

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing
November 30, 2011
Jefferson City, Missouri
Volume 2

In the Matter of the Application)
of Missouri Gas Energy For The)
Issuance Of An Accounting Authority)
Order Relating To Its Natural Gas) File No. GU-2011-0392
Operations And For A Contingent)
Waiver Of The Notice Requirement)
Of 4 CSR 240-4.020(2))

DANIEL JORDAN, Presiding
SENIOR REGULATORY LAW JUDGE
KEVIN D. GUNN, Chairman,
JEFF DAVIS,
TERRY M. JARRETT,
ROBERT S. KENNEY,
COMMISSIONERS.

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P R O C E E D I N G S

JUDGE JORDAN: The Commission is calling File No. GU-2011-0392. The caption is as follows: In The Matter Of The Application Of Missouri Gas Energy For The Issuance Of An Accounting Authority Order Relating To Its Natural Gas Operations And For A Contingent Waiver Of The Notice Requirement Of 4 CSR 240-4.020 Section 2.

My name is Daniel Jordan. I'm the regulatory law judge assigned to this action. We're here for an evidentiary hearing on the application I just described.

I'm going to ask everyone right now to turn off your communication devices. I'm doing that right now. If the parties will inform me when they think a break is necessary or appropriate, and you can check your devices then.

I asked the parties before we went on the record whether there were any preliminary matters and I understand that there are none and I'm not seeing anybody to negate that, so we will begin by taking entries of appearance. Let's start with the applicant.

MR. MITTEN: Good morning, Your Honor. Appearing on behalf of the applicant, Missouri Gas Energy Division of Southern Union Company are L. Russell Mitten and Paul A. Boudreau of the law firm of Brydon, Swearingen and England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri, 65102.

1 JUDGE JORDAN: Thank you, counselor.

2 For Staff?

3 MR. BERLIN: Good morning, Judge. Let the
4 record reflect that appearing on behalf of the staff of the
5 Missouri Public Service Commission are Robert S. Berlin, Sarah
6 L. Kliethermes and Goldie Thompkins.

7 JUDGE JORDAN: Thank you.

8 For the Office of Public Counsel?

9 MR. POSTON: Thank you. Marc Poston appearing
10 on behalf the Office of Public Counsel and the public.

11 JUDGE JORDAN: Thank you.

12 Now, I understand the prefiled testimony has
13 already been marked; is that correct? Yes? Yes?

14 MR. POSTON: Yes.

15 MR. BERLIN: Yes.

16 JUDGE JORDAN: Yes. Okay. Good.

17 And I understand, too, that the parties wish to
18 make opening statements? We'll begin with the applicant.

19 MR. MITTEN: Your Honor, before I make my
20 opening statement, might I ask as to the origin of the text
21 that's on the screen over here?

22 JUDGE JORDAN: Office of Public Counsel, you
23 want to address that?

24 MR. POSTON: Yes. That is my PowerPoint
25 presentation from my opening.

1 MR. MITTEN: Can I ask that we take it off the
2 screen unless it's being used?

3 MR. POSTON: I'm not sure how to do that.

4 JUDGE JORDAN: You could turn off the monitor.
5 There's probably a switch.

6 MR. POSTON: That'll do it? Turn off this
7 monitor or this monitor?

8 MR. BERLIN: I don't it's being broa-- I mean,
9 is your concern that the people in this room see it? Because I
10 don't think anybody else on the outside can see it.

11 MR. MITTEN: I am concerned about the people in
12 the room seeing it because we don't agree with the
13 characterization that's up there. I don't have any problem with
14 Public Counsel using it for his opening statement, but I don't
15 want it to be up there --

16 MR. POSTON: I'll power it down --

17 JUDGE JORDAN: Well, I'll note your objection
18 for the record. Any characterization that appears on that
19 monitor will not control the Commission.

20 CHAIRMAN GUNN: Marc, check on this -- over on
21 this far side.

22 MR. POSTON: Well, I can see it but I'm worried
23 I won't be able -- it won't come up right. You mean this right
24 here?

25 CHAIRMAN GUNN: We'll have to wait. That's

1 silly, but we'll do it.

2 MR. MITTEN: If it'd please the Commission. On
3 Sunday, May 22nd of this year what has been described as the
4 worst tornado in the United States in the last 60 years and one
5 of the deadliest in all of American history struck Joplin,
6 Missouri and the surrounding area. The National Weather Service
7 designated the tornado an EF-5, the strongest capacity on a
8 scale for rating tornadoes. And winds were reported to have
9 peaked at between 225 and 250 miles per hour.

10 The tornado followed a six-mile path through the
11 middle of Joplin destroying much of the city's central and south
12 side. More than 160 people were killed and almost 1,000 were
13 injured. Thousands of homes and businesses were destroyed and
14 many more were severely damaged.

15 After the storm passed, MGE, which serves Joplin
16 and the surrounding area, was required to shutdown over 10 miles
17 of its gas mains, which interrupted service even to those
18 customers not directly affected by the tornado. In addition,
19 the company lost approximately 3,200 gas meters because no
20 structures remained at the locations that had been served by
21 those meters.

22 More than six months after the tornado most of
23 those meters have not yet been replaced because the structures
24 they serve have not yet been rebuilt and no one knows when the
25 reconstruction efforts will be completed.

1 Many of the facts I just related are well known
2 to the Commission and I don't repeat them this morning because I
3 want to force anyone in the hearing to relive the horrors of the
4 Joplin tornado and the destruction it brought. Instead, I
5 relate those facts for two reasons: First, to recall the truly
6 extraordinary nature of the Joplin tornado; and two, to remind
7 the Commission that it is the extraordinary nature of that event
8 that caused MGE to file its application for an accounting
9 authority order in this case and it is the extraordinary nature
10 of the event that -- ultimately controls whether the Commission
11 should grant the application in this case.

12 This is clear from the language of the
13 Commission's Report and Order in consolidated Case Nos.
14 EO-91-358 and EO-91-360, which is the order where, as Staff
15 states in its recommendation in this case, the Commission stated
16 its criterion for deferral of costs incurred outside a rate
17 case.

18 In the context of Staff's recommendation, that
19 statement contains an error in syntax, but it's an error that
20 speaks the truth because there is but one criterion that
21 controls the Commission's decision regarding whether MGE should
22 be granted the accounting authority order it seeks in this case.

23 In the Report and Order I referred to a moment
24 ago the Commission explicitly stated: The decision to defer
25 costs associated with an event turns on whether the event was

1 extraordinary. The Commission reemphasized that point later in
2 the same order when it stated: The primary focus is on the
3 uniqueness of the event; either through its occurrence or its
4 size.

5 And to erase any doubt as to the primacy of that
6 single question, the Commission when on to state that while
7 considerations like whether the event has a material or
8 substantial effect on utilities earnings are -- quote -- "also
9 important" -- close quote -- those considerations are not a
10 primary concern and are not -- quote -- "case dispositive" --
11 close quote.

12 Actually, the evidence in this case will show
13 that chara-- that characterization of additional considerations
14 as also important was probably an overstatement because under
15 the Uniform System of Accounts for gas utilities, the Commission
16 can authorize deferrals irrespective of their financial impact
17 on a utility as long as the event giving rise to those deferrals
18 is extraordinary.

19 Certainly, this is not the first application for
20 an accounting authority order that the commission has considered
21 in the aftermath of an extraordinary event, but it appears to be
22 the first instance where the Commission is being asked to decide
23 whether the utility affected should be allowed to defer not only
24 its out-of-pocket operating -- operations and maintenance and
25 capital-related costs, but also revenues lost as a result of the

1 event.

2 But there's a simple explanation for why that's
3 true; never before this case has this commission been confronted
4 with an event as truly as extraordinary as the Joplin tornado.
5 Such an extraordinary storm surely deserves a regulatory
6 response that goes beyond what's normal and routine.

7 The least contested part of MGE's application
8 concerns the expenses and capital-related costs that the company
9 has incurred and will continue to incur in the future to repair
10 the damage caused by the Joplin tornado and restore service to
11 customers.

12 Other utilities are routinely granted authority
13 to defer these types of costs following lesser extraordinary
14 events so there should be no question that MGE is entitled to
15 the same relief in this case.

16 The evidence in this case will show that Staff
17 and the company are in agreement that the Joplin tornado is an
18 extraordinary event and that the Commission should issue an
19 accounting authority order that allows MGE to defer
20 out-of-pocket O&M and capital-related costs. Public Counsel may
21 also agree, although the testimony of its witness on this case
22 is far from clear on that point.

23 The only contested issues with respect to MGE's
24 request to defer out-of-pocket costs are: One, when the
25 amortization of those costs should commence; and two, over what

1 period they should be amortized. Consistent with past orders of
2 the commission and past recommendations of Staff, MGE believes
3 that the amortization of the deferred out-of-pocket O&M and
4 capital-related costs should commence on the effective date of
5 rates approved by the Commission in the company's next general
6 rate case and that the amortization period should be five years.

7 Much more controversy surrounds MGE's request to
8 defer the fixed costs revenues the company has lost and
9 continues to lose as a result of the tornado. In MGE's last
10 rate case the Commission approved a straight, fixed variable
11 rate design that provides for recovery of all fixed costs the
12 company incurs to provide service through a separate rate
13 element that is billed to roughly 99 percent of MGE's customers.

14 But despite the fact that its fixed costs of
15 providing service have not diminished since the Joplin tornado,
16 thousands of customers are not currently paying the rates
17 necessary to cover those fixed costs because the structures
18 where those customers received service were destroyed and have
19 not yet been rebuilt.

20 Consequently, instead of covering its fixed
21 costs through rates, the funds necessary to pay those costs are
22 coming directly from MGE's earnings. Requiring MGE to dip into
23 earnings to cover its fixed costs of providing service acts to
24 deny the company the reasonable opportunity to earn a fair rate
25 of return to which it is entitled by law.

1 Certainly the evidence presented in this case
2 will support what I've just told you, but the specific effect of
3 lost fixed cost revenues on the company's earnings is, as I
4 mentioned before, beside the point because if the Commission
5 determines that the Joplin tornado was an extraordinary event,
6 then MGE should be authorized to defer its lost revenues just as
7 it is authorized to defer out-of-pocket O&M and capital-related
8 costs.

9 That's true because following an extraordinary
10 event the Uniform System of Accounts specifically authorized the
11 deferral of any item that effects a utility's net income. That
12 means the commission has the same authority to defer lost
13 revenues that it has to defer out-of-pocket expenses and
14 capital-related costs because each of these items effects net
15 income.

16 In opposing the deferral of lost fixed cost
17 revenues witnesses for Staff and the Public Counsel have raised
18 a host of issues that are not related to the question of whether
19 the Joplin tornado was an extraordinary event. For reasons I
20 have already discussed, as well as for some additional reasons I
21 will discuss in a moment, all of those issues are irrelevant to
22 this case.

23 Consequently, Staff and Public Counsel's
24 evidence on those issues should be ignored. But because these
25 other witnesses have raised -- these other issues were raised by

1 the other parties, MGE's witness -- witnesses have addressed
2 each of them in their prefiled testimony.

3 As those are -- issues are discussed during this
4 hearing, I ask the Commission to consider those issues only in
5 the context of the following evidence: First, whether the items
6 presented by Staff and Public Counsel had a material financial
7 impact on MGE is of no real consequence because the Uniform
8 System of Accounts allows the deferral of any item that effects
9 net income so long as the event that caused the deferral is
10 extraordinary.

11 Second, if the Commission chooses to even
12 consider whether the Joplin tornado had a material financial
13 impact on MGE, you must consider that the USOA also requires
14 that all of the financial effects of that tornado, that is both
15 expenses and revenues, be aggregated to determine materiality.

16 Third, although none of the parties has been
17 able to find a prior Missouri case where a utility has asked for
18 authority to defer lost revenues following an extraordinary
19 event, MGE's request is not unprecedented as some parties would
20 suggest.

21 There's testimony filed by MGE's witness Michael
22 Noack, shows that in December of 1992 the Hawaii Public
23 Utilities Commission granted the electric company serving the
24 island of Kauai authority to defer revenues lost as a result of
25 a hurricane that devastated that island much like the tornado

1 devastated Joplin.

2 Fourth, the type and duration of the financial
3 impacts on MGE of the Joplin tornado differ materially from the
4 impacts other utilities have experienced as a result of other
5 extraordinary events that the Commission has dealt with in the
6 past.

7 Following more normal and routine ice and wind
8 storms, service can quickly be restored and the affected utility
9 can resume collecting rates to cover its costs within a few
10 days. But the Joplin tornado destroyed the residential and
11 commercial structures where customers lived and worked, which
12 means that service cannot be restored and MGE cannot resume
13 collecting rates until those structures are rebuilt.

14 Fifth, if the customer -- if the Commission
15 grants MGE authority to defer lost fixed costs revenues that
16 decision will not increase current rates to customers and it
17 will not obligate the Commission to increase rates in the
18 future. Whether any or all of the deferred amounts will be
19 included in future rates will be decided in MGE's next rate case
20 based solely on the evidence that presented in that case.

21 And finally, unless the Commission grants MGE's
22 request to defer its lost revenues, the company will forever be
23 denied the opportunity to have that loss considered in a future
24 rate case. Don't be sidetracked or distracted by the testimony
25 of witnesses for the Staff and Public Counsel who tell you that

1 this case is about things other than the singular question of
2 whether the Joplin tornado was an extraordinary event.

3 As I stated before, those things are irrelevant
4 and those witnesses should know that because in the Report and
5 Order that was issued in the Missouri Public Service company
6 cases I mentioned a few moments ago, the Commission made it
7 crystal clear that it is a rate case and not in a proceeding
8 such as this one where all other issues related to deferred
9 amounts should be considered.

10 The only issue the Commission needs to decide in
11 this case is was the Joplin tornado an extraordinary event. If
12 you determine that it was, then MGE's application should be
13 granted in its entirety. Thank you.

14 CHAIRMAN GUNN: I just have a couple questions,
15 Judge.

16 JUDGE JORDAN: Go ahead.

17 CHAIRMAN GUNN: I just have a couple questions.

18 MR. MITTEN: Sure.

19 CHAIRMAN GUNN: Thanks for the opening. What is
20 MGE's currently authorized ROE?

21 MR. MITTEN: I don't know. I'm sorry.

22 CHAIRMAN GUNN: That's okay. So you wouldn't
23 know what they're -- what they're currently earning?

24 MR. MITTEN: I don't know. Mr. Noack can answer
25 those questions.

1 CHAIRMAN GUNN: All right. I want to -- even
2 though the previous commission reports were crystal clear and I
3 don't necessarily disagree with you on that, that certainly
4 doesn't bind this -- the current commission.

5 MR. MITTEN: It certainly doesn't bind the
6 commission, but I don't think there's any good reason to deviate
7 from that previous ruling or to deviate from the standards that
8 are contained in the Uniform System of Accounts.

9 CHAIRMAN GUNN: Which is different from -- I --
10 I just want to make it perfectly clear that we're not bound by
11 previous commission orders --

12 MR. MITTEN: I -- I --

13 CHAIRMAN GUNN: -- even if I happen to be part
14 of that report.

15 MR. MITTEN: I accept that.

16 CHAIRMAN GUNN: So two more quick questions.
17 You talked about how the USOA requires you to aggregate all
18 these things -- all these things together. Isn't part of the
19 purpose of an AAO is to take you out of what the USOA requires?

20 MR. MITTEN: Well --

21 CHAIRMAN GUNN: Isn't it -- isn't it -- isn't it
22 meant to say that this is going to be treated substantially
23 different, we're allowing you to -- to not conform to the
24 standards in the USOA?

25 MR. MITTEN: I think I would characterize it

1 differently. The purpose of an AAO is to take these costs
2 outside the normal rate case treatment of costs. And the A--
3 the USOA specifies how that should be done. And the way that
4 the USA [sic] specifies it should be done is you defer those
5 costs so that they can then be considered in a future rate case.

6 Because under normal ratemaking procedures if
7 costs aren't incurred during a test period or if costs aren't
8 recurring even if they do occur during a test period, they get
9 excluded from consideration in a rate case. So unless you defer
10 these extraordinary costs, you don't have an opportunity in a
11 future rate case.

12 CHAIRMAN GUNN: And -- and if we were to include
13 everything in -- in -- in the AAO, nothing prevents the
14 commission during a general rate case from going through line by
15 line everything that's included in the AAO and say you're not
16 entitled to recovery.

17 MR. MITTEN: Absolutely. And we would expect
18 you to do just that, Commissioner Gunn.

19 CHAIRMAN GUNN: I have one final question and
20 it's going to be completely unfair, but I get to do that. If
21 everyone in Joplin tomorrow decided that they organized together
22 and they said, you know what, we're not -- we're going to turn
23 off all our gas and use nothing but electricity for the next
24 month. We just decided. It's a crazy anti-gas movement that
25 happened to spring up in Joplin.

1 So everybody turns off their gas, so you're
2 receiving no gas revenue other than your fixed costs from --
3 other than the fixed costs on the charge, there's not volume
4 metric charge, right. So you've lost a ton of revenue.

5 Would that quali-- would that qualify as an
6 extraordinary event and if it did, would you then be entitled to
7 come in for an AAO to get that lost -- to get that lost revenue?

8 MR. MITTEN: It may qualify as an extraordinary
9 event. What it would point out is one of the shortcomings in
10 ratemaking in that you would have to wait a full year to have
11 the effects of that decision by everyone in Joplin to stop using
12 gas be reflected in test period revenues and expenses so that
13 you can then base future rates on the actual situation that
14 exists in Joplin.

15 Because of that, it may well constitute an
16 extraordinary event because in order to get any ratemaking
17 relief as a result of that decision, you would have to defer the
18 costs that aren't currently being collected from customers to
19 see if the Commission will allow you to collect those in the
20 future after -- at your next rate case.

21 CHAIRMAN GUNN: Thank you. I don't have
22 anything else.

23 JUDGE JORDAN: I have a question or two for you.

24 MR. MITTEN: Yes.

25 JUDGE JORDAN: Something's bothering me. You

1 raised the issue of relevancy. I'd like to address that because
2 as I mentioned it will be important as we go along. If I
3 understand the accounting rules that apply to utilities as I've
4 have read them, the parts that have been cited to me, they
5 address income and losses generally. The idea is, is it not, to
6 report all gains, all losses; is that correct?

7 MR. MITTEN: That's correct.

8 JUDGE JORDAN: Okay. The arguments of other
9 parties suggest that these expenses will never be used in a rate
10 case. We can tell that now because they're not the kind of
11 expenses that ever go into a rate case. And I'd like to address
12 that as follows --

13 MR. MITTEN: Well, if you're talking about the
14 deferred -- the amounts that we're asking for authority to
15 defer, I agree because unless they're deferred, they can't be
16 considered in a future rate case.

17 JUDGE JORDAN: Focusing specifically on the lost
18 revenue issue, parties have suggested that that can never be
19 useful in a rate case. I'd like to analogize, if I may, to
20 analyze the relevance of that. Suppose there were an expense
21 that we understand that as given, cannot be used in setting
22 rates. Say the chairman of the board goes out to dinner and
23 does not business during it and just has a really good time.

24 That's the kind of thing that I understand does
25 not go into a rate base; is that correct?

1 MR. MITTEN: It wouldn't be in rate base, but it
2 wouldn't be a recoverable expense either.

3 JUDGE JORDAN: Not recoverable, not a
4 recoverable expense. Okay. If this AAO were about something
5 that we understand is not a recoverable expense, should we have
6 a hearing on it?

7 MR. MITTEN: Well, the problem is you can't make
8 that determination in this case based on the record in this
9 case. That discrimination can only be made in the next rate
10 case based upon the evidence that's available in that case. All
11 we're asking you to do right now is because there was an
12 extraordinary event -- and that's critical because you can't
13 defer anything that is not linked to an extraordinary event --
14 because there was an extraordinary event, we want the
15 opportunity to defer lost costs, most fixed costs, which are
16 represented by revenues, and also lost O&M and capital-related
17 costs so that the commission has an opportunity to consider
18 those in the next case.

19 Because if we don't get the deferral opportunity
20 or authority in this case for both of those items, the
21 commission can't consider whichever one we don't get deferral
22 authority for.

23 JUDGE JORDAN: I think I understand that
24 argument. My question is: Would your argument be the same if
25 this were something that we understand is not a non-recoverable

1 cost?

2 MR. MITTEN: Well, yeah. If you -- if I can use
3 the example that you gave of the chairman going to dinner and
4 not conducting any business, the problem there is it's not
5 linked to an extraordinary event. So if we came in and asked to
6 defer that cost, you could rightly tell us no because there is
7 no extraordinary event. The trigger here is there was an
8 extraordinary event.

9 And the USOA specifically recognizes that if
10 there is an event and that event effects items that effect net
11 income that you have the right to request to defer those items.
12 And if you don't defer them, then you have no opportunity to
13 have them considered in a future rate case.

14 And that's the reason -- that's the derivation
15 of the deferral order because you need an opportunity to have
16 them considered in a future rate case and that's the only way to
17 do it.

18 CHAIRMAN GUNN: So if I could follow up. So
19 essentially what you're saying is is that once we make a
20 determination that there's an extraordinary event, that an AAO
21 was appropriate, then everything remotely connected with that
22 extraordinary event goes in?

23 MR. MITTEN: I won't say remotely connected, no.

24 CHAIRMAN GUNN: Connected. I'm not trying -- I
25 don't want to parse -- I don't want to parse words, but

1 basically it's that's where the inquiry ends. And then you have
2 a second inquiry during your general rate case to determine
3 whether the items contained within the AAO are appropriate to be
4 recovered in a rate case?

5 MR. MITTEN: That's correct.

6 CHAIRMAN GUNN: So the question then becomes it
7 is the company's decision -- it is your position that it's the
8 company's decision as to what is connected to the event which
9 would then go to the AAO?

10 Once we find out it's an extraordinary event and
11 an AAO is appropriate, then it -- then the authority shifts
12 essentially to the company to decide what's connected and what
13 they're going to place in that AAO?

14 MR. MITTEN: Yes. I think that's correct. And
15 I would add, Commissioner Gunn, that under the two Missouri
16 Public Service Commission -- the combined cases and also under
17 the instructions in the Uniform System Account, if the aggregate
18 amount of the items that you want to defer is 5 percent or
19 above, you technically don't have to come to the Commission for
20 authority to defer them.

21 The aggregate amount of the items that MGE is
22 seeking deferral of in this case well exceed 5 percent, but it's
23 the company policy to come to the Commission for authority to
24 defer those items so that there's no question between the
25 company, the staff, Public Counsel and the Commission as to

1 what's going on.

2 CHAIRMAN GUNN: Okay. Thank you.

3 JUDGE JORDAN: I think I understand your
4 argument. Just to wrap up the idea -- follow-up the chairman's
5 inquiry was once we grant the AAO the utility reports those what
6 it believes are the relevant expenses as directed in the order?

7 MR. MITTEN: Yes.

8 JUDGE JORDAN: Preserving them for a -- for a
9 future rate case at which point the Commission will decide
10 whether they are or are not compensable; is that correct?

11 MR. MITTEN: That's correct.

12 JUDGE JORDAN: Thank you. That was helpful.
13 Thank you.

14 Opening statement from Staff, please.

15 MR. BERLIN: Yes, Judge. Staff's opening
16 statement will be given by Sarah Kliethermes.

17 JUDGE JORDAN: I'll go do that right now. Do
18 you have something for me?

19 MS. KLIETHERMES: I actually need the projector
20 if that's possible. I have three missing commissioners. Right?

21 CHAIRMAN GUNN: I'll make sure they get that.

22 MS. KLIETHERMES: I'll give the judge one.

23 MR. BERLIN: Sarah, he's got the feed on. I
24 don't know if --

25 MS. KLIETHERMES: While we are working with the

1 technology, Mr. Mitten, were those cases EO-91-358 and
2 EO-91-360, did you say?

3 MR. MITTEN: Yes.

4 MS. KLIETHERMES: Okay.

5 MR. BERLIN: Can you turn that on to make sure
6 that's -- that switches automatically.

7 JUDGE JORDAN: Yeah. Turn that on and see if
8 that overrides --

9 MS. KLIETHERMES: I think it is on. I think I
10 know how to make it appear on that screen, at least I did
11 yesterday.

12 I had a neat and organized presentation but your
13 discussion with Mr. Mitten causes me to deviate a bit from it.
14 I guess initially I'm a bit confused by Mr. Mitten's reference
15 to what we call the Sibley case, because that quite plainly
16 included a two-prong test in which it first required an
17 extraordinary event and then a materiality requirement.

18 And Commissioner -- Chairman -- I'm sorry -- I
19 agree with your characterization of how MGE's, you know -- once
20 you have the -- once you have an extraordinary event, you then
21 look at what you need to do and, you know, then it's up to the
22 company what goes into that account. You had that exactly
23 right. Except the USOA also includes a probability of recovery
24 requirement, which was also not mentioned.

25 And I guess taking MGE's argument to a logical

1 conclusion that's it's all about the extraordinary nature of the
2 event -- I mean, I think that would mean that if Ameren happened
3 to have a truck in Joplin, you know, passing through when the
4 tornado struck that that would allow Ameren to seek an AAO for
5 recovery of that \$40,000 truck, if I understood his argument
6 properly.

7 He also argued that you can't consider an item
8 in a -- these items under a rate case if you don't grant this
9 accounting authority order. That is simply not true. They
10 could file a rate case today to seek recovery of these items.
11 They could file a rate case at any point that includes these
12 items. In fact, if these lost revenues, as they phrase it, or
13 is drawn out as they claim, then certainly there will be lots of
14 opportunities for them to file a rate case, which would include
15 those reduced customer numbers.

16 In short, you probably could grant MGE's request
17 under the USOA, it would just be a really horrible idea. Staff
18 does not dispute MGE's description of Joplin's destruction, loss
19 of life. Staff supports granting an AAO for the O&M request.
20 However, the lost revenues request is just plain wrong.

21 Now, OPC characterized that on the offending
22 overhead there as unearned revenues and that's probably more
23 appropriate. On second or third thought, under profit is
24 probably the most accurate.

25 The lost revenues request is MGE's first step in

1 a process to insulate its shareholders from the risk of any
2 shortfall in profit due to Joplin's tornado. This is not about
3 fixed costs; it's about profit. You asked what MGE's currently
4 allowed ROE is, it's 10.0 percent. And after performing the
5 adjustments described by Mr. Oligschlaeger in his rebuttal
6 testimony, we learned that MGE's ROE adjusted is impacted by
7 approximately 26 basis points. So that's an ROE of 9.74 percent
8 versus and ROE of 10.0 percent.

9 Now, as a gas company subject to the
10 Commission's jurisdiction, MGE is required by regulation to keep
11 all of its accounts in conformity with the USOA prescribed by
12 the FERC. As a rule, the USOA requires that a company's net
13 income reflect all items of profit or loss occurring during the
14 period. The USOA does give commissions such as ours the
15 discretion to vary the standard accounting rules through the
16 granting of an AAO. But booking as incurred is the rule.

17 I do need to double check this citation. I'm
18 afraid that this was actually in the case involving MGE's Kansas
19 property taxes and the citation above it was to the Missouri
20 American Water case. So I will confirm that when I return from
21 our first break.

22 But I won't read it out loud to you, but I would
23 encourage you to take a moment to read this, particularly the
24 bolded language there that -- I'm sorry, that's not bolded
25 language. The immediate and primary benefit of an AAO is that

1 the deferred item is booked as a regulatory asset rather than an
2 expense thereby improving the financial picture of a utility
3 during the deferral period. That's something that happens
4 regardless of whether they get recovery in a rate case.

5 This gets shielded from MGE's shareholders and
6 spread out over time regardless of if they ever file a rate case
7 if you grant this deferral order.

8 MGE shareholders have risk. MGE shareholders
9 need to understand their risk. An AAO spreads out shareholder
10 losses and has the potential to increase ratepayer liabilities.
11 Now Staff believes that MGE's cost of repairing and rebuilding
12 should be deferred, but Staff does not believe that it would be
13 appropriate to give MGE the accounting authority to guarantee
14 dollar-for-dollar deferral to insulate its shareholders from the
15 risk that MGE goes a few months without collecting customer
16 charges from those displaced by Joplin's devastating tornado.

17 The devastation experienced by Joplin does not
18 obligate you to guarantee MGE's desired level of profit. MGE's
19 fixed costs are admit, we are talking about profit. The risk of
20 reduction of profit and the risk of not even making a profit is
21 why MGE's ROE wasn't set as a risk-free investment. Even by
22 MGE's calculation Joplin's tornado doesn't put any of its -- I'm
23 sorry -- much of its profit at risk. And as we'll show, MGE's
24 calculation of the reduction to profit is significantly
25 overstated.

1 Joplin's tornado took everything from some
2 residents of Joplin and the surrounding communities including in
3 some instances their lives. MGE is asking this commission to
4 shield the investment community from any trace of that tornado
5 and then some. MGE is asking you to give it the authority to
6 make accounting entries showing no losses for not only the
7 distribution system repairs, which Staff reports, but also for
8 the financial ding associated with some level of its Joplin area
9 customers not paying a residential -- I'm sorry -- a monthly
10 customer charge while those residents rebuild. There's actually
11 a few other items included in that.

