

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Hearing
8 June 30, 2004
9 Jefferson City, Missouri
10 Volume 20
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12 In the Matter of Missouri Gas)
13 Energy's Tariffs to Implement a)
14 General Rate Increase for Natural) Case No. GR-2004-0209
15 Gas Service)
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18 MORRIS L. WOODRUFF, Presiding,
19 SENIOR REGULATORY LAW JUDGE.
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22 JEFF DAVIS,
23 LINWARD "LIN" APPLING,
24 COMMISSIONERS.
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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: All right. Welcome back
3 to GR-2004-0209. I note that a Nonunanimous Stipulation &
4 Agreement, Partial Nonunanimous Stipulation & Agreement
5 was filed yesterday afternoon, and I've had a brief chance
6 to review that. Has anyone talked with any of the other
7 parties to see if there's going to be any opposition to
8 this?

9 Mr. Hack?

10 MR. HACK: Your Honor, we have had general
11 discussions with some of the parties, and it's my belief
12 that there won't be problems with it, but Mr. Finnegan is
13 not here, Mr. Conrad is not here, Mr. Deutsch is not here,
14 Mr. Comley is not here, so I have not had a chance to
15 speak to all those folks about the entire thing.

16 I did have a chance to speak with
17 Mr. Conrad last week about most of it, and I don't think
18 I'm speaking out of rule. I think he was indicating that
19 it wasn't going to be a problem. Obviously he'll have
20 to -- I think he'll be here tomorrow. I don't think
21 there'll be a problem.

22 JUDGE WOODRUFF: That's reassuring and I
23 appreciate that. Certainly we don't want to have to be
24 going on the Fourth of July.

25 MR. HACK: Right.

1 JUDGE WOODRUFF: Okay. Anything else
2 anyone wants to bring up before we get started on the next
3 issue?

4 MR. HACK: We may have discovered a slight
5 problem with one number in the settlement, so we have to
6 discuss that with the Staff. So there may be a subsequent
7 filing later this morning.

8 JUDGE WOODRUFF: Okay. Very good.

9 MR. FRANSON: I would allow maybe even
10 later in the day, Judge. We have some talking to do on
11 that.

12 JUDGE WOODRUFF: All right. Then we need
13 to go on to the next issue, which I believe we were going
14 to cover lobbying and legislative costs. And I presume
15 the parties would like to do mini openings on that. So
16 we'll begin with MGE.

17 MR. SWEARENGEN: Thank you, Judge.

18 Briefly, the company's opening statement on
19 legislative -- on the legislative activities issue, I
20 would like to call the Commission's attention to the fact
21 that what the issue involves is an adjustment which the
22 Staff and the Public Counsel propose to make to the books
23 and records of the company to disallow for ratemaking
24 purposes certain internal payroll costs involving what has
25 been characterized as legislative responsibilities and

1 activities of three Missouri Gas Energy employees. And
2 the issue, as I understand it, has a revenue requirement
3 impact of approximately \$95,000.

4 Specifically, the Staff and the Public
5 Counsel propose to disallow 100 percent of the payroll
6 costs of MGE employee Paul Snider and 10 percent each of
7 the payroll costs of MGE employees Jim Oglesby and Rob
8 Hack, and the basis for this proposed disallowance is that
9 these percentages represent the percentage of activities
10 undertaken by these three individuals that constitutes
11 lobbying.

12 By way of background, the Commission should
13 know that the company has excluded from its requested rate
14 request in this proceeding all expenses associated with
15 its outside contract lobbyists, and in addition, the
16 company has excluded from its rate request in this
17 proceeding the dues which the company pays to the Missouri
18 Energy Development Association. So the company's not
19 seeking rate recovery of outside or contract lobbying
20 costs.

21 It's not seeking recovery of its dues to
22 the industry association, but we are seeking recovery of
23 the costs that we pay to the three employees that I
24 mentioned. I'm not aware of any prior case where the
25 Staff or the Public Counsel has sought to disallow

1 internal payroll costs of specific employees on the theory
2 that some of those activities constituted lobbying and
3 thus should not be recovered through cost of service. So
4 this may be a case of first impression in that regard.

5 We think there are two main problems with
6 the proposed adjustment. The first is the use of the term
7 "lobbying" by the Staff and the Public Counsel. While the
8 Staff and Public Counsel recite in their testimony and pay
9 lip service to the definition of lobbying, which is any
10 attempt, as I understand it, to influence the decisions of
11 legislators or public officials, that's the commonly
12 accepted definition, we think that the Staff and the
13 Public Counsel fail to apply that definition properly to
14 the work performed by the three individuals involved.

15 Second and to compound the problem, we
16 believe that the Staff and Public Counsel really have
17 presented no evidence and they really have no idea as to
18 how much time these three individuals actually spent on
19 what can truly be considered lobbying under the common
20 definition. So we believe the adjustment is just an
21 arbitrary calculation.

22 The evidence in this case will demonstrate
23 that Mr. Snider spends less than 50 percent of his time on
24 legislative activities, a term that encompasses activities
25 beyond the common definition of lobbying. And, in fact,

1 his responsibilities as reflected by his job description
2 are not limited to legislative matters. His job
3 description demonstrates that he has responsibility for
4 external communications and certain other functions which
5 go well beyond legislative activities and well beyond
6 lobbying.

7 As a practical matter, given the length of
8 the Missouri legislative session, it's obvious that even
9 if Mr. Snider worked on lobbying matters for the entirety
10 of the legislative session, which he does not, the
11 percentage of his time devoted to lobbying would be less
12 than 50 percent and far below the 100 percent claimed by
13 the Staff and Public Counsel.

14 The evidence will also show that
15 Mr. Oglesby and Mr. Hack spend less than 10 percent of
16 their time on legislative matters, most of which does not
17 include lobbying.

18 So the adjustment, we believe, must fail
19 for two reasons: The Staff and the Public Counsel are
20 wrong on the amount of time these individuals spend on
21 legislative activities in the first instance; and second,
22 the part of the time that they do spend on legislative
23 activities that does not meet the definition of lobbying
24 has not been spelled out with any specificity.

25 MGE submits that attention to legislative

1 matters or the legislative process is fundamental
2 responsibility of an operating business that is affected
3 with the public interest, such as MGE. It is certainly
4 something that cannot be ignored.

5 Certainly no one would dispute that MGE, in
6 serving the public, must monitor legislative activities
7 and identify issues which affect the company's operations.
8 When laws are passed that affect the company and its
9 customers, this information must be communicated to the
10 appropriate personnel within the company. Sometimes, as a
11 result of legislation that is passed, certain actions must
12 be taken by the company in order to fulfill its
13 responsibilities to serve its customers.

14 Certainly evaluating legislation that has
15 been passed in order to determine what the appropriate
16 conduct of the company must be is not the same as lobbying
17 or attempting to influence what legislation is passed in
18 the first instance. Just because the Staff or the Public
19 Counsel characterize an activity as lobbying does not
20 necessarily mean that it is not a proper expense for
21 ratemaking purposes.

22 What one calls the activities should really
23 not be the issue here. The question is whether or not the
24 activity involved benefits the customer. We submit that
25 the analysis of legislation both proposed and enacted and

1 the dissemination of this information within the company
2 is a prudent expense which benefits customers and is a
3 legitimate cost of doing business which should be
4 recovered through rates. The Staff and the Public Counsel
5 do not meet their burden of proof on this issue simply by
6 coloring all these activities with the black brush of
7 lobbying.

8 So in conclusion we believe the Staff and
9 the Public counsel have incorrectly represented the amount
10 of time Mr. Snider and Mr. Oglesby and Mr. Hack spend on
11 legislative activities, and second, they have failed to
12 meet their burden of proof by distinguishing between
13 lobbying on the one hand and other legislative activities
14 on the other hand, which the company would be expected to
15 undertake in the prudent operation of its business.
16 Thank you.

