

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Hearing
8 June 24, 2004
9 Jefferson City, Missouri
10 Volume 13
11
12 In the Matter of Missouri)
13 Gas Energy's Tariffs to)
14 Implement a General Rate) No. GR-2004-0209
15 Increase for Natural)
16 Gas Service)
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18 MORRIS L. WOODRUFF, Presiding,
19 SENIOR REGULATORY LAW JUDGE.
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21 LINWARD "LIN" APPLING,
22 COMMISSIONER.
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1 PROCEEDINGS

2 JUDGE WOODRUFF: Let's come to
3 order, please. Welcome back for day four of Case
4 No. GR-2004-0209. We finished Mr. Oligschlaeger
5 last night, and I guess we're ready to move on to
6 the next group of issues which is policy and
7 customer service rate of return. And we'll start
8 with mini openings on that.

9 But just a minute, I want to bring
10 up something else. There was a motion filed
11 yesterday to file supplemental rebuttal testimony
12 concerning depreciation that was filed by MGE.
13 Have the parties had a chance to look at that?

14 MR. FRANSON: No, Your Honor. I
15 also at this time would ask that you defer ruling
16 on that at this point, and I cannot go into any
17 great detail on why I'm asking that.

18 JUDGE WOODRUFF: That's all right.
19 When is depreciation coming up, next week
20 sometime?

21 MR. HACK: Monday or Tuesday of next
22 week.

23 JUDGE WOODRUFF: All right. We'll
24 defer ruling on it until closer to that time,
25 then. All right, then.

1 Let's begin with the mini openings.

2 And Mr. Hack.

3 MR. HACK: Good morning. MGE will
4 be offering the testimony of John Quain, Jim
5 Oglesby, Carl Ricketts, and Mike Noack on this
6 bundling of issues which deal with broad policy,
7 customer service, and MGE's request for management
8 efficiency adjustment to its overall rate of
9 return.

10 Mr. Quain spent eight and a half
11 years as a Commissioner for the Pennsylvania
12 Public Utilities Commission, and more than six of
13 those years as chair.

14 Mr. Quain is here because MGE
15 thought it would be helpful to the Commission to
16 be able to talk to someone on the record in this
17 case who has on numerous occasions had an
18 opportunity to make decisions similar to the one
19 the Commission will be making in this case.

20 Mr. Quain discusses some of the
21 policy and legal considerations attendant to these
22 types of decisions, and I would encourage the
23 Commission and the Law Judge to make use of Mr.
24 Quain as a resource.

25 Mr. Oglesby, MGE's Chief Operating

1 Officer, has offered testimony about his
2 philosophy. In a nutshell, he identifies three
3 primary constituencies: customers, employees, and
4 shareholders.

5 Mr. Oglesby goes on to explain in
6 his testimony that MGE's operating philosophy
7 seeks to appropriately balance the interests of
8 these three core constituencies.

9 Mr. Oglesby also identifies in his
10 prepared testimony areas of the regulatory rate
11 making process the Company believes to have
12 presented significant challenges in the past in
13 terms of MGE being able to achieve or attain its
14 financial objective of actually earning its
15 authorized -- commission authorized rate of
16 return.

17 In offering this kind of analysis,
18 MGE is in no way trying to assign blame, but is
19 instead attempting to identify in a candid and
20 frank way areas of the regulatory rate making
21 process that we believe deserve a fresh look.

22 And while this kind of analysis and
23 dialogue can be at times challenging and even
24 uncomfortable, we firmly believe that it is
25 required for the process to evolve and adequately

1 address changing circumstances.

2 Mr. Ricketts presents information
3 concerning customer service performance levels and
4 initiatives.

5 Mr. Noack presents statistical
6 information concerning historical earnings
7 relative to authorized earnings levels by the
8 Commission, and comparing annual operating and
9 maintenance costs per customer among MGE and peer
10 companies in the state.