12 Now this is a little difficult to see, but the
13 reason the table is at the top is to show the sources of all of
14 these numbers. Essentially, the big blue circle without the
15 wedge out, would be their revenues. And then the wedge
16 represents their calculation of lost revenues. The bar graph
17 then breaks that out as described in Mr. Oligschlaeger's
18 testimony.

19 First, let's talk about the income tax expense.
20 Essentially, for MGE to recover a dollar in rates it is
21 necessary to collect \$1.62 in customers to cover the taxes.
22 Since MGE isn't obligated to pay taxes on revenues it doesn't
23 receive, Staff removes \$448,000 from MGE's calculation.

24 A good illustration of what's fundamentally
25 wrong with MGE's lost revenues request is also seen through this

1 income tax figure. You see, profits get taxed. Any of MGE's
2 repair and restoration costs deferred through the AAO should be
3 tax deductible. Therefore, there is no need to gross these
4 amounts up for rate recovery purposes. However, recovery of
5 deferred profits in rates by MGE will not be tax deductible,
6 meaning that its customers will have to pay approximately \$1.62
7 in rates to reimburse MGE for every dollar of revenue that it
8 alleges it lost due to the tornado.

9 Next, Mr. Oligschlaeger looked at year over year
10 customer numbers and that's that adjustment you see in the green
11 color, the April to April customer loss. MGE's calculation
12 included customers that had already quit taking gas service
13 prior to the tornado. Given the length and arrangement of MGE's
14 billing months, Staff conservatively used the April to April
15 loss of 169 customers while the March to March comparison showed
16 nearly twice as much pre-existing customer loss.

17 This is a smaller adjustment, but the variable
18 costs in customer charge refers to Mr. Oligschlaeger's
19 description of how MGE's calculation relies on the full customer
20 charge applicable to a given rate class despite the fact that
21 MGE does experience a reduction in cost due to serving fewer
22 customers. And as I said, this is a small amount, but
23 specifically and conservatively Staff removed the cost for items
24 associated with mailing a customer's bill, like cardstock and
25 postage.

1 And finally, even Staff's adjusted figure there,
2 the blue, assumes a full year of customer loss. The Joplin City
3 Clerk's Office and other utilities serving Joplin are reporting
4 that rebuilding is underway. In fact, we received a data
5 request response this morning from MGE that indicated that
6 approximately 927 old customers affected by the tornado had
7 connected at a different premise and there are approximately 975
8 old customers had reconnected at their old premise.

9 These items are important for materiality.
10 These items are important for consideration of probability of
11 recovery. Do not ignore them as MGE suggests.

12 Now here, under -- I believe it's Instruction
13 No. 7 -- the USOA makes it clear that the intent that net income
14 shall reflect all items of profit and loss during the period is
15 the rule. The exception is when there is an unusual and
16 infrequent occurrence.

17 Now, it's a simple matter to conclude that
18 Joplin's devastating tornado was an extraordinary event for the
19 people of Joplin. Staff does not dispute this in any way nor
20 intend to diminish that in any way. Further, the Staff has
21 stated all along the tornado did extraordinarily effect MGE's
22 Joplin area distribution system and Staff's supports deferral
23 authority for those O&M expenditures associated with repair and
24 restoration.

25 What is not extraordinary about Joplin's tornado

1 is it's effect on MGE's shareholders' profits. While MGE
2 encourages the Commission to grant its AAO and not worry about
3 those pesky accounting details, those accounting details point
4 towards denial of MGE's request.

5 Here, under 182.3 (b), we see that USOA's
6 instruction that in order for a deferral to be valid under the
7 USOA it needs to be probable that the amounts will be included
8 in a different period for purposes of developing rates. The
9 standard is not if in doubt, defer.

10 Even if you think MGE should be allowed to defer
11 lost revenues against Staff's recommendation, MGE should not be
12 allowed to dump dollars into a deferral account associated with
13 the income taxes, the pre-existing customer loss, the variable
14 costs and their 19 -- I'm sorry -- 1,900 already reconnected
15 customers.

16 So we've established that MGE's calculation of
17 lost revenues was wrong and we've established that your decision
18 matters. What about the merits of MGE's request to pad its
19 booked profit with dollar-for-dollar deferral of monthly
20 customer charges tornado victims aren't paying?

21 Well, for a good illustration of what's wrong
22 with MGE's request let's go back to Staff's initial
23 recommendation, which we filed in the middle of August. We
24 stated there that we were unable to find a similar request and
25 invited MGE to alert to anything we may have overlooked.

1 Well, in Mr. Noack's surrebuttal testimony three
2 months later MGE accepted that invitation and let us know about
3 Citizen's United in Hurricane Iniki. That case involved a
4 stipulation and agreement that resulted in authorization for the
5 deferral of lost margins.

6 Let's compare these disasters and these requests
7 for better understanding of exactly of what MGE is asking this
8 commission for. Hurricane Iniki affected between 30 and 35
9 percent of KED's transmission and distribution systems. KED
10 alleged emergency rate relief and continued to maintain that
11 throughout the case.

12 However, ultimately the parties to the 1992 case
13 cited by MGE did request that the Hawaii commission give
14 Citizens the authority to defer loss gross margin amounts
15 similar to MGE's loss revenues request.

16 But there was then a 1995 rate case to decide
17 the ratemaking treatment for the lost margins. In that case
18 parties argued that ratepayers should not be responsible for
19 paying Citizen shareholders to make up for the utilities
20 temporarily decreased revenues resulting from a natural disaster
21 such as Hurricane Iniki and the Hawaiian commission agreed.

22 So to recap, in the only case anyone can find
23 with any resemblance to MGE's request here, other than Empire's
24 request prepared by the same law office, which has since been
25 withdrawn, the natural disaster itself was more powerful. The

1 system sustained at least 15 times more damage. A stipulation
2 was involved. The emergency rate relief standard was alleged to
3 have been met and recovery of the deferred lost margin amount
4 was ultimately denied. Given MGE's facts, this is not an area
5 where this commission should plow new regulatory ground.

6 Well, let's talk about Joplin. According to its
7 application in EU-2011-0387 Empire estimated its initial
8 customer loss from Joplin's tornado at 8,000. And according to
9 its 2010 annual report Empire serves approximately 168,000
10 Missouri electric customers. That's about 4.7 percent.

11 MGE serves -- I'm sorry -- MGE serves
12 approximately half a million customers in Missouri spread
13 through 29 counties. MGE estimates that it lost at its peak,
14 excluding any offsets, approximately 7,000 customer accounts in
15 the Joplin area. By my math, that's 1.37 percent.

16 Now, assuming those customers are just sitting
17 around until May 22nd, 2012 at the earliest and ignoring the
18 1,900 of them who have already reconnected, we're looking at
19 1.37 percent of MGE's Missouri customers. That's what MGE is
20 here fighting for; the authority to insulate its shareholders
21 from the risk that it goes a few months without customer charges
22 from less than 1.37 percent of its customers. Now, those
23 figures are relying on MGE's numbers, not Staff's or OPC's.

24 In its application, MGE holds out the prospect
25 of the rate case as practically a threat. However, if MGE feels

1 that Joplin's tornado was as devastating to shareholder profit
2 as it alleges, a rate case would be the appropriate course of
3 action not stretching the definition of an AAO. Further,
4 Missouri statutes provide for expedited rate relief.

5 Now, these numbers basically show -- I'm sorry.
6 I should preface by saying that it's my understanding that MGE
7 does not split out its long-term debt obligations from its ROE
8 and it's for its financial reporting purposes. And I'm sure the
9 company witness will be happy to correct me on that if I
10 misspoke. But that's why you see the one green chunk covering
11 all return -- I'm sorry -- all rate of return, which still
12 comprises 10 percent.

13 That's 10 percent in excess of its income taxes
14 and other deductions and that's 10 percent in excess of its
15 fixed expenses.

16 Now, even that -- I'm sorry. We spoke earlier
17 about MGE's ROE being approximately -- or being awarded at -- or
18 being allowed at 10 percent in the last rate case. Now, if you
19 do the simple cross-multiplication based on Mr. Noack's
20 assertion that the insurance deductible plus the loss revenues
21 amount equals 51 basis points -- for some reason in his
22 testimony he didn't break those two amounts out -- but knowing
23 MGE's quantification of the lost revenues request, we can back
24 that out and determine the insurance deductible and then we can
25 do some simple cross-multiplication.

1 And if you'll remember our sheet we went through
2 earlier showing Mr. Oligschlaeger's adjustments, it works out
3 that the actual impact of lost revenues appears to be -- and
4 this is not accounting for the 1,900 customers we learned this
5 morning have reconnected -- approximately 26 basis points.

6 Now, as Mr. Oligschlaeger explained in his
7 rebuttal testimony, MGE is meeting its fixed costs and long-term
8 debt obligations and as Mr. Noack concedes in his surrebuttal
9 testimony, even using MGE's inflated estimate of the impact of
10 Joplin's tornado on MGE's profits, the tornado only reduced
11 shareholder profit to 9.49 percent. And again, that's including
12 the insurance deductible.

13 In other words, MGE continues to collect
14 revenues sufficient to meet its fixed cost. It's not the fixed
15 costs that MGE's here after. It's the extra profit; 9.74 versus
16 10.0, 26 basis points of profit.

17 Turning briefly to MGE's O&M expenditures,
18 they're mostly capital related, a 10-year amortization is
19 appropriate. For capital intense AAO's Staff has typically
20 recommended 20 years. In cases where expense is the driver,
21 Staff typically recommends five years. And what MGE has
22 requested here is a mix and a 10-year amortization period is
23 most appropriate.

24 Concerning the start date; Joplin citizens
25 experienced the affects of Joplin's tornado beginning May 22nd,

1 2011. MGE shareholders should not be so removed as to delay
2 recording the impact of that tornado until they feel like filing
3 a rate case. At MGE's Kansas property taxes case, which was
4 GU-2005-0095, this commission determined that AAOs inherently
5 cause subsidization across time and looked to Staff's
6 recommended start date in that case as the best way to minimize
7 subsidization across time.

8 Again, in this case, Staff's recommended start
9 date of January 1, 2012 is the best recommendation to minimize
10 subsidization across time.

11 In other words, Staff does recommend MGE gets
12 special accounting treatment to protect -- to protect MGE's
13 shareholders from the cost of repair and restoration as related
14 to the Joplin tornado. But Staff can't recommend that this
15 commission step on to the slippery slope of guaranteeing MGE
16 those extra 26 basis points of profit. The devastation
17 experienced by Joplin does not obligate you to guarantee MGE's
18 desired level of profit.

19 CHAIRMAN GUNN: I have some questions.

20 MS. KLIETHERMES: Sure.

21 CHAIRMAN GUNN: Thank you very much. Just some
22 quick clarification. So the -- and on this chart. So the
23 allowed ROEs is 10.0?

24 MS. KLIETHERMES: Correct.

25 CHAIRMAN GUNN: So are you saying that they are

1 currently earning 9.74 or we are essentially only allowing them
2 the opportunity to earn 9.74?

3 MS. KLIETHERMES: That latter would be the case,
4 that assuming their numbers are correct and not doing further
5 adjustment, that their opportunity to earn an ROE of 10.0 given
6 the loss of fixed customer charges in the Joplin area, is not
7 reduced to an opportunity to earn 9.74 and that's barring
8 expansion elsewhere on the system. That's only looking at what
9 happened in the tornado zone.

10 CHAIRMAN GUNN: All right. And then just the
11 title says it in excess of 9.74, but that's not -- that's not
12 what the number show. Right? I mean, it's --

13 MS. KLIETHERMES: Well, what's the referring to
14 is the fact that Staff's calculation is not a perfect
15 calculation.

16 CHAIRMAN GUNN: Okay.

17 MS. KLIETHERMES: As I indicated this morning --
18 as I indicated earlier, we received some additional DRs since
19 this morning. Basically, that number assumes that every
20 customer who was off from the tornado stays off exactly 12
21 months.

22 I think the evidence is showing that a
23 substantial number of customers have already returned to the
24 system and it's likely that many more will return by the
25 conclusion of 12 months.

1 CHAIRMAN GUNN: So if -- if -- if we're only
2 talking about allowed ROE and not earned ROE, we have a Report
3 and Order out there that authorizes them 10 percent.

4 MS. KLIETHERMES: Correct.

5 CHAIRMAN GUNN: Why shouldn't we continue to
6 allow them to earn what the Report and Order authorizes them to
7 earn?

8 MS. KLIETHERMES: Well, the Report and Order
9 authorizes them the opportunity -- I'm sorry -- the opportunity
10 to earn 10 percent.

11 CHAIRMAN GUNN: Right. And this -- you're
12 saying here that they only have, under the calculations you've
13 made, they only have the opportunity to earn 9.74 percent?

14 MS. KLIETHERMES: Correct. I guess, I don't
15 mean to answer your question with a question but I will. If we
16 saw them put in a 2000-home subdivision in the Joplin area --
17 you know, if the tornado never occurred and if instead, you
18 know, a new factory went in and significant growth occurred, I
19 don't think that we have any reason to believe they would be in
20 here seeking to defer those excess profits caused by having
21 2,000 additional customer charges each month.

22 CHAIRMAN GUNN: But you would be within your
23 rights to file a complaint that said you're earning over what
24 you are allowed to earn?

25 MS. KLIETHERMES: Precisely.

1 CHAIRMAN GUNN: So if there was an expansion and
2 they earned 10.25 percent, you could come in here and say you
3 are earning above what your authorized ROE is and therefore you
4 need to stop doing whatever you -- we need to adjust that in
5 order to take away that extra .25 percent.

6 MS. KLIETHERMES: Yes. That's entirely
7 consistent with their ability to file a rate relief request
8 frankly, coupled with an interim rate request given the
9 devastation in the Joplin area.

10 CHAIRMAN GUNN: But I just want to be clear. I
11 mean --

12 MS. KLIETHERMES: Yes.

13 CHAIRMAN GUNN: As of what we're talking about
14 right now, there is a reduction in what their opportunity is --
15 what the ROE -- there is a reduction in their opportunity to
16 earn their authorized ROE?

17 MS. KLIETHERMES: Looking only at the Joplin
18 tornado zone, which is what they've defined --

19 CHAIRMAN GUNN: Right.

20 MS. KLIETHERMES: -- as the geographic area
21 within Joplin, yes that is true.

22 CHAIRMAN GUNN: Okay. So I got a -- I got a
23 couple more.

24 MS. KLIETHERMES: Sure.

25 CHAIRMAN GUNN: A couple more questions. All

1 right. So when we talk about -- and this really is where I'm
2 trying to wrap my head around -- so by -- we always retain the
3 ability within the AAO to disallow costs that are in the AAO.
4 And I know Staff has some concerns about whether we will
5 actually do that or not, but -- but -- and so -- but let's --
6 let's put those aside for a second.

7 So we have the ability to go in and say all
8 right, the company has -- or this stuff has been included in an
9 AAO, you are not -- but we're not going to allow you to recover
10 it in rates.

11 MS. KLIETHERMES: That's accurate on the
12 ratemaking side.

13 CHAIRMAN GUNN: Right. Now -- so the benefit
14 of -- over and above that is that they get to book this as a
15 regulatory asset?

16 MS. KLIETHERMES: Yes.

17 CHAIRMAN GUNN: And therefore the company is at
18 least portrayed in a better financial light than Staff might
19 think that they actually are?

20 MS. KLIETHERMES: Correct.

21 CHAIRMAN GUNN: So my question here is what is
22 the -- what is the real impact of that benefit, though? I mean,
23 what -- does it -- if you were not to give them that benefit,
24 would they see an increased cost of -- would they see an
25 increase in their borrowing costs? Would they see impact of

1 their bond rating? I mean, is -- is -- is that benefit -- does
2 that benefit actually move the needle when we're talking
3 about -- you know, because we're talking about an outside of
4 rate case, how much is -- does that really impact the company?

5 MS. KLIETHERMES: Frankly, I think that that's
6 where the 26 basis points comes into effect. That's the 9.74 is
7 well within the zone of reasonableness that the commission used
8 in the last rate case.

9 CHAIRMAN GUNN: So why -- but -- I guess as a
10 philosophical question --

11 MS. KLIETHERMES: Why not do it?

12 CHAIRMAN GUNN: Why do we want to be -- why do
13 we want to say that hey, you know, there was this weird weather
14 event where a tornado came through, so why do we want to be
15 punitive? Why don't we want to say -- or let's not even say
16 punitive. Why don't we want to say well look, we don't want to
17 put you unnecessarily on shakier financial ground because of
18 this -- of this act of God, so we're going to -- we're going to
19 allow you to, at least for now, put this aside and have the
20 outside world view you as not being impacted by this. So you
21 can continue to get your borrowing costs and continue --

22 MS. KLIETHERMES: Sure.

23 CHAIRMAN GUNN: -- to have a lower cost of
24 capital. And then when we do the ratemaking, we'll actually
25 decide whether this is appropriate and the rates themselves will

1 then -- then the outside world will then judge you based on how
2 we've taken this into account, which is your argument throughout
3 the entire territory rather than just the impact of the Joplin
4 area.

5 MS. KLIETHERMES: And I think that's a
6 legitimate question as MGE explains the USOA, but MGE ignores
7 the part about the probable recovery. And that requirement
8 means that you can't just say, you know, we'll think about it
9 later, but go ahead and do what you want to do.

10 CHAIRMAN GUNN: Okay. So that's -- that's -- I
11 think that's a fair point. So if the USOA didn't have the
12 probable recovery requirement --

13 MS. KLIETHERMES: You could do it, it would just
14 be a really bad idea.

15 CHAIRMAN GUNN: But again, why is it -- this is
16 why I'm philos-- what I'm asking you philosophically: Why is it
17 a really bad idea? Why is keeping the company, holding the
18 company harmless because of an act of God a bad idea when at a
19 later point we can make the determination that these costs
20 should not be included in rates?

21 MS. KLIETHERMES: And I --

22 CHAIRMAN GUNN: Because aren't we -- aren't we
23 really just putting all this stuff in a box and saying, hey
24 we're going to take a look at this box later on and determine
25 whether it's appropriate to be included or not? Whether it's

1 appropriate to be recovered or not?

2 MS. KLIETHERMES: And we're setting aside the
3 probability?

4 CHAIRMAN GUNN: For now, sure.

5 MS. KLIETHERMES: I think you still have some
6 issues with that because when you do that -- and this isn't to
7 say that the people of Joplin or the people currently in MGE's
8 service territory elsewhere should -- should be penalized now,
9 but I think it's important as the commission noted in the Kansas
10 property tax case to not drag these things out over time
11 inappropriately.

12 So what happens if you grant this AAO and it's
13 deferred in the next rate case is that's when the hit goes to
14 MGE's bottom line. So if that occurred this year, it's more
15 appropriate that it be booked this year than three years from
16 now if they decide that at that point it warrants a rate case
17 filing instead of doing so now.

18 CHAIRMAN GUNN: So the main -- so the main
19 problem is that -- is a timing issue?

20 MS. KLIETHERMES: It's a timing issue. It's
21 also a completeness issue. There's no reason they can't file a
22 rate case now. And it's also a materiality issue. As we've
23 seen, there's, you know -- the Sibley test does have a
24 materiality requirement and lost revenues don't need it.

25 CHAIRMAN GUNN: But isn't -- I mean, part -- I

1 see a little -- and I just want to clarify. There are some
2 internal contradictions in what you're saying. Right? Because
3 what you're saying is, is that they can file a rate case right
4 now.

5 MS. KLIETHERMES: Yes.

6 CHAIRMAN GUNN: But on the same side you're
7 saying that, well, we're seeing housing starts move up. We're
8 seeing that, so that -- so that -- so we shouldn't worry about
9 it. Shouldn't they be able to have -- at least be granted a
10 period of time in which we can determine systemwide how this
11 actually is going to affect their financial bottom line before
12 we start making determinations of -- about what is appropriate
13 or not.

14 So for example, if we make the determination
15 that Joplin has gotten a great amount of sympathy from the rest
16 of the world, so it has seen a population explosion. So in the
17 next two years they expand their territory to the point where
18 they are -- they are earning their 10 percent or they're earning
19 way above what was even authorized. We even have to take care
20 of that. Then can't we make the determination that all of those
21 costs that were deferred should be written off and they should
22 not be recoverable in rates?

23 MS. KLIETHERMES: You can make that
24 determination. I guess I'd ask one point of clarification. Did
25 you say one or two years out? Because I think if this one or

1 two years out that it would be very common to have a test year
2 that's a year or two stale.

3 CHAIRMAN GUNN: All right. Let's say -- I mean,
4 let's say three years. I mean --

5 MS. KLIETHERMES: I think they have to come
6 in -- they'll -- I'm sure they'll correct me if I'm wrong. I
7 believe 2013 is when they need to come in to maintain their
8 ISRS.

9 CHAIRMAN GUNN: So we're talking -- we're
10 talking two years --

11 MS. KLIETHERMES: I believe so, yes.

12 CHAIRMAN GUNN: -- for them to maintain the
13 ISRS. So -- so -- where -- I come back to what -- what is
14 the -- what is -- putting aside the probability --

15 MS. KLIETHERMES: Sure.

16 CHAIRMAN GUNN: -- because I'll get to that in a
17 second. What's the harm here? What -- what -- if -- if we have
18 the ability to take a systemwide view of whether or not these
19 are appropriate, what is the harm in at least temporarily
20 allowing them to maintain the current financial system or status
21 of the company?

22 MS. KLIETHERMES: Well, as the company's
23 requested it, they're calculation of this amount, what they've
24 stated as effectively the intent to defer if given this
25 authority doesn't maintain the status quo, it improves it

1 because they've included amounts in there that shouldn't have
2 been included.

3 So -- and I'm not trying to be nitpicky --

4 CHAIRMAN GUNN: No. I -- but --

5 MS. KLIETHERMES: -- but I think that's
6 important.

7 CHAIRMAN GUNN: I think that's a point, we
8 can -- I'll get to that in a second.

9 MS. KLIETHERMES: And that also brings me to the
10 other point of I don't think Staff has been able to come up with
11 a really good way to determine what the status quo is and I'm
12 confident that MGE hasn't presented a good way to determine what
13 the status quo is. And so it's important that, you know, if
14 you're trying to maintain the status quo, we need to make sure
15 that they're booking only that amount that would get them back
16 to the status quo. And we don't have a mechanism to do that.

17 CHAIRMAN GUNN: And that's a separate issue and
18 I agree -- I agree with that. That -- that makes it -- that's
19 makes it problematic. But I'm kind of in the -- still in the
20 beginning stages of how this all works. And I'm trying to
21 figure out -- and I'll let you go here in a second because I
22 know these are opening statements and I can ask witnesses this
23 stuff, but I really am just trying to quantify the harm and
24 quantify the benefit.

25 MS. KLIETHERMES: Sure.

1 CHAIRMAN GUNN: So the benefit that -- that
2 comes -- that comes in is the ability to defer these costs and
3 book it as a regulatory asset and at least temporarily hold the
4 shareholders harmless. Let's --

5 MS. KLIETHERMES: Yes.

6 CHAIRMAN GUNN: Forget about the mechanism for
7 awhile.

8 MS. KLIETHERMES: And I think it's important
9 that the general rule of the USOA is book it as incurred. To me
10 that says to deviate from the rule you need a reason. You know,
11 they -- it's not a flip a coin, 50 percent, maybe it's only a 51
12 percent, but there needs to be a reason to do, it can't just be
13 we'll let them do it and see how things turn out.

14 CHAIRMAN GUNN: All right. So let's move to the
15 probability rule part.

16 MS. KLIETHERMES: Sure.

17 CHAIRMAN GUNN: Is it 50.01 percent?

18 MS. KLIETHERMES: That's a very good question.

19 CHAIRMAN GUNN: Okay.

20 MS. KLIETHERMES: I -- I'm not aware -- and I'll
21 be honest, I didn't do a great deal of research on it. I'm not
22 aware of any case law interpreting that in Missouri.

23 CHAIRMAN GUNN: Okay. That's fair. And I
24 think -- I doubt there was probably -- there's probably
25 something that says that's there a certain percentage.

1 MS. KLIETHERMES: Frankly, it wouldn't surprise
2 me. My research was incredibly non-thorough.

3 CHAIRMAN GUNN: At -- I -- well -- but the
4 determination about the probability recovery, if you go by the
5 company's theory, right, the company is the one that would make
6 the determination about probability of recovery.

7 MS. KLIETHERMES: I don't believe so.

8 CHAIRMAN GUNN: Well, but if you think about it,
9 I'm saying what the company's argument is is once we determine
10 that it's a -- that it's an extraordinary event and an AAO is
11 appropriate --

12 MS. KLIETHERMES: Ignoring the materiality test
13 of Sibley?

14 CHAIRMAN GUNN: Well, but -- right. Okay. But
15 they -- but then their -- their position is, is then they get to
16 decide what is in the AAO for our determination later. That's
17 the company's position?

18 MS. KLIETHERMES: That's just an inaccurate
19 description.

20 CHAIRMAN GUNN: But then who -- so then who
21 makes the line by line determination about probability of
22 recovery and when is that made?

23 MS. KLIETHERMES: What you would do is -- I
24 don't know if you have a copy of Mr. Oligschlaeger's testimony
25 with you. I can hand you one.

1 CHAIRMAN GUNN: His direct?

2 MS. KLIETHERMES: It's actually his rebuttal,
3 but attached to that is Staff's recommendation memorandum.

4 CHAIRMAN GUNN: I --

5 MS. KLIETHERMES: Or if you have Staff's
6 recommendation, that would be --

7 CHAIRMAN GUNN: I have that. I have it.

8 MS. KLIETHERMES: If you turn to page -- we
9 don't have page numbers. Yeah, we do. Page 8 of 9 of that.
10 And you look at paragraph 1. That's the description for the O&M
11 stuff that no one is objecting to. I think OPC maybe -- if I
12 misspoke there.

13 CHAIRMAN GUNN: There's less objection to the
14 O&M?

15 MS. KLIETHERMES: Yes. Certainly. You need a
16 paragraph like that or -- it'd probably be a lot more than a
17 paragraph like that saying you have authority to do this with
18 these accounts and you have the authority to transfer amounts
19 that would otherwise go to certain accounts into account 182.3.

20 CHAIRMAN GUNN: So -- but how does -- so the
21 Commission makes that determination in their order granting an
22 AAO?

23 MS. KLIETHERMES: Yes. The AAO would have to
24 say what they have the auth-- what accounting they have the
25 authority to do --

1 CHAIRMAN GUNN: So -- so what --

2 MS. KLIETHERMES: -- and I'm not trying to be
3 flippant.

4 CHAIRMAN GUNN: So we would need -- wouldn't we
5 need an evidentiary hearing to go through every single item that
6 they -- that they were talking about in making the determination
7 that the probability of recovery would be high? And if so, how
8 is that not single issue ratemaking?

9 MS. KLIETHERMES: You're not ratemaking. I'm
10 not sure that you actually need that.

11 CHAIRMAN GUNN: Well, we're making a
12 determination that pro-- that -- the Commission itself, which is
13 setting to determine whether or not something is going to be
14 recovered in a ratemaking process.

15 MS. KLIETHERMES: Sure.

16 CHAIRMAN GUNN: We are making a predetermination
17 before evidence is heard that the probability for being
18 recovered is at a certain percentage.

19 MS. KLIETHERMES: I don't -- I don't think
20 you're doing that. I think you're finding something -- for
21 example, if you look at this paragraph 1, it sets out the actual
22 incremental O&M expenses.

23 CHAIRMAN GUNN: Right.

24 MS. KLIETHERMES: The way -- the way
25 sequentially this works is you have a commission order saying

1 here are accounting entries you can make. Then you have money
2 being incurred or -- I'm sorry -- expenses being incurred or
3 reverse -- I don't think they're called reverse entries -- or
4 entries to correct for things that have already been incurred,
5 that move it from the account it would go into under the USOA
6 into account 182.3.

7 CHAIRMAN GUNN: Right.

8 MS. KLIETHERMES: That's the sequence. Then you
9 have a rate case and then we say, you included the chairman's
10 steak dinner while he went down to visit the workers and we
11 don't think that should be in there. And that's when you have
12 the prudence.

13 CHAIRMAN GUNN: So the probability of recovery
14 only refers to general categories of -- general categories?

15 MS. KLIETHERMES: And again, without any real
16 research on this, that's my understanding.

17 CHAIRMAN GUNN: Okay. So we would -- we would
18 say -- and I'm just throwing this out -- lost revenue or lost
19 fixed -- lost fixed costs as a general category would be --
20 would be included, but then would we then have the ability to go
21 back and specify what fixed costs we think should be or what
22 shouldn't be?

23 MS. KLIETHERMES: Well, and I guess my response
24 to that is that lost fixed costs isn't actually a category -- I
25 mean, you'd -- you'd -- that's the problem with the request.