17 JUDGE WOODRUFF: Thank you. For Staff?

18 MR. FRANSON: Thank you, your Honor. A
19 couple things. No. 1, the definition of lobbying and
20 legislative activities. First of all, Mr. Swearengen
21 explained in his opinion that Staff didn't meet a burden
22 for these -- for these adjustments as he calls them.
23 Well, taking a look at page 9, lines 13 through 22 of
24 Mr. Hyneman's direct testimony, the reason is the company
25 doesn't keep adequate records to show what Mr. Snider and

1 Mr. Oglesby and Mr. Hack do with some of their time.

2 What we're talking about, Judge, is
3 compliance with the uniform system of accounts. In the
4 surrebuttal testimony of Mr. Hyneman, Schedule 2-2,
5 426.4 of the uniform system of accounts, which MGE is
6 required to follow, that's where we find the definition
7 of -- it's called expenditures for certain civic,
8 political and related activities. This account shall
9 include expenditures for the purpose of influencing public
10 opinion with respect to the election or appointment of
11 public officials, referendum, legislation or ordinances.

12 Judge, quite frankly, what they do is
13 lobbying. Yes, they are influencing legislative opinion.
14 Yes, they are trying to get certain candidates that MGE
15 might want in office. That's what Mr. Snider does. His
16 job description might say he has other responsibilities,
17 but that means he could do other things. We heard when
18 Mr. Oglesby testified, one of the primary things, if not
19 the primary, was the ISRS legislation, which was described
20 in MGE's own reports, and Mr. Oglesby agreed with it, that
21 this was the most pro-utility legislation in this state, I
22 believe it was either in the last 75 years and possibly
23 since 1913.

24 The problem is, MGE is required to keep
25 certain things along the line. They don't do it. And

1 that's why Staff is making this adjustment. And the
2 reason that Mr. Swearingen says we don't have enough
3 records, MGE doesn't keep them right. They don't give us
4 the records. They don't keep adequate time specifically
5 for Mr. Snider, Mr. Oglesby and Mr. Hack. Those are very
6 reasonable estimates. These need to be recorded.

7 Now, another thing, Judge, one of the
8 things we heard early on in this hearing was this
9 Commission needs to consider what other commissions do in
10 the rate of return area. Well, likewise, it's very
11 interesting, we didn't hear that here, that this
12 Commission should consider and be aware of what other
13 commissions do. Mr. Hyneman's testimony spells out, no
14 other commission allows lobbying activities. MGE is
15 silent on that. Mr. Hyneman asked a DR, and we received a
16 response from MGE. They don't know of any jurisdictions
17 that allow lobbying along these lines.

18 Judge, this is a case of first impression
19 in the sense that if this Commission were to allow what
20 MGE is asking here, this Commission would be the only one
21 out there that any of the parties are aware of, and,
22 Judge, that is just another reason that they should not be
23 allowed. What we're talking about is also MGE is very
24 proud it made this -- all these adjustments and things for
25 outside lobbying.

1 Judge, what we're talking about is internal
2 lobbying. There's no distinction in the uniform system of
3 accounts. There's no distinction on what these people do.
4 That is a distinction without substance. What we're
5 talking about are lobbyists. There's eight registered
6 lobbyists. All three of the people we're talking about
7 here today, Mr. Snider, Mr. Hack and Mr. Oglesby, are all
8 registered lobbyists in this state.

9 So it comes down to how do they have to be
10 recorded under the uniform system of accounts. It's just
11 as Mr. Hyneman recommends in his testimony, and that is
12 how the Staff would recommend and request the Commission
13 rule on this issue. Thank you.

14 JUDGE WOODRUFF: Thank you. For Public
15 Counsel?

16 MR. MICHEEL: May it please the Commission?
17 The Office of the Public Counsel has presented the
18 testimony of Kimberly Bolin recommending that certain
19 expenses be disallowed, specifically 100 percent of
20 Mr. Snider's salary for lobbying methods.

21 The evidence is going to show that the only
22 auditable information that MGE was able to provide Public
23 Counsel were Mr. Snider's calendars. Those are attached
24 as attachment KKB-6 to Ms. Bolin's rebuttal testimony.

25 There was extensive cross-examination of

1 Witness Oglesby, the COO, and numerous, numerous -- the
2 calendar is littered with specific lobbying events.

3 I think the evidence is going to
4 demonstrate that MGE has not kept any sort of time
5 records. The only thing the Commission can look at are
6 the calendars, and the calendars clearly demonstrate that
7 100 percent of Mr. Snider's time is spent lobbying.
8 I think the fact that MGE has already removed the MEDA
9 dues and the outside lobbying costs is tacit recognition
10 in this case that lobbying is not something that my
11 clients should be paying for, particularly when that
12 lobbying leads to laws such as the ISRS that result in
13 higher rates for my customers.

14 I think at the close of the evidence you
15 will come to the conclusion that Mr. Snider's salary needs
16 to be excluded from rates 100 percent, and although Ms.
17 Bolin did not recommend a 10 percent disallowance for
18 Mr. Oglesby or Mr. Hack, that was only the Staff, I think
19 that the evidence in this case presented by Mr. Hyneman
20 and the cross-examination of Mr. Oglesby makes it
21 abundantly clear that both Mr. Hack and Mr. Oglesby spend
22 some time on inappropriate lobbying matters.

23 Therefore, I'd ask the Commission to make
24 the adjustments recommended by Staff and Public Counsel.

25 JUDGE WOODRUFF: Thank you. Midwest Gas

1 and Jackson County are not here. Federal Agencies wish to
2 make an opening?

3 MR. PAULSON: No, sir.

4 JUDGE WOODRUFF: Kansas City and Joplin are
5 not here either. So we'll go ahead with the first
6 witness, which I believe is Mr. Noack for MGE.

7 THE WITNESS: Good morning, your Honor.

8 JUDGE WOODRUFF: Good morning.

9 MR. FRANSON: Your Honor, has Mr. Noack's
10 testimony been actually admitted into evidence or maybe
11 this is his last time?

12 THE WITNESS: No. We have a couple more
13 mornings.

14 MR. FRANSON: Okay. He's one of those
15 perpetual ones up here. I was just trying to look at my
16 list here.

17 JUDGE WOODRUFF: Mr. Noack, you've already
18 been on the stand and already been sworn. You are still
19 under oath.

20 MIKE NOACK testified as follows:

21 DIRECT EXAMINATION BY MR. SWEARENGEN:

22 Q. Mr. Noack, just for the record, your
23 testimony on the subject we're discussing this morning is
24 contained in your rebuttal testimony; is that right?

25 A. That is correct.

1 Q. And that's been marked as Exhibit 10?

2 A. That is correct.

3 Q. Does your discussion begin at page 13 of

4 that testimony?

5 A. Yes, it runs through the middle of page 15.

6 MR. SWEARENGEN: Thank you. I tender the

7 witness.

8 JUDGE WOODRUFF: All right. And for

9 cross-examination?

10 MR. SWEARENGEN: Excuse me. I believe his

11 exhibit has been offered, has it not, Exhibit 10? If not,

12 I would re-offer it.

13 JUDGE WOODRUFF: It has been offered, yes.

14 For cross-examination, Kansas City and Joplin are not

15 here. Federal Agencies have any questions?

16 MR. PAULSON: No, sir.

17 JUDGE WOODRUFF: Jackson County and Midwest

18 Gas are not here. Public Counsel?

19 MR. MICHEEL: Yes, I have questions, your

20 Honor.

21 CROSS-EXAMINATION BY MR. MICHEEL:

22 Q. Mr. Noack, is it correct that the Missouri

23 Legislature is generally in session from January until

24 May?

25 A. That's --

1 Q. Mid May?

2 A. That's my understanding, yes.

3 Q. And it's your testimony in your rebuttal

4 that -- I think on page 14, that it would be as a

5 practical matter impossible for Mr. Snider to be spending

6 all of his time on legislative matters because the

7 legislative session is only a limited time, four months;

8 is that correct?