11 In the end, the evidence will show
12 that MGE provides high quality service in a very
13 cost effective fashion. This evidence
14 demonstrates that MGE management is highly
15 efficient, justifying above expected compensation
16 for MGE as a result of this case. Thank you.

17 JUDGE WOODRUFF: Thank you.

18 MR. FRANSON: Thank you, Your Honor.
19 Your Honor, this part of the case is denoted
20 policy and customer service and rate of return
21 adder. Mr. Hack mentioned the fresh look. This
22 Commission should always be taking a fresh look at
23 issues.

24 In this section, they're presenting
25 a policy expert, or that's how they're portraying

1 him. Make no mistake, Mr. Quain does have very
2 impressive credential; however, Mr. Quain is not a
3 commissioner in this case. Mr. Quain is an expert
4 witness for the Company.

5 He is a witness who comes in and
6 says you should decide things in favor of MGE
7 across the board. No matter how you disguise it,
8 no matter what you say, no matter what title you
9 give it, he is an MGE witness.

10 And when you look at his testimony,
11 one of the primary things there is, well, you
12 should be concerned because the Regulatory
13 Research Associate average, and it is just that,
14 an average, that means there's a lot above it and
15 a lot below it, you're just way too low. Staff
16 and OPC are too low.

17 No mention whatsoever of the fact
18 that that average, if that's what we use, MGE's
19 expert witness, Mr. Dunn, is way too high as has
20 been shown in the record. He used every
21 opportunity to just ratchet up his ROE
22 recommendation.

23 And then there is this management
24 efficiency. What is fundamentally missing from
25 MGE's case in this regard, and what is responded

1 to by Ms. Bernsen and Mr. Oligschlaeger later, is,
2 first of all, it's really inappropriate to use
3 this if there is, in fact, management efficiency.

4 And Staff is saying -- simply saying
5 we're low cost because we do this rather
6 questionable O and M analysis and we're the
7 lowest. That by itself doesn't show much.

8 And Judge, I guess the most
9 troubling aspect here in all of this, you need to
10 remember, MGE was in -- in the last rate case,
11 rates took effect in August of 2001. MGE agreed
12 to those rates. MGE was a signatory in a
13 unanimous stipulation and agreement. MGE had
14 those rates in effect.

15 If MGE was so concerned about
16 things, why weren't they in here with the new rate
17 case? Why aren't they in here with good evidence?
18 They want this adder.

19 Where's the evidence of management
20 efficiency? It's simply lacking. And the problem
21 is the appropriateness of this adder as some kind
22 of reward for management efficiency.

23 First and foremost, management doing
24 its job, even if they're especially good at it, we
25 don't have any evidence of that, but let's assume

1 that the evidence would suggest that, the reward
2 is a proper reward to reward shareholders?

3 Staff would suggest that is not
4 necessarily appropriate, but it's certainly
5 something the Commission should think about
6 because really what we're doing here is setting an
7 ROR at whatever number.

8 What they want is above and beyond
9 that. They want 25 additional basis points
10 because they claim they have management
11 efficiency. Staff would suggest that is simply
12 not an appropriate way to do it here.

13 And Judge, make no mistake, Mr.
14 Oglesby's testimony blames this Commission and
15 Staff for any woes. Judge, if they want a fresh
16 look, then let them come in with a fresh attitude.
17 Let them come in and say this is what we're doing,
18 we're doing these things better, and we want a
19 fresh look.

20 If that's what they're doing, then
21 let's start that process right here, right now.
22 Thank you, Judge.

23 JUDGE WOODRUFF: Thank you. Public
24 Counsel?

25 MR. MICHEEL: May it please the

1 Commission. This issue's about \$2 million, and
2 MGE, the evidence will indicate, wants to increase
3 customer rates \$2 million for their alleged
4 management efficiency and good customer service.