1 They've said bad things have happened; we want more money --

2 CHAIRMAN GUNN: But isn't the --

3 MS. KLIETHERMES: -- and then they give it this
4 name.

5 CHAIRMAN GUNN: Isn't it also a problem though
6 with your -- with your argument where you -- what you're asking
7 us to do in a granting of an AAO is be very specific about what
8 we think you're going to be able to recover. And even if you're
9 talking about general categories, that requires us to make a
10 determination -- some sort of determination that some more
11 likely than not this commission is going to make a determination
12 that you can recover that in rates and therefore we're going to
13 include it in the AAO?

14 MS. KLIETHERMES: That's what the USOA says,
15 yes. And I think that -- I mean, the problem -- there's an
16 issue with how they've identified what they're calling lost
17 fixed costs -- I'm sorry -- fixed cost recovery. I think that
18 you could -- I mean, I'm not suggesting you do this, but what
19 you could do is identify a level of customers and say their
20 monthly customer charge times this number times 12 is how much
21 they defer on an annual basis.

22 I mean, I think there are ways to do it.

23 CHAIRMAN GUNN: It seems very imprecise to me --

24 MS. KLIETHERMES: That's --

25 CHAIRMAN GUNN: -- to do that in an accounting

1 authority order when we have the authority to do that in a rate
2 case. And I don't necessarily disagree that we would have the
3 authority to do it under in a rate case in the absence of an
4 AAO.

5 MS. KLIETHERMES: Sure.

6 CHAIRMAN GUNN: Because I think we -- depending
7 upon the test year and depending upon the timing of a rate case,
8 I think you're -- I think that argument is accurate, that an AAO
9 is not necessary for us to do this depending on when they file a
10 rate case. But aren't we kind of -- is it really the purpose of
11 the AAO to recognize that these things are different and that a
12 look -- a very in depth look will happen at a later date.

13 MS. KLIETHERMES: The fundamental problem with
14 their request, though, is that you have to have some way of
15 giving them accounting authority that's spelled out. I mean, I
16 guess you could say you can defer what you've described in
17 Mr. Noack's direct testimony or in their application, wherever
18 it occurs. Staff, and I believe OPC, also think that that
19 number is wrong for a number of reasons.

20 So you could give them an inflated number and
21 adjusted it down at a later point. If that answers your
22 question.

23 CHAIRMAN GUNN: And that is the true question.
24 And actually that's -- and I'm going to ask some folks this -- I
25 mean, really is there an underlying concern that once it gets in

1 the accounting authority order the commission's not going to
2 take a close look at it and it's going to be -- and there's a
3 higher -- there's a higher probability that it's going to get
4 recovered?

5 I mean, is that -- is that -- that -- that
6 there's -- in some of the testimony and in some of the sense
7 that I get, that that is kind of an undercurrent to a lot of
8 this, that there is not confidence -- and I don't mean it in a
9 bad way. I mean, I understand that that happens on occasion,
10 that we don't take a close look at stuff as we should or people
11 don't have the time to do it, but is that an undercurrent in
12 some of this stuff?

13 MS. KLIETHERMES: Notwithstanding the fact I've
14 only been here five years, I'm not aware of an AAO where the
15 company has an order, that the granting of the AAO constituted a
16 commission, you know, seal of approval, if you will, on an
17 expense and says, this prior commission decided this was
18 appropriate. If we right it off bad things will happen; it must
19 go in. However, that's not the driver of Staff's
20 recommendation.

21 CHAIRMAN GUNN: But it is a concern?

22 MS. KLIETHERMES: It's something we're aware of.

23 CHAIRMAN GUNN: Okay.

24 MR. BERLIN: Chairman Gunn, if I could kind of
25 address a couple of points that you're getting at? I know you

1 have a very -- you have questions about harm. What's the harm
2 in this if we were to grant it. And let me just address that if
3 I could maybe clear the air a bit.

4 Staff believes that filing for emergency rate
5 relief subject to refund would be the appropriate mechanism
6 if in fact this lost revenue was as severe of impact as MGE is
7 claiming. That would give them relief from lost revenues now
8 and put the booking of the revenues and the losses in the
9 appropriate time period.

10 Now, that said, you had asked about, okay, what
11 if we do grant this lost revenue request portion of the AAO
12 application? What's the harm? And Mr. Oligschlaeger will be
13 address it in much better detail than I --

14 CHAIRMAN GUNN: Sure.

15 MR. BERLIN: -- can, but I will say this: If
16 you grant that AAO request, they will be able to accumulate this
17 regulatory asset in the account 182.3 of the USOA and if
18 subsequently in the next rate case it's looked at and the
19 commission says, well that lost revenues of those homes that
20 were lost over a few months or whatever -- whatever that turns
21 out to be, which we don't know what it is -- we're not going to
22 grant that.

23 Well, then they have a regulatory asset sitting
24 on the books and they're not given the rate recovery, they will
25 then be able to say, well we're going to write this off and it's

1 just written off in a period of a year and Mr. Oligschlaeger can
2 explain those ramifications for you better than I can. But
3 that's a very big concern that Staff has.

4 CHAIRMAN GUNN: And I would like -- I -- when --
5 I would like for you guys to address that when he comes up.
6 I'll follow up with one other thing that you said. If we
7 said -- if we granted emergency rate relief subject to refund,
8 wouldn't that put a greater burden on the consumer and say we're
9 going to make the consumer the bank for this. And at some later
10 point you might get some of that money back in the form of bill
11 credits and all that other stuff.

12 But we're going to ask the customer to front the
13 money in order -- in order to do this when we're not -- if you
14 grant the AAO, you're not doing that because you're allo--
15 you're not affecting rates until the next rate case and you're
16 allowing all relevant factors to come in, which may mean that
17 you could disallow all of those and not impact rates at all.

18 MR. BERLIN: Well, part of -- part of a request
19 for emergency rate relief is they would have to have a hard
20 number to come before the commission to say that they actually
21 need it. And really, what we've been talking about all morning
22 is we can't really even get to that number for purposes of
23 booking as a regulatory asset because, as Ms. Kliethermes said,
24 today we received a DR that indicated that we had quite a few
25 numbers of customers come back on.

1 CHAIRMAN GUNN: Right.

2 MR. BERLIN: And so it's no longer an annualized
3 expense as MGE has represented in their testimony. So this
4 is -- this is a very fluid -- fluid and -- situation. So the
5 thing about the AAO though, is it does kick the can down the
6 road and it has to be dealt with in terms of a regulatory asset
7 that if that is not included in rate recovery in a future case,
8 then that asset can be written off immediately and that could
9 have some financial impacts on the company, which
10 Mr. Oligschlaeger could explain --

11 CHAIRMAN GUNN: Okay.

12 MR. BERLIN: -- better for you. So that's all
13 part of Staff's concern. And again, we're talking about
14 revenues, not costs. And we're looking at lost
15 revenues --

16 CHAIRMAN GUNN: Right. No. I understand.

17 MR. BERLIN: -- that just diminish the ROE about
18 26 basis points.

19 MS. KLIETHERMES: And if I may make the
20 gratuitous point --

21 CHAIRMAN GUNN: Absolutely.

22 MS. KLIETHERMES: -- of saying the ROE isn't set
23 that they get that ROE. The ROE is set they get the opportunity
24 to get that ROE. Things cut into that. Things like customers
25 deciding they don't want to use natural gas anymore. Things

1 like customers leaving the system. Whether they're -- whether
2 those customers leave the system because they decide they don't
3 want to use gas anymore or whether it's because of an event like
4 the Joplin tornado, I don't think there's a distinction.

5 CHAIRMAN GUNN: Well, but -- but that's why I
6 made the question about what they were actually earning.
7 Because I agree, they're --

8 MS. KLIETHERMES: Yes.

9 CHAIRMAN GUNN: -- not entitled to earn that.
10 But if the -- I think there is a difference if the -- if there
11 is no possible way with the loss of Joplin customers for them to
12 make 9.85 percent --

13 MR. BERLIN: Sure.

14 CHAIRMAN GUNN: -- which is underneath their
15 authorized ROE, isn't that something we have to take into
16 account?

17 MS. KLIETHERMES: And it's my understand-- I
18 mean, I -- I don't know if it's proper for Marc to correct me if
19 I'm wrong in the middle of this statement -- I think that's
20 something that we requested and that's something they told us
21 they just couldn't provide to us.

22 CHAIRMAN GUNN: And I -- I saw some of that in
23 the testimony that they don't kind of monitor what their -- what
24 their ROE is. But -- but -- but according to their
25 calculations -- according to your interpretation of their

1 calculations, they do not have the opportunity to earn -- not
2 what they're currently earning -- but they do not have the
3 opportunity to earn 9.9 percent?

4 MS. KLIETHERMES: Looking only at the Joplin
5 area.

6 CHAIRMAN GUNN: Well, the company -- only taking
7 the Joplin area into account or only using --

8 MS. KLIETHERMES: Only looking at this single
9 source of reduction, not looking at any areas where expenses may
10 have gone down.

11 CHAIRMAN GUNN: Okay.

12 MS. KLIETHERMES: Not looking at any areas where
13 they may have gotten more favorable long-term lending rates.
14 Not looking at any areas where they may have experienced
15 customer growth. Not looking at anything like that. This is
16 single --

17 CHAIRMAN GUNN: So if everything was exact--

18 MS. KLIETHERMES: Yes?

19 CHAIRMAN GUNN: If everything was exactly the
20 same?

21 MS. KLIETHERMES: Exactly.

22 CHAIRMAN GUNN: And there was no in-- no
23 expansion of business, no decrease in costs or whatever,
24 anywhere else in the system; if everything else were the same
25 and we took this Joplin piece out, then the -- you would not

1 have the opportunity to earn -- you may not have the opportunity
2 to earn that? But we're not taking any of that stuff -- any
3 changes into account?

4 MS. KLIETHERMES: Exactly. We're only looking
5 at an isolation.

6 CHAIRMAN GUNN: Thank you. That's all I have.
7 Thank you all very much. I appreciate you indulging me.

8 JUDGE JORDAN: I hate doing this, but I'm going
9 to ask a couple more questions. You mentioned probability of
10 recovery. Is that addressed in the prefiled testimony?

11 MS. KLIETHERMES: I'm not sure if we cite to
12 that part of the USOA or not. It's from the USOA.

13 JUDGE JORDAN: Right. I understand. You have a
14 quotation in your exhibit and I appreciate that. If I
15 understand the response to the chairman's question about the
16 problem with granting this AAO, it is the potential at least, in
17 danger of generating a regulatory asset, which if not -- if not
18 allowed in rates can be -- I think you used the word written off
19 all at once; is that correct?

20 MS. KLIETHERMES: Correct.

21 JUDGE JORDAN: Okay.

22 MS. KLIETHERMES: And I clarify by saying that's
23 among the problems.

24 JUDGE JORDAN: Among. Fair enough. Fair
25 enough. If I understand the issuance of an accounting authority

1 order, it's not even necessary for this deferral if the amount
2 is -- well, basically if the utility feels comfortable that the
3 amount at issue is more than 5 percent; is that correct?

4 MS. KLIETHERMES: I'm sorry. I was trying to
5 communicate with --

6 JUDGE JORDAN: Okay. I'll repeat my question.

7 MS. KLIETHERMES: Please.

8 JUDGE JORDAN: Okay. Under USOA a utility can
9 defer extraordinary expenses to this regulatory asset if it
10 feels comfortable that the amount is over 5 percent?

11 MS. KLIETHERMES: That is my understanding.

12 JUDGE JORDAN: Okay.

13 MS. KLIETHERMES: Now, Mr. Oligschlaeger will be
14 better to speak to that, though.

15 JUDGE JORDAN: Okay. So that would generate a
16 larger regulatory asset than the deferral of expenses below 5
17 percent; is that correct?

18 MS. KLIETHERMES: 5 percent is greater than an
19 amount less than 5 percent. Sure.

20 JUDGE JORDAN: Right. Right. Right. So the
21 AAO is only necessary for the smaller amount?

22 MS. KLIETHERMES: Yes. The less material
23 amounts such as this.

24 JUDGE JORDAN: Right. Right. The AAO is not
25 necessary for the larger amount?

1 MS. KLIETHERMES: It's my understanding it's
2 something of a presumptive AAO if it's an amount larger than 5
3 percent. Again, Mr. Oligschlaeger will be better able to speak
4 to that.

5 JUDGE JORDAN: Well, see if it's, say, 10
6 percent, the utility can go ahead and do this deferral, generate
7 an even larger regulatory asset than would without the AAO. So
8 I'll ask again, what's the harm?

9 MS. KLIETHERMES: In granting an AAO for an
10 immaterial amount?

11 JUDGE JORDAN: Well, yes. We'll put it that way
12 if you like. Since they can do this deferral for a much larger
13 amount and generate a larger regulatory asset, which you're
14 saying is the danger.

15 MS. KLIETHERMES: I -- I don't mean to sound
16 caddy, but I didn't draft the USOA. I mean, that's how they
17 have it set up. It's my understanding that for amounts larger
18 than 5 percent, such as the storm -- the O&M amortization, I
19 think OPC's calculation of it -- of the O&M, comes in under 5
20 percent, while Staff and Company's are at over 5 percent.

21 It's my understanding that frequently companies
22 will come in even though they're over the 5 percent to have the
23 ability to say that a prior commission had authorized the
24 accounting treatment.

25 JUDGE JORDAN: Right. My question is not really

1 about your case or your defenses. It really is about the USOA.

2 MS. KLIETHERMES: And I agree, that is a
3 somewhat interesting way they have that arranged. I think it
4 basically is saying that something that is presumptive -- that
5 something that is of a facially high magnitude, there is no
6 materiality question. Of course under MGE's characterization,
7 there's no materiality question regardless.

8 But I think that if it's under 5 percent,
9 certainly the materiality is called into question.

10 JUDGE JORDAN: In fact, I think my question's
11 not even about the USOA. I think it's about my understanding of
12 the USOA. And I appreciate your clarification.

13 That's all the questions I have. Did that raise
14 anything from the chairman further?

15 CHAIRMAN GUNN: No.

16 JUDGE JORDAN: Okay. Well, thank you very much.

17 I have -- I think I do not have a technical
18 issue here. I think I will be able to stream OPC's
19 demonstrative exhibit.

20 MR. POSTON: I'm sorry.

21 JUDGE JORDAN: But once that's -- assuming that
22 I'm successful in that -- if I'm successful in that I won't need
23 to take a break for any technical issue.

24 MR. POSTON: Okay.

25 JUDGE JORDAN: If I am able to stream that, then

1 I'd like to take a break at the close of opening statements and
2 questions to straighten out a technical issue.

3 MR. POSTON: Okay. I may be --

4 JUDGE JORDAN: Wait a minute. Wait a minute. I
5 will be with you in just a moment.

6 MR. POSTON: Okay.

7 JUDGE JORDAN: You can pass out your exhibits
8 while I check with my technician.

9 Thanks everyone. I appreciate your indulgence.
10 I just wanted to make sure we're showing the world what I want
11 to show the world.

12 MR. POSTON: Thank you. May it please the
13 commission.

14 My name's Marc Poston. I represent the Office
15 of the Public Counsel and the public. And there's no doubt that
16 the massive tornado that wiped out a portion of south, central
17 Joplin in May of 2011 was a tragedy. May lives were lost. May
18 more were seriously injured and the destruction to property was
19 immense. Joplin will be scarred by this for a long time.

20 OPC asks the Commission not to further this
21 tragedy by forcing the remaining Joplin customers and customers
22 elsewhere in MGE's system, like Kansas City and St. Joseph, to
23 reach into their pockets and pay shareholders for the phantom
24 bills of former customers no longer served by MGE and to reach
25 in their pockets to boost the profits of MGE's shareholders.

1 This is what MGE's request boils down to:

2 Requiring all gas consumers not impacted by the tornado to pay
3 MGE's shareholders for lost customers. This is not lawful.
4 It's not reasonable. And it's clearly contrary to the public
5 interest.

6 MGE's -- and I have a PowerPoint here that I've
7 handed out copies of. MGE's deferral request can be broken down
8 into two pieces. There's the incremental expense and then the
9 unearned revenue that they claim they would have earned if not
10 for the lost customers. I'd like to briefly just touch on
11 Public Counsel's position.

12 The distinction between deferring incremental
13 expenses -- which we've stated that we will not oppose this
14 deferral -- obviously we want to make sure MGE cooperates with
15 Staff and OPC to track and document all incremental expenses and
16 all offsets.

17 One such offset identified in OPC's position
18 statement would be to make sure MGE doesn't double dip by
19 recovering for the abandon facilities and the new facilities at
20 the same time. And it's possible we may support, oppose or not
21 object to future rate recovery of these incremental expenses.
22 But for now, we do not intend to oppose the deferral of these
23 incremental costs.

24 Deferring unearned revenues on the other hand,
25 we strongly oppose this. And we distinguish between these --

1 these two. Mainly one -- historically, OPC has not opposed
2 deferral of storm-related incremental expenses and we do see
3 benefit in encouraging utilities to react promptly to storms.
4 That is in the public interest or promptly to damages -- system
5 damages. And the incremental expenses that MGE incurs will help
6 provide safe and adequate service to ratepayers in the future.

7 Deferring unearned revenues, on the other hand,
8 provides no public benefit. It would, in fact, only harm future
9 ratepayers by increasing future rates for past losses. And I
10 apologize for the size of this. I was expecting a larger smart
11 board that used to be up there. But this kind of walks through
12 a basic outline of our position.

13 First is that their request would constitute
14 prohibited retroactive ratemaking. That was not addressed in
15 testimony. It's mainly a legal argument that we will address
16 extensively in our brief.

17 Utility regulation also does not provide a
18 guarantee. It's just to provide an opportunity.

19 And MGE's request is not extraordinary because
20 it's not significant and I'll expand on that in a little bit.
21 What the evidence -- and being not significant, that is an
22 important element of the USOA. It needs to be significant. It
23 needs to be material.

24 What we think the evidence will show is that MGE
25 has received record sales since the tornado. And I have only

1 six-tenths of 1 percent of the customers were lost due to the
2 tornado. And I believe that number is -- needs to be adjusted
3 because of the new information that was provided to Staff this
4 morning that essentially 1,900 customers are back.

5 Shareholders are already compensated for the
6 risks. We discussed that in the testimony of Mr. Lafferty. And
7 the impact is less than 5 percent of net income. That's another
8 USOA requirement. And that's also explained in Mr. Lafferty's
9 testimony.

10 Other important issues to consider is that they
11 want to be compensated for as if they were serving these
12 customers, but no services have been provided to those
13 customers. So they essentially would be compensated for
14 nothing.

15 And they also seek recovery of facilities that
16 are not used or useful in providing service. Requiring all our
17 customers to foot the bill for the unearned customer charge
18 would necessarily allow rate recovery for retired or abandoned
19 facilities such as the service lines and meters and mains that
20 are no longer used to provide service.

21 And I've got a few citations here regarding
22 retroactive ratemaking. 393.140(11) of the Missouri Statutes
23 sets forth: No corporation shall charge, demand, collect or
24 receive a greater or less or different compensation for any
25 service rendered or to be rendered than the rates and charges

1 applicable to such services as specified in its schedules filed
2 and in effect at the time.

3 And the AG Processing case -- quote -- "defines
4 retroactive ratemaking as the setting of rates which permit a
5 utility to recover past losses for which are required to refund
6 past excess profits collected under a rate that did not
7 perfectly match expenses plus rate of return, with the rate
8 actually established."

9 In going back a little further to a earlier,
10 1979 Supreme Court case, what the Supreme Court said: The
11 Commission may not redetermine rates already established and
12 paid without depriving the utility (or the consumer if the rates
13 were originally too low) of his property without due process.

14 Here is The Instruction No. 7 that is at issue
15 in this case. And I've highlighted the top part that's -- shows
16 it is the intent that net income shall reflect all items of
17 profit and loss during the period. Their request would vary
18 from that intent. Now, I've also highlighted that to be
19 extraordinary events -- events or transactions need to be --
20 have a significant effect and I've highlighted that.

21 Again, I just kind of broke down the different
22 elements of that Instruction 7 as to what you look at to
23 determine if it is extraordinary. Did it occur during the
24 current period? Was it an unusual nature and infrequent
25 occurrent? Are the events and transactions of significant

1 effect? That goes to the materiality question.

2 It must be abnormal. Significantly different
3 from the ordinary activities. They must not be expected to
4 reoccur in the future and it should be more than approximately 5
5 percent of income.

6 Focusing on the significant effect, MGE's impact
7 is not significant. If you look, this chart graphs the
8 comparison between net margins sales revenues since the May 2011
9 tornado with the net margins sales revenues over like periods
10 for the past ten years. So we basically -- the tornado happened
11 in May; what has happened to their net margin sales revenues
12 since then?

13 Well, by looks of -- comparing it to all the
14 other years for the past ten years, they're doing extremely
15 well. There's been no dip in sales revenues. And you see I've
16 got some stars up there and those represent the first recording
17 period, the May through September period, following a rate
18 increase. So that explains the jump in sales revenues was --
19 that there was a rate increase that kicked in.

20 And here just kind of explains those rate
21 increases. It shows how they had a change in the way they
22 structured their rates in 2004, which accounts for the large
23 jump you see in that last screen. I'm sorry, 2007.

24 And that chart with the line graph -- these are
25 the numbers that were used. And you'll see a steady increase in

1 net margin sales revenues. And 2011 looks to be a banner year
2 for MGE; a record year.

3 And if you look down below, that 216 percent,
4 that is over the last 10 years, they're earning 216 percent more
5 now than they were just 10 years ago for this time period. Of
6 course, the straight fixed variable would account for some of
7 that in the way it evens out the -- what they recover from
8 month-to-month.

9 This is the number of customers lost. This was
10 provided -- and this will be evidence that will be entered in
11 the case today. These are numbers that were provided by MGE
12 at -- I believe that was -- as of September they were saying
13 they lost 300 and 223 -- 3,223 customers.

14 Again, with that new evidence today suggesting
15 that 1,900 are back on. I don't know to what extent that number
16 includes some of those 1,900. If it did not, then that would
17 mean they've only lost about 1,300 customers to date. And they
18 continue to reconnect customers.

19 That is six-tenths of 1 percent of their total
20 customer base. And again, taking in those additional 1,900 that
21 would go down to probably below three-tenths of 1 percent.

22 I've also handed out a Delaware decision.
23 And -- from last yeas. In this case it's -- I think it's very
24 much on point to -- to what we're looking at here. It was a
25 customer of United Water in Delaware curtailed their business

1 and the utility said that would constitute a 4.2 percent
2 decrease in their total revenues and so they filed a similar
3 proposal here. They wanted to track and defer the loss in
4 revenue associated with the reduced usage. The Delaware
5 Commission denied the petition the revenue loss.

6 And I hope you'll bear with me. There's a lot
7 of quotations I've added from that decision because they provide
8 a very detailed and thorough analysis that I hope you'll pay
9 attention to in the way that they handled this and the reasons
10 they handled it.

11 They state that pervasive and fundamental rule
12 underlining the utility ratemaking process is that rates are
13 exclusively prospective in application and that future rates may
14 not be designed to recoup past losses in absence of expressed
15 legislative authority.

16 The rationale for this principle, the commission
17 acts in a legislative capacity in exercising its ratemaking
18 authority. And by its nature, legislative action operates
19 prospectively and not retroactively.

20 Delaware also stated that retroactive ratemaking
21 runs counter to the matching principle. When comparing revenues
22 and expenses from the same period is crucial as it ensures
23 adherence to the matching principle, that the relationship of
24 rate base revenues and expenses be within the same timeframe
25 when we are setting just and reasonable rates in the future.

1 And retroactive ratemaking runs counter to these
2 fundamental principles because it seeks the imposition of future
3 rates of a surcharge to recover a utility's past losses from
4 past services.

5 The Delaware PSC also found the financial
6 integrity was an issue to look at and in this case they
7 determined that the company had not demonstrated that the
8 revenue lost seriously threatened its financial integrity.

9 And likewise MGE has not demonstrated and will
10 not be able to demonstrate that unearned revenue caused by the
11 tornado comes anywhere close to threatening the financial
12 integrity of MGE.

13 This slide is a conclusion by the Delaware PSC
14 is an important because it explains that deferral should not be
15 authorized unless future recovery is probable. And they state
16 that by seeking and then recording the revenue lost from the
17 refinery shutdown as a regulatory asset, United would be
18 indicating to the financial community that such a loss is an
19 asset that it probably will recover in the future during its
20 next rate case, which it claims to file next year.

21 The Commission will not and need not make any
22 discrimination of the appropriateness of recording the
23 anticipated lost revenue as a regulatory asset whereas here the
24 commission itself is not convinced the asset -- of the asset's
25 probably recovery. And they conclude that United has failed to

1 show why commission approval is required for it to defer the
2 lost revenue other than the fact that it wants to establish a
3 regulatory asset, which again is an assurance of future
4 recovery. This we will not allow.

5 Please read this Delaware decision carefully, as
6 I said, provides a great analysis of the issues before this
7 commission.

8 In conclusion I'd like to remind you of what the
9 U.S. Supreme Court and Federal Power Commission versus Hope
10 Natural gas had to say about utility rate regulation. It
11 doesn't ensure that the business shall produce net revenues.
12 Rates which enable the company to operate successfully to
13 maintain its financial integrity to attract capital and
14 compensate its investors for the risks assumed certainly cannot
15 be condemned as invalid even though they might produce only
16 immediate return in the so-called fair value rate base.

17 For these reasons we ask that you reject the
18 request to defer unearned revenues. Approving the deferral
19 would open an ugly can of worms that can be avoided by denying
20 this request. Thank you.

21 CHAIRMAN GUNN: I just have a couple of
22 questions.

23 JUDGE JORDAN: Okay.

24 CHAIRMAN GUNN: This has been kind of a theme
25 throughout some of this stuff. If we can deny recovery of these

1 during a rate case proceeding, how are we guaranteeing them
2 their return? This idea of guaranteeing -- this idea that
3 putting it in an AAO is somehow guarantees or makes that they
4 are going to earn something, I think there's a real disconnect
5 where I am. Because I look at it as I can always make the
6 determination in the AAO that the -- that they cannot recover.

7 MR. POSTON: Well, I think what you're doing is
8 you're, I guess, agreeing with the notion that losses from one
9 period -- revenue losses from one period can be appropriately
10 considered in the next period.

11 CHAIRMAN GUNN: Well, and that's actually my
12 next question. When you literally read that Court of Appeals
13 decision that you pointed out, and that point right there,
14 doesn't that mean that AAO's are inappropriate at any time?

15 MR. POSTON: I would say yes. You know, of
16 course --

17 CHAIRMAN GUNN: I mean, it appears that your
18 argument is, is that an AAO shouldn't be considered ever, that
19 they're not appropriate under the law.

20 MR. POSTON: Yeah. And like I said, if you look
21 at that Delaware decision, they kind of get into some of that.
22 And I think, I guess, they just -- possibly one way to
23 distinguish it is by looking at the materiality of it. Maybe
24 that's --

25 CHAIRMAN GUNN: But how -- again, as a general

1 matter, how does an AAO not violate what the principle that
2 you're talking about, the way you describe retroactive
3 ratemaking?

4 MR. POSTON: It does violate it, yes. I would
5 say both aspects violate it; expenses and the revenue portion.

6 CHAIRMAN GUNN: All right. So at least we're on
7 the same page about what your argument is.

8 Then you talk about -- you have a quote from the
9 '79 case, which says: The Commission may not redetermine rates
10 already established and paid without depriving the utility (or
11 the consumer if the rates were too low) of this property without
12 due process.

13 This is an important point. Assuming that no
14 other factors had changed and assuming that the MGE numbers are
15 correct, and now the authorized rate of return is 9.74, or
16 that's what it's affecting. Now, assuming that there are no
17 other changes around, haven't we done -- haven't we cha--
18 haven't we taken away -- even if it's only 26 basis points --
19 haven't we taken away a property right in the opportunity to
20 earn those 26 basis points without the benefit of a rate case?

21 MR. POSTON: Well, I'd say no. You're not
22 taking away anything. It's just -- they have not earned what
23 they expected to earn, so there's nothing being taken from them.

24 CHAIRMAN GUNN: No. That's not what we're
25 talking about. We're not -- and that's why I was very specific

1 about asking the question about whether they were earning it.
2 It is not what they are earning, because we all agree that they
3 can earn nothing or they can earn -- they're ROE can be 0, it
4 could be 1, it could be whatever. We're talking about
5 authorized ROE or the opportunity to earn.

6 And if -- if -- if all other things -- and
7 granted, I'm making a huge assumption, but if all of the things
8 are equal and we take out that Joplin piece, it's Staff's
9 assertion that the opportunity to earn -- the cap on the
10 opportunity to earn ROE is 9.74.

11 MR. POSTON: I wouldn't necessarily agree with
12 that. I think you need to -- I think just because there's seen
13 that there is a reduction in revenues does not mean that there
14 is not -- they still don't have that opportunity to get to that
15 10 percent.

16 CHAIRMAN GUNN: And isn't that determination --
17 because there are other factors that need to be considered,
18 isn't that determination more appropriate in a rate case?

19 MR. POSTON: I would say for the expense piece,
20 yes, but for the revenue piece, no.

21 CHAIRMAN GUNN: Because your -- but your
22 contention is is that the revenues should never -- they should
23 never be considered?