9 A. That's what it says on page 14, yes.

10 Q. And is it your belief that because the

11 Legislature's not in session, that Mr. Snider doesn't

12 spend any other time dealing with legislative matters

13 outside of those four months? Is that your testimony?

14 A. No, not at all.

15 Q. Do you have a copy of Ms. Bolin's rebuttal

16 testimony?

17 A. No, I do not.

18 MR. MICHEEL: May I approach the witness,

19 your Honor?

20 JUDGE WOODRUFF: You may.

21 MR. MICHEEL: I'm going to give him a

22 portion of our copy of KKB-6, which is Mr. Snider's

23 calendar, and we talked about it earlier.

24 BY MR. MICHEEL:

25 Q. Have you seen this, Mr. Noack, Mr. Snider's

1 calendar?

2 A. Yes, I have.

3 Q. And that was in response, I believe, to

4 Staff Data Request 195? You can look at the first page of

5 that and it --

6 A. Yes.

7 Q. -- might help you out.

8 A. Yes.

9 Q. And you're aware that that's attached to

10 Ms. Bolin's rebuttal testimony as a schedule?

11 A. If you say so.

12 Q. You don't read that stuff?

13 A. I don't recall. I do read the stuff, yes.

14 Q. Just wanted to make sure. Would you agree

15 with me that generally the Missouri Legislature's not in

16 session in June, the month of June?

17 A. Yes.

18 Q. Let me ask you, I've handed you

19 Mr. Snider's calendar and I've highlighted some items.

20 Does it indicate that Mr. Snider was going to be in

21 Jefferson City on the first Tuesday of June?

22 A. It does.

23 Q. Does it indicate that on June 17th, the

24 third Tuesday of June at 8 a.m., he was going to be

25 attending Rex Rector's golf tournament?

1 A. Yes, it does.

2 Q. And Rex Rector is a Representative from the
3 Kansas City area who's chairman of the utilities
4 committee; isn't that correct?

5 A. I don't know who Rex Rector is.

6 Q. Were you here when Mr. Oglesby testified?

7 A. Yeah, I was, but I don't know who Rex
8 Rector is.

9 Q. Did you hear Mr. Oglesby testify that Rex
10 Rector is a representative from the Kansas City area and
11 the chairman of the utilities commission -- or committee?

12 A. Yes.

13 Q. Do you have any reason to believe that
14 Mr. Oglesby was telling me a fib when he testified under
15 oath?

16 A. Mr. Micheel, you asked me a question if I
17 knew Rex Rector, and I don't. And I have no reason to
18 disagree with Mr. Oglesby.

19 Q. And Mr. Oglesby's testified that he's a
20 legislator, did he not?

21 A. Yes.

22 Q. Do you see the next thing there, MEDA board
23 meeting in Jefferson City?

24 A. Yes, I do.

25 Q. And that's the Missouri Energy Development

1 Association; is that correct?

2 A. That's correct.

3 Q. And MGE has already taken out those costs

4 because they think they're inappropriate for ratepayers to

5 pay; isn't that correct?

6 A. We took those costs out so we wouldn't

7 have, I guess, disagreement with Staff and Public Counsel

8 on it. I'm not going to say that we necessarily disagree

9 that all those costs should be out, but we have taken them

10 voluntarily out of the case.

11 Q. So you're not seeking recovery from

12 ratepayers for those costs?

13 A. No.

14 Q. Does this indicate that that's something

15 that Mr. Snider was doing, attending one of these MEDA

16 meetings?

17 A. It was on his schedule to do that, yes.

18 Q. The next Wednesday there, does it say he's

19 got a lobbyist meeting at 10:30 or 12:30 p.m.?

20 A. It has a question mark by it.

21 Q. Does it indicate lobbyist meeting?

22 A. Yes, with a question mark.

23 Q. 5 p.m., reception for Senator Gibbons?

24 A. Yes.

25 Q. 7 p.m., dinner with lobbyists?

1 A. Yes.

2 Q. The next day, 7:30 a.m., Adams Point tee
3 time, golf with lobbyists?

4 A. It doesn't say golf with lobbyists on my
5 calendar.

6 Q. Okay. Have you seen Ms. Bolin's schedule
7 that has the receipt for that, that indicates that was a
8 golf date with Andy and Joe, the outside lobbyists?

9 A. All right.

10 Q. The next day, ask Rick about PAC reports.
11 That stands for political action committee; is that
12 correct?

13 A. That's correct.

14 Q. The next day on the 26th, the fundraiser
15 for Senator Louden; is that correct?

16 A. That's after hours, that's after work.

17 Q. Well, he's required to go to those things
18 for work, is he not? Or is it your testimony that all
19 these things that are after work are not work-related?

20 A. No. My testimony and what my testimony is
21 in my rebuttal testimony is that we can go through each
22 and every one of his calendars like this and we can pick
23 out 1/10th of his time, and say this is involved with
24 lobbying, I mean, but we've done 1, 2, 3, 4, 5 days out of
25 30. That's 1/6th. That's not 100 percent.

1 Q. And the calendars are the only item that
2 MGE provided that indicated, other than MGE's own
3 self-serving testimony as to what Mr. Snider does; is that
4 correct?

5 A. That is not correct.

6 Q. What else did you provide other than the
7 calendars and the job description?

8 A. We provided time sheets.

9 Q. You provided time sheets?

10 A. To the Staff in Data Requests, yes.

11 Q. And what did those time sheets show?

12 A. They had categories of time that he put his
13 time to.

14 Q. There's no specific accounting for the time
15 that he did lobbying; isn't that correct?

16 A. I believe there is probably a category on
17 there for legislative category, yes.

18 Q. So you disagree with Mr. Oglesby's
19 testimony; is that correct?

20 A. In what way?

21 Q. Well, Mr. Oglesby said that there was no
22 time accounting for any lobbying. Do you recall that
23 testimony?

24 A. Mr. Oglesby may not have known about the
25 time sheets that we keep for government and community

1 relations personnel at the request of Staff.

2 Q. Would you agree with me that during the
3 times that the Missouri Legislature is not in session,
4 that Mr. Oglesby -- or Mr. Snider is still engaging in
5 lobbying-type activities, and that's borne out by his
6 calendar?

7 A. To a very limited degree, yes.

8 Q. To a very limited degree?

9 A. Yes.

10 Q. And so you think -- it's your testimony
11 that these calendars show only a limited degree of
12 lobbying activity?

13 A. Well, as we just said, the week of
14 January -- excuse me -- of June 2nd, we have one notation
15 for 8 a.m., Jeff City on Tuesday. The rest of that week
16 he was -- according to this, he was in town.

17 Q. Well, it doesn't say where it was, does it?

18 A. Well, the --

19 Q. It doesn't indicate anything?

20 A. -- PA staff meeting is his department.

21 Q. Okay. And other than that, it doesn't --
22 for example on that first week, it doesn't say anything;
23 it says, Dale study group, Page doctor, so we don't know?

24 A. I'm assuming, yes. Page doctor, that's his
25 daughter.

1 Q. So other than that, we don't know, do we?
2 And then when we look at the third week of June, for
3 example, every day he has something with respect to
4 lobbying; isn't that correct?
5 A. Not Monday, no. No. That's not correct.
6 Tuesday he was in Jeff City, it indicates, and Wednesday
7 he was in Jeff City. And half of Thursday or at least
8 Thursday he was playing golf. Friday he has on there to
9 ask Rick a question, and the rest of the day, it's no
10 indication that he spent on lobbying, no.
11 Q. There's no indication of what he did; isn't
12 that true?
13 A. Well, we could look at his time sheet and
14 maybe there's something on his time sheet for that day.
15 Q. Did you provide those time sheets in your
16 testimony?
17 A. No, I did not.
18 Q. And other than those time sheets and the
19 calendar and his job description, you provided nothing
20 else; isn't that correct?
21 A. I don't know what else I could provide.
22 Q. Would it be possible for him to do positive
23 time reporting?
24 A. Well, his time sheets, I guess, are
25 positive time reporting.