5 First of all, I would suggest to the
6 Commission that the customers have already spoken,
7 and it will be entered into evidence at the public
8 hearings through various e-mails that they sent to
9 the company, e-mails that they sent to our office,
10 letters that they sent to our office, that this
11 proposed increase is outrageously too high.

12 Secondly, the evidence will show
13 that the measures that MGE touts to allegedly
14 provide them with a basis for the management
15 efficiency just don't hold true. Specifically
16 they tout their average speed of answer and their
17 call rate.

18 The standards, the evidence will
19 show, that the company have set are below industry
20 average standards. Certainly this Commission
21 should not reward management efficiency for
22 achieving standards that are below the industry
23 average.

24 The Company also raises the issue of
25 O and M expenses, and there will be very good

1 evidence as to why the O and M expenses are the
2 inappropriate thing to do.

3 And if the Commission is going to
4 base that determination on O and M expenses, I
5 think the Commission needs to remember that every
6 other LDC -- the flip side of MGE's argument is
7 that every other LDC in this state vis-a-vis MGE
8 is providing inefficient management.

9 And I just don't think necessarily
10 that the evidence is going to show that the O and
11 M costs are comparable.

12 At the end of the day, after hearing
13 all the evidence based on all the factors that you
14 hear in this case, I believe that the Commission
15 will come to the conclusion that it's wholly
16 inappropriate to increase rates \$2 million for
17 this issue.

18 JUDGE WOODRUFF: Thank you. Midwest
19 Gas and Jackson County are not here. Federal
20 Agencies wish to make an opening?

21 MR. PAULSON: Yeah, I think I will,
22 Your Honor. Briefly.

23 JUDGE WOODRUFF: Haven't heard much
24 from you so far.

25 MR. PAULSON: Frankly, I'm not real

1 familiar with this issue, but we're a significant
2 customer. I guess the only thing I would suggest
3 is, in what I heard, it sounds to me a little bit
4 like this might almost be a policy decision
5 instead of a rate making decision.

6 And if it's a policy decision, it
7 seems to me that if -- if the Commission has never
8 awarded efficiency before, it seems to me that
9 might be something that's the subject of a rule
10 making or a policy, so that, as the Public Counsel
11 indicated, all the natural gas distribution
12 companies in the State of Missouri would have an
13 opportunity to take advantage of this, not just
14 one. Thank you.

15 JUDGE WOODRUFF: Thank you. City of
16 Kansas City and -- Kansas City and Joplin are not
17 here. That leaves the first witnesses --

18 MR. FRANSON: Your Honor, before you
19 do, I might mention on at least one witness, Mr.
20 Ricketts, we are going to have some HC testimony,
21 and I haven't looked through all the rest of them
22 in the last few minutes to remember, it's just
23 that issue has not come up and we need to be aware
24 of it.

25 JUDGE WOODRUFF: All right.

1 Certainly. All right. I believe the first
2 witness on my list is Mr. Noack.

3 MR. HACK: MGE calls Michael Noack.

4 JUDGE WOODRUFF: If you would please
5 raise your right hand?

6 (Witness sworn.)

7 JUDGE WOODRUFF: You may be seated,
8 and you may inquire.

9 MICHAEL NOACK, testified as follows:

10 DIRECT EXAMINATION BY MR. HACK:

11 Q State your name for the record,
12 please.

13 A It's Michael Noack, N-o-a-c-k.

14 Q Mr. Noack, did you cause to be filed
15 in this proceeding certain direct testimony,
16 updated direct testimony, corrected rebuttal
17 testimony, and surrebuttal testimony, that have
18 been marked respectively for identification
19 purposes as Exhibits 8, 9, 10, and 11?

20 A Yes, I did.

21 Q Do you have any corrections or
22 changes to any of those testimonies at this time?

23 A No, I do not.

24 Q If I were to ask you today the
25 questions that are posed in those testimonies,

1 would your answers be substantially the same?