24 MR. POSTON: Right.

25 CHAIRMAN GUNN: So it doesn't matter where it

1 is, it shouldn't be in there at all?

2 MR. POSTON: That's correct.

3 CHAIRMAN GUNN: I think -- so why are you
4 opposing the incremental -- deferral of the incremental costs?

5 MR. POSTON: And I explain that in one of the
6 slides, but we see consumer benefit -- some consumer benefit
7 in --

8 CHAIRMAN GUNN: So even though you believe it
9 might be illegal, you think that there's a benefit to the
10 consumers then you're okay with it?

11 MR. POSTON: We've agreed not to oppose it, yes.
12 They are acting promptly to get their facilities back in place.
13 We see there's a benefit to putting in new facilities that
14 provide safe and adequate service. So for those reasons, we --
15 and historically the Commission has approved those kind of
16 things.

17 CHAIRMAN GUNN: So -- but -- but at the end of
18 the day, retroactive ratemaking is okay if it benefits the
19 consumer in your opinion?

20 MR. POSTON: Well --

21 CHAIRMAN GUNN: It's acceptable?

22 MR. POSTON: It's something we're not going to
23 oppose. I mean, for one we see that it would benefit consumers,
24 but we also see that this commission has routinely granted these
25 kind of things and so I don't know if we would get very far by

1 opposing this.

2 CHAIRMAN GUNN: So it's a futility argument?

3 MR. POSTON: Possibly. Part of it, yes.

4 CHAIRMAN GUNN: Okay. You can be -- you can be
5 honest. I'm not going to hold it against you. I mean -- I
6 mean, it's the same question I had about Staff about really
7 what's underlying some of -- of their issues is, is that they --
8 they don't trust -- because of the way the commission has acted
9 in the past -- that we're going to do what the AAO allows us to
10 do, which is knock out these costs.

11 And I'm not saying that illegitimate. Because I
12 think that, you know, Ms. Kliethermes pointed out that that may
13 have been the practice of the commission in the past. And I
14 think it's perfectly acceptable for you to say, Look, my
15 interest as the consumer representative is to say that when
16 retroactive ratemaking benefits the consumer, I'm going to look
17 the other way to what I perceive as a potential illegality.

18 I think that -- I mean, I understand that. And
19 I'm not saying this is a bad thing, but it is -- but -- but why
20 should the -- I mean, the company is taking exactly the same --
21 potentially taking the exactly the same position where, well if
22 it benefits the company, we're going to look the other way in
23 terms of retroactive ratemaking.

24 But if you want to be consistent in your
25 argument, you would oppose AAOs at every -- at every single

1 turn. Now, I get the futility argument that says, well, all
2 we're going to do it look like we're trying to, you know, be an
3 obstructionist, but --

4 MR. POSTON: Right. And historically, these --
5 like I said, these type of storm-type damage recoveries -- at
6 least the expense side -- has been granted, at least the AAO.

7 CHAIRMAN GUNN: Right.

8 MR. POSTON: But to now say that revenue loss as
9 the company refers to it, can also be deferred in an AAO, that's
10 unprecedented. It's unprecedented here, anywhere else. I mean,
11 no one here can find a true case where a commission granted that
12 sort of a request.

13 Like I said, the Delaware one is probably the
14 most on point case where they addressed lost revenue and they
15 said no.

16 CHAIRMAN GUNN: Was the Delaware -- was the
17 Delaware case really an extraordinary event? I mean a refinery
18 deciding that they're not going to -- not going to use it. I
19 mean, that's -- that's an anticipated -- potentially
20 anticipated --

21 MR. POSTON: It was over 4 percent of their
22 income.

23 CHAIRMAN GUNN: Right. I understand. But it
24 wasn't -- it couldn't have been wholly unanticipated, could it
25 have been?

1 MR. POSTON: I don't know. I don't know the
2 facts. It seemed like it certainly was because they didn't
3 consider it in the prior rate case.

4 CHAIRMAN GUNN: Let me ask you -- let me ask it
5 this way: Is there a difference between a business judgment by
6 a customer and an act of God when it comes to determining what's
7 an extraordinary event?

8 MR. POSTON: Well, I mean, you'd have to look at
9 all of the elements of extraordinary event. Is it material?
10 Significant? Is it going to reoccur in the future? All of
11 those things.

12 CHAIRMAN GUNN: Well, let's assume -- let's
13 assume all those things are true. But I just think that there's
14 a fundamental difference between a -- and I'm not saying it
15 effects the outcome of this case -- but I think that there is a
16 fundamental difference between one of your largest customers
17 decides to move out of state than an unanticipated act of God
18 like a tornado or a flood or an earthquake.

19 MR. POSTON: Well, I think if you look at the
20 impact it has on revenues, it's exactly the same. It's revenues
21 they expected to earn that they're claiming they will now not
22 earn and there's no difference between those two scenarios.

23 CHAIRMAN GUNN: From an economic standpoint.

24 MR. POSTON: Well, it's lost customer. One's a
25 lost -- one's 3,000 now down to 1,300, lost customers, and one

1 is one big lost customer.

2 CHAIRMAN GUNN: But by monitoring the financial
3 situation of that customer and especially if it's a large one,
4 you'd think that would be prudent to do. There are ways that
5 you should be -- you could from a business perspective help to
6 try to mitigate that risk. I don't what -- I don't know from a
7 business perspective what you can do to mitigate the risk of and
8 F5 tornado.

9 MR. POSTON: I don't know to what extent the
10 utility companies is monitoring the financial conditions of all
11 of their customers. I doubt that's going on.

12 CHAIRMAN GUNN: But if you have a customer that
13 was 5 percent of your business, wouldn't you think from a
14 business risk perspective you should be?

15 MR. POSTON: Yeah, possibly. Yeah.

16 CHAIRMAN GUNN: So you could mitigate that risk?

17 MR. POSTON: I don't know how you -- I mean, I
18 don't know how you can -- how you'd be able to determine that
19 yes, they may go out of business during this next period, they
20 may not. I just don't know how -- how you'd do that.

21 CHAIRMAN GUNN: Fair enough. Thank you. I
22 don't have anything else.

23 JUDGE JORDAN: I have just a quick question for
24 you. And this is in regard to your position vis-a-vis Staff's
25 position. Do you have a position as to what Staff is saying

1 about the danger of a large regulatory asset being -- quote --
2 "written off" -- unquote -- suddenly. Is that part of OPC's
3 position?

4 MR. POSTON: We have not expressed that in our
5 testimony. Perhaps Mr. Lafferty has a position on that.

6 JUDGE JORDAN: Okay. Fair enough.

7 MR. POSTON: But not being an accountant, I
8 really can't talk to that.

9 JUDGE JORDAN: I can relate to that.

10 And I'll ask this question for you, I asked it
11 of Staff counsel and she wasn't able to give me an answer and I
12 understand that. That's not -- that's not a criticism because I
13 don't understand it either.

14 USOA requires permission for something when the
15 danger -- at least under Staff's view -- is greater. It
16 requires permission when the danger's lesser, but not when the
17 danger is greater. Does OPC have any light to shed on that?

18 MR. POSTON: Yeah. That appears to be an
19 accurate reading. And that explains really why MGE's here; they
20 believe that their -- the impact is over 5 percent. But what
21 they're really here for is the stamp of approval by this
22 commission, which gives them probable recovery in the rate case.
23 And you know, they're in the middle of an acquisition by ETE.
24 Perhaps that could increase the value of the company by having
25 that regulatory asset out there.

1 JUDGE JORDAN: Okay. As far as USOA goes, do
2 you have any explanation -- does OPC have an explanation for
3 what appears to me to be just flat irrational in the USOA?

4 MR. POSTON: I would say maybe the USOA, the
5 purpose is that something under 5 percent is just generally
6 considered not material. Once you get over 5 percent, maybe the
7 questions on materiality aren't as questionable.

8 JUDGE JORDAN: Okay. And that -- thank you.
9 That answers my question. My question is for everyone and
10 certainly if the utility wants to address that in the course of
11 these proceedings, they may also. That's something that's been
12 bothering me since the beginning of this case.

13 Any further questions from the Chair?

14 CHAIRMAN GUNN: No.

15 JUDGE JORDAN: Thank you.

16 MR. POSTON: Thank you.

17 JUDGE JORDAN: We have a choice at this point.
18 I know that we have a witness who's testimony is time sensitive
19 and we've changed the order of witnesses so that he may go ahead
20 and testify. We could also go straight to lunch, whichever --
21 whichever is necessary.

22 MR. MITTEN: Your Honor, the conflict that
23 caused Mr. Hanley's testimony to be moved to the front of the
24 line as eliminated earlier this week when the meeting that was
25 scheduled to be held at the same time got cancelled. So we have

1 no objection to breaking for lunch at this time and taking
2 Mr. Hanley after lunch.

3 JUDGE JORDAN: Thank you for that information.

4 Does anyone else have an objection to a lunch break?

5 Then we will adjourn temporarily for lunch.

6 Thank you.

7 MR. BERLIN: How long, Judge?

8 JUDGE JORDAN: Let's take an hour.

9 MR. BERLIN: Off the record?

10 JUDGE JORDAN: Hang on a second. We'll -- I
11 don't know how much testimony will be required. Do we want a
12 half hour lunch break? Do we want an hour lunch break? I don't
13 need one at all. What is the consensus?

14 MR. MITTEN: An hour.

15 MR. POSTON: Hour sounds good.

16 JUDGE JORDAN: Splendid. And I hope the parties
17 will put that time to constructive use for nutrition and in
18 other things. Thank you. Anything else before we go off the
19 record?

20 Okay. Then we'll go off the record and adjourn
21 for lunch.

22 (Off the record.)

23 JUDGE JORDAN: We are back on the record in File
24 No. GU-2011-0392. We're resuming after a lunch break and having
25 concluded opening statements, which I appreciated. I found

1 opening statements and responses to questions from the bench to
2 be very helpful in clarifying the issues that I think are at
3 stake in this proceeding.

4 I'm unmuting now. Resuming the camera's
5 scrutiny. As I listened to the arguments this morning, the
6 question occurred to me as follows: There's a lot of
7 information we've been told the evidence will show. A lot of
8 things, a lot of different numbers. And my question for the
9 parties, which I want you to bear in mind as you present your
10 evidence is how much of the Commission's order will really be
11 about numbers?

12 How much can the Commission say as to any
13 number? In other words, let me put it this way: If the
14 commission issues an accounting authority order allowing the
15 deferral of expenses as are requested, can the Commission
16 accurately quantify those expenses?

17 Isn't that something that will remain open,
18 remain subject to refinement through the next rate case at
19 least? If you see what I'm saying, I think this action is about
20 eligibility. I don't think the commission could possibly be
21 correct in saying this amount of expenses applies to this
22 category of expenses, if you see what I'm saying.

23 Counsel, were you getting ready to say
24 something? Do you have something?

25 MR. BERLIN: For me, Judge?

1 JUDGE JORDAN: Yes, Mr. Berlin.

2 MR. BERLIN: I know that there's some numbers
3 regarding the operations and maintenance and capital-related
4 costs that are in the prefiled testimony, but really I'd like to
5 have our expert witness address those specific numbers and where
6 they are as opposed to having an attorney talking about
7 accounting of the numbers.

8 But there are numbers in there, so I'm going to
9 have to defer that to my witness.

10 MS. KLIETHERMES: Well, in --

11 MR. BERLIN: Go ahead.

12 MS. KLIETHERMES: To the specific question of
13 the O&M, the language you would need for your order is included
14 in Staff's recommendation --

15 JUDGE JORDAN: Right.

16 MS. KLIETHERMES: -- attached to
17 Mr. Oligschlaeger's testimony.

18 MR. BERLIN: That's correct.

19 JUDGE JORDAN: Say that last part again. I
20 didn't quite get it.

21 MR. BERLIN: Well, the language that you would
22 need for the order is in Mr. Oligschlaeger's testimony. It's in
23 his rebuttal.

24 JUDGE JORDAN: What I'm really getting too is
25 what kind of order does the Commission put out? Does it say

1 this -- well, can it -- can it say how much expenses may be
2 deferred? Are those numbers finished? Do we, today, have those
3 numbers? I'm seeing some heads shaking from Staff. I'm seeing
4 heads shaking from the utility.

5 OPC, do you see it differently?

6 MR. POSTON: Would say you really aren't going
7 to know a number. You know, the number seems to be changing
8 constantly. So yeah, I understand your point. It would be very
9 difficult to come forward with an expense number because if they
10 get insurance proceeds there could be no expenses. I mean, it
11 could cover everything.

12 JUDGE JORDAN: Theoretically, we just -- and we
13 just don't know. That's what my -- my reading of this told me
14 under the law and the pleadings. It seems to be one point on in
15 which everyone agrees. I could leave it there.

16 MR. MITTEN: Judge?

17 JUDGE JORDAN: Yes?

18 MR. MITTEN: It's my understanding the
19 commission is deferring categories of expenses and revenues. In
20 this case, it would be O&M and capital-related costs that relate
21 to the restoration and repairs done following the tornado. And
22 it would be fixed cost revenues lost as a result of the tornado.

23 Then in the subsequent rate case, the Commission
24 would have an opportunity to determine which, if any, of the
25 deferred costs actually relate to the tornado and either include

1 or not include those in rates at its discretion.

2 You're not trying to fix a number for either
3 revenues or expenses that you're deferring in this case. Again,
4 it's categories of items that effect net income.

5 JUDGE JORDAN: That's what I understood from
6 your opening argument and that's what it seems to me reading the
7 applicable regulations is the only order the Commission can
8 really make here.

9 Any further comment?

10 MR. POSTON: Yeah. I'd say one exception would
11 be to the extent the Commission wants to establish whether the 5
12 percent threshold has been met or --

13 JUDGE JORDAN: Right. In which case, if the 5
14 percent threshold is not met, then we have to put out an order,
15 which we will likely do on this application anyway. And I
16 agree. In other words, I'm saying agree. I think 5 percent is
17 the only number that I think really counts when we're talking
18 about an application for an AAO.

19 Mr. Berlin, did you have something?

20 MR. BERLIN: That is in our testimony.

21 JUDGE JORDAN: Okay.

22 MR. BERLIN: We address that in our testimony.

23 JUDGE JORDAN: All right. And the reason I
24 raise this is to give a perspective to the parties to help them
25 focus their -- the evidence that they're going to present.

1 MR. POSTON: And I want to add that -- and in
2 determining materiality and significant effect, I mean, that
3 could all pull in these numbers as well. So to the extent the
4 Commission wants to address that in any length, I mean that
5 could -- could raise -- require some determination of -- of
6 those dollars facts.

7 JUDGE JORDAN: Anything else before we proceed?

8 I'm not seeing anything from the parties, so I
9 take it we are ready to begin with MGE's case in chief; is that
10 correct?

11 MR. MITTEN: That's correct, Your Honor.

12 JUDGE JORDAN: Then you may call your first
13 witness.

14 MR. MITTEN: The Applicant calls as its first
15 witness Frank Hanley.

16 JUDGE JORDAN: Please be seated. You may sit.
17 You may take the oath while seated.

18 (Witness sworn.)

19 JUDGE JORDAN: Thank you.

20 FRANK HANLEY testifies as follows:

21 DIRECT EXAMINATION BY MR. MITTEN:

22 Q. Would you please state your name and business
23 address for the record.

24 A. Yes. My name is Frank J. Hanley, H-a-n-l-e-y.
25 I'm principal and director of AUS Consultants. My business

1 address is 155 Gaither, G-a-i-t-h-e-r, Drive, Suite A, Mount
2 Laurel, New Jersey, 08054.

3 Q. Mr. Hanley, did you prepare and cause to be
4 filed in this case prepared surrebuttal testimony, which has
5 been marked for identification as Applicant's Exhibit 3?

6 A. Yes.

7 Q. Was that testimony prepared by you?

8 A. Yes.

9 Q. Do you have any changes or corrections you need
10 to make at that testimony at this time?

11 A. I do not.

12 Q. If I asked you today the questions that are
13 contained in that prepared testimony, would your answers be the
14 same as are reflected there?

15 A. Yes, they would.

16 Q. And is the information contained in that
17 prepared testimony true and correct to the best of your
18 knowledge and belief?

19 A. Yes.

20 MR. MITTEN: Your Honor, I have no further
21 questions of this witness at this time. I would offer into
22 evidence Applicant's Exhibit No. 3.

23 (Wherein; Applicant Exhibit No. 3 was marked for
24 identification.)

25 JUDGE JORDAN: Objections?

1 Applicant's Exhibit No. 3 will be entered into
2 the record.

3 (Wherein; Applicant Exhibit No. 3 was received
4 into evidence.)

5 JUDGE JORDAN: Cross-examination, we begin with
6 Staff.

7 MR. BERLIN: Yes, Judge. Staff has no questions
8 for Mr. Hanley. Thank you.

9 JUDGE JORDAN: Office of the Public Counsel?

10 MR. POSTON: Thank you.

11 CROSS-EXAMINATION BY MR. POSTON:

12 Q. Good afternoon, Mr. Hanley.

13 A. Good afternoon, Mr. Poston.

14 Q. You have a bachelors degree in Business
15 Administration. Correct?

16 A. Yes.

17 Q. Have you been awarded any advanced degrees such
18 as a masters or Ph.D.?

19 A. No.

20 Q. Can you tell me how much you're being paid for
21 your work on this case?

22 A. No.

23 Q. And why can't you tell me that?

24 A. Because it's based on time and out-of-pocket
25 expenses and we don't know yet.

1 Q. Okay. What's your hourly rate?

2 A. \$300.

3 Q. Okay. Approximately how many hours have you
4 worked on this case?

5 A. Not sure, a couple of days probably.

6 Q. And you're the same Frank Hanley who testified
7 for MGE in its last rate case, Case GR-2009-0355. Correct?

8 A. Yes.

9 Q. And in that case you testified on the issue of
10 rate of return. Correct?

11 A. Yes, sir.

12 Q. And do you have a copy of the Commission's
13 Report and Order from that case with you?

14 A. I do.

15 Q. And could you please turn to Page 29 of that
16 report.

17 A. Okay.

18 Q. Would you agree with me that in Paragraph 34,
19 second sentence, that the Commission's Report and Order states
20 that Mr. Hanley applied an arbitrary adjustment to his risk
21 premium analysis?

22 A. That's what it says.

23 Q. Would you also agree that later in that
24 paragraph it states that rather than estimate this obvious
25 unreliable result, Mr. Hanley simply assigns an arbitrary

1 weighting of 20 percent and includes 20 percent there in his
2 analysis? Is that accurate?

3 A. Well, it does. What is not accurate however,
4 is --

5 Q. My question was a yes or no question. Thank
6 you, sir.

7 And on Page 30, if you could please turn there.
8 Are you there?

9 A. Yes.

10 Q. On Page -- on Paragraph 36 the second sentence
11 states: The result is that Mr. Hanley's risk premium analysis
12 is substantially overstated and cannot be relied upon for
13 establishing ROE for MGE; is that accurate? An accurate
14 reflection of the order?

15 A. You read it correctly, yes.

16 Q. And Paragraph 37, isn't it true that that
17 states: MGE's analysis cannot be supported as a sound basis
18 for setting just and reasonable rates?

19 A. Again, your reading is impeccable.

20 Q. Thank you. And one more; Paragraph 38 states:
21 Mr. Lawton corrected Mr. Hanley's analysis by removing the
22 forecasted returns and results, explained why Mr. Hanley felt
23 the need to apply arbitrary adjustments. Without the inflated
24 forecasted returns, Mr. Hanley's DCF analysis yields a 9.20
25 percent ROE, his risk premium analysis yielded a 10.18 percent

1 ROE, and his CAPM analysis yields a 9.0 percent and 9.5 percent
2 ROE; is that accurate?

3 A. Again, you read it correctly.

4 Q. And approximately utility regulation cases have
5 you testified?

6 A. About 350.

7 Q. And in how many of those did you testify on
8 behalf of the utility?

9 A. Most of them.

10 Q. Can you give me an estimate of the number of
11 utility regulation cases where you testified on behalf of a
12 commission or a staff?

13 A. A few. A handful. Less than a dozen.

14 Q. Okay. Can you give me an estimate of the number
15 of utility regulation cases where you testified on behalf of a
16 utility consumer or consumers?

17 A. No. I've never been asked.

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

19 JUDGE JORDAN: Questions from the bench?

20 Chairman Gunn?

21 EXAMINATION BY CHAIRMAN GUNN:

22 Q. You talk about how this event was not something
23 that was taken into account by investors. Correct?

24 A. Yes, it is, Your Honor.

25 Q. Do they -- in doing the analysis of a company,

1 do investors generally -- of utilities -- take into account
2 weather-related -- or potential for weather-related disruptions?

3 A. Sure. Absolutely they do. The question is what
4 constitutes a norm that which can be reasonably anticipated.
5 And it's my contention that a weather event, act of God, if you
6 will, such as the May 22nd, 2011 tornado which struck Joplin was
7 indeed extraordinary, far, far from any norm which could have
8 been reasonably anticipated.

9 Q. So investors were taking into account the fact
10 that tornadoes might hit, just not the magnitude that the Joplin
11 tornado hit?

12 A. Sure. I mean, I think, you know, the kind of
13 tornado that might take out a few homes or maybe even a
14 subdivision, but to -- you know, a mile-wide and six miles in
15 length and thousands of buildings destroyed, no. That's not
16 something that could have been reasonably anticipated.

17 Q. In doing your analysis, did you examine what
18 MGE's current earned ROE was?

19 A. No, sir. I didn't -- honestly didn't see any
20 nexus between the testimony I'm giving here and that, so I did
21 not.

22 CHAIRMAN GUNN: Okay. All right. I don't have
23 anything further.

24 JUDGE JORDAN: I have no questions for this
25 witness. Any recross from Staff?

1 MR. BERLIN: None. None, Judge.

2 JUDGE JORDAN: From the Office of Public
3 Counsel?

4 MR. POSTON: No. Thank you.

5 JUDGE JORDAN: Any redirect from MGE?

6 MR. MITTEN: Briefly, Your Honor.

7 JUDGE JORDAN: Okay.

8 REDIRECT EXAMINATION BY MR. MITTEN:

9 Q. Mr. Hanley, do you recall when Mr. Poston asked
10 you questions about Paragraphs 36, 37 and 38 on the Commission's
11 Report and Order in MGE's last Missouri rate case?

12 A. Yes, I do.

13 Q. What, if anything, does that have to do with
14 Public Counsel's recommendation -- or contention in this case
15 that MGE's shareholders have already been compensated for the
16 risk associated with the Joplin tornado?

17 A. I don't think it has anything to do with it.
18 What it does have to do with was that it was an extraordinary
19 event and we know what the commission decided in the last case.
20 And my -- simply, my testimony is that the -- an event of that
21 nature was not something that was anticipated by investors --

22 MR. POSTON: Objection.

23 THE WITNESS: -- and therefore not reflected --

24 JUDGE JORDAN: When you hear the word
25 "objection", you need to stop speaking.

1 THE WITNESS: I'm sorry. I didn't hear, Your
2 Honor.

3 JUDGE JORDAN: That's okay. We have an
4 objection, so let's take that.

5 THE WITNESS: I'm sorry.

6 MR. POSTON: This goes beyond the questions that
7 I had. I didn't ask any questions about this case.

8 JUDGE JORDAN: Overruled. Overruled.
9 You may finish your answer.

10 THE WITNESS: Thank you. I'm sorry. I think it
11 simply had to do with the fact that the event was extraordinary
12 and it's my contention that based on what the Commission did
13 consider in arriving at its decision in the last rate case was
14 such that this type of situation could not have been reflected
15 in the allowed ROE.

16 BY MR. MITTEN:

17 Q. Mr. Hanley, Mr. Poston also asked you some
18 questions regarding Paragraph 34 of the Commission's Report and
19 Order from the last MGE rate case. Do you recall those
20 questions?

21 A. I do. Yes, sir.

22 Q. What, if anything, does Paragraph 34 have to do
23 with Public Counsel's contention in this case that MGE's
24 investors have already been compensated for the risk associated
25 with the Joplin tornado?

1 A. Nothing.

2 Q. Chairman Gunn asked you a question regarding
3 MGE's current return on equity. Do you recall that question?

4 A. I do, yes.

5 Q. And you indicated in your response that you
6 didn't think it had any nexus to the issues in this case. Do
7 you recall that?

8 A. Yes, sir. I do.

9 Q. Could you please explain what you meant by that
10 answer?

11 A. Yes. What I meant was that -- well, let me
12 preface by saying I believe that the Chairman's question was to
13 what are they actually earning on their equity. And my response
14 was that I didn't see a nexus between that and my testimony in
15 this proceeding where I simply present the testimony that
16 however and whatever the Commission arrived at -- well, we do
17 know what the Commission arrived at -- was a 10 percent allowed
18 rate of return on equity -- common equity.

19 And my testimony simply says that in arriving at
20 that the Commission did not, could not, based on the evidence
21 deduced in the case and based on everything that I know in 350
22 cases and 35-plus years of testifying such a situation could not
23 have been reflected in the market data that the Commission drew
24 upon to arrive at its allowed ROE and therefore this type of
25 event was not one that was -- could have been anticipated

1 therefore -- excuse me -- therefore it was indeed extraordinary.

2 MR. MITTEN: I don't have any further questions.

3 Thank you, Mr. Hanley.

4 JUDGE JORDAN: And may this witness be excused?

5 I'm not seeing any objections to that, so you may stand down.

6 THE WITNESS: Thank you, Your Honor.

7 (Witness excused.)

8 MR. MITTEN: Your Honor, the Company calls as
9 its next witness Michael Noack.

10 JUDGE JORDAN: Please raise your right hand.

11 (Witness sworn.)

12 JUDGE JORDAN: And before we proceed, I just
13 want to clarify on the record if anyone prefers an affirmation
14 to an oath, I will administer that as well.

15 MICHAEL NOACK testifies as follows:

16 DIRECT EXAMINATION BY MR. MITTEN:

17 Q. Would you please state your name and business
18 address for the record.

19 A. It's Michael R. Noack, N-o-a-c-k, 3420 Broadway,
20 Kansas City, Missouri, 64111.

21 Q. Mr. Noack, where are you currently employed and
22 what is your job title?

23 A. I'm employed as the director of pricing and
24 regulatory affairs for Missouri Gas Energy.

25 Q. Mr. Noack, did you cause to be filed in this

1 case prepared direct testimony, which has been marked for
2 identification as Applicant Exhibit 1 and prepared surrebuttal
3 testimony, which has been marked for identification as
4 Applicant's Exhibit 2?

5 A. Yes, I have.

6 Q. Did you prepare both that direct and surrebuttal
7 testimony?

8 A. I did.

9 Q. Do you have any changes or corrections to make
10 to either your direct or your surrebuttal testimonies in this
11 case?

12 A. I have two changes to make to my direct
13 testimony. The first change is on Page 11 at Line 13. The
14 number 12,705 should be 13,009. And the next number 3,527
15 should be 3,223. The other change is on my schedule --

16 JUDGE JORDAN: I'm sorry. Can you go back to
17 the first --

18 THE WITNESS: Sure.

19 JUDGE JORDAN: -- change?

20 THE WITNESS: Absolutely.

21 JUDGE JORDAN: I was on the wrong page. It's my
22 fault. Go ahead. Page 11?

23 MR. MITTEN: He didn't the change.

24 THE WITNESS: I'm sorry. Page 11, Line 13 the
25 first number that changed is 12,705 becomes 13,009. The second

1 change was 3,527, that becomes 3,223.

2 JUDGE JORDAN: Thank you.

3 THE WITNESS: The second change is on Schedule
4 MRN-4 and under the grouping titled Joplin and Duquesne, the
5 heading right above the word May should be "regular billed
6 customers".

7 BY MR. MITTEN:

8 Q. Do you have any other changes or corrections to
9 make, Mr. Noack?

10 A. No. That's all the changes.

11 Q. With the changes that you just made, if I ask
12 you the questions that are contained in your direct and
13 surrebuttal testimony, would your answers be the same as are
14 reflected there?

15 A. Yes.

16 Q. And is the information in your direct and
17 surrebuttal testimonies true and correct to the best of your
18 knowledge and belief?

19 A. Yes, it is.

20 MR. MITTEN: Your Honor, I have no further
21 questions for Mr. Noack at this time. And I would offer into
22 evidence Applicant's Exhibits 1 and 2.

23 (Wherein; Applicant Exhibit Nos. 1 and 2 were
24 marked for identification.)

25 JUDGE JORDAN: Objections?

1 MR. POSTON: None.

2 JUDGE JORDAN: Seeing no objections, I will
3 enter Applicant's Exhibits 1 and 2 into the record.

4 (Wherein; Applicant Exhibit Nos. 1 and 2 were
5 received into evidence.)

6 MR. MITTEN: Mr. Noack is available for
7 cross-examination, Your Honor.

8 JUDGE JORDAN: And for cross-examination for
9 Staff?

10 MR. BERLIN: Thank you, Your Honor.

11 CROSS-EXAMINATION BY MR. BERLIN:

12 Q. Good afternoon, Mr. Noack.

13 A. Good afternoon.

14 Q. Now, MGE has applied for an AAO to seek deferral
15 of its operations and maintenance expense and capital costs
16 related to the Joplin tornado. Correct?