1 Q. And how do you define positive time
2 reporting?

3 A. I mean, to me it's just -- I don't have a
4 definition of it. I mean, it's him marking down the time
5 that he spends.

6 Q. Okay. Do you get positive time reporting
7 from your outside attorneys, if you know?

8 A. I don't -- define positive time reporting
9 for me and I'll tell you if we get it. I don't know what
10 you mean.

11 Q. Well, where you keep track positively of
12 all the time you spend on all the issues.

13 A. Of the actual issues?

14 Q. What you're doing every day.

15 A. Well, that was the attempt for his time
16 sheet was to keep positive time reporting.

17 Q. And that's your definition of positive time
18 reporting?

19 A. Well, that's what you told me you meant by
20 positive time reporting; keeping track of what he's doing.

21 MR. MICHEEL: I have no more questions.

22 JUDGE WOODRUFF: All right. Staff?

23 CROSS-EXAMINATION BY MR. FRANSON:

24 Q. Good morning, Mr. Noack.

25 A. Good morning, Mr. Franson.

1 Q. Okay. You have -- this is more for my own
2 purposes. You have filed rebuttal and corrected rebuttal.
3 Do you know which one of those is actually being offered
4 as Exhibit 10, or are they both being offered and I'm just
5 missing something here?

6 A. I'm assuming the corrected.

7 Q. So that's the one we should be working
8 from, your corrected?

9 A. Right.

10 Q. Okay. Do you need just a moment to look at
11 that? I mean, I guess what I'm asking is, what is being
12 offered into evidence by MGE, if you know? Is it just
13 your corrected as Exhibit 10?

14 A. With the exception of some line numbers on
15 a couple of tables in my testimony, there is no
16 difference.

17 Q. Okay. I was just trying to be sure I knew
18 which one to work from here.

19 JUDGE WOODRUFF: And to clarify from the
20 Bench, that's what I show on my chart as well is just the
21 corrected.

22 MR. FRANSON: Okay. Thank you, your Honor.

23 BY MR. FRANSON:

24 Q. Mr. Noack, you receive a paycheck from MGE;
25 is that correct?

1 A. Yes.

2 Q. About every two weeks?

3 A. Every two weeks.

4 Q. Okay. Would you agree that this paycheck

5 is for services that you perform on behalf of MGE?

6 A. MGE pays me, yes.

7 Q. Would you agree that this paycheck that you

8 receive from MGE is an expenditure by MGE?

9 A. Yes.

10 Q. Okay. Mr. Noack, is it fair to say that

11 really what we're talking about, the adjustment that Staff

12 is proposing regarding the salaries of -- part of the

13 salaries of Mr. Hack and Mr. Oglesby, and then all of the

14 salary of Mr. Snider, is really a matter of ultimately who

15 pays for, I believe, what MGE's calling legislative

16 activities and what Staff is calling lobbying activities?

17 What I'm asking is, even if ratepayers

18 don't pick up these expenses, MGE's still going to incur

19 these expenses but use other funds; is that a fair

20 statement?

21 A. MGE is going to continue to pay its

22 employees.

23 Q. Okay. And really isn't it fair to say that

24 what MGE is asking is that all of its what it's calling

25 legislative-related activities, whether they're internal

1 or external folks doing this, internal lobbyists, external
2 lobbyists, is you're asking ratepayers to pay all of those
3 costs?

4 MR. SWEARENGEN: I'm going to object to the
5 form of the question, your Honor. He's mixing terms here.
6 He says legislative activities on one hand, and then he
7 interchanges it with lobbying activities on the other, and
8 I don't think they're one and the same.

9 JUDGE WOODRUFF: Would you like to clarify
10 your question?

11 MR. FRANSON: Actually, no. I guess more
12 it would be a question if the witness understands my
13 question, I'll leave my question in place, unless you deem
14 it inappropriate, in which case I'll certainly rephrase
15 it.

16 JUDGE WOODRUFF: I'll overrule the
17 objection. If the witness understands the question, he
18 can answer.

19 THE WITNESS: Can you ask the question one
20 more time?

21 BY MR. FRANSON:

22 Q. Yes. Okay. Is it fair to say that the
23 certain MGE employees that are the subject of a Staff
24 adjustment being Mr. Oglesby, Mr. Hack and Mr. Snider,
25 that their activities MGE is calling legislative

1 activities?

2 A. That's correct.

3 Q. Staff is calling those lobbying activities?

4 A. I believe so, yes.

5 Q. But we -- is it fair to say that MGE is

6 saying, whatever you want to call those activities that

7 we're talking about here, that whether the -- whether

8 these employees are saying to legislators pass this

9 pro-utility legislation or we're just monitoring, whatever

10 they're doing, do you want -- is it fair to say MGE wants

11 that paid for?

12 A. The internal payroll costs of the company?

13 Q. Regarding these specific individuals,

14 Mr. Oglesby, Mr. Hack and Mr. Snider, yes.

15 A. That is correct.

16 Q. Okay. And that's true regardless of the

17 content or who benefits from legislation they may be in

18 favor of or against; is that a fair statement?

19 A. We're asking for the internal payroll costs

20 of Snider, oglesby and Hack in their entirety.

21 Q. Without regard to anything they might

22 advocate or oppose at the Legislature, the content of the

23 legislation?

24 A. Regardless of what they're doing, however

25 you think they're spending their time, we're asking for

1 the costs in rates.

2 MR. FRANSON: No further questions, your
3 Honor.

4 JUDGE WOODRUFF: All right. Thank you.
5 Come up for questions from the Bench. Commissioner
6 Appling?

7 COMMISSIONER APPLING: No questions this
8 morning, Judge.

9 JUDGE WOODRUFF: No recross. Any redirect?

10 MR. SWEARENGEN: Just a couple, your Honor.

11 REDIRECT EXAMINATION BY MR. SWEARENGEN:

12 Q. Once again, Mr. Noack, when Public Counsel
13 was inquiring, he used the phrase "dealing with
14 legislative matters." In your mind, is dealing with
15 legislative matters necessarily the same as lobbying?

16 A. Not based on the definitions that
17 Mr. Franson read from FERC, or that I understand lobbying
18 to be, no.

19 Q. All of the questions that Mr. Micheel asked
20 you with respect to Mr. Snider's calendar for the period
21 after the close of the General Assembly in June, did you
22 hear any questions about whether that would lead you to
23 believe that Mr. Snider was attempting to influence the
24 decision of public officials?

25 A. No.

1 Q. And for that period after the close of the
2 General Assembly, and having looked at Mr. Snider's
3 calendar, did you see any evidence that Mr. Snider was
4 undertaking any lobbying activities?

5 A. I -- I don't believe so, unless -- the only
6 thing that might be questionable on his calendar would be
7 the dinner fundraiser.

8 Q. Can you be more specific?

9 A. On I think it's June 26th, there's a 5:30
10 fundraiser for Senator Louden, but at the same time
11 there's also a notation on that day for a 5:30 p.m. study
12 group. So while there might be a fundraiser for Senator
13 Louden, the fact -- whether or not Mr. Snider went to that
14 fundraiser or went to his study group, I can't tell you.

15 Q. Do these three employees get paid the same
16 salary whether or not they actually undertake any lobbying
17 activities during the year?

18 A. Yes, they do.

19 Q. Do they get paid any extra because they do
20 lobbying?

21 A. No, they do not.

22 Q. Could it be that in a particular year that
23 none of these individuals would do anything that could
24 remotely be considered lobbying?

25 A. Ask that question one more time,

1 Mr. Swearengen.

2 Q. Could it be possible that in any given year
3 these three individuals would not undertake any activities
4 that could possibly be fairly characterized as lobbying?

5 A. It could. That could happen that way in a
6 particular year they didn't do anything, right.

7 Q. To the extent that in the test year in this
8 case any of those individuals have undertaken any lobbying
9 activities, is there any evidence of that that's been
10 brought forward by the Staff or the Public Counsel in this
11 case?