2 A Yes, they would.

3 Q And are those answers true, correct,
4 and accurate to the best of your information,
5 knowledge, and belief?

6 A Yes, they are.

7 MR. HACK: With that, MGE would move
8 the admission of Exhibits 8, 9, 10, and 11, and
9 tender Mr. Noack for cross.

10 JUDGE WOODRUFF: And I believe Mr.
11 Noack will be on the stand several more times in
12 the process?

13 MR. HACK: That's correct.

14 JUDGE WOODRUFF: If somebody has an
15 objection now, I'll hear it --

16 MR. FRANSON: Your Honor, I have no
17 particular objection to Mr. Noack's testimony, but
18 I am a little confused because I show he did
19 direct, updated direct, rebuttal, corrected
20 rebuttal, and surrebuttal.

21 And I have not heard that he's
22 moving the re -- is the rebuttal in Exhibit 10,
23 which one that is? Because it would seem that
24 there should be another exhibit if he's going to
25 put it all in. Again, I'm not objecting, I'm just

1 trying to figure out which one we're putting down.

2 JUDGE WOODRUFF: I understand.

3 MR. HACK: The corrected rebuttal
4 encompasses all of the rebuttal, so there is no
5 need to offer the rebuttal.

6 MR. FRANSON: So on this list when
7 you say No. 10, Noack rebuttal, you're really
8 referring to the Noack corrected rebuttal?

9 MR. HACK: That is correct.

10 MR. FRANSON: Okay. Thank you, Your
11 Honor.

12 JUDGE WOODRUFF: Okay. As I
13 indicated then, I'll defer making any ruling on
14 the admission of those until the last time Mr.
15 Noack's on the stand.

16 MR. HACK: Very well.

17 JUDGE WOODRUFF: All right? And for
18 cross examination, then, Kansas City and Joplin
19 are not here. Federal Agencies?

20 MR. PAULSON: No questions, Your
21 Honor.

22 JUDGE WOODRUFF: Jackson County and
23 Midwest Gas are not here, so we'll go to Public
24 Counsel.

25 MR. MICHEEL: No questions on this

1 issue.

2 JUDGE WOODRUFF: All right. Staff?

3 MR. FRANSON: Just a moment, Your
4 Honor, I have a few. Thank you, Your Honor, may I
5 proceed?

6 JUDGE WOODRUFF: You may.

7 CROSS EXAMINATION BY MR. FRANSON:

8 Q Good morning, Mr. Noack.

9 A Good morning, Mr. Franson.

10 Q Okay. Mr. Noack, do you have your
11 surrebuttal testimony?

12 A Yes, sir, I do.

13 Q Okay. Could you turn to page 14,
14 please?

15 A I am there.

16 Q Okay. Let me get there. Okay.
17 Page 14. Isn't it true that you make the point
18 that MGE has failed to -- on its authorized
19 return, even in the year immediately following a
20 rate increase?

21 A That's correct.

22 Q Okay. When MGE receives a rate
23 increase, do you receive the entire amount of the
24 increase of the first month that rates go into
25 effect?

1 A No, we don't get the entire increase
2 in the first month, no.

3 Q Is it fair to say you only get
4 one-twelfth of the increase?

5 A It's not really one-twelfth. It
6 depends. If the increase goes in during a heating
7 season, we're going to get more than one-twelfth
8 at that time. It's depending what time of year it
9 is.

10 Q But whatever that percentage is of
11 an increase, you don't get it all in that first
12 month?

13 A It's kind of prorated, yes,
14 absolutely.

15 Q Would you agree it takes 12 full
16 months for MGE to receive the full amount of the
17 Commission's ordered rate increase, assuming
18 normal weather?

19 A Absolutely.

20 Q Okay. Okay. On pages 16 and 17 of
21 your surrebuttal -- actually, I'm directing your
22 attention to page 16, line 13 and going through
23 the end of your testimony at page 17, line 7. If
24 you could review that and tell me when you have
25 done that?