17 A. That is correct.

18 Q. And so if I refer to that request as the O&M
19 request, you'll know what I'm referring to.

20 A. All right.

21 Q. And does the Staff recommend that MGE be granted
22 an AAO for its O&M expense and capital-related costs as a result
23 of the tornado?

24 A. That's my understanding, yes.

25 Q. And now MGE is also seeking approval to defer an

1 amount equal to its monthly customer deliver charge multiplied
2 by the number of customers MGE believes that it lost from the
3 tornado; is that correct?

4 A. That's correct.

5 Q. And if I refer to that request as the lost
6 revenues request, then you'll know what I'm referring to?

7 A. Yes.

8 Q. And MGE has sought deferral in AAOs in the past.
9 Correct?

10 A. Yes, they have.

11 Q. But MGE has never before sought deferral of lost
12 revenues?

13 A. No, we have not.

14 Q. Now, to your knowledge has any Missouri utility
15 ever sought deferral of lost revenues?

16 A. No. I know of no other utilities that has
17 sought that.

18 Q. So if we were to look at MGE's income statements
19 since the tornado occurred does it show that MGE's revenues
20 exceed its expenses?

21 A. Yes.

22 Q. And MGE is not currently deferring either the
23 O&M request or the lost revenues request at this time. Correct?

24 A. No. We are asking commission approval to make
25 that entry.

1 Q. And will deferral of the O&M request that Staff
2 recommends make MGE's ROE more positive or less positive?

3 A. It will increase our net income, so it will
4 probably make it more positive.

5 Q. So statewide, MGE does not dispute that its
6 total revenues exceed its total expenses?

7 A. No.

8 Q. And even after the impact of the Joplin tornado
9 on MGE's revenues are taken into account --

10 A. The question?

11 Q. Well, you just had answered that MGE does not
12 dispute that its total revenues exceed its total expenses and my
13 follow-up is: Even after the impact of the tornado on MGE's
14 revenues are taken into account?

15 A. That's correct.

16 Q. Okay. So in any event MGE is currently showing
17 a profit?

18 A. Yes, we are.

19 Q. Does MGE compute earnings on the Joplin service
20 area?

21 A. No. We do not keep a separate income statement
22 for any of the -- no, for the Joplin service territory. No, we
23 do not.

24 Q. So Mr. Noack, do you consider MGE's return on
25 equity to be a fixed cost?

1 A. The -- the level of earnings that was granted in
2 our last case would be one of the cost that was included in the
3 rates that were approved, yes.

4 Q. So is -- is return on equity considered to be a
5 profit?

6 A. It is.

7 Q. So is MGE's profit a cost to MGE?

8 A. Well, the -- MGE's profit is part of the
9 regulatory equation whereby you set your revenues and your
10 rates, so while it is a profit, it is also one of the items
11 that's included in the equation to come up with the rates that
12 you're charging your customers.

13 Q. Well, prior to the introduction of MGE's
14 straight fixed variable rate design in 2007, did you consider
15 ROE to be a fixed cost as you defined it?

16 A. It was still one of the items of the regulatory
17 equation that yes, we would -- it would be part of the cost -- I
18 would call it a cost that we included in what we are -- we
19 worked back to come up with a rate for.

20 Q. Okay.

21 A. Yes.

22 Q. Okay. Mr. Noack, are you familiar with the FERC
23 Uniform System of Accounts?

24 A. Yes.

25 Q. And we refer to it commonly as the USOA?

1 A. Yes.

2 Q. And would you agree that the Commission has
3 adopted the FERC USOA by commission rule?

4 A. Yes.

5 MR. BERLIN: Okay. Judge, may I approach the
6 witness?

7 JUDGE JORDAN: You certainly may. Yes.

8 BY MR. BERLIN:

9 Q. Mr. Noack, I'm going to hand you Page 627 of the
10 USOA for natural gas companies. And I'm doing this for sake of
11 brevity. I have the entire 140-page -- 146-page document, if
12 you'd like to refer to it. But --

13 MR. BERLIN: I believe we would mark this as
14 Staff Exhibit 4.

15 (Wherein; Staff Exhibit No. 4 was marked for
16 identification.)

17 MR. MITTEN: What was this number?

18 MR. BERLIN: Staff Exhibit 4.

19 BY MR. BERLIN:

20 Q. Okay. Mr. Noack, have you had time to look at
21 this document?

22 A. I'm looking at it, yes.

23 Q. And I'm going to -- I'm going to give you a copy
24 of the actual FERC USOA for natural gas accounts so that you can
25 refer to it.

1 A. I'm with you. Okay.

2 Q. Can you identify Page 627 in the FERC USOA that
3 this document, Staff Exhibit 4, is part of the USOA?

4 A. Yes.

5 Q. Okay.

6 A. Yes.

7 Q. Mr. Noack, if you would please, go down to
8 Paragraph 9. And it's highlighted in yellow. If you would
9 please, read the first sentence in Paragraph 9 that defines the
10 word "cost".

11 A. Paragraph 9, Cost means the amount of money
12 actually paid for property or services.

13 Q. Okay.

14 A. When the consideration given is other --

15 Q. No. That's okay. I only needed the first
16 sentence. Thank you.

17 So in referring to this -- you had just talked
18 about MGE's return on equity, which you consider to be a profit.
19 It's not a cost under the USOA definition. Correct?

20 A. Well, I'm not -- not exactly -- I guess I would
21 need to see where else the word cost is used in here and how
22 it's being applied. When we refer to --

23 Q. But --

24 A. -- equity, we refer to it as the cost of equity.

25 So --

1 Q. But from the sentence that defines the word
2 cost, I mean you -- you'd agree then return on equity is not
3 included in that sentence?

4 A. No. I'm not sure I would actually agree to
5 that.

6 Q. Okay.

7 MR. BERLIN: As Staff -- Judge, I'd like to move
8 to admit Staff Exhibit 4 into evidence at this time.

9 JUDGE JORDAN: Objections?

10 Staff Exhibit 4 is entered into the record.

11 (Wherein; Staff Exhibit No. 4 was received into
12 evidence.)

13 BY MR. BERLIN:

14 Q. Moving on, Mr. Noack, has MGE alleged that the
15 loss of revenues from the Joplin tornado effects its ability to
16 provide safe and adequate service to its customers?

17 A. No, we have not.

18 Q. Now, based on a response from MGE to Staff's
19 Data Request asking for -- about total customer count, would you
20 agree that MGE has a total customer base of some 515,000 as of
21 the end of April 2011?

22 A. Subject to check of, you know, what I provided
23 in response, yes. I mean, that number moves around from month
24 to month, but that might be the number in April, yes.

25 Q. Well, that comes from MGE response to Staff DR

1 No. 19. Does that sound right to you?

2 A. If I can see the actual --

3 Q. I can --

4 A. Yes. It sounds right. I mean, that's -- that's
5 about what we have, but --

6 Q. All right. Well, we'll agree it's somewhere
7 around 515,000?

8 A. Yes.

9 Q. Okay. And MGE has alleged a loss of
10 approximately 3,200 customers as of September 30th, 2011 in the
11 Joplin area due to the tornado?

12 A. That is the current number that -- that I use
13 to -- to estimate a number in my testimony, yes.

14 Q. Okay. So doing the math and using MGE's
15 numbers, MGE's loss of Joplin area customers amounts to -- would
16 you agree, it's about .62 percent -- .62 of 1 percent of MGE's
17 total customer Missouri count?

18 A. .62 percent -- total Missouri?

19 Q. Correct.

20 A. Yes. But it's going -- 2 -- it's 20 percent of
21 Joplin.

22 Q. So that would -- that would be a customer loss
23 to MGE of less than two-thirds of 1 percent, then. Correct?

24 A. Systemwide, yes.

25 Q. Okay. All right. Moving on to Page 10 of your

1 direct testimony, do you have that before you?

2 A. I do.

3 Q. On Page 10 you estimate that on an annual basis
4 MGE is foregoing approximately 1.1675 million dollars in revenue
5 due to the tornado; is that right?

6 A. Yeah. It's a combination of residential/general
7 service and transportation.

8 Q. But that 1.1675 million does not take into
9 account the reduction of income tax expense that comes with a
10 decrease in revenues, does it?

11 A. I haven't taken any -- no. It has -- not taking
12 any deductions. We're just trying to quantify what we think the
13 estimated fix cost recovery loss is.

14 Q. All right. Now, would you agree that a
15 reduction of a \$1 in revenue should also result in an offsetting
16 reduction of about 38 cents in income tax expense?

17 A. Using our -- if that's the only item that we're
18 taking into consideration, yes.

19 Q. So -- and I think you answered this, but MGE did
20 not consider the offsetting reduction in taxes when you
21 developed your 1.1675 million dollar number?

22 A. No.

23 Q. Okay. So doing the math we take out the
24 offsetting reduction of income tax from MGE's asserted 1.1675
25 million, that would reduce MGE's asserted lost revenues from the

1 tornado down to about \$720,000. Would you agree with that?

2 A. I'll agree with the math, yes.

3 Q. And now you may recall MGE's response to Staff
4 DR No. 22. It identified a small amount of avoided monthly
5 billing expense per customer of about 41 cents for each customer
6 that left the system. Are you familiar with that number?

7 A. I am.

8 Q. And I believe that was for avoidance of billing
9 items such as envelopes, postage, cardstock, that type of thing?

10 A. Yes.

11 Q. So doing the math, that would amount to an
12 avoided \$16,000 of billing expense on an annual basis, you
13 agree?

14 A. That's correct.

15 Q. Now, subtracting the \$16,000 of avoided variable
16 billing expense from the \$720,000 of asserted lost revenue, that
17 would bring that amount down to 704,000. Correct?

18 A. That's the math, but --

19 Q. That is the math.

20 A. -- that's not what I'm asking for, so --

21 Q. I understand. But you agree with the math?

22 A. As you presented it to me, yes.

23 Q. Okay. But the projected total company annual
24 net revenues are approximately \$203.8 million according to the
25 company's 2011 budget. Correct?

1 A. That's approximately right. That's correct.

2 Q. Okay. So the asserted lost revenue, the math we
3 just did of \$704,000 -- and of course that was adjusted on an
4 after-tax basis, is about .34 of 1 percent of MGE's budgeted
5 2011 Missouri net revenues. Correct? Would you agree with the
6 math? I have a calculator.

7 A. That's fine, if that's what the math is, it's --
8 sure.

9 Q. Does that sound right?

10 A. 700,000 divided by 204 million?

11 Q. 704,000 divided by the Missouri net revenue
12 budgeted amount of 203.8 million.

13 A. All right.

14 Q. So .34 percent is about one-third of 1 percent.
15 Correct?

16 A. Yes.

17 Q. So if we were to accept for sake of argument
18 that MGE lost, after tax and on an annualized basis some
19 \$704,000 in lost revenue, that number would amount to .34
20 percent or .341 percent of MGE's budgeted 2011 Missouri net
21 revenues.

22 A. That's what the math is.

23 Q. Okay. On Page 10 of your surrebuttal, Line 6 to
24 8, you were referring to Mr. Oligschlaeger and Mr. Lafferty.
25 You said --

1 A. I'm sorry, surrebuttal?

2 Q. Yeah. Surrebuttal, Page 10.

3 A. I'm there.

4 Q. Okay. And you were referring to

5 Mr. Oligschlaeger and Mr. Lafferty, you state and I quote

6 "neither contends that the USOA prohibits an accounting deferral
7 for lost revenues associated with an extraordinary event" close
8 quote.

9 So my question is, is it your contention that
10 the USOA mandates and accounting deferral for lost revenues
11 associated with an extraordinary event?

12 A. Ask the question again. I'm sorry. I was
13 reading the --

14 Q. Okay.

15 A. -- entire answer. I'm sorry.

16 Q. Well, and I had excerpted a piece where you
17 state and I quote "neither contends that the USOA prohibits an
18 accounting deferral for lost revenues associated with an
19 extraordinary event" close quote.

20 So my follow-up question related to that piece
21 of your testimony is, are you contending that the USOA mandates
22 an accounting deferral for lost revenues associated with an
23 extraordinary event?

24 A. Not mandates, but allows and says that you need
25 to take into consideration all items of net income.

1 Q. But it does not mandate it?

2 A. It says that shall consider specific revenues,
3 expenses, gains or losses that would have been included in net
4 income.

5 Q. Okay. Okay. Now, I think we've talked about
6 this earlier today, but you are familiar with the commission's
7 Report and Order in MGE's last rate case?

8 A. Yes.

9 Q. And was MGE awarded and ROE of 10.0 percent?

10 A. That's correct.

11 Q. Okay. And would you agree with me that the
12 commission's order set a zone of reasonableness for ROE was
13 between 9.5 to 10.5?

14 A. I don't have that specific language. I know
15 that --

16 Q. I have it.

17 A. -- the rates were set using 10 percent. So
18 basically that's the number we were -- we were allowed.

19 Q. Well, I -- I'm talking about the zone of
20 reasonableness of 9.5 to 10.5. Are you familiar with that
21 language in the Report and Order?

22 A. I'd like to review it again.

23 Q. Okay.

24 A. If I could.

25 MR. BERLIN: May I approach?

1 JUDGE JORDAN: You may and I'm not going to
2 require permission to approach witnesses unless somebody really,
3 really wants it.

4 MR. MITTEN: Counsel, what page are you
5 referring to you the report?

6 MR. BERLIN: It's on page -- it's 28 and 29.

7 THE WITNESS: This is Mr. Lawton's range of
8 reasonableness.

9 BY MR. BERLIN:

10 Q. Yeah. That was what the Commission had selected
11 in the rate case.

12 A. Well, they also state that they didn't accept
13 the 50 basis point reduction.

14 Q. Well, I understand that. That goes back to the
15 idea of risk and the SFB, but I -- I'm not trying to make this
16 complicated. It was just that the Commission looked at a zone
17 of reasonableness of -- and maybe -- maybe I misdirected you.
18 It's actually -- maybe the best place to look it is Page 36, the
19 last paragraph where the commission addresses the zone of
20 reasonableness.

21 A. All right.

22 Q. Okay. So the zone of reasonableness as the
23 Commission states is a tool that the Commission uses and you'd
24 agree that it was 9.5 to 10.5?

25 A. That's Mr. Lawton's range. That's not the

1 Commission's range. The Commission is commenting on OPC's
2 witness and they make this statement that Mr. Lawton suggested a
3 range of 9.5 to 10.5.

4 Q. All right. But -- okay. Let me back off. But
5 there is a zone or reasonableness, I guess that the address here
6 of 9.1 to 11.1.

7 A. And the decision is is that the Commission found
8 the appropriate return on equity to be 10 percent.

9 Q. That's correct. Okay. I'll move on.
10 Mr. Noack, how many residential accounts is MGE opened in the
11 Joplin area since May 22nd?

12 A. The -- the numbers that -- new res-- I do not
13 know the answer to that question.

14 Q. Okay. How many commercial accounts has MGE
15 opened in Joplin area since May 22nd?

16 A. I can't answer that question.

17 Q. How many residential construction orders does
18 MGE have pending in the Joplin area?

19 A. I have no idea.

20 Q. Okay. And how many commercial construction
21 orders does MGE have pending in the Joplin area?

22 A. I don't know that answer either.

23 Q. Do you know how many construction permits the
24 City of Joplin has issued since May 22nd?

25 A. No.

1 Q. Do you know how many occupancy permits the City
2 of Joplin has issued since May 22nd?

3 A. No, I do not.

4 Q. Has the City of Joplin issued building permits
5 in an amount nearly equal to 50 percent of the number of
6 structures destroyed?

7 A. I don't know the answer to that.

8 Q. Has MGE been tracking new or transferred
9 accounts in the Joplin area against accounts closed in the
10 tornado zone?

11 A. We are att-- yes. We are doing that.

12 Q. But not after September 30th of 2011?

13 A. Ask that question again. I'm sorry,
14 Mr. Berlin.

15 Q. Has MGE been tracking new or transferred
16 accounts in the Joplin area against accounts that were closed in
17 the tornado zone?

18 A. Yes.

19 Q. And are you carrying that beyond September 30th
20 of 2011 or did you end it a September 30th?

21 A. No. We're -- no. It's an ongo-- it's an
22 ongoing analysis and it will continue to be ongoing in the
23 indefinite future.

24 Q. Okay. All right. I'd like to shift gears again
25 here and go back to the Uniform System of Accounts. And I

1 believe you stated earlier that you were familiar with the FERC
2 USOA? And I'm going to hand you a document that has been
3 addressed earlier today in opening.

4 And what I just handed to -- and if you would,
5 you --

6 A. You haven't handed me anything. I'm sorry.

7 Q. I'm sorry. I thought I did. Sorry.

8 MR. MITTEN: Bob, is this designated as Staff
9 Exhibit 5?

10 MR. BERLIN: Yes. This is to be premarked as
11 Staff Exhibit 5 and maybe I need to get it marked.

12 (Wherein; Staff Exhibit No. 5 was marked for
13 identification.)

14 MR. BERLIN: And I'd like the record to reflect
15 that Staff Exhibit 5 is dual-sided.

16 BY MR. BERLIN:

17 Q. And on the first page in Paragraph 7,
18 extraordinary items.

19 A. Yes.

20 Q. And on the flip side is Paragraph 182.3, other
21 regulatory assets. Mr. Noack, would you agree that I just
22 handed those portions of the USOA?

23 A. Yes.

24 Q. And if you would just take a quick minute here
25 to read for yourself the yellow highlighted portion of Paragraph

1 7 under extraordinary items.

2 A. I'm with you.

3 Q. Okay. Would you agree that this portion of the
4 USOA on extraordinary items pertains to MGE's request for an
5 AAO?

6 A. Yes.

7 Q. If you would please take a minute to read for
8 yourself the yellow highlighted portion of Paragraph 182.3 on
9 other regulatory assets on the flip side.

10 A. I'm with you.

11 Q. And to recap what you just read on other
12 regulatory assets, would you agree that the USOA sets forth a
13 requirement that it be probable that charges in a -- included in
14 a regulatory asset be used to develop utility rates?

15 A. That's what the language says, yes.

16 Q. Okay. And so would you agree that this portion
17 of the USOA on other regulatory assets pertains to MGE's request
18 for an AAO?

19 A. It -- it pertains to our request in that we are
20 asking for a deferral of these costs to a regulatory asset so
21 that we can include it in our next rate case and ask commission
22 approval.

23 Q. So the answer's yes?

24 A. Yes.

25 MR. BERLIN: Okay. All right. Your Honor, I'd

1 like to move to enter what is marked as Staff Exhibit 5, this
2 portion of the FERC USOA on extraordinary items and other
3 regulatory assets into the record.

4 JUDGE JORDAN: And that's staff Exhibit 5, is it
5 not?

6 MR. BERLIN: Staff Exhibit 5.

7 JUDGE JORDAN: Any objections to Staff Exhibit
8 5?

9 Seeing none, Staff Exhibit 5 is entered into the
10 record.

11 (Wherein; Staff Exhibit No. 5 was received into
12 evidence.)

13 BY MR. BERLIN:

14 Q. Okay. All right. Shifting gears a little bit
15 here, Mr. Noack. We'll look at your Schedule 3 in your direct
16 testimony.

17 A. Page 1 or Page 2?

18 Q. The first page.

19 A. Okay.

20 Q. Looking at Schedule 3 in your direct testimony,
21 you include customer losses for the months of August and
22 September 2011. Correct?

23 A. When you say I'm including customer losses, all
24 I'm -- what I'm measuring on Page 1 of Schedule MRN-3 is a
25 reduction in customers.

1 Q. All right.

2 A. In the various months, yes.

3 Q. All right. Okay. Now, are August and September
4 2011 some three and four months after the tornado occurred?

5 A. They are.

6 Q. So is it your testimony that MGE's customer loss
7 is some three and four months after the tornado occurred were
8 caused by the tornado?

9 A. This is simply an estimate to try and quantify
10 the amount of fixed costs recovery that we are not experiencing
11 at the present time. We lost 3,200 meters, at least that many
12 service lines have been cut. We had other customers that have
13 been off service where their house wasn't necessarily destroyed,
14 but --

15 Q. Well, let me -- let me --

16 A. This is --

17 Q. I'm just trying to --

18 A. This is simply a place holder that we can
19 quantify an exact number for each and every month --

20 Q. Well, let me --

21 A. Since the tornado.

22 Q. All right. Well, but you're not re-- are you
23 representing that the losses that you record in August and
24 September are caused by the May 22nd tornado?

25 A. No. Not -- no. I'm saying that --

1 Q. Okay.

2 A. -- as of September we have 3,223 less customers
3 this year than last year.

4 Q. All right. So you're not -- you're not
5 asserting that they were caused by the tornado?

6 A. It's a reasonable estimate of what was caused by
7 the tornado.

8 Q. Now, going to your surrebuttal on Page 19 -- are
9 you there?

10 A. I'm here.

11 Q. On Page 19 of your surrebuttal, you discuss the
12 Hurricane Iniki case that was before the Hawaii Public Utilities
13 Commission. Correct?

14 A. That's correct.

15 Q. And so would you agree with me that in the
16 Hurricane Iniki case that the utility had damage to over 30
17 percent of its system?

18 A. That's what the case said, yes.

19 Q. And would you agree with me that the utility had
20 pled facts to justify emergency rate relief?

21 A. That the company had what? I'm sorry.

22 Q. Had pled facts to justify emergency rate relief?

23 A. Yes, and they decided to --

24 Q. Okay.

25 A. -- not do that, but to ask for a deferral

1 instead.

2 Q. All right. And then would you agree with me
3 that there was a stipulation among the parties that the
4 Commission authorized the deferral of lost margins?

5 A. Yes.

6 Q. And are you aware that ultimately in a later
7 case the utility did not get rate recovery of its deferred lost
8 margins?

9 A. I am. Because I don't think they were able to
10 prove up the -- the amount.

11 Q. Okay. Mr. Noack, are you familiar with the
12 Empire Electric application for AAO related to the Joplin
13 tornado?

14 A. No. I -- I know that they have one. I know
15 that a stipulation was just approved, but I don't know all of
16 the specifics.

17 Q. All right. One second. Mr. Noack, do you
18 believe that absent the authority to defer lost revenues that
19 MGE will not have a reasonable opportunity to recover its fixed
20 costs in rates?

21 A. They will not -- no. They will not be able --
22 we will not be able to recover all of our fixed costs.

23 Q. And does that quantification of fixed costs
24 include the profit?

25 A. It does.

1 Q. Mr. Noack, do you believe that absent the
2 authority to defer lost revenues MGE will not have a reasonable
3 opportunity to earn a positive ROE?

4 A. We'll -- we'll earn a positive ROE, it just
5 won't be the same ability to -- it won't be the same ROE that we
6 would have the ability to earn absent this tornado.

7 Q. Is MGE under any sort of rate case filing
8 moratorium currently?

9 A. When you say rate case moratorium, no. No. We
10 have to file a rate case in 2013 under the rules of -- if we
11 want to continue to charge our ISRS, but --

12 Q. Okay. Is there any reason why MGE could not
13 file a general rate case earlier in 2012 that could presumably
14 feature a test year including tornado-related impacts?

15 A. We possibly could do that, but I can't envision
16 any -- any scenario where Staff would allow operating expenses
17 caused by the tornado or these lost fixed -- recovery of fixed
18 charges --

19 Q. But --

20 A. -- in that rate case.

21 Q. My question is you could do this? You could
22 file a general rate case early in 2012 that would presumably
23 have a test year that included tornado-related --

24 A. It would --

25 Q. -- impacts?

1 A. Again, it would be a test year that included the
2 tornado, but would not be something that Staff or OPC would
3 allow those expenses --

4 Q. Okay.

5 A. -- to be collected --

6 Q. Thank you.

7 A. -- going forward.

8 Q. Thank you. Mr. Noack, earlier there was some
9 discussion about a DR response from the company, which is
10 Staff's data request. And I'm going to hand you a copy of the
11 company's response to Staff's Data Request No. 32 and we'll mark
12 that as Staff's Exhibit 6.

13 (Wherein; Staff's Exhibit No. 6 was marked for
14 identification.)

15 BY MR. BERLIN:

16 Q. Mr. Noack, have you had an opportunity to look
17 at this document? Can you identify it for me?

18 A. Staff Exhibit 6 is a print out off of the EFIS
19 system of our response, MGE's response to Staff DR No. 32 in
20 this case.

21 Q. And are you the author of that response?

22 A. I'm the one that submitted this response, yes.

23 Q. And this is an update of customers back online
24 as of October 31st, 2011. Correct?

25 A. It is an unverified preliminary update, yes.

1 Q. But you believe this information that you
2 authored is true and correct?

3 A. Well, with the caveat that in the response, the
4 very first line it says: The estimates being provided in this
5 response are preliminary and unverified and not reliable for
6 ratemaking purposes.

7 Q. All right. Okay.

8 MR. BERLIN: Judge, I would move to enter the
9 company's response to Staff Data Request 32, which has been
10 marked as Staff Exhibit 6 into the record.

11 JUDGE JORDAN: Any objection to Staff Exhibit
12 No. 6?

13 Not seeing any, Staff Exhibit No. 6 is entered
14 into the record.

15 (Wherein; Staff Exhibit No. 6 was received into
16 the record.)

17 MR. BERLIN: And I want to make sure, Judge,
18 because I've been going through these quickly, also did we enter
19 Staff Exhibit 5 in?

20 JUDGE JORDAN: Yes, we entered Staff Exhibit 5
21 in.

22 MR. BERLIN: Mr. Noack, that completes my
23 questions, thank you.

24 THE WITNESS: Would you like your order back?

25 MR. BERLIN: Sure. And my FERC USOA, please.

1 JUDGE JORDAN: Any cross-examination from OPC?

2 MR. POSTON: Yes. Thank you.

3 CROSS-EXAMINATION BY MR. POSTON:

4 Q. Mr. Noack, isn't it true that in a data request
5 response to OPC you indicated that MGE lost approximately
6 six-tenths of 1 percent of MGE's total customers as a result of
7 the tornado?

8 A. Yes. What DR response is that?

9 Q. DR 14.

10 A. Yes. .66.

11 Q. And that was calculated -- or was that
12 calculated prior to you calculating the customer numbers that
13 were addressed in Staff's DR 32?

14 A. That did -- yes. That did not take into
15 consideration any response to Staff DR 32.

16 Q. So those numbers didn't take into consideration
17 the customers that have been reestablished since being initially
18 lost?

19 A. That's correct.

20 Q. And do you agree that prior to the May 2011
21 tornado that it was common for MGE to experience fluctuations in
22 customer accounts from one month to the next?

23 A. Yes.

24 Q. Do you agree that prior to the May 2011 tornado
25 that MGE was experiencing a steady decline in the number of

1 customers?

2 A. There was somewhat of a decline previous to the
3 tornado, but there was a greater decline after the tornado.

4 Q. Do you agree there are a number of MGE customers
5 that drop off out of the system seasonally?

6 A. Yes. There are customers that drop off.

7 Q. Is it possible that some former customers lost
8 due to the tornado will never reestablish service with MGE?

9 A. That's probably a possibility, yes.

10 Q. And in the Staff DR 32 you estimate that the
11 staff -- or that 927 customers affected by the tornado have
12 moved to another location within MGE's service territory.
13 Correct?

14 A. Yes. That's what the DR response states.

15 Q. And then another 975 have reestablished their
16 service at their former address?

17 A. That's correct.

18 Q. For these customers does MGE expect to receive
19 payment for providing service to these customers?

20 A. If the customer is currently connected and
21 receiving service from us, they will be receiving a bill, yes.

22 Q. So if we add the 927 customers to -- that moved
23 to new locations, the 975 that reestablished at their old
24 location we come up with over 1,900 customers that MGE has
25 regained; is that correct?

1 A. That's correct. It's an estimate of what we've
2 reconnected, yes.

3 Q. And if we subtract those 1,900 from the
4 approximately 3,200 customers initially lost due to the tornado,
5 we come up with approximately 1,300 customers that continue to
6 be disconnected as a result of the tornado?

7 A. The 3,200 isn't the proper number to deduct that
8 from. If -- if you look at the response to DR 32, we initially
9 coded -- I put in the DR 6,000 accounts with a 10, directly
10 after the tornado struck. That number was really 9,800 that we
11 coded and did not send a bill to until July after the tornado.

12 of those 9,800 accounts that were coded that did
13 not get a bill for two months, 3,700 of those customers we
14 determined to have been affected by the tornado that caused them
15 to lose service and we would code them such that when they did
16 reconnect, we wouldn't charge them a reconnect fee or a connect
17 fee.

18 So it's really probably the 3,700 that you want
19 to compare the 1,900 to.

20 Q. Okay. Well, if you look back at the DR 14 that
21 we discussed a moment ago.

22 A. Yes.

23 Q. Explain the difference between -- what is the
24 number that you show here. You state the number of fewer
25 customers used to calculate lost fixed cost recoveries is 3,223.