12 A. I don't believe so, no.

13 MR. SWEARENGEN: Thank you. That's all I
14 have.

15 JUDGE WOODRUFF: Thank you. Mr. Noack, you
16 can step down.

17 I believe the next witness on the list is
18 Kim Bolin for OPC.

19 MR. MICHEEL: We would call Kim Bolin, your
20 Honor.

21 JUDGE WOODRUFF: Thank you. Welcome back,
22 Ms. Bolin, and you are still under oath.

23 MR. MICHEEL: Your Honor, we would tender
24 Ms. Bolin and I would indicate this is her last trip up to
25 the hot seat.

1 JUDGE WOODRUFF: Okay. I was just noticing
2 that myself here.

3 MR. MICHEEL: I think you've already
4 admitted her testimony, though, your Honor, the first
5 time. That's what my records show.

6 JUDGE WOODRUFF: I did, actually, on her
7 direct and surrebuttal, but for some reason I did not
8 admit her rebuttal testimony.

9 MR. MICHEEL: Then I would move the
10 admission of her rebuttal, which is Exhibit No. 205, your
11 Honor?

12 JUDGE WOODRUFF: Yes, I had a note here
13 that MGE had made an objection. Does counsel for MGE
14 recall what that might be?

15 MR. HACK: Was that the rebuttal testimony,
16 your Honor.

17 JUDGE WOODRUFF: Yes.

18 MR. HACK: Much as I hate to say it, you
19 overruled my well-taken objection.

20 JUDGE WOODRUFF: Okay. Well --

21 MR. MICHEEL: You did overrule the
22 objection, your Honor, properly.

23 JUDGE WOODRUFF: Well, 205 will be admitted
24 into evidence, if it wasn't previously.

25 (EXHIBIT NO. 205 WAS RECEIVED INTO

1 EVIDENCE.)

2 JUDGE WOODRUFF: All right. For

3 cross-examination, then, begin with Staff.

4 MR. FRANSON: No questions, your Honor.

5 JUDGE WOODRUFF: Kansas City and Joplin are

6 not here. Federal Agencies?

7 MR. PAULSON: No questions, your Honor.

8 JUDGE WOODRUFF: MGE?

9 MR. SWEARENGEN: We have no questions.

10 JUDGE WOODRUFF: Commissioner Appling, do

11 you have any questions for this witness?

12 COMMISSIONER APPLING: No questions.

13 JUDGE WOODRUFF: Then no redirect and no

14 recross. You can step down. Chuck Hyneman for Staff.

15 MR. FRANSON: Your Honor, I'm going to have

16 to ask your assistance. I left my records upstairs

17 regarding the exhibit numbers of Mr. Hyneman's testimony,

18 which I know have been offered, and if I'm correct, I

19 believe this will be Mr. Hyneman's last testimony.

20 JUDGE WOODRUFF: His direct is 816 and his

21 surrebuttal is 817.

22 MR. FRANSON: Your Honor, I don't

23 believe -- I know they've been offered, but I don't

24 believe they've actually been received into evidence. And

25 I would offer them at this time.

1 JUDGE WOODRUFF: Is there any objection to
2 the receipt of 816 and 817?
3 (No response.)
4 JUDGE WOODRUFF: Hearing none, they will be
5 received into evidence.
6 (EXHIBIT NOS. 816 AND 817 WERE RECEIVED
7 INTO EVIDENCE.)
8 MR. FRANSON: With that, your Honor,
9 because the witness has been previously sworn and I don't
10 know if you're going to swear him again, but I would --
11 after that, I would tender him for cross-examination.
12 JUDGE WOODRUFF: And he is still under
13 oath, so we are not swearing him again. Let's see. For
14 Public Counsel?
15 MR. MICHEEL: Yes, I have a couple
16 questions.
17 CHUCK HYNEMAN testified as follows:
18 CROSS-EXAMINATION BY MR. MICHEEL:
19 Q. Mr. Hyneman, isn't it true that your
20 recommendation differs from Witness Bolin's recommendation
21 in that the Staff has recommended excluding 10 percent of
22 Mr. Oglesby and Mr. Hack's salary?
23 A. That is correct.
24 Q. Isn't it correct that there's no evidence
25 in this record indicating that Mr. Oglesby spends

1 10 percent of his time lobbying?

2 A. The 10 percent adjustment proposed by the
3 Staff, as I explained in my testimony, is not based on
4 exact evidence. It was an estimate based on the evidence
5 that we accumulated during the audit. Mr. Oglesby is
6 involved in lobbying activity, but the records do not
7 support making an exact allocation of that.

8 Q. What records do you have -- I haven't seen
9 the records that you have that indicate that Mr. Oglesby
10 is involved in lobbying.

11 A. We had interviews with Mr. Snider and
12 Mr. Hack indicating that -- and Mr. Oglesby is on the
13 board of MEDA, MGE's lobbying organization. He
14 participates in MEDA activities, and he supervises the
15 individuals who supervise MGE's external lobbyists.

16 Q. Did you see any indications on his calendar
17 that he did those types of activities?

18 A. It's been a while since I reviewed that, so
19 I can't recall this morning if I did see that.

20 Q. And with respect to Mr. Hack, do you have
21 any evidence in this case that Mr. Hack is engaged in
22 lobbying?

23 A. Yes, I have documentation from Mr. Hack
24 indicating his involvement. In fact, it's a letter to the
25 Commission outlining MGE's legislative initiatives and

1 MEDA's legislative initiatives that MGE's proposed during
2 this year through its lobbying organization, MEDA.

3 Q. And for purposes of that, how are you
4 defining lobbying?

5 A. I define it in my direct testimony as any
6 attempt to influence legislation. I give a more direct
7 definition that Staff supports in my surrebuttal
8 testimony. It's a definition published by the Federal
9 Communications Commission, and also FERC uniform system of
10 accounts, the account where MGE is required to charge all
11 lobbying activities, both internal and external, gives the
12 definition of lobbying. So I guess for the purposes of
13 this Commission, we would use the USOA definition.

14 Q. Did MGE charge any costs to lobbying in
15 those accounts?

16 A. I understand for -- that recently MGE
17 corrected its accounting. I was advised that it recorded
18 all lobbying activities, both internal and external, in an
19 above-the-line account, and I believe 923, which is a
20 ratemaking account. They recently discovered that that
21 was incorrect. Now they are charging their time. I've
22 been advised that they are charging their time of outside
23 lobbyists to 426, a below-the-line account.

24 MR. MICHEEL: Thank you very much,
25 Mr. Hyneman.

1 JUDGE WOODRUFF: Kansas City and Joplin are
2 not here. Federal Agencies?

3 MR. PAULSON: No questions.

4 JUDGE WOODRUFF: Jackson County and Midwest
5 Gas are not here. MGE?

6 MR. SWEARENGEN: No questions, thank you.

7 JUDGE WOODRUFF: Commissioner Appling from
8 the Bench, do you have any questions?

9 COMMISSIONER APPLING: Just one question.

10 QUESTIONS BY COMMISSIONER APPLING:

11 Q. In your activities, did you find MGE's
12 lobbying activity to be out of line, different from other
13 gas supply activities that we regulate? Is it similar or
14 is there a bump in the road here on MGE?

15 A. Well, it -- there's an increase in MGE's
16 involvement in lobbying activities, and it's due to the
17 creation of MEDA, Missouri Energy Development Association,
18 I believe is the name, MEDA, that was a lobbying
19 organization created in, I believe, 2002. So this is the
20 first rate case where we audited MGE since the creation of
21 that utility lobbying organization.

22 So I suspect all utilities have increased
23 their lobbying activities, but I only have direct
24 knowledge of MGE's increased lobbying activities since the
25 creation of that organization.