1 A I'm -- I'm there. I've looked at
2 it.

3 Q Okay. You state that you expect
4 that Atmos has joint common costs that it would
5 recover that are not shown on its Form 2, correct?

6 A Yes, that's what's stated there.

7 Q Do you have any direct knowledge of
8 this?

9 A I don't, I don't have any direct
10 knowledge of what the exact corporate costs for
11 Atmos are, no.

12 Q Okay. What is the basis of your
13 statement on pages 16 and 17 of your surrebuttal
14 regarding Atmos in Court Form 2?

15 A Basically it's looking at our
16 expenses which amounted to approximately \$14 a
17 customer that was in our last rate case, the \$6.9
18 million of corporate costs, and understanding that
19 headquarters for Atmos are outside of the State of
20 Missouri.

21 The gas supply department,
22 regulatory department, I believe everything, most
23 of the major departments are outside of the State
24 of Missouri. And assuming that they're operating
25 similar to us, they're going to be allocating some

1 of those costs to their different properties.

2 Q Okay. Fair to say you didn't
3 contact Atmos and get this specific information?

4 A I did not.

5 Q And you didn't review any Form 2s
6 regarding Atmos?

7 A No, I did not.

8 MR. FRANSON: Thank you. No further
9 questions, Your Honor.

10 JUDGE WOODRUFF: All right. Thank
11 you. And I have no questions from the bench, so
12 there's no need for recross. Is there any
13 redirect?

14 MR. HACK: No, Your Honor.

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

17 THE WITNESS: Thank you.

18 JUDGE WOODRUFF: Would you call your
19 next witness?

20 MR. HACK: MGE calls John Quain to
21 the stand.

22 JUDGE WOODRUFF: Morning, sir.
23 Please raise your right hand.

24 (Witness sworn.)

25 JUDGE WOODRUFF: You may be seated.

1 Mr. Hack, you may inquire.

2 JOHN M. QUAIN, testified as follows:

3 DIRECT EXAMINATION BY MR. HACK:

4 Q State your name for the record,
5 please.

6 A My name is John, M as in Michael,
7 Quain, Q-u-a-i-n.

8 Q Mr. Quain, did you cause to be
9 prepared and submitted in this proceeding certain
10 direct and surrebuttal testimony that have been
11 marked for identification purposes as Exhibits 6
12 and 7, respectively?

13 A Yes, sir.

14 Q Do you have any changes or
15 corrections to either of those testimonies at this
16 time?

17 A There are no changes or corrections
18 to the direct testimony. There is one small
19 correction to the surrebuttal testimony on page 6,
20 line 18. I reference a quote of Mr. Oligschlaeger
21 and incorrectly identified as being from his
22 surrebuttal rather than his rebuttal. That is the
23 only change.

24 MR. HACK: Judge, may I mark that on
25 the exhibit?

1 JUDGE WOODRUFF: Yes, if you would
2 repeat it for me?

3 MR. FRANSON: And could you repeat
4 it please, also?

5 THE WITNESS: Page 6 line 19 -- I'm
6 sorry, line 18 of the surrebuttal, my surrebuttal?
7 The quote referenced from Mr. Oligschlaeger's
8 testimony is cited incorrectly as being from his
9 surrebuttal. It is, in fact, from his rebuttal.

10 MR. FRANSON: Thank you.

11 Q (By Mr. Hack) Subject to that
12 correction, if I were to ask you the questions
13 posed in Exhibits 6 and 7 today, would your
14 answers be substantially the same?

15 A Yes, sir.

16 Q And are those answers true and
17 correct to the best of your information,
18 knowledge, and belief?

19 A Yes, they are.

20 MR. HACK: MGE moves the admission
21 of Exhibits 6 and 7, and tenders Mr. Quain for
22 cross examination.

23 JUDGE WOODRUFF: Is this the only
24 time Mr. Quain will be on the stand?

25 MR. HACK: Yes.

1 JUDGE WOODRUFF: Thank you.
2 Exhibits 6 and 7 have been offered into evidence.
3 Any objection to their receipt? Hearing none,
4 they will be received into evidence.