1 A. All that states is the number that I used to
2 estimate the lost fixed cost recovery was 3,223.

3 Q. Okay.

4 A. And --

5 Q. And that's 3,223. How does that compare to the
6 1,900 who have reestablished service? Would that come off of
7 this number right here to show the number of customers that are
8 still off the system?

9 A. Part of those would, yes. Part of those would.
10 Again, as I said, we -- we had 30-- if I could have the exact --
11 probably the exact number, but -- current number of meters
12 that -- that were removed is 3,210 as of November 17th and 3,266
13 services that were either cut or abandoned.

14 So we're really kind of mixing apples and
15 oranges with what you're -- with what you're comparing to the
16 3,223. The 3,223 was -- was my best estimate at the time I
17 wrote my testimony as to what fixed cost recovery we lost on an
18 annual basis might be.

19 Q. Okay. What would be your best estimate now,
20 taking into account the 1,900 reestablished customers as to
21 what -- the number of customers that are now off the system?

22 A. Well, first I need to actually look at each of
23 these customers that reconnected, which is something we will do,
24 and determine first when they reconnected to the system.

25 Q. I'm just looking for a number. Can you give me

1 a number?

2 A. I can't give you a number, no.

3 Q. If you, I guess, considered those 1,900 into the
4 calculation that you made to come up with the .66 percent of
5 customers that have been lost, would that number go down?

6 A. Yes.

7 Q. In your direct testimony you identify one of the
8 customers as St. John's Hospital. You state that St. John's was
9 one of MGE's top 10 customers. Do you recall that?

10 A. Yes. Yes.

11 Q. And top 10 in what? What category?

12 A. In usage.

13 Q. Okay. And what class of customer is or was
14 St. John's?

15 A. A large volume transportation customer.

16 Q. And on Page 10 of your direct testimony you
17 calculate what you term the lost of fixed cost recovery from
18 transportation customers to be 36,000 annually; is that correct?

19 A. That -- that's also -- where's that? I'm sorry.

20 Q. Page 10.

21 A. Page 10.

22 Q. Is that your testimony is all I'm asking you.

23 A. For two customers, yes. Large volume
24 transportation; St. John's and Joplin High School, yes.

25 Q. Do you agree with the statement MGE's existing

1 rates were set to recover all expenses?

2 A. Yes.

3 Q. And do those expenses include the cost of the
4 mains, meters and service lines that have been damaged or taken
5 out of service due to the tornado?

6 A. Those costs include a return of the mains and
7 service lines and meters that were taken out of service along
8 with the -- the depreciation associated with those.

9 Q. So even though those facilities are no longer
10 used to provide service where the facilities were destroyed, all
11 MGE customers currently pay a portion of the return as you've
12 characterized it in their monthly rate; is that correct?

13 A. That's correct.

14 Q. And are MGE's rates the same throughout MGE's
15 service territory?

16 A. Yes, they are.

17 Q. There's a statement in MGE's September 16th,
18 2011 reply to Staff's recommendation. I'm going to quote it for
19 you. On Page -- Paragraph 4 of Page 3 it states: It is MGE's
20 belief based on ongoing discussions with insurers that potential
21 insurance payments may cover facilities, replacement costs, lost
22 gas costs and incident response costs incurred by MGE due to the
23 tornado. Do you agree with that statement?

24 A. It's our hope that we will get recovery of --
25 yes, a lot of these costs, yes.

1 Q. Are there any costs on the expense side of the
2 deferral that you know would not be covered by insurance
3 payments?

4 A. At this point in time I can't tell you exactly
5 what's covered or what isn't covered. There have been
6 underwriters down to look at the area and there's been no
7 decision as to what -- you know --

8 Q. So you're not aware --

9 A. -- what insurance --

10 Q. -- of any costs that's off the table as far as
11 insurance recovery?

12 A. No. The only thing I know as it relates to
13 insurance recoveries is that we were notified that we would have
14 an adverse claim adjustment applied to whatever we got back from
15 insurance. And if -- for example, if the -- if the deductible
16 results in paid claims of 7.5 million or more, we'd get a 12.5
17 percent charge.

18 Q. Okay. In your surrebuttal testimony on Page 15
19 you conclude that the annual loss of the fixed cost recovery due
20 to the tornado will reduce MGE's actual achieved return on
21 equity by 51 points; is that accurate?

22 A. Yes.

23 Q. And did you use December 31, 2010 data for the
24 calculations you performed to come up with that number?

25 A. No. What I used here was the actual rate case,

1 so --

2 Q. Okay.

3 A. That's like the -- the perfect world before we
4 cannot earn anything on it.

5 Q. Isn't it true that in response to a data request
6 from OPC in a different case, GE-2011-0282. Do you recall that
7 **

8 A. Okay.

9 Q. Correct? Okay.
10 You provided OPC with a document comparing MGE's
11 achieved rate of return to its authorized rate of return?

12 A. I am aware that I provided you with that, yes.
13 I don't have it in front of me.

14 Q. Okay. Do you recall at all what MGE's achieved
15 and authorized rate of return was for --

16 A. 2010?

17 Q. -- 2010?

18 A. No. I need to see it. I don't -- I don't have
19 that -- those DRs with me.

20 MR. MITTEN: Your Honor, since counsel's not
21 providing a copy of that DR, could I please look over the
22 witness's shoulder?

23 MR. POSTON: I have no problem with that and I
24 apologize. I just have the one copy.

25 JUDGE JORDAN: Okay. You only have the one

1 copy?

2 MR. POSTON: Yeah. I don't even have one for
3 myself, but I don't mind.

4 JUDGE JORDAN: Yes.

5 BY MR. POSTON:

6 Q. Is anything on here highly confidential? It was
7 not marked highly confidential.

8 A. No. What this schedule -- what this schedule is
9 and what I provided in response to --

10 Q. I'm just asking if there's anything --

11 A. No. It's not.

12 Q. Okay.

13 A. No.

14 Q. Isn't it true that the analysis shows that the
15 end of 2010 MGE's authorized rate of return was 7.72 percent and
16 its achieved rate of return was even higher at 8.0 percent?

17 A. The estimate of what the actual earned rate of
18 return -- yes -- shows 8 percent for 12 months, ended 2010.

19 Q. And that the authorized was 7.72 percent?

20 A. That's correct.

21 Q. And so this is 0.28 percent above MGE's
22 authorized return; is that correct?

23 A. An estimate of calendar year 2010, yes.

24 Q. How would you quantify that .28 percent into
25 dollars?

1 A. It's on the schedule. It -- it would show
2 excess of a million 774.

3 Q. And the new rates following your last rate case
4 were effective in March of 2010; is that correct?

5 A. February -- yes. The end of February. Yes.

6 Q. So the rate of return -- excuse me -- that you
7 calculate there is based on only 10 months of new rates; is that
8 correct?

9 A. It -- that is correct.

10 Q. Did MGE file for an AAO to track these over
11 earnings?

12 A. No. We did not.

13 Q. I'd like to change gears and briefly talk about
14 the concept of risk that you briefly addressed in your
15 surrebuttal testimony.

16 MR. POSTON: I'd like to have an exhibit marked.
17 This will be OPC 3.

18 (Wherein; OPC Exhibit No. 3 was marked for
19 identification.)

20 JUDGE JORDAN: There is a vacancy, so --

21 MR. BERLIN: What exhibit number?

22 MR. POSTON: OPC 3.

23 BY MR. POSTON:

24 Q. I hand you two documents; one has been marked as
25 OPC 3, just the smaller of the two. And then the larger

1 document. If I could ask you to first look at the larger
2 document and tell me if you can identify that for me?

3 A. This is a Form-10K for Southern Union Company
4 for fiscal year ended December 31st, 2010.

5 Q. And does that look to be an accurate copy minus
6 the attachments?

7 A. It does.

8 Q. And if you could please turn to Page 29 --
9 strike that.

10 If you -- the document that's been marked OPC 3,
11 would you agree that that is an accurate reflection of the cover
12 page of Form-10K, the table of contents from that Form-10K and
13 Page 29 and 30 from that Form-10K?

14 A. It looks to be official.

15 Q. And if you look on Page 29, do you see the
16 heading risks that relate to the company's distribution
17 business?

18 MR. MITTEN: Your Honor, I'm going to object to
19 any further questions regarding this document until counsel
20 establishes some relevancy to a 2010 Form-10K report for
21 Southern Union Gas in a case that involves a 2011 tornado.

22 MR. POSTON: This goes to the concept of
23 business risk. There's been the -- regarding the issue of
24 whether investors -- what risks investors consider. So I'm
25 pointing to this 10K to show the company's explanation of the

1 risk that the company faces. And that's where this goes to.
2 That's the relevance.

3 JUDGE JORDAN: I'll overrule the objection.

4 THE WITNESS: Are you referring to something
5 specific in my surrebuttal testimony?

6 MR. POSTON: Your surrebuttal testimony. I'm
7 asking the questions here, but yes I am, as a matter of fact.

8 MR. MITTEN: Okay. Your Honor, I'm going to
9 object until counsel establishes that this is relevant to
10 anything in Mr. Noack's direct or surrebuttal testimony in this
11 case.

12 MR. POSTON: In his surrebuttal he does raise
13 the issue of business risk and I'll also point the Court -- the
14 judge to Section 536.070 of the Administrative Procedure Review.
15 It states that each party shall have the right to call and
16 examine witnesses, to introduce exhibits and to cross-examine
17 opposing witnesses on any matter relevant to the issues even
18 though that matter was not subject to the direct examination.

19 JUDGE JORDAN: Yes. We do have open cross just
20 like in Circuit Court. If the witness cannot address the issue
21 of risk, then he can certainly say so. So I'm overruling that
22 objection.

23 BY MR. POSTON:

24 Q. Okay. Do you see on Page 29 there's a heading,
25 Risks that relate to the company's distribution business. Do

1 you see that?

2 A. I do.

3 Q. Okay. And then on Page 30, still under that
4 heading you see the subheading, Operational risks are involved
5 in operating a distribution business. Do you see that?

6 A. I do.

7 Q. And could you read that following paragraph.
8 I've underlined that in -- on Exhibit OPC 3. Can you just read
9 that underlined portion into the record, please?

10 A. Numerous risks are associated with the
11 operations of a natural gas distribution business. These
12 include; adverse weather conditions; accidents; break down or
13 failure of equipment or processes; the performance of suppliers
14 processing facilities below expected levels of capacity or
15 efficiency; the collision of equipment with facilities;
16 catastrophic events such as explosions, fires, earthquakes or
17 floods, landslides, tornados, lightening or other similar events
18 beyond in the company's control.

19 Casualties occurrence might result in injury or
20 loss of life, extensive property damage, or environmental
21 damage. Insurance proceeds may be adequate to cover all
22 liabilities or expenses incurred or revenues lost.

23 Q. So isn't it true that in Southern Union
24 Company's Form-10K for the year ending December 31st, 2010 that
25 damage and lost revenues caused by tornadoes was specifically

1 listed as a risk for MGE's distribution business?

2 A. It's written here in the 10k, but how that has
3 anything to do with our return on equity or anything I can't
4 answer that.

5 Q. I'm just asking, isn't that specifically listed,
6 tornadoes?

7 A. This is -- it reads that, yes. We have had
8 tornadoes in the MGE service territory before in Gladstone and
9 Pierce City that we've not asked for AAOs on.

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

11 JUDGE JORDAN: Did you want to put this into the
12 record?

13 MR. POSTON: Yes. I would offer Exhibit OPC 3.
14 Thank you.

15 JUDGE JORDAN: Any objection to OPC 3?
16 Not seeing any, OPC 3 is entered into the
17 record.

18 (Wherein; OPC Exhibit No. 3 was received into
19 evidence.)

20 JUDGE JORDAN: I have one or two questions I --
21 from the parties previously that I may going to being asking
22 stupid questions and I want to be true to my word. I have a
23 question about USOA.

24 That is a system of accountancy principles for
25 utilities, is it not?

1 THE WITNESS: Yes.

2 JUDGE JORDAN: Okay. And I've heard of some
3 other systems for accountancy like the generally accepted
4 principles of accountancy.

5 THE WITNESS: Well, there's general accepted
6 accounting principles, which our auditors -- which I think in
7 this case is Price, Waterhouse, Coopers -- they need to follow
8 to issue audited financial statements for the company. And
9 those rules, yes, are rules that they follow.

10 JUDGE JORDAN: Okay.

11 THE WITNESS: They aren't the same as the USOA.

12 JUDGE JORDAN: Okay. My question is: Does USOA
13 constitute a comprehensive set of principles for entering gains
14 and losses or does it piggyback on some other set of principles?

15 THE WITNESS: We generally -- we follow the
16 Uniform System of Accounts and what their instructions are as to
17 the recording of costs, both capital items, expenses and
18 revenues. Yes.

19 JUDGE JORDAN: Okay. So the answer is that --

20 THE WITNESS: We follow the Uniform System of
21 Accounts, what they instruct us to do.

22 JUDGE JORDAN: Okay. Are there times when you
23 need to resort to any other system to fill in gaps in the USOA?

24 THE WITNESS: No. I don't believe so.

25 JUDGE JORDAN: Okay. That's the only question

1 that I had of this witness.

2 Do we have any recross from Staff?

3 MR. BERLIN: No, Judge.

4 JUDGE JORDAN: Anything more from OPC?

5 MR. POSTON: No, thank you.

6 JUDGE JORDAN: Okay. Any redirect?

7 MR. MITTEN: Your Honor, I do have a
8 considerable amount of redirect. May I ask for a five-minute
9 recess?

10 JUDGE JORDAN: I have no problem with a
11 five-minute recess.

12 MR. MITTEN: Thank you.

13 JUDGE JORDAN: We'll take an intermission for
14 five minutes.

15 (Off the record.)

16 JUDGE JORDAN: And we were ready to resume
17 questioning of this witness with redirect.

18 MR. MITTEN: Thank you, Your Honor.

19 REDIRECT EXAMINATION BY MR. MITTEN:

20 Q. Mr. Noack, Mr. Berlin asked you if in past AAO
21 applications any Missouri utility had ever requested authority
22 to defer revenues. Do you recall that question?

23 A. I do.

24 Q. And you responded that to your knowledge no
25 utility ever had.

1 A. That's correct.

2 Q. Do you have any idea why that might be?

3 A. Well, the -- the storms usually that give rise
4 to the accounting authority orders in Missouri, at least in my
5 experience, have done ice storms or floods or -- but primarily
6 wind and ice where the facilities of the utility have been
7 destroyed and the utility working very diligently with sometimes
8 with many other utilities gets those facilities back in place
9 and service restored to the customers within a matter of days.

10 In those cases the facilities of the customer
11 generally haven't been damaged, at least to an extent where they
12 can't continue to live there. In this case not only were our
13 facilities destroyed, but the facilities of the -- and the
14 houses and businesses of the customers we serve were destroyed,
15 so there was no way for us to, you know, rapidly restore
16 service.

17 Q. Mr. Berlin also asked you if MGE is currently
18 earning a profit and if its revenues currently exceed its
19 expenses. Do you recall those questions?

20 A. Yes, I do.

21 Q. What relevance does that have to the AAO MGE is
22 requesting in this case?

23 A. Well, really in my -- none. I mean, the event
24 is really the only thing that we're here to report on and
25 request, you know, approval from the Commission to allow us to

1 accumulate these costs and set them aside in the regulatory
2 asset account and for subsequent consideration in our next rate
3 case.

4 Q. There were also a number of questions that
5 Mr. Berlin asked you about return on equity as a cost. Do you
6 recall those questions?

7 A. I do, yes.

8 Q. Is cost, as that word is used in a ratemaking
9 context, the same as the word cost is used for the purposes of
10 the Uniform System of Accounts?

11 A. I -- you know, I think in some instances it
12 might be. I mean, we refer to it as the cost of equity. We --
13 you know, you can actually have a cost, you know. Dividends
14 could be something that is actually paid out as a cost, I mean,
15 to the company. So yes, I think it can.

16 Q. Do you still have a copy of Staff Exhibit 4.

17 A. I probably do, yes. Thank you. I have it now.

18 Q. The cost of equity that you referred to in your
19 previous answer, does that comport with the definition of cost
20 that is shown on Staff Exhibit 4?

21 A. No. Staff's Exhibit 4 is -- it's actually the
22 amount of money that's paid for property or services as it says.

23 Q. You also mentioned dividends as a cost that are
24 considered for ratemaking purposes, didn't you? Do dividends
25 qualify as a cost under this definition?

1 A. Well, that I really don't know. Probably not,
2 but --

3 Q. Can you think of any other ratemaking items that
4 might be referred to as costs that wouldn't qualify under the
5 definition of that word that's in Staff Exhibit 4?

6 A. No.

7 Q. In your experience, Mr. Noack, is cost that's
8 used in a ratemaking proceeding used with the same precision as
9 in the definition of that word that appears in Staff Exhibit 4?

10 A. No. I think as I -- as I said to Mr. Berlin, I
11 mean, the -- the equation is operating expenses plus
12 depreciation plus taxes, plus -- plus a return. And that's what
13 equals the revenue requirement, so --

14 Q. Now, Mr. Berlin also asked you some questions
15 about the total number of customers that MGE serves and what
16 percentage of that total number of customers lost in Joplin was.
17 Do you recall those questions?

18 A. Yes, a little bit.

19 Q. What percentage of the total number of customers
20 in Joplin did MGE lose as a result of the tornado?

21 A. I believe it was about 20 percent.

22 Q. And do you consider that to be a significant
23 loss in that particular service area?

24 A. Absolutely.

25 Q. Now, Mr. Berlin also asked you about some

1 numbers that appear on Page 10 of your direct testimony. Can
2 you please turn to that page for a moment?

3 A. I'm there.

4 Q. Now, the figure \$1.675 million was discussed in
5 terms of the lost fixed cost revenues. Do you recall that?

6 A. Yes.

7 Q. Is that a hard number or an estimate?

8 A. That's -- that's an estimate right now. It's a
9 place holder that I used for this testimony.

10 Q. And Mr. Berlin pointed out that that number does
11 not include any deductions for income tax; is that correct?

12 A. No, it does not.

13 Q. Do you have any idea what the income tax effect
14 of the revenues that the company is losing as a result of the
15 tornado is going to be?

16 A. Not at this time because I don't know exactly
17 what that number is. I mean, again you can take -- you can take
18 income taxes as a percent of revenues in isolation, but I --
19 that's something that will need to be raised in the rate case
20 and that's where that would be discussed.

21 Q. If the company is authorized to defer lost fixed
22 cost revenues in this case, would any tax savings be credited
23 against those deferrals for ratemaking purposes in the company's
24 next rate case?

25 A. I don't know that at this time.

1 Q. Is that something the Commission would decide in
2 that case?

3 A. That is absolutely something the Commission
4 would decide, yes.

5 Q. Now --

6 A. This -- the deferral that we're asking for will
7 have no effect on rates at this time. The only thing that will
8 happen is if we don't get the deferral, we're going to lose any
9 opportunity we have to raise this issue again before the
10 Commission.

11 Q. Now, Staff in this case has not opposed the
12 deferral of O&M and capital-related costs; is that correct?

13 A. That's my understanding, yes.

14 Q. Are there any offsets that might apply to those
15 costs?

16 A. Not that -- not that I'm aware of. No. Those
17 were -- those were just additional expenses that we incurred and
18 coded as such to make the area safe after the tornado and the
19 ongoing work in the area.

20 Q. Are any of those costs subject to insurance?

21 A. They might be, yes.

22 Q. And if you got an insurance payment, would that
23 be an offset?

24 A. That would -- we would use that as an offset,
25 yes.

1 Q. So there may be some offsets to the O&M and
2 capital-related costs that Staff is agreeing should be deferred
3 in this case; is that correct?

4 A. That's correct.

5 Q. Now, Mr. Berlin also asked you a question or
6 asked you a number of questions where you premised your answer
7 by saying you would accept the math. Do you recall those
8 questions?

9 A. I did.

10 Q. What did you mean by that?

11 A. Yeah. You know, I really would need to listen
12 to the question again. But I mean, he was basically doing
13 arithmetic and division problems that, you know, I would accept
14 the calculations. But for purposes of what we're asking for
15 here, they're really at this time irrelevant. We were only
16 asking to be allowed to accumulate these costs and set them up
17 in a regulatory asset.

18 Q. Is there a time when the kinds of calculations
19 Mr. Berlin asked you to make would be relevant?

20 A. At the time of the rate case, yes, when we need
21 to support the numbers that we come to the Commission with.

22 Q. Mr. Berlin also asked you a question based upon
23 budgeted revenues for 2011; is that correct?

24 A. That's correct.

25 Q. Let me ask you a few questions about the budget

1 process. When was MGE's 2011 budget prepared?

2 A. Probably in September of 2010 and for revenue it
3 could have actually been done earlier. I don't know, but it
4 definitely in the late third quarter or probably early fourth
5 quarter of 2010.

6 Q. And that was your best guess at that time as to
7 what your revenues would be for 2011?

8 A. Yes.

9 Q. Can you think of anything that happened in 2011
10 that might have made those 2010 estimates wrong?

11 A. Besides the tornado?

12 Q. Well, why don't we start with the tornado?

13 A. Obviously, the tornado had a significant impact
14 to -- on the O&M budget and the revenues from Joplin. Right off
15 the top of my head I can't -- can't think of anything else.
16 There's nothing else similar to that that I can recall.

17 Q. But would the tornado have had an affect on the
18 accuracy of your 2011 revenue --

19 A. Absolutely.

20 Q. -- projections for the budget?

21 A. Yes. Absolutely.

22 Q. Does the Commission set rates on budgeted
23 amounts or booked amounts?

24 A. They set rates on the -- on a historical test
25 year, which would be the booked amounts with adjustments made.

1 Q. Now, Mr. Berlin also asked you a number of
2 questions about the Uniform System of Accounts. Do you recall?
3 In fact, he gave you an exhibit that had a couple of excerpts
4 from the Uniform System of Accounts, Staff Exhibit 5. Do you
5 still have that?

6 A. I do.

7 Q. All right. Now, he asked you if the Uniform
8 System of Accounts mandates the deferral of lost revenues. Do
9 you recall that question?

10 A. Yes.

11 Q. Let me direct your attention to Staff Exhibit 5,
12 the side that deals with Instruction No. 7. Do you see that?

13 A. I do.

14 Q. In the first sentence of that instruction is the
15 word "all". Does that have any significance to you?

16 A. Well, it basically -- it says that when, you
17 know -- what the sentence says is it's the intent that net
18 income shall reflect all items of profit and loss during the
19 period whether it be a revenue or a cost or an expense.

20 Q. Do revenues affect profit and loss?

21 A. Yes. Yes.

22 Q. Do you have an opinion as to whether it would be
23 appropriate under this particular instruction to defer only
24 expenses and not to defer revenues?

25 A. In this case it's -- the revenues are definitely

1 something that -- that were effected by this catastrophe and
2 they need to be -- to be looked at and included.

3 Q. And Mr. Berlin also asked you to accept for
4 purposes of argument that MGE had lost a little over \$700,000 in
5 revenue as a result of the tornado. Do you recall that
6 question?

7 A. I do.

8 Q. Do you accept that figure as being valid?

9 A. I -- no. That -- that -- again, we don't know
10 what that number is. That's a -- it's a number that we're
11 continuing to look at on a daily basis. And when we come before
12 the Commission, assuming we're granted this accounting authority
13 order, we will be able to support that number and we'll know
14 what that number is. We don't know what that number is at this
15 time.

16 Q. Mr. Berlin also asked you some questions about
17 the probability standard in the Uniform System of Accounts. Do
18 you recall those questions?

19 A. No. I don't. I don't remember those questions.

20 Q. Well, could you turn to the side of Staff
21 Exhibit 5 --

22 A. I do. I do. Yes. Yes.

23 Q. Okay. Now, there's some language in Sec-- or
24 account 182.3, other regulatory assets that's been highlighted.
25 Do you see that?

1 A. I have it.

2 Q. And also some language that appears in bold
3 text. Do you see that?

4 A. I do.

5 Q. The language that appears in bold text says, But
6 for it being probable that such items will be included in a
7 different period for purposes of developing rates that the
8 utility is authorized to charge for its utility services. Do
9 you see that?

10 A. Yes.

11 Q. What does that phrase mean to you, Mr. Noack?

12 A. That we will request these costs in a subsequent
13 rate case and basically under the assumption that we will be
14 allowed to amortize these to rates.

15 Q. Under your understanding of the language that I
16 just read out of the description of account 182.3, does that
17 require certainty that you'll be allowed to recover all of those
18 amounts?

19 A. No. Not at all. No. It doesn't say that the
20 Commission -- you have to know ahead of time that the
21 Commission's going to rule favorably.

22 Q. Is there a probability standard that applies to
23 financial accounting?

24 A. I don't know.

25 Q. Mr. Berlin also asked you a number of questions

1 regarding the rate of return that was authorized in the
2 company's last rate case. Do you recall that?

3 A. I do.

4 Q. Do you still have a copy of the Report and Order
5 that was issued in that case?

6 A. No, I do not.

7 Q. Let me hand you a copy and refer you to Page 36,
8 which is the page Mr. Berlin asked you a number of questions
9 about. Do you have that?

10 A. I do.

11 Q. And on that page it talks about a zone of
12 reasonableness that runs from 9.1 percent to 11.11 percent; is
13 that correct?

14 A. It does.

15 Q. What rate of return on equity was MGE authorized
16 in that rate case, Mr. Noack?

17 A. In this rate case?

18 Q. Yes.

19 A. 10 percent.

20 Q. Now, is it your understanding that MGE would be
21 allowed to earn 11.11 percent under the order that issued by the
22 Commission in that case?

23 A. We wouldn't be allowed to set rates to -- to
24 earn 11.11 percent, no.

25 Q. And within that zone of reasonableness the

1 Commission picked a specific number; is that correct?

2 A. That's correct.

3 Q. And that specific number as you told me a moment
4 ago was 10 percent?

5 A. 10 percent.

6 Q. And that's the allowed return on equity that
7 you're supposed to have an opportunity to earn; is that correct?

8 A. That's correct. That's what our rates are based
9 on.

10 Q. Mr. Berlin, let me ask you to turn to -- excuse
11 me --

12 Mr. Berlin asked you a number of questions as to
13 whether or not you knew the number of residential and commercial
14 accounts that had restored service since the tornado. Do you
15 recall those questions?

16 A. Yes.

17 Q. And he also asked you about building permits and
18 I think some other things related to restoration efforts
19 following the tornado?

20 A. Yes.

21 Q. Do you recall those?

22 A. I do.

23 Q. Does MGE know how many customers are going to
24 rebuild in the Joplin area?

25 A. Not at this time, no.

1 Q. Would you have a better idea some time in the
2 future?

3 A. Yes. Absolutely.

4 Q. Is that an issue you that you think should be
5 deferred to the rate case as well?

6 A. Yes.

7 Q. And why is that?

8 A. Well, I mean, they'll be some certainty
9 hopefully at that time as to what the expenses are and --

10 Q. Let me direct your attention to Schedule No. 3
11 that is attached to your direct testimony in this case.
12 Mr. Berlin asked you some questions about that as I recall.

13 A. I'm there.

14 Q. I'm looking at Page 1 of 2. Now, I'm looking at
15 the column entitled Total Joplin and Duquesne that shows
16 customer levels for the months April, May, June, July, August
17 and September. Are you with me?

18 A. I am.

19 Q. Now, May 22nd was the Joplin tornado; is that
20 correct?

21 A. That's correct.

22 Q. And you see a decline of roughly 900 customers
23 between April and May; is that correct?

24 A. That's correct.

25 Q. And then a further decline in June and July and

1 August; is that correct?

2 A. Yes.

3 Q. And roughly the same number in September as in
4 August; is that correct?

5 A. Yes.

6 Q. Now, Mr. Berlin asked you if customers don't
7 move in and out of MGE's service territory all the time. Do you
8 recall that question?

9 A. I do.

10 Q. The changes in customer levels that are
11 reflected in the column I just described on Schedule MRN-3, are
12 those the kinds of customer losses that MGE is used to seeing on
13 a month-to-month basis?

14 A. No. Not at all.

15 Q. What would you attribute the large number of
16 losses that you experienced between April and September of 2011?

17 A. To customers that were disconnected because
18 they -- they lost their homes or they lost total gas
19 service.

20 Q. And Mr. Berlin asked you if customer losses
21 three or four months after the tornado could be caused by the
22 tornado. Do you recall that question?

23 A. Yes.

24 Q. Could they be?

25 A. There could be some additional customers that

1 got turned off due to the fact -- I mean, there was several
2 houses immediately after the tornado that people lived in, they
3 maintained their gas service that were later deemed to -- I
4 guess they were condemned and needed to be torn down. So that
5 would -- that would cause some -- some increase on a
6 month-to-month basis.

7 But -- but primarily what this schedule is doing
8 is it's showing that we're really at a very, you know, static
9 number of 3,200 down as a result of the tornado. And that's the
10 number I used as -- again, as I said in earlier testimony -- as
11 a place holder to estimate what our lost fixed cost recovery
12 might be.

13 Q. Mr. Berlin also asked you a number of questions
14 regarding the Hawaii Public Utilities Commission order that you
15 referenced in your surrebuttal testimony. Do you recall those?