1 COMMISSIONER APPLING: Thank you very much,
2 sir.
3 JUDGE WOODRUFF: I have a question.
4 QUESTIONS BY JUDGE WOODRUFF:
5 Q. When Mr. Noack was testifying a little bit
6 ago, he mentioned that MGE had submitted some time sheets
7 to Staff?
8 A. Yes.
9 Q. Do you have such time sheets?
10 A. Yes. For example, I have time sheets here
11 for Mr. Robert Hack and Mr. James Oglesby, but none of the
12 time on those time sheets reflect activities in lobbying.
13 Q. It's not broken out?
14 A. No.
15 Q. What kind of things are on there, then?
16 A. Just general allocation of different time
17 codes. I don't have the exact time codes here, but
18 there's no recording to lobbying activities.
19 Q. So there's no code for lobbying activities?
20 A. Now there is and I don't -- I think MGE
21 created some for their community relations department, but
22 not at the higher level.
23 JUDGE WOODRUFF: Okay.
24 COMMISSIONER APPLING: I have another
25 question.

1 JUDGE WOODRUFF: Go ahead.

2 FURTHER QUESTIONS BY COMMISSIONER APPLING:

3 Q. I think you asked -- you had a
4 recommendation of 10 percent reduction in, was it two
5 individuals?

6 A. Yes.

7 Q. Could you just briefly explain to me why
8 you made that recommendation?

9 A. Okay. The FERC uniform system of accounts,
10 it's 426.2, I believe, requires they don't make a
11 distinction, they say all expenditures, and they go on a
12 long list of activities, lobbying and lobbying-related,
13 will be recorded below-the-line. So the company has that
14 obligation to do that. Commission rules require that, but
15 they are not doing that.

16 So because of their failure to record in
17 accordance with USA, we have to go in and try to extract
18 records, put pieces of the puzzle together to come up with
19 how much time their utility executives are spending on
20 lobbying, and that is now how it is supposed to work.

21 MGE has the burden of proof to show that
22 their records are complete, that this is the amount of
23 time they spent on lobbying. And even, as I explained in
24 my testimony, if MGE involved in a lobbying, say, a
25 lobbying related activity that they're required to do and

1 had a positive impact on its ratepayers, then they can
2 make an adjustment to that below-the-line account in the
3 rate case and bring it up, and the Staff would seriously
4 consider allowing that cost.

5 We're not saying all lobbying activities
6 per se are bad, but we say there is a general presumption
7 that they are wrong for ratemaking; maybe you could record
8 the level of. MGE's required to do that, but they aren't
9 doing it.

10 Q. Did I understand you to say that we have a
11 rule to that effect, that the PSC has a rule --

12 A. Yes.

13 Q. -- to say exactly what can be allowed and
14 what's not allowed?

15 A. Yes. The PSC has a rule that requires
16 utilities under its jurisdiction to comply with the FERC
17 uniform system of accounts, so the special account
18 descriptions where the utilities have to comply with.
19 Now, the utilities can request an exemption or deviation
20 from the rules. I believe they have in the past, and the
21 Commission can have deviation from the rules, but I'm not
22 aware of any request for exemption from MGE that they do
23 not have to require -- or comply with the FERC rules for
24 lobbying costs. I don't believe one exists, so they're
25 required.

1 Q. Last question. Help me out here.

2 Summarize for me your concern for MGE's lobbying
3 activities.

4 A. Well, I have direct knowledge of some
5 legislation that was passed through the support of MGE,
6 and it's called primarily the ISRS legislation. And that
7 legislation that they supported, created and lobbied for
8 increases their rates outside of a rate case, and it's
9 legislation that prohibits the Commission from coming in
10 and looking at MGE's costs to see if they have cost
11 decreases. The Commission is prohibited from looking at
12 their cost structure. We just have to look at certain
13 elements of their plant investment, and if that has
14 increased we have to allow their rates to increase.

15 Now, maybe MGE is not in an overearnings
16 position right now, but other utilities who are actually
17 earning above their authorized rate of return can get this
18 increase in rates while they're already earning over their
19 authorized rate of return. So it's just bad ratemaking
20 for the ratepayers of this state, and that legislation was
21 supported by MGE.

22 COMMISSIONER APPLING: Thank you very much,
23 sir.

24 JUDGE WOODRUFF: All right. For recross,
25 then, Public Counsel?

1 MR. MICHEEL: I have no questions, your
2 Honor.

3 JUDGE WOODRUFF: Federal Agencies?

4 MR. PAULSON: None, sir.

5 JUDGE WOODRUFF: MGE?

6 MR. SWEARENGEN: Just a couple.

7 RECROSS-EXAMINATION BY MR. SWEARENGEN:

8 Q. Mr. Hyneman, did I understand you to say
9 that you think what the General Assembly did in passing
10 that legislation was a mistake?

11 A. I didn't say it was a mistake.

12 Q. What did you say?

13 A. I said it does not benefit MGE ratepayers.

14 Q. Does it benefit anyone's ratepayers?

15 A. No, not that I'm -- not in my opinion.

16 Q. So would you say that it wasn't in the
17 public interest?

18 A. It depends on how you define public
19 interest.

20 Q. Well, how would you define it?

21 A. It was in the interest of MGE shareholders.

22 Q. How would you define the public interest?

23 A. I don't have a definition right now.

24 Q. Would you say the public interest includes
25 MGE's shareholders?

1 A. Yes.

2 Q. You mentioned that you had some time
3 records that were provided to you in connection with
4 Mr. Hack and Mr. Oglesby; is that true?

5 A. Yes.

6 Q. Did you have any time records provided to
7 you by the company in connection with Mr. Snider?

8 A. Yes, we did.

9 Q. And was there some reason you didn't
10 mention that when you were asked the question earlier?

11 A. Well, to be honest with you, yes. I was
12 primarily involved with Mr. Hack and Mr. Oglesby's
13 adjustments. Mr. Snider's adjustment in its community
14 relations department was primarily done by another Staff
15 witness. I am supporting that, but that individual was
16 the one that analyzed those time records.

17 Q. And when you say community relations
18 department?

19 A. Public affairs, community relations. I
20 think the name changes, but that's basically what it's
21 been over the years.

22 Q. And what does that involve?

23 A. It's the department where several of MGE
24 lobbyists are assigned. Mr. Paul Snider, Ms. Pam Levitow
25 (ph. sp.) are involved, and they work on different

1 activities. Lobbying is one of them.

2 Q. What are the other activities?

3 A. Communication. When they -- I know Pam

4 Levitow does MGE's commercials on the radio, advertising,

5 communications, that type of work. They supervise --

6 Mr. Snider supervises MGE's external lobbyists.

7 Q. And what other type of work does Mr. Snider

8 do?

9 A. I think communications, I think is

10 basically one of his responsibilities.

11 Q. And what does that entail?

12 A. Press releases, working with MGE's outside

13 communications consultants, I think maybe internal

14 communications, communicating about different activities

15 that MGE's involved with outside the public.

16 Q. During the course of the year, how many

17 press releases would the company issue, do you have any

18 idea?

19 A. I don't know for sure. I've read Southern

20 Union press releases, but I don't -- I don't remember MGE

21 press releases.

22 Q. Do you think there have been some?

23 A. I suspect there have.

24 Q. What about internal communications, how

25 frequently does the company communicate internally, do you

1 know?

2 A. I don't know.

3 Q. Do you have any idea?

4 A. No.

5 Q. Have you ever been involved in an audit of

6 any company where you looked at the internal

7 communications?

8 A. Yes.

9 Q. What company was that?

10 A. Different companies that we would review,

11 like, the internal newsletters just to see generally the

12 activities the company's doing.

13 Q. Just give me an example of a company where

14 you did that.

15 A. I know MGE for sure in the past, past rate

16 cases.

17 Q. Well, you've reviewed internal

18 communications for MGE in past rate cases?

19 A. Yes, company newsletters and company press

20 releases, I guess, if they're internal or external. But

21 they post them on a bulletin board.

22 Q. And how many of those would there have been

23 in the test year in that case that you're referring to,

24 approximately?

25 A. I don't know. I think I recall -- and this

1 is going back a few years -- a Vision magazine, you know,
2 and different company newsletters. I think they might be
3 quarterly or monthly. I don't recall.

4 Q. Are there any other types of internal
5 communications that you looked at in that past rate case?

6 MR. FRANSON: Your Honor, we're getting
7 very far afield from questions from the Commissioners and
8 your Honor. I would object on the basis of it's beyond
9 the scope and relevance, your Honor.

10 JUDGE WOODRUFF: What's your response?

11 MR. SWEARENGEN: My response is in response
12 to one of my earlier questions, he talked about the
13 functions of these people in communications, and I think
14 he brought it up and I'm entitled to inquire.

15 JUDGE WOODRUFF: I'll overrule the
16 objection.

17 THE WITNESS: Could you repeat the
18 question, please?

19 BY MR. SWEARENGEN:

20 Q. Well, you communicated that in this
21 particular case you weren't familiar with respect to
22 Mr. Snider how many internal or external communications he
23 had been involved in, but you went on to say in a prior
24 case involving Missouri Gas Energy you did look at that
25 and you were familiar with the internal and external

1 communications that were put out by his department. And I
2 was trying to get some idea from you if you know to what
3 extent that occurs.

4 A. And like I -- I don't know if he's
5 involved. I know that department. That's part of the
6 department's responsibility. And there are individuals in
7 that department that are registered lobbyists where the
8 Staff made no adjustment to their salaries.

9 Q. So you don't know, you can't tell the
10 Commission today with respect to this case and this test
11 year the extent to which Mr. Snider was involved in other
12 communication-type activities that would not meet the
13 definition of lobbying?

14 A. We have a Staff witness who primarily
15 looked at that in response to that adjustment. She would
16 be the appropriate witness on that, but I believe that
17 issue is settled.

18 Q. But you can't answer that question today,
19 how much time Mr. Snider has spent in the test year
20 undertaking activities which did not meet the definition
21 of lobbying?

22 A. No. And the basis of that is, my
23 consultations with Mr. Oligschlaeger and Staff Witness
24 Lonergan, and the documents I reviewed, the interviews
25 with Mr. Snider and the fact that Mr. Snider's group

1 includes other lobbyists, if he -- if he actually spends
2 less than 100 percent of his time for the lobbying
3 activities, the other people, the other registered
4 lobbyists in his group would easily compensate for that
5 time. So that's the position of Staff.

6 MR. SWEARENGEN: Thank you. I have nothing
7 further, and I would ask that response be stricken as not
8 responsive. Thank you.

9 JUDGE WOODRUFF: Sustained.

10 REDIRECT EXAMINATION BY MR. FRANSON:

11 Q. Mr. Swearengen just asked you a question at
12 the very end there. Do you remember that question,
13 Mr. Hyneman?

14 A. Yes.

15 Q. And had you finished your answer?

16 A. No, I had not.

17 Q. What is the rest of your answer?

18 A. Well, the question dealt with Mr. Snider's
19 time and whether he spends less than --

20 MR. SWEARENGEN: Your Honor, I'm going to
21 object. The question called for a yes or no answer, and
22 he said, no, he could not show, based on his knowledge,
23 how much time Mr. Snider had spent during the test year in
24 doing things other than lobbying. That was the question.
25 Then he made a speech which I objected to and you

1 sustained. So I don't think counsel for the Staff can go
2 back and ask him to make that speech again. I object.

3 JUDGE WOODRUFF: I think it's an improper
4 question. If you want to ask a specific question about
5 the previous question that Mr. -- counsel for MGE asked,
6 you can do that.

7 MR. FRANSON: Okay. Could I ask the court
8 reporter to read back Mr. Swearengen's last question to
9 Mr. Hyneman?

10 (THE REQUESTED TESTIMONY WAS READ BY THE
11 REPORTER.)

12 BY MR. FRANSON:

13 Q. Why is it you cannot say with specificity
14 that Mr. -- the amount of time that Mr. Snider spent on
15 lobbying?

16 A. The Staff was not completely satisfied with
17 the documentation proposed by MGE to allow us to make an
18 exact determination, but we felt if we did overstate by a
19 little bit his activities in lobbying, there are other
20 lobbyists in MGE, registered lobbyists to perform that
21 type of activities that supervise Mr. Snider that if we
22 overstated by not making adjustment to those other
23 lobbyists, it would easily compensate for any
24 overestimation of his time.

25 Q. Mr. Hyneman, you are not saying here today

1 that there's anything wrong with MGE deciding, we support
2 legislation, and doing everything within the law to
3 support that, are you?

4 A. Not at all.

5 Q. Okay.

6 A. I'm just seeking proper accounting.

7 Q. Okay. Now, in fact, MGE can go out and
8 support ISRS or any other legislation it deems
9 appropriate; is that correct?

10 A. That's correct.

11 Q. And the bottom line is, are you suggesting
12 it's a matter of who pays for that?

13 A. Yes, and the proper accounting. And if MGE
14 would book those costs to a below-the-line account, and in
15 a rate case if it believes those costs should be
16 recovered, it would make an adjustment to bring that up,
17 and then we could have a discussion on that.

18 But as it is now, the Staff has the burden
19 to go in to do the interviews, to get the time reports, to
20 get the calendars, to spend a lot of resources trying
21 to -- and it's a shift of the burden itself to prove how
22 much time, where the burden should be on MGE to show that
23 it books these costs correctly and that it has the burden
24 to prove that these costs are reasonable.

25 Q. What does the term "below-the-line" mean?

1 A. Below-the-line is you charge it to a
2 non-operating account, which means there's a general
3 presumption that those costs are not included in the
4 revenue requirement calculations.

5 Q. And how does an entity such as MGE know
6 whether costs should be above-the-line or below-the-line?
7 What guides them in that regard?

8 A. Well, MGE is required to comply to keep
9 their books and records in accordance with the FERC's
10 uniform system of accounts. Those accounts have general
11 instructions and specific detailed instructions on how to
12 book costs.

13 Q. And is it your testimony here today MGE did
14 not follow that uniform system of accounts in regard to
15 the lobbying aspect of this case?

16 A. Yes, it is.

17 MR. FRANSON: Thank you. No further
18 questions, your Honor.

19 JUDGE WOODRUFF: All right. Thank you.
20 And then, Mr. Hyneman, you can step down. I believe
21 that's all we are going to be handling for today; is that
22 correct?

23 MR. FRANSON: Your Honor, there is one
24 other matter, and I'm not ready to do this, but it's more
25 of a cleanup matter.

1 MR. SWEARENGEN: Before that, could I
2 inquire with respect to Exhibit 817, has that been
3 admitted?

4 JUDGE WOODRUFF: 817?

5 MR. FRANSON: That would Mr. Hyneman's
6 surrebuttal, I believe, your Honor.

7 JUDGE WOODRUFF: Yes, I show them both as
8 being admitted, 816 and 817.

9 MR. FRANSON: Your Honor, the cleanup is
10 there are several Staff witnesses -- and I'm sorry I don't
11 have a list in front of me -- have that are not going to
12 be called but they filed testimony, and one -- and also
13 Exhibit 841, which is Staff's accounting schedules, those
14 have not been offered into evidence.

15 No. 1, I would like to be offering those,
16 and No. 2, see if there's any questions from the
17 Commissioners regarding those witnesses, which I might be
18 a little bit surprised if there are, but it's just a
19 cleanup matter of getting those items in.

20 JUDGE WOODRUFF: Are these witnesses whose
21 testimony would be coming in through the Stipulation &
22 Agreement?

23 MR. FRANSON: No. Those witnesses are
24 specifically identified in the Stipulation & Agreement.
25 No, these are additional witnesses where they filed some

1 testimony but those issues were -- are really not in
2 controversy, but generally those are admitted in and then
3 it gives the Commission some background. And, Judge, I'm
4 assuming the other parties possibly may have some
5 witnesses in the same boat, but I know in regard to Staff
6 witnesses, there are several.

7 JUDGE WOODRUFF: Okay. Which witnesses are
8 they in particular?

9 MR. FRANSON: Staff Witness Lonergan and
10 Preston are the ones that immediately come to mind.

11 JUDGE WOODRUFF: Mr. Hack or
12 Mr. Swearengen, is the company in the same position?

13 MR. HACK: I don't believe we have any
14 testimony other than that which is referred to in the
15 settlement agreement or which is a part of the contested
16 hearing.