16 A. Yes.

17 Q. Do you have a copy of that order in front of
18 you?

19 A. I do.

20 Q. Now, Mr. Berlin stated that the utility company
21 in that case pled facts to justify an emergency rate increase.
22 Do you recall that?

23 A. Yes.

24 Q. Do you know of anything in this order where the
25 Commission said that it believed an emergency rate increase was

1 appropriate?

2 A. Where the Commission said that?

3 Q. Yes.

4 A. No. I don't -- I don't believe so. I mean, let
5 me look through it again. I know that KED believed that
6 emergency rate relief would be justified. I know the order --
7 it's an or-- the way that the order reads it's an order
8 accepting an electric utility's plan to forego emergency rate
9 relief and instead use a new allowance refunds used during
10 construction along with these other deferrals for the benefit of
11 the customers.

12 Q. So as best you can tell it's just the utility's
13 opinion that it qualified for emergency rate relief. Would that
14 be a fair characterization?

15 A. Well, the Commission -- the Commission agreed --
16 yes. No. As far as emergency rate relief, I think so. Yes.

17 Q. Now, Mr. Berlin also asked you whether or not
18 the fixed cost revenues that MGE's seeking to defer in this case
19 include profit. Do you recall that question?

20 A. Yes.

21 Q. Do you have any idea how much profit is built in
22 to the fixed cost rates that the company is trying to recover?

23 A. Yes. It's -- for -- for every dollar of revenue
24 that we receive I think it's about 12 cents is -- is the return
25 on equity piece.

1 Q. And what's the other 88 cents comprised of?

2 A. It's operating expenses, depreciation, taxes
3 other than income taxes and income taxes.

4 Q. Mr. Berlin also asked you if MGE was subject to
5 a rate case moratorium right now and you said you weren't. Do
6 you recall that question and answer?

7 A. Yes.

8 Q. What would -- in your opinion, would MGE be in a
9 position to file a general rate case at this time that would
10 allow it to recover the costs that it's seeking to defer in this
11 proceeding?

12 A. No.

13 Q. Could you explain why?

14 A. Well, I think earlier I explained in that if we
15 were to file for a rate case let's say in March of 2012 using a
16 2011 test year, which concluded the effects of the tornado, one
17 of the very first adjustments that Staff and OPC would make
18 would be to remove the extraordinary costs resulting from the
19 tornado and probably put back in customers that we lost from the
20 tornado.

21 Q. And why --

22 A. To set rates into the future.

23 Q. And why would they do that, Mr. Noack?

24 A. Well, if they didn't do that we would
25 essentially be allowed -- we'd be setting rates to collect a

1 level of extraordinary costs into the future. The other
2 alternative would be at the time of a rate case, I guess, would
3 be for Staff and MGE and OPC to come to some kind of agreement
4 that -- where they would take those costs, look at those costs
5 and set up a type of amortization schedule to allow the company
6 to recover those over some period of time.

7 Q. Would the expenses and revenues associated with
8 the tornado be recurring or non-recurring items?

9 A. They would be non-recurring.

10 Q. And does the Commission generally exclude
11 non-recurring items for ratemaking purposes?

12 A. Absolutely, yes.

13 Q. Now, do you also have a copy of Staff Exhibit 6
14 in front of you?

15 A. I do.

16 Q. In your answer to that data request, Staff Data
17 Request No. 32, you state in the first sentence that the
18 estimates being provided in this response are preliminary,
19 unverified and not reliable for ratemaking purposes. Do you see
20 that?

21 A. I do.

22 Q. Why did you think it was necessary to include
23 that in your response, Mr. Noack?

24 A. Well, because essentially that they are -- they
25 are just estimates right now and they are unverified. We

1 have -- what we have done is basically establish two lists of
2 customers; the outside plant people who cut the services,
3 abandon, you know -- retire the services who pulled the meters
4 and stuff. They have a list of customers that they did this
5 for. They have a premise I.D.

6 And then we also have on the customer service
7 side a list of those customers that are no longer receiving
8 bills due to this tornado. And probably one of the -- the most
9 important things that we have to do, and we're in the process of
10 doing now is to reconcile these -- these two lists of customers.
11 I mean, when we pulled the meters and brought them in, those
12 were handwritten lists that, you know, people might have dropped
13 a digit or something.

14 So I mean, there's a lot of work going into
15 trying to reconcile which customers are -- were affected by the
16 tornado and that's something that -- that we are doing on an
17 ongoing basis.

18 Q. Do you anticipate a time in the future when you
19 might be able to provide information that is not preliminary,
20 that is verified and that would be reliable for ratemaking
21 purposes?

22 A. Yes. I do, but I can't tell you when that is at
23 this time. I mean, we would -- we would definitely have it at
24 the time that we filed our next rate case or we wouldn't ask for
25 it.

1 Q. Mr. Poston also asked you some questions about
2 normal fluctuations in the number of customers. Do you recall
3 that?

4 A. I do.

5 Q. Again, directing your attention back to Schedule
6 MRN-3.

7 A. Yes.

8 Q. Do you believe that the fluctuation in the
9 number of customers that is shown on that schedule for the
10 period April through September of 2011 is normal or abnormal?

11 A. Those -- that's an abnormal difference in
12 customers. Those customers continuously are declining and are
13 staying at the same level.

14 Q. And it would be abnormal for what reason,
15 Mr. Noack?

16 A. Because we're no longer serving those customers
17 due to the tornado.

18 Q. Mr. Poston asked you whether or not MGE's
19 customers are currently paying a return on destroyed meters and
20 other items of plant. Do you recall that?

21 A. Yes.

22 Q. And you said that you believe that was true. Do
23 you recall that answer?

24 A. Yes.

25 Q. Why do you believe that's true, Mr. Noack?

1 A. Well, the rates set in the last rate case were
2 based on a level of plant as of -- the true-up date I think was
3 September 30, 2009, a rate base and level of plant at that point
4 in time. And the next time that we will change that return will
5 be in the next rate case.

6 Q. Since rates were approved in your last rate
7 case, has the level of plant investment for MGE remained static?

8 A. No. It continues to increase. Now, part of
9 that increase is covered by the ISRS that we are allowed to file
10 in between rate cases. But there is still another piece of the
11 plant that continues to increase, yes.

12 Q. So would it be fair to say that customers are
13 currently getting benefit from plant that they are not currently
14 paying a return on?

15 A. Yes.

16 Q. Mr. Poston also asked you some questions
17 regarding a data request response from another case, which I
18 believe showed earned versus authorized returns for various used
19 years up to the end of 2010. Do you recall that?

20 A. Yes.

21 Q. Do you remember when that data request response
22 was given to Public Counsel?

23 A. No. But it was probably within the last two
24 weeks. I don't -- I don't recall exactly when -- when that
25 particular data response was. But what that schedule is, is

1 it's a continuation of the schedule from our last rate case. I
2 think it was Schedule G4, which is listed at the bottom of that
3 schedule. And it's something that was included in the last rate
4 case just updated to included 2009 and 2010.

5 Q. And did that reflect actual earned return for
6 2010 or an estimated earned return for 2010?

7 A. It's an estimated return from the standpoint
8 that the income statement data for 2010 is -- is accurate. It's
9 from the -- excuse me -- it's from the income statement. But
10 the rate base that's being used is -- we haven't gone through
11 all the gyrations and calculations that we would go through,
12 13-month averages and the like in a normal rate case to come up
13 with an accurate rate base. So that might be higher, which
14 would lower the -- the earned return or it might be lower, which
15 would actually increase the earned return.

16 Q. Mr. Poston asked you on the assumption that you
17 were currently earning more than you were authorized to earn,
18 whether or not you had filed an AAO to deal with those over
19 earnings. Do you recall that question?

20 A. I do.

21 Q. Is over earnings something that is normally
22 dealt with through an accounting authority order?

23 A. No. I don't believe so. And in my history with
24 Missouri Gas Energy, we've never had that problem, so -- but
25 generally I think it would be handled through a complaint.

1 Q. Did Public Counsel file a complaint claiming
2 that you were over earning?

3 A. Not yet.

4 Q. You also have a copy of OPC Exhibit 3, which is
5 the excerpt from the 2010 Form-10K report for Southern Union.

6 A. No. Mr. Poston took that back. Do I want the
7 big one or the little one?

8 Q. I'm just interested in the little one. I think
9 that was the one that was marked as an exhibit.

10 A. Okay.

11 Q. And he pointed you to some language on Page 30
12 of the Form-10K that is underscored that describes some of the
13 operational risks that are involved in operating a gas
14 distribution business?

15 A. Yes.

16 Q. Do you have any reason to believe that the
17 Missouri Public Service Commission took into account everything
18 that's on that list when it set MGE's rate of return in its last
19 general rate case?

20 A. No.

21 Q. And why do you say that?

22 A. Why do I say that I don't think that they took
23 all this stuff into consideration?

24 Q. Yes.

25 A. Well, most of these things have never happened

1 to us, plus you know, an extraordinary and catastrophic event
2 similar to what we had happen in Joplin is just not something
3 that I would see as being included in any risk.

4 Q. Is likely that a Form-10K report for 2010 was
5 included in the evidence that was considered by the Commission
6 in MGE's last rate case?

7 MR. POSTON: Objection; speculation.

8 JUDGE JORDAN: Well --

9 MR. MITTEN: Let me withdraw the question and
10 ask it this way.

11 BY MR. MITTEN:

12 Q. The Report and Order in MGE's last rate case is
13 February 10th, 2010. Is it likely that the information from
14 Southern Union's Form-10K for 2010 was considered by the
15 Commission in a rate case that was decided in early February
16 that same year?

17 A. No. This -- this probably wouldn't have even
18 been -- I'm looking for the date that it was filed. It probably
19 wasn't even filed until March or April of 2011.

20 MR. MITTEN: I don't think I have any further
21 questions. Thank you, Mr. Noack.

22 JUDGE JORDAN: I don't know whether any of the
23 witnesses here today are under subpoena, so unless someone
24 objects I'm just going to rule now that anyone -- anyone may
25 leave once redirect is done unless someone tells me otherwise.

1 Okay.

2 (Witness excused.)

3 JUDGE JORDAN: Anything before we proceed with
4 Staff's case in chief?

5 I'm not hearing anything.

6 MS. TOMPKINS: Staff calls Amanda McMellen to
7 the stand.

8 (Witness sworn.)

9 AMANDA MCMELLEN testifies as follows:

10 DIRECT EXAMINATION BY MS. TOMPKINS:

11 Q. Please state and spell your full name for the
12 record.

13 A. It's Amanda C. McMellen, M-c-M-e-l-l-e-n.

14 Q. And how are you employed?

15 A. I'm employed as a utility -- sorry -- utility
16 regulatory auditor for the Missouri Public Service Commission.

17 Q. And how long have you been employed by the
18 Commission as an auditor?

19 A. About twelve and a half years.

20 Q. Are you the same Amanda McMellen who prepared or
21 caused to be prepared the rebuttal testimony that's previously
22 marked as Staff's Exhibit 1?

23 A. Yes.

24 Q. And did you along with Mark Oligschlaeger and
25 Tom Imhoff also prepare or cause to be prepared Staff's

1 recommendation in this case?

2 A. Yes, I did.

3 Q. Do you have any corrections to those documents
4 at this time?

5 A. No, I do not.

6 Q. Are the answers that you gave in those documents
7 true and correct to the best of your knowledge and belief?

8 A. Yes, they are.

9 Q. If I were to ask you the same questions in your
10 prefiled testimony today, would they be the same?

11 A. Yes, they would.

12 Q. If you were asked what your recommendation was
13 today, would your recommendation be the same?

14 A. Yes, it would.

15 MS. TOMPKINS: I move to admit into the record
16 Ms. McMellen's rebuttal testimony marked as Staff's Exhibit
17 No. 1 and tender the witness for cross-examination.

18 (Wherein; Staff's Exhibit No. 1 was marked for
19 identification.)

20 JUDGE JORDAN: Any objections to Staff's Exhibit
21 1?

22 Not hearing any, so Staff's Exhibit 1 is
23 admitted into the record.

24 (Wherein; Staff's Exhibit No. 1 was received
25 into evidence.)

1 JUDGE JORDAN: Cross-examination from the Office
2 of Public Counsel?

3 MR. POSTON: None, thank you.

4 JUDGE JORDAN: Any cross-examination from the
5 Southern Union Company?

6 MR. MITTEN: Company has no questions, Your
7 Honor.

8 JUDGE JORDAN: I have no questions. I think we
9 can dispense with recross and redirect.

10 (Witness excused.)

11 MS. KLIETHERMES: Staff calls Mark
12 Oligschlaeger.

13 (Witness sworn.)

14 MARK OLIGSCHLAEGER testifies as follows:

15 DIRECT EXAMINATION BY MS. KLIETHERMES:

16 Q. Good afternoon, Mr. Oligschlaeger.

17 A. Good afternoon.

18 Q. Could you please state and spell your name?

19 A. Sure. Mark L. Oligschlaeger,
20 O-l-i-g-s-c-h-l-a-e-g-e-r.

21 Q. And what is your present position with the
22 Commission?

23 A. I am acting manager of the auditing department
24 for the Public Service Commission.

25 Q. And how long have you been a commission auditor?

1 A. Since September 1981.

2 Q. Are you the same Mark Oligschlaeger who prepared
3 rebuttal testimony?

4 A. Yes, I am.

5 Q. And to your knowledge has that been marked as
6 Staff Exhibit 2?

7 A. Yes.

8 Q. And did you also prepare a surrebuttal
9 testimony?

10 A. Yes.

11 Q. And is that Staff Exhibit 3?

12 A. Yes.

13 Q. Did you, along with Tom Imhoff and Amanda
14 McMellen, also prepare or cause to be prepared Staff's
15 recommendation in this case, which is included with your
16 rebuttal testimony?

17 A. Yes, I did.

18 Q. Do you have any corrections to any of those
19 documents at this time

20 A. I do not.

21 Q. Are the answers that you gave in those documents
22 true and correct to the best of your knowledge and belief?

23 A. They are.

24 Q. If I were to ask you the same questions in your
25 prefiled testimony today, would your answers be the same?

1 A. They would.

2 Q. If asked what your recommendation was today,
3 would your recommendation be the same?

4 A. It would.

5 MS. KLIETHERMES: I offer Staff Exhibits 2 and 3
6 and tender the witness for cross-examination.

7 (Wherein; Staff Exhibit Nos. 2 and 3 were marked
8 for identification.)

9 JUDGE JORDAN: Any objections to Staff's
10 Exhibits Nos. 2 and 3?

11 MR. MITTEN: Your Honor, may I conduct a brief
12 voir dire examination for purposes of determining if I have any
13 objections?

14 JUDGE JORDAN: Sure.

15 VOIR DIRE BY MR. MITTEN:

16 Q. Mr. Oligschlaeger, good afternoon.

17 A. Good afternoon.

18 Q. You're appearing as an expert witness in this
19 case on behalf of the commission staff; is that correct?

20 A. Yes, I am.

21 Q. I notice that Schedule 1 of your
22 cross-surrebuttal testimony, which I believe is Staff Exhibit 3,
23 is a copy of a newspaper article; is that correct?

24 A. Yes.

25 Q. Are newspaper articles something that you, as an

1 expert witness, routinely rely on for information?

2 A. I'd have to answer yes.

3 MR. MITTEN: I have no further questions and I
4 have no objection to the admission into evidence of Staff
5 Exhibits 2 and 3.

6 JUDGE JORDAN: Staff Exhibits 2 and 3 will be
7 entered into the record.

8 (Wherein; Staff Exhibit Nos. 2 and 3 were
9 received into evidence.)

10 JUDGE JORDAN: Cross-examination from the Office
11 of Public Counsel?

12 MR. POSTON: Yes. Just one question.

13 CROSS-EXAMINATION BY MR. POSTON:

14 Q. Do you believe that the business risk associated
15 with so-called acts of God occurrences was taken into account in
16 determining the appropriate return on equity to authorize in
17 MGE's last rate case, GR-2009-0355?

18 A. I do.

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

20 JUDGE JORDAN: Is there any cross-examination
21 from the Applicant?

22 MR. MITTEN: We have a few questions, Your
23 Honor.

24 CROSS-EXAMINATION BY MR. MITTEN:

25 Q. Mr. Oligschlaeger, let me first follow-up on the

1 question that Mr. Poston just asked you. It's your belief that
2 the business risk associated with acts of God was taken into
3 account by the Commission in the company's last rate case; is
4 that correct?

5 A. That is correct.

6 Q. How about an act of God the size and scope of
7 the May tornado that hit Joplin. Was that taken into account in
8 setting rates -- the rate of return in MGE's last rate case?

9 A. A specific and future, from that point in time,
10 act of God, by definition could not have been.

11 Q. Let me first ask you to turn to Schedule 2-1 of
12 Attachment A of your rebuttal testimony in this case, which is
13 the Staff recommendation. And you indicated that you were one
14 of the staff members who prepared this recommendation; is that
15 correct?

16 A. Yes.

17 Q. And you were sponsoring it for purposes of this
18 case; is that correct?

19 A. That's correct.

20 Q. Let me ask you first to turn to Page 2 of that
21 report. Would you please read aloud the first two sentences
22 immediately following the heading, Standard for Deferral
23 Authorization that appears near the bottom of that page.

24 A. Okay. I am reading from the Miss-- or the Staff
25 recommendation in this case. Quote -- in its Report and Order

1 in Case No. EO-91-358 and EO-91-360 cases filed by Missouri
2 Public Service, a division of Utila Corp. United Inc., now KCPL
3 Greater Missouri Operations Company, the Commission stated its
4 criterion for deferral of costs incurred outside of a rate case
5 test year. The Commission has consistently used this same
6 criterion since those cases.

7 Q. Thank you. That's all I wanted you to read.

8 A. Okay.

9 Q. Mr. Oligschlaeger, I just handed you a copy of a
10 Report and Order that was issued in consolidated Case Nos.
11 EO-91-358 and EO-91-360. Is that the Report and Order that you
12 were referring to in the passage from the staff recommendation
13 that you just read?

14 A. It is.

15 Q. Let me ask you next to turn to Page 3 of the
16 staff recommendation. And in the first full paragraph on that
17 page the staff recommendation states that: The Report and Order
18 in the Missouri Public Service Company case -- cases that you
19 just referred, to the Commission described two criteria for
20 allowing utilities to defer costs outside a rate case; is that
21 correct?

22 A. That's correct.

23 Q. And according to the staff recommendation those
24 two criteria are: Is the event extraordinary, unusual and
25 unique and non-recurring; and: Are the costs associated with the

1 event material; is that correct?

2 A. Yes.

3 Q. For the next few questions I'd like to focus on
4 exactly what the Missouri Public Service Commission Report and
5 Order says about the first of those two criteria. The standards
6 for deferral section of the Missouri Public Service Company
7 [sic] Report and Order begins on Page 6 and continues to the
8 middle of Page 11; is that correct?

9 A. Yes.

10 Q. Would you please turn to Page 8 of that section.
11 In the first full paragraph of that Report and Order I have
12 highlighted on the copy of it that I handed to you two sentences
13 in yellow. Would you please read aloud the first of those
14 sentences?

15 A. The decision to defer costs associated with an
16 event turns on whether the event is, in fact, extraordinary or
17 non-recurring. And the second sentence?

18 Q. No. Just the first one.

19 A. Okay.

20 Q. For now. Since that Report and Order says that
21 the decision to defer costs turns on whether the event is, in
22 fact, extraordinary and non-recurring, let me ask you this: Do
23 you believe that the May 22nd Joplin tornado was an
24 extraordinary event?

25 A. I do.

1 Q. And do you also believe that it most likely was
2 non-recurring?

3 A. We all hope so.

4 Q. Now, for my next few questions I want to focus
5 on what that same Report and Order says about the second
6 criterion that's listed in Staff's report. I did a computer
7 search of the Report and Order and I could only find a couple of
8 references to the word "material" or "materiality" in that
9 Report and Order. And all of those references are found on Page
10 8. Did I miss something?

11 A. Without doing a thorough search of the document
12 myself, I will take your word for it.

13 Q. Now, on Page 8 of that order I have highlighted
14 a portion in blue. Do you see that?

15 A. I do.

16 Q. Could you please read aloud the highlighted
17 portion of that Report and Order?

18 A. The issues of whether the event has a material
19 or substantial effect on a utility's earnings is also important,
20 but not a primary concern. The company under the USOA is
21 required to seek commission approval if the costs to be deferred
22 are less than 5 percent of the company's income computed before
23 the extraordinary event. This 5 percent standard is thus
24 relevant to materiality and whether the event is extraordinary,
25 but is not case dispositive.

1 Q. Now, is that the portion of the Report and Order
2 that Staff was relying on when it say materiality is one of two
3 criterion that the Commission considers for purposes of granting
4 accounting authority orders?

5 A. I believe so.

6 Q. Now, the last sentence of the passage you just
7 read says material is not case dispositive; is that correct?

8 A. That's what it states.

9 Q. Doesn't that mean that even if the items that
10 are subject of the utility's deferral request are not material
11 that that fact alone is not sufficient basis to deny the
12 utility's request?

13 MS. KLIETHERMES: Objection; calls for a legal
14 conclusion.

15 MR. MITTEN: Your Honor, Staff said
16 Mr. Oligschlaeger is sponsoring its Staff report that says that
17 their -- that this particular Report and Order establishes two
18 criteria. I don't think he can now hide behind the fact he's a
19 lawyer [sic] and not respond to my questions.

20 JUDGE JORDAN: I understand this witness's
21 testimony to be in the nature of expert testimony and I think
22 MGE is entitled to inquire into his reasoning, so I will
23 overrule that objection. I'll also state that nothing that any
24 witness says in this or any other proceeding binds the
25 Commission as a matter of law.

1 THE WITNESS: Could you please repeat your
2 question.

3 BY MR. MITTEN:

4 Q. Certainly. The last sentence of the passage
5 your just read says that materiality is -- quote -- not case
6 dispositive. Doesn't that mean that even if the items that are
7 the subject of a utility's deferral request are not material,
8 that that fact alone is not a sufficient basis to deny the
9 utility's request?

10 A. My interpretation of this sentence is that it
11 states even if the extraordinary event is worth less than 5
12 percent of the utility's net income, that is not case
13 dispositive in terms of automatically rejecting any application
14 for deferral of the associated costs,

15 Q. I'm not sure what your answer was to my
16 question. And let me repeat the question again. Doesn't that
17 mean that even if the items that are subject of a utility's
18 deferral request are not material that that fact alone is not
19 sufficient basis to deny the utility's request. I think you can
20 answer that yes or no.

21 MR. POSTON: Objection. It was asked and
22 answered.

23 JUDGE JORDAN: I'm still not sure of the answer.
24 The question's a little bit -- is lengthy.

25 MS. KLIETHERMES: Well, it's a compound question

1 as well, Judge. That's probably part of the problem here.

2 JUDGE JORDAN: That sounds like a basis for an
3 objection.

4 MS. KLIETHERMES: And it is.

5 JUDGE JORDAN: Okay. I think -- I think you've
6 made your point. Let's move on.

7 BY MR. MITTEN:

8 Q. Now, again on Page 8 I have highlighted two
9 sentences in yellow at the top of that page. You previously
10 read the first of those sentences. Could you please read aloud
11 the second sentence?

12 A. Factors such as those proposed by Staff as
13 criteria can influence that decision but the primary focus is on
14 the uniqueness of the event either through its occurrence or its
15 size.

16 Q. So while other issues may influence the
17 Commission's decision, the order clearly states that the primary
18 focus is on the event; is that correct?

19 A. I will agree with your characterization.

20 Q. And finally, could you please turn to Page 9 of
21 that Report and Order. And I have highlighted in yellow a
22 portion of the order that appears on that page. Could you
23 please read that aloud?

24 A. Staff's emphasis on whether the utility was
25 earning above its authorized rate of return at the time of the

1 deferral, whether the expenditures are reasonable and prudently
2 incurred and whether to include carrying costs in the recovery
3 are rate case issues and best left for rate case review.

4 Recordkeeping procedures and the booking of any
5 offsets associated with the extraordinary event may be
6 requested. Whether to allow those offsets is the decision for
7 the rate case. Another reasonable inquiry in the rate case is
8 whether a company shareholders were compensated to some extent
9 for the extraordinary event in the rate of return authorized by
10 the Commission.

11 Q. So again, the Commission specifically stated in
12 this Report and Order that issues like the ones described in
13 that paragraph should be considered in a rate case and not in
14 the case that considers whether to grant the utility's request
15 for an AAO; is that correct?

16 A. I will agree with your characterization.

17 Q. Now, let me refer you back to Staff's contention
18 that materiality is one of the criteria that should be
19 considered in this case. The term that is used in the Uniform
20 System of Accounts is "significance" and not materiality; is
21 that correct?

22 A. I think the exact words "of significant effect"
23 as I recall.

24 Q. And the standard in the Uniform System of
25 Accounts for significance as it applies to the deferral of

1 extraordinary items is found in the instructions for the Uniform
2 System of Accounts; is that correct?

3 A. I don't want to quibble. I think the standard
4 for materiality as it applies to whether a utility needs
5 specific authorization for a deferral can be found within the
6 Uniform System of Accounts.

7 Q. Now, do you happen to have a copy of Staff
8 Exhibit 5, which is the text of Instruction No. 7 to the Uniform
9 system of Accounts?

10 A. Yes, I do.

11 Q. Now, would you agree with me that Instruction
12 No. 10 uses the word "approximately 5 percent of income computed
13 before extraordinary items"? I'm sorry. Instruction No. 7. If
14 I said Instruction No. 10.

15 A. With that correction, I agree.

16 Q. That means an extraordinary item could be less
17 than 5 percent and still be significant or material; is that
18 correct?

19 A. I'd agree with that.

20 Q. Now, at the beginning of that instruction
21 there's the following sentence: It is the intent that net
22 income shall reflect all items of profit and loss during the
23 period with the exception of prior period adjustments as
24 described in Paragraph 7.1 and long-term debt as described in
25 Paragraph 17 below. Did I read that correctly,

1 Mr. Oligschlaeger?

2 A. You did.

3 Q. Revenues are considered in the calculation of
4 net income, aren't they?

5 A. They are.

6 Q. In fact, in calculating profit or loss that is
7 determined based upon whether or not revenues exceed expenses,
8 isn't it?

9 A. Yes.

10 Q. Now, the lost fixed cost revenues that MGE is
11 requesting authority to defer in this case, those aren't prior
12 period adjustments as described in Paragraph 7.1, are they?

13 A. I don't believe so.

14 JUDGE JORDAN: Excuse me, counselor. Sorry to
15 interrupt. But I sometimes neglect to do this too, like I did
16 just then and that is turn on the microphone. I just got a
17 message that it's hard to hear your questioning over the --

18 MR. MITTEN: My apologies, Your Honor.

19 JUDGE JORDAN: That's okay. I've done the same
20 thing.

21 BY MR. MITTEN:

22 Q. Now, near the bottom of Instruction No. 7 there
23 is some language enclosed in parenthesis. Can you see that?

24 A. I do.

25 Q. And it says: In determining significance items

1 should be considered individually and not in the aggregate.
2 However, the effects of a series of related transactions arising
3 from a single, specific and identical identifiable event or plan
4 of action should be considered in the aggregate. Do you see
5 that?

6 A. I do.

7 Q. And did I read it correctly?

8 A. You did.

9 Q. Mr. Oligschlaeger, the Joplin tornado is a
10 single, specific and identifiable event; is that correct?

11 A. Yes.

12 Q. And because the tornado is a single, specific
13 and identifiable event, Instruction No. 7 says that all of the
14 financial effects of that event should be considered in the
15 aggregate; is that correct?

16 A. Yes, for purposes of determining whether the 5
17 percent threshold is met for the requirement for a company to
18 seek authorization or not seek authorization for a specific
19 deferral.

20 Q. Thank you for that clarification. I just have a
21 few more questions, Mr. Oligschlaeger. Could you please turn to
22 that newspaper article that I asked you about, which I believe
23 is Schedule 1 of your cross-surrebuttal testimony.

24 Now, that's an article -- copy of an article
25 from the Joplin Globe that's dated November 14th, 2011; is that

1 correct?

2 A. Yes.

3 Q. And as the article notes, the Joplin tornado
4 occurred on May 22nd; is that correct?

5 A. Yes.

6 Q. So that article appeared almost six months to
7 the day from the Joplin tornado. Would you agree with that?

8 A. Approximately six months afterwards. Yes.

9 Q. It's about a week shy of six months.

10 A. Right.

11 Q. Now, according to that article almost six months
12 after the tornado, less than half of the 7,500 homes affected by
13 that tornado are under repair or reconstruction; isn't that
14 correct? It says nearly half. That means less than half,
15 doesn't it?

16 A. I agree that the article states that, yes.

17 MR. MITTEN: Your Honor, I'd like to have a
18 couple of documents marked as exhibits.

19 (Wherein; Applicant Exhibit Nos. 4 and 5 were
20 marked for identification.)