17 MR. SWEARENGEN: The other thing, Judge,
18 customarily we do that at the end, because that's when we
19 know what's left that we don't need to deal with.

20 MR. FRANSON: And that would be fine,
21 Judge. It's just I don't want to forget it, and I
22 certainly wanted to offer any opportunity if Commissioners
23 had any questions of those witnesses, so we aren't at the
24 very end and suddenly discover we have an issue there.

25 And also, Judge, I know in particular

1 Exhibit 841, the Staff accounting schedules, will be
2 included in this cleanup matter, and if it would help, I
3 would offer Exhibit 841 at this time.

4 JUDGE WOODRUFF: All right. 841, which is
5 the Staff accounting schedules has been offered. Does
6 anyone have any objection to its receipt?

7 MR. HACK: The only thing I would, I think,
8 perhaps point out for the record -- I don't know that I
9 have any objection, but that accounting run has very
10 little relevance to the situation as it exists today,
11 based upon all of the agreements that have been put
12 forward to the Commission. It doesn't reflect, as I
13 understand it, what the Staff position is today. And I
14 would, I think, for fairness state that the revenue
15 requirement run, the most recent one included in
16 Mr. Noack's testimony is similarly outdated.

17 So I think the record, at the conclusion we
18 need to get accurate revenue requirement runs. I'll call
19 them into the record of both the Staff and MGE, but so I
20 don't -- I don't have a problem with 841. I just don't
21 think it really does anything.

22 MR. FRANSON: Well, your Honor, that
23 unfortunately is part of our process. Sometimes by the
24 time we get to this stage, there are differences. And I
25 would also tell you, Staff is planning to run another

1 reconciliation, share that with the parties and hopefully
2 there will be no objection to that being offered into
3 evidence at the end of the hearing. And that hopefully,
4 as best we can, will reflect the actual differences, and
5 it is our intention that that -- and I have shared that
6 information with the other parties, that we will be
7 preparing one, and hopefully that will include the effects
8 of the stipu-- the Partial Nonunanimous Stipulation &
9 Agreement that will be in here.

10 JUDGE WOODRUFF: It sounds like at this
11 point the Staff reconciliation -- or excuse me -- the
12 Staff accounting schedules as prefiled may not have any
13 relevance to anything at this point. I'm not going to
14 make a ruling on it at this time, but you may want to
15 consider possibly amongst the parties agreeing upon
16 something else to replace that, rather than just putting
17 it into the record as --

18 MR. FRANSON: Your Honor, actually, I guess
19 I can agree they don't have any relevance in the sense
20 that they support Staff testimony, a lot of which has come
21 in and there are specific references to adjustments in
22 Staff's direct case. And if it's not in, we are going to
23 have an incomplete record. And while I realize things
24 evolve and things change, they certainly do have
25 relevance, and will have a shortfall in the record if

1 those, in fact, are not in.

2 JUDGE WOODRUFF: Well, as indicated, I'll

3 wait until the end of the hearing to actually make a

4 decision on it, then.

5 MR. FRANSON: Okay. Judge, I would inform

6 you also that Staff really will not be in a position to

7 recreate those accounting schedules in entirety, but we

8 will certainly by Friday be offering a new reconciliation

9 along the lines of Exhibit 42, but it will have some

10 differences in them.

11 JUDGE WOODRUFF: Okay.

12 MR. FRANSON: I'm sorry. I believe that

13 was 842, your Honor, that I was referring to.

14 JUDGE WOODRUFF: Yes, 842 is the

15 reconciliation; 841 is the accounting schedules.

16 MR. FRANSON: Thank you, your Honor.

17 JUDGE WOODRUFF: Mr. Hack, you have

18 something?

19 MR. HACK: I just have one item for you.

20 The Travis Allen video, I have a copy for the Bench, a

21 DVD.

22 JUDGE WOODRUFF: As I recall, that was

23 assigned a number.

24 MR. HACK: And I couldn't find the number,

25 your Honor. I'm sorry.

1 JUDGE WOODRUFF: All right. I can tell you
2 here in a moment. 217.

3 MR. HACK: 217.

4 JUDGE WOODRUFF: I have that marked as a
5 video transcript.

6 MR. MICHEEL: Is that the complete video,
7 Rob, or just the portion?

8 MR. HACK: I thought that we gave you the
9 complete one, and this is just the portions.

10 MR. MICHEEL: I had reserved 217, your
11 Honor, for the complete one, and I will get that to you
12 before the end of the hearing. If this is just the
13 portion that Mr. Herschmann put in, that is probably
14 Exhibit --

15 MR. FRANSON: I would agree, your Honor.
16 My memory serves that there were two distinctions and that
17 there may be a different number.

18 MR. MICHEEL: I don't know. I don't know
19 what number you reserved because --

20 JUDGE WOODRUFF: I don't recall reserving a
21 separate number for that, and I don't see anything marked
22 on here.

23 MR. MICHEEL: If you want to make it
24 Exhibit 46, I don't have a problem with that. I'm not --

25 JUDGE WOODRUFF: Let's do that.

1 MR. HACK: Let's do that. We would --

2 JUDGE WOODRUFF: This is Exhibit 46, and

3 this is the Travis Allen video?

4 MR. MICHEEL: Edited video.

5 MR. FRANSON: Your Honor, I think that

6 needs to be distinguished that it is not the complete

7 video.

8 JUDGE WOODRUFF: I'll put it down as edited

9 video. It's a copy of what was presented live in the

10 hearing last week?

11 MR. HACK: Correct. Correct.

12 JUDGE WOODRUFF: And that has been offered

13 as Exhibit 46. Are there any objections to its receipt?

14 MR. MICHEEL: I have no objection to its

15 receipt, based on our abilities to provide the entire

16 video.

17 JUDGE WOODRUFF: Exhibit 46 will be

18 received into evidence.

19 (EXHIBIT NO. 46 WAS MARKED AND RECEIVED

20 INTO EVIDENCE.)

21 MR. PAULSON: My records show that he

22 reserved 217 to put the whole video in.

23 JUDGE WOODRUFF: Yes, that's what my

24 records show also.

25 MR. PAULSON: Okay.

1 JUDGE WOODRUFF: All right. Anything else
2 then before we adjourn for the day?

3 MR. FRANSON: Your Honor, just a reminder
4 at the very end, whenever that is, presumably sometime on
5 Friday, you might want to adjourn, and then have a time
6 for cleanup of any exhibits or any testimony or anything
7 that we want.

8 JUDGE WOODRUFF: We'll certainly do that.
9 And we may also try to schedule some time on Friday for
10 Commissioners to ask questions about the Nonunanimous
11 Stipulation & Agreement.

12 With that, then, we will adjourn until 8:30
13 tomorrow morning.

14 WHEREUPON, the hearing of this case was
15 recessed until July 1, 2004.

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1	I N D E X		
2	LOBBYING/LEGISLATIVE COSTS		
3	Opening Statement by Mr. Swearengen		1924
	Opening Statement by Mr. Franson		1929
4	Opening Statement by Mr. Micheel		1932
5	MGE'S EVIDENCE:		
6	MIKE NOACK		
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7	Cross-Examination by Mr. Micheel		1935
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8	Redirect Examination by Mr. Swearengen		1949
9	STAFF'S EVIDENCE:		
10	CHUCK HYNEMAN		
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11	Questions by Commissioner Appling		1957
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1	EXHIBITS INDEX		
2		MARKED	RECEIVED
3	EXHIBIT NO. 46		
4	Travis Allen partial video	1978	1978
5	EXHIBIT NO. 205		
6	Rebuttal Testimony of Kimberly Bolin		1952
7	EXHIBIT NO. 816		
8	Direct Testimony of Chuck Hyneman		1953
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10	Surrebuttal Testimony of Chuck Hyneman		1953
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