21 THE WITNESS: Actually, no.

22 MR. MITTEN: That's 4 and this is 5.

23 Your Honor, my apologies. How many copies would
24 the bench like of these exhibits?

25 JUDGE JORDAN: Well, let's see. We have four

1 commissioners currently and we have me. There is a vacancy. So
2 if you have --

3 MR. MITTEN: I have six copies exactly.

4 JUDGE JORDAN: I'll take them.

5 MR. MITTEN: And that's Applicant Exhibit 4 and
6 that's Applicant Exhibit 5.

7 BY MR. MITTEN:

8 Q. Mr. Oligschlaeger, I'm first going to ask you
9 some questions about Applicant Exhibit 4. Would you like a
10 moment to review that article or have you had a chance to review
11 it?

12 A. Is that the October 26th article?

13 Q. Yes, it is.

14 A. Yes, I have.

15 Q. Now, when you were researching newspaper
16 articles to include in your cross-surrebuttal testimony, did you
17 happen to come across the article that's been marked as
18 Applicant's Exhibit 4?

19 A. I do not recall seeing this before.

20 Q. The title of that article is The Tornado Stirs
21 new Worries in Joplin Over Lead; is that correct?

22 A. Yes.

23 Q. And the article describes the fact that high
24 levels of lead contamination have been discovered in some areas
25 of Joplin that were damaged by the tornado; is that correct?

1 A. Yes.

2 Q. And in the fifth paragraph of that article it
3 states: In the meantime however, the City has stopped issuing
4 building permits for some highly contaminated properties and
5 heavily damages areas until the contamination has been cleaned
6 up; is that correct?

7 A. That's what it states.

8 Q. Let me now direct your attention to what's been
9 marked as Applicant's Exhibit 5. Have you had a chance to
10 review --

11 A. I have not, so if you would give me a moment. I
12 have glanced at it.

13 Q. Mr. Oligschlaeger, I realize this article was
14 posted -- excuse me. First of all, that's an article from the
15 Joplin Globe headline Payouts Stand at 1.13 Billion. And it's
16 dated November 25th, 2011; is that correct?

17 A. It is.

18 Q. Now, I realize that this article was filed after
19 you filed your cross-surrebuttal testimony, but have you ever
20 seen this article before?

21 A. I have not.

22 Q. The article describes the pace of insurance
23 payouts to Joplin residents whose property was damaged or
24 destroyed by the tornado; is that correct?

25 A. I'd agree with that.

1 Q. And on Page 2 of that article it states that
2 according to the Missouri Department of Insurance the time for
3 filing insurance claims in Joplin has been extended and that
4 extension was made necessary because for a period of time while
5 debris was being removed, Joplin residents were denied access to
6 their damaged or destroyed property; is that correct?

7 A. I would generally agree with that, yes.

8 Q. Well, specifically on the fourth paragraph on
9 Page 2, isn't that what it says?

10 A. Again, you paraphrased and I would agree with
11 how you characterized it.

12 Q. So based on the newspaper article that was
13 attached to your cross-surrebuttal testimony and the two
14 newspaper articles that I have just shown you, would you agree
15 with me that it will be some time before most of the customers
16 MGE lost as a result of the tornado will be in a position to
17 resume gas service?

18 A. I'm troubled by the use of the word "most".
19 Obviously not all MGE customers have been reconnected and I
20 think it's reasonable to expect some time will elapse before all
21 of those that can be reconnected are reconnected.

22 Q. Well, if I said a significant portion of the
23 customers MGE lost as a result of the tornado, it will be some
24 time before they are in a position to reconnect, would you agree
25 with that statement?

1 A. Some time? Yes.

2 MR. MITTEN: Your Honor, I move for the
3 admission into evidence of Exhibits 4 and 5.

4 JUDGE JORDAN: Any objection to Applicant's
5 Exhibit 4 and 5?

6 Seeing none, Applicant's Exhibits 4 and 5 are
7 entered into the record.

8 (Wherein; Applicant's Exhibit Nos. 4 and 5 were
9 received into evidence.)

10 BY MR. MITTEN:

11 Q. One final question, Mr. Oligschlaeger. Since
12 the May 22nd tornado in Joplin, have you been to Joplin to
13 personally review the damage that that tornado caused?

14 A. I traveled through on one occasion and saw the
15 very little damage that could be observed along Interstate 44.
16 With that exception, no I have not.

17 MR. MITTEN: No further questions, Your Honor.
18 Thank you.

19 MS. KLIETHERMES: Judge, I think this would be a
20 good time for a brief break.

21 JUDGE JORDAN: Okay. Five minutes? Ten
22 minutes?

23 MS. KLIETHERMES: Sure.

24 JUDGE JORDAN: Ten-minute break. Ten minutes
25 from now.

1 (Off the record.)

2 JUDGE JORDAN: We're back on the record after a
3 short break and cross-examination of this witness, Mark L.
4 Oligschlaeger has concluded.

5 I have just a question or two for you. The same
6 matter that I asked of the last witness, which is whether in the
7 course of your utility accounts in practice, you have need to
8 resort to standards other than Uniform Standard of Accountancy
9 [sic] as adopted by Commission regulations.

10 THE WITNESS: My belief is that the Uniform
11 System of Accounts are intended to be more or less a complete
12 self-enclosed set of instructions for reporting their financial
13 results. And so I -- I -- there's no backup set of standards
14 that underlie it, I believe.

15 JUDGE JORDAN: Okay. I think that answers my
16 question, but I'm going to ask it anyway. Do you find need to
17 fill in the gaps with some other system, like generally accepted
18 accounting principles? Or is that -- does that question even
19 make sense?

20 THE WITNESS: The question makes sense and in
21 most instances the Uniform System of Accounts are consistent
22 with generally accepted accounting principles, but where they
23 are not, then obviously for regulatory accounting purposes the
24 USOA overrides gap for regul-- for regulatory accounting
25 purposes.

1 JUDGE JORDAN: Okay. That's all the questions I
2 have. Any recross from -- from the Office of Public Counsel?

3 MR. POSTON: No, thank you.

4 JUDGE JORDAN: Did that generate any questions
5 for MGE?

6 MR. MITTEN: No questions, Your Honor.

7 JUDGE JORDAN: No recross, we will -- is there
8 any redirect?

9 MS. KLIETHERMES: Yes, Judge.

10 JUDGE JORDAN: Okay. Good.

11 MS. KLIETHERMES: Just a few.

12 REDIRECT EXAMINATION BY MS. KLIETHERMES:

13 Q. Mr. Oligschlaeger, both Mr. Poston and
14 Mr. Mitten asked you about business risk and how it was -- how
15 that relates to MGE's ROE in general. Do you recall that?

16 A. Yes, I do.

17 Q. Mr. Mitten in particular talked about disasters
18 of the size or scope similar to the Joplin tornado. Do you know
19 if hurricanes would be of a similar size or scope to the Joplin
20 tornado?

21 A. From what I have read in terms of geographic
22 impact or the scope of house and building destruction, they can
23 actually be a lot -- there's a -- there could be a lot more than
24 with the more limited nature of a tornado.

25 Q. And do you have an opinion as to whether MGE's

1 business risk might include -- in any way be reflective of the
2 risk associated with a hurricane?

3 A. I certainly don't know this for a fact. I would
4 be surprised if none of the comparable companies used in the
5 last case were exposed to the risk of hurricanes.

6 Q. You were asked quite a few questions about the
7 Sibley order, the '91 Report and Order. I guess the first
8 question is, since you have it in front of you, could you read
9 the actual heading of it. I do not have it with me.

10 A. You mean the case numbers?

11 Q. Yes, please.

12 A. Sure. Case No. EO-91-358 and Case No.
13 EO-91-360.

14 Q. And again, if you'll bear with me as I forgot to
15 bring a copy down. I believe Mr. Mitten was discussing with you
16 on Page 8 of that order two highlighted sentences. If you could
17 refer to the second of those highlighted sentences.

18 A. I have it.

19 Q. Does that refer to something about the size of
20 the event?

21 A. It does.

22 Q. Could you read that sentence aloud?

23 A. Sure. Factors such as those proposed by Staff
24 as criteria can influence that decision, but the primary focus
25 is on the uniqueness of the event either through its occurrence

1 or its size.

2 Q. Now, what would you assume would be the purpose
3 of referring to both its occurrence and its size?

4 A. I assume the size would refer to the dollar
5 value of the financial impact on the utility.

6 Q. And would that be similar to what Staff has been
7 referring throughout the day as its materiality standard?

8 A. Yes.

9 Q. The Sibley case generally referred to costs.
10 Correct? All right. I'm sorry. Let me withdraw that.

11 Did the Sibley case deal with a request to defer
12 profits?

13 A. No. It was strictly a request to defer, as I
14 recall, both O&M expenses and certain capital-related costs.

15 Q. Are MGE's profits a cost as referred to in the
16 Sibley case?

17 A. I believe by commonly accepted definitions of
18 the word "cost" as well as the definition within the Uniform
19 System of Accounts for the term "cost" a profit is not and
20 cannot be the same thing as a cost. Those are two different
21 financial concepts.

22 Q. And are ROE and profit synonymous?

23 A. Roughly, yes.

24 Q. You say "roughly". What -- is or isn't it
25 synonymous?

1 A. Okay. Profits for a utility company include
2 both return on equity and a return on debt. For most
3 non-regulated entities, profits strictly measure return, the
4 equivalent of return on equity.

5 Q. So just to be clear, would return on equity be a
6 cost as defined under the Sibley case?

7 A. No.

8 Q. Are there substantive differences between a
9 deferral of profits and expenses -- I'm sorry -- between a
10 deferral of profits versus a deferral of expenses or capital
11 items?

12 A. In my opinion, definitely.

13 Q. And what are those differences?

14 A. I think one factor that is -- has been noted
15 earlier today is that recovery of deferred expenses typically
16 are dollar-for-dollar, do not involve a tax gross up while
17 recovery and rates of deferred profits or revenues will most
18 definitely need to be grossed up for income tax purposes. So in
19 that sense, they're more onerous for customers to have to pay in
20 rates for deferred revenues versus deferred expenses.

21 Q. In that case Mr. Mitten asked you about --
22 there's some language about offsets being better questions for
23 the next rate and the current rate case. Do you recall that
24 generally?

25 A. Yes, I do.

1 Q. How do the offsets discussed in that rate
2 case -- well, let me correct what I -- or let me make sure you
3 did say what I think I heard earlier.

4 Did you say that the Sibley case involved
5 expenses and O&M and capital?

6 A. Yes.

7 Q. So O&M and capital are categories of costs.
8 Correct?

9 A. Yes.

10 Q. Are those well accepted, well defined categories
11 of costs in the accounting community?

12 A. Yes.

13 Q. So if somebody says O&M, you know where to look
14 in the USOA? I'm sorry, in their accounting ledger pursuant to
15 the USOA?

16 A. Yes.

17 Q. Are revenues associated with lost profits due to
18 an undefined number of customers being off the system for an
19 undefined point of time also a common accounting convention?

20 A. Accounting conventions call for a specific
21 number to be included in the particular account for a particular
22 purpose. For that reason I would expect any kind of deferral of
23 revenues, if approved by this commission, there would need to be
24 some guidances as to how or some knowledge by the parties in
25 this commission as how that -- those amounts would be calculated

1 and ultimately deferred.

2 Q. So is looking at -- I'm sorry -- does looking at
3 items such as; offsets of income taxes, when you're talking
4 about revenues; offsets of customer growth, when you're looking
5 at revenues, those items referred to in the Sibley case, are
6 those necessary for the Commission to give a good working
7 definition were it to grant an accounting authority order to
8 MGE?

9 A. I think it's in everybody's best interest to
10 have a reasonably accurate deferral that can be judged and
11 assessed for ratemaking purposes in a future case. And that
12 would include such items as to whether taxes should be taken
13 into account, whether insurance reimbursement should be offset
14 against any costs -- which we've actually already agreed to in
15 this case -- and those kinds of items. Those are best dealt --
16 those items are best dealt with up front.

17 Q. Now, when you say deal with them up front -- and
18 this also goes back to some questions Mr. Mitten was asking you
19 about aggregation. If the Commission were just to say this is a
20 significant event, this was an extraordinary event, anything
21 that MGE feels is related to that event, MGE has the authority
22 of the Commission to defer.

23 If that were to happen, would a deferral of that
24 sort survive a -- or should a deferral of that sort survive an
25 independent financial audit?

1 A. Independent financial auditors have to assess
2 these kinds of deferrals we're discussing today via the
3 provisions of generally accepted accounting principles. And
4 those gap and specifically financial accounting standard 71
5 require a finding similar to what's included in the USOA that
6 the amounts be judged probable of future rate recovery. And if
7 that probability is not found by the external auditors, then the
8 company should be prohibited from booking that item as an asset
9 on its books and records.

10 Q. All right. And I think I just have one last
11 question. Mr. Mitten was asking you about customers resuming
12 gas service. And I believe he asked a question to the effect of
13 if customers weren't allowed to obtain building permits for a
14 certain amount of time does that necessarily mean that those
15 customers weren't taking gas service from MGE. Do you recall
16 that?

17 A. Yes.

18 Q. Now, does that answer taken --

19 MR. MITTEN: Your Honor, I think she
20 mischaracterized my question. I never asked a question that was
21 remotely related to the one she just asked the witness.

22 JUDGE JORDAN: Why not just ask your own
23 question.

24 MS. KLIETHERMES: I was just trying to tie it
25 back to the cross-exam --

1 JUDGE JORDAN: Fair enough, but don't worry
2 about that.

3 MS. KLIETHERMES: -- to avoid the objection.
4 BY MS. KLIETHERMES:

5 Q. Quite simply then to expedite it now that we're
6 officially at 5:00, your understanding of Mr. Mitten's
7 discussion regarding the -- I forget which article -- one of the
8 two articles. Did that assume -- did those numbers assume that
9 customers would only rebuild on the site where they previously
10 had a residence in the tornado zone and did that exclude any
11 possibility that they would be receiving service elsewhere in
12 MGE's territory?

13 A. Yes.

14 MS. KLIETHERMES: That's all I have.

15 JUDGE JORDAN: Okay. That concludes redirect.

16 (Witness excused.)

17 MR. POSTON: OPC calls Mr. Shawn Lafferty. Have
18 a seat.

19 JUDGE JORDAN: Hang on one second.

20 MR. POSTON: May I proceed?

21 JUDGE JORDAN: Yes. Hang on just a second.

22 MR. POSTON: Okay.

23 (Witness sworn.)

24 JUDGE JORDAN: Thank you. You may proceed.

25 SHAWN LAFFERTY testifies as follows.

1 DIRECT EXAMINATION BY MR. POSTON:

2 Q. Please state and spell your name for the record.

3 A. Yes. My name is Shawn Lafferty,
4 L-a-f-f-e-r-t-y.

5 Q. And by whom are you employed and in what
6 capacity?

7 A. The Office of Public Counsel as a public utility
8 accountant.

9 Q. And is this your first time testifying before
10 the Commission?

11 A. Orally, yes.

12 Q. Okay. Are you the same Shawn Lafferty who
13 caused to be prepared and filed rebuttal testimony and
14 surrebuttal testimony that has been premarked as OPC Exhibits 1
15 and 2 respectively?

16 A. I am.

17 Q. And do you have any changes to -- or corrections
18 to your testimony?

19 A. I do.

20 Q. Please identify those.

21 A. On Page 6, Lines 3 and 4 --

22 Q. Of which -- which testimony?

23 A. This is all on my rebuttal testimony.

24 Q. Okay.

25 A. I would add net operating income totaled 47.4

1 million and net income after imputing interest based upon the
2 capital structure was 24.7 million.

3 Q. Okay. So let me get this correct. This would
4 just be added at the end of that sentence that ends on Line 4?

5 A. Correct.

6 MR. MITTEN: I'm sorry. Could he repeat that
7 language again. I didn't have a chance to write it down.

8 THE WITNESS: Yes. Where -- where it ends with
9 net operating income totalled 47.4 million and net income after
10 imputing interest based up on the capital structure was 24.7
11 million.

12 On Page -- and that impacts some further
13 testimony. On Page 6, Lines 9 through 11 costs would need to
14 total approximately 1.23 million, which is 5 percent of that
15 24.7 million.

16 BY MR. POSTON:

17 Q. Okay. So the 2.37 million would be changed to
18 1.23 million?

19 A. That is correct.

20 Q. And the 47.4 would be changed to 24.7?

21 A. That is also correct. On Page 8, I believe this
22 is on Lines 19 through 21 --

23 Q. If you could hold for a moment.

24 A. Certainly.

25 Q. Go back to that Page 6. Did you have a change

1 on Line 10?

2 A. Page 6, Line 10.

3 Q. The term "operating"?

4 A. Yes. That should be net income. Thank you.

5 Sorry.

6 Q. It's all right. The next one was on what page?

7 I'm sorry.

8 A. Page 8.

9 Q. Okay.

10 A. And this would be Line 20. 85.3 should state
11 83.5.

12 MR. MITTEN: Your Honor, could we go back to the
13 last change? I'm wasn't -- I missed something. On Line 10 --
14 okay. I'm sorry. I've got it now. My apologies.

15 THE WITNESS: Did you get Line -- or Page 8,
16 Line 20? 85.3 should be 83.5.

17 MR. MITTEN: Okay.

18 THE WITNESS: On Page 18, Line 14, 1,067,420
19 should be 1,167,420.

20 JUDGE JORDAN: And that's Page 18. What line is
21 that?

22 THE WITNESS: Page 18 was line 14.

23 JUDGE JORDAN: 14. And what is the correction
24 on there?

25 THE WITNESS: 1,167,420.

1 JUDGE JORDAN: Got you.

2 THE WITNESS: And then I believe the -- the last
3 one would be on Page 19 --

4 BY MR. POSTON:

5 Q. Can I stop you on that?

6 A. I'm sorry. Page 18, Lines 14 through 20, again
7 I would change the 47.4 million to 24.7 million, so it reflects
8 net income. Therefore, the estimated revenue loss represents
9 approximately 4.73 percent of MGE's net income.

10 Q. Okay. So the -- on Line 18, the \$47 million
11 figure becomes 24.7 million?

12 A. That is correct.

13 Q. And did you also intend to delete the references
14 to operating in that --

15 A. Correct.

16 Q. -- paragraph.

17 A. It's a comparison to net income, not net
18 operating income.

19 Q. Okay. And where would those corrections be that
20 would be in the -- would that be on Line 16. Is that where that
21 term -- word "operating" comes out?

22 A. Yes.

23 Q. And on Line 19 as well?

24 A. Correct.

25 Q. And looks like one more place. Okay.

1 A. And then the last one is Page 19, the estimated
2 margin revenue loss is 4.73 percent as opposed to 2.25 percent
3 and again "operating" should be struck. It should be net
4 income.

5 JUDGE JORDAN: That's somewhere on Page 19?

6 THE WITNESS: It's Page 19, Line 24.

7 MR. POSTON: Okay.

8 JUDGE JORDAN: And what's happening on Page 19,
9 Line 24?

10 THE WITNESS: It was a -- it was a comparison to
11 net operating income instead of net income, so it should change
12 to 4.73 percent of net income as opposed to -- I think it was
13 2.25 percent of net operating income.

14 BY MR. POSTON:

15 Q. So just delete the word "operating"?

16 A. Correct.

17 Q. And do you have any more changes?

18 A. No. I do not.

19 Q. If I were to ask you the same questions that
20 appear in your testimony would your answers be the same as
21 corrected?

22 A. Yes, they would.

23 Q. Are these answers true to the best of your
24 belief?

25 A. Yes, they are.

1 MR. POSTON: Your Honor, I offer Exhibits -- OPC
2 Exhibits 1 and 2 into the record and tender Mr. Lafferty for
3 cross-examination.

4 (Wherein; OPC Exhibit Nos. 1 and 2 were marked
5 for identification.)

6 JUDGE JORDAN: Any objections to OPC Exhibits 1
7 and 2?

8 Hearing none, those exhibits are entered into
9 the record.

10 (Wherein; OPC Exhibit Nos. 1 and 2 were received
11 into evidence.)

12 JUDGE JORDAN: Any cross-examination from Staff?

13 MS. TOMPKINS: Yes, Your Honor.

14 CROSS-EXAMINATION BY MS. TOMPKINS:

15 Q. On Page 8 of your testimony you stated that -- I
16 think the new number is 85.3 percent of cost subject to deferral
17 are capital related. Is that the most current number that you
18 have?

19 A. 83.5 percent?

20 Q. Yeah. 83.5.

21 A. And I believe that was according to Mr. Noack's
22 testimony.

23 Q. Okay. Do you have an updated percentage of that
24 amount?

25 A. I do not have that with me.

1 MS. TOMPKINS: Okay. Thank you. Nothing
2 further.

3 JUDGE JORDAN: Any cross-examination from the
4 Applicant?

5 MR. MITTEN: Yes, Your Honor.

6 CROSS-EXAMINATION BY MR. MITTEN:

7 Q. Good evening, Mr. Lafferty.

8 A. Good evening.

9 Q. Now, according to your rebuttal testimony in
10 this case you've been employed by the Office of Public Counsel
11 for approximately one year; is that right?

12 A. That is correct.

13 Q. And this is only the second case in which you've
14 filed written testimony or appeared as a witness; is that
15 correct?

16 A. That is correct.

17 Q. Is this the only case you have participated in
18 for the Public Counsel that involved a request by a utility for
19 an accounting authority order?

20 A. It is.

21 Q. Now, prior to joining Sprint, your rebuttal
22 testimony -- or excuse me -- prior to joining Public Counsel,
23 your testimony indicated that you worked for Sprint for more
24 than 18 years; is that correct?

25 A. That is correct.

1 Q. While you were at Sprint, did you ever
2 participate in a state regulatory proceeding where Sprint was
3 asking for an accounting authority order?

4 A. I did not.

5 Q. Your testimony also indicates that prior to
6 joining Sprint you spent six years in public accounting; is that
7 correct?

8 A. That is correct.

9 Q. During that six-year period, did you ever
10 participate in a state regulatory proceeding where a utility was
11 asking for an accounting authority order?

12 A. I did not.

13 Q. So based on what you just told me, your
14 involvement in this case represents the full extent of your
15 experience with a utility request for an accounting authority
16 order?

17 A. For accounting authority orders, that would be
18 correct.

19 Q. Prior to filing your rebuttal testimony in this
20 case, did you review any past cases where a utility requested an
21 accounting authority order from the Missouri Public Service
22 Commission?

23 A. I -- I've done a cursory review, but that was
24 it.

25 Q. Well, which cases did you cursorily review?

1 A. I -- I do not know for certain.

2 Q. Did you review the --

3 A. I -- I think it was the Empire ice storm from --
4 because it was part of their last rate case.

5 Q. Did you refer to the case that has been referred
6 to in this case as the Sibley AAO case?

7 A. I did not review that.

8 Q. And so you didn't review the Report and Order
9 that was issued in that case?

10 A. I did not.

11 Q. Do you agree with the opinions stated in Staff's
12 recommendation in this case that the Sibley Report and Order
13 states the criterion for the Commission -- that this commission
14 uses to decide to defer costs to rate cases?

15 MR. POSTON: Objection. He's already stated he
16 didn't read that order.

17 MR. MITTEN: I'm just asking if he agrees with
18 Staff's conclusion.

19 MR. POSTON: I don't know how he could agree
20 with it if he hasn't read the order.

21 JUDGE JORDAN: If you can answer the question,
22 answer the question. If your answer's --

23 THE WITNESS: I haven't reviewed the order,
24 but -- so I don't know specifically. On the surface I would
25 probably say I concur.

1 BY MR. MITTEN:

2 Q. Now, it's also your -- excuse me.

3 MR. MITTEN: Did you rule on the objection?

4 JUDGE JORDAN: That was my ruling.

5 BY MR. MITTEN:

6 Q. Okay. You also testify in this case that you
7 believe that the risk associated with the May tornado in Joplin
8 was -- that investors in -- let me rephrase the question.
9 Excuse me.

10 You also state that it's your belief that MGE's
11 investors have already be compensated for the risk associated
12 with the Joplin tornado; is that correct?

13 A. I believe they earn a return on equity, which
14 compensates them for business risk above and beyond what they
15 earn in debt.

16 Q. But answering my question specifically, is it
17 your testimony in this case that MGE's investors have been
18 compensated for the risk associated with the Joplin tornado?

19 A. The Joplin tornado occurred after the last rate
20 case, so no. I don't think they -- up to that point in time
21 been compensated for that particular event.

22 Q. Were they compensated for risks that were equal
23 to the risk associated with the Joplin tornado?

24 A. I believe that's potentially true, yes.

25 Q. Well, is it actually true?

1 A. I would state, yes.

2 Q. Now, in reaching your conclusion regarding
3 whether investors had been compensated for risk similar to the
4 Joplin tornado did you review any of the direct rate of return
5 testimony that was filed in MGE's last rate case?

6 A. I briefly looked at it.

7 Q. And is it your opinion that some or all of that
8 testimony touched on business risk that is comparable to the
9 Joplin tornado?

10 A. I believe business risk is business risk and
11 different people have different opinions as to what all is
12 included in business risk. My opinion is, yes, catastrophic
13 events are in fact included in that business risk.

14 Q. I'm handing you the direct testimony of the
15 witnesses who filed rate of return testimony in MGE's last rate
16 case. Let me first ask you to turn to the testimony that was
17 filed by Frank Hanley. Can you tell me where in that testimony
18 he discusses the business risk associated with the Joplin
19 tornado or -- excuse me -- an event similar to the Joplin
20 tornado?

21 A. I don't know if it's specifically addressed in
22 here or not.

23 Q. How about the other two witnesses?

24 A. I would -- I would answer the same.

25 Q. Have you reviewed the Commission's Report and

1 Order in MGE's last rate case?

2 A. I did look at the Report and Order.

3 Q. Does that Report and Order discuss business risk
4 that is comparable to the Joplin tornado?

5 A. Not specifically.

6 MR. MITTEN: I have no further questions. Thank
7 you, Your Honor.

8 JUDGE JORDAN: I have no questions for this
9 witness.

10 Any recross from Staff?

11 MS. TOMPKINS: No, Judge.

12 JUDGE JORDAN: Nothing from Staff. And I doubt
13 there's any recross from MGE. Redirect?

14 MR. POSTON: Thank you. Just a few.

15 REDIRECT EXAMINATION BY MR. POSTON:

16 Q. Counsel for MGE asked you questions about your
17 experience with accounting authority orders. Do you recall?

18 A. I do.

19 Q. And can you tell me what experience you bring
20 that you believe allows you to testify in this case on that
21 issue of accounting authority orders?

22 A. Basically given my educational background, my
23 training and of course I did look at the Uniform System of
24 Accounts and what I've learned in the past year working in the
25 Office of Public Counsel.

1 Q. How about your time at Sprint?

2 A. At Sprint I really didn't deal with accounting
3 authority orders. Definitely dealt with what we considered
4 business risk.

5 Q. And do you believe anyone in this room has
6 experience dealing with an accounting authority order regarding
7 what the company has characterized lost revenues?

8 A. Based upon the testimony probably not.

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

10 JUDGE JORDAN: And that concludes redirect.

11 (Witness excused.)

12 JUDGE JORDAN: If there's nothing else, that's
13 the end of my witness list. Is there anything else before we
14 adjourn this hearing?

15 MR. MITTEN: Your Honor, I would ask to the
16 extent it's necessary that the Commission take administrative
17 notice of the Report and Order in the consolidated cases that
18 have been referred to as the Sibley case.

19 JUDGE JORDAN: I'll take notice of those. Is
20 there anything else before we adjourn?

21 MS. KLIETHERMES: Just a question. Has the -- I
22 don't recall -- has the Report and Order at MGE's last rate case
23 been offered or was that an exhibit?

24 JUDGE JORDAN: It has not been offered into
25 evidence.

1 MS. KLIETHERMES: I'd also request the
2 Commission take administrative notice of that Report and Order
3 given the prevalence of it.

4 JUDGE JORDAN: Granted.

5 MR. POSTON: Judge, I did have one question. I
6 brought in that Delaware order --

7 JUDGE JORDAN: Yes.

8 MR. POSTON: -- and I haven't asked to have
9 administrative notice, but it's my understanding that it's a
10 legal document. It's an order. It can be referenced without
11 taking administrative notice of it.

12 JUDGE JORDAN: As to that, I don't know whether
13 we can official notice of another state's order, but it has been
14 entered into the record without objection.

15 MR. MITTEN: Your Honor, it hasn't been entered.

16 MR. POSTON: Actually, I didn't offer it.

17 JUDGE JORDAN: You didn't?

18 MR. POSTON: You know, I'll withdraw the
19 question. I'm comfortable that I can refer to it. Thank you.

20 JUDGE JORDAN: Okay. Hang on a second. Let me
21 check on something. That was among your demonstrative exhibits.

22 MR. POSTON: That is correct.

23 JUDGE JORDAN: Okay. So that is not in --
24 entered into the record. Is there anything else before we
25 adjourn? Well, I thank the parties for their hard work and for

1 their patience with our technical issues today. And we will
2 stand adjourned. I adjourn this evidentiary hearing and we will
3 go off the record.

4 (Off the record.)

5 (Hearing adjourned.)

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CERTIFICATE OF REPORTER

I, LISA M. BANKS, a Certified Court Reporter, within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Lisa M.Banks, CCR