5 And for cross examination, again,
6 Kansas City and Joplin are not here. Federal
7 Agencies?

8 MR. PAULSON: No questions, sir.

9 JUDGE WOODRUFF: Jackson County and
10 Midwest Gas are not here. Public Counsel?

11 MR. MICHEEL: Yes, Your Honor, I
12 have some questions of this witness.

13 CROSS EXAMINATION BY MR. MICHEEL:

14 Q Mr. Quain, is it correct that you're
15 being paid \$320 per hour by Missouri Gas Energy
16 for your work in this case?

17 A For my time in this case, that's
18 correct.

19 Q And how many hours have you billed
20 to this matter to date?

21 A I have -- I have not checked.

22 Q Can you give me a ballpark?

23 A This is my second trip to Jefferson
24 City, I was here for depositions, no, sir, I
25 really couldn't. I'd have to go back and check.

1 I just -- we've put a fair amount of time into
2 this proceeding. I think the issues are
3 important, I think the testimony being offered is
4 important, but I have not totaled the hours.

5 Q Have you bill -- have you sent bills
6 to Missouri Gas Energy for your time?

7 A I bill on a monthly basis, yes.

8 Q Is it correct that your job in this
9 proceeding is to convince the Commission that the
10 application of Hope and Bluefield is an important
11 part of the process as well as the promotion of
12 public policy objectives?

13 A Yes, sir.

14 Q Is it correct that the Hope and
15 Bluefield case are the seminal cases in the United
16 States and from the United States Supreme Court
17 that relate to rate of return?

18 A Yes, rate of return and confiscation
19 of property and those kinds of items, yes, sir,
20 they're seminal cases.

21 Q Would you agree with me that this
22 Commission should -- or is well aware of its
23 obligations to comply with the law and to promote
24 the public policy of the State of Missouri?

25 A I would agree that this Commission

1 is well aware of its obligations under the law,
2 but I would add that I think the application of
3 the Hope and Bluefield standards and public policy
4 present difficult challenges for all of us who sit
5 or have sat in those chairs.

6 MR. MICHEEL: Your Honor, that was a
7 yes or no. So after yes, I ask that that answer
8 be stricken.

9 JUDGE WOODRUFF: Sustained.

10 Q (By Mr. Micheel) Would you agree
11 with me that return on equity granted to an
12 individual company by a regulatory body is very
13 case specific?

14 A Repeat the question, please?

15 Q Would you agree with me that the
16 return on equity granted to an individual company
17 by a regulatory body is very case specific?

18 A It can -- no, I would not agree. I
19 agree that the evidence of record is case
20 specific, but you cannot set rate of return in a
21 vacuum.

22 Q Would you agree with me it is only
23 appropriate for the regulator to use the record
24 evidence plus applicable law and public policy
25 objectives to decide a matter before it?

1 A No, I would not. I would agree that
2 you have to look at the record evidence, the
3 applicable law, public policy standards, and
4 informed judgment to make that decision.

5 Q Do you recall when I took your
6 deposition, sir?

7 A I do.

8 Q Do you recall this question
9 appearing on page 99 of your deposition, starting
10 at line 12: Is it appropriate as a regulator to
11 decide the return on equity or any other matter
12 using anything but the record evidence?

13 Answer: The record evidence plus
14 applicable law and public policy objectives.

15 Question: Other than that?

16 Answer: No.

17 A And -- and I think I've answered it
18 consistent with that -- with that question and
19 answer. My answer here today.

20 Q Is it correct that the utilities'
21 rate of return should be comparable to those of
22 similarly situated companies?

23 A That is only part of the standard in
24 Hope and Bluefield.

25 Q Do you have your direct testimony

1 with you, sir?

2 A I do.

3 Q And is that what you state on page
4 4, line 6 through 8 of that direct testimony?

5 A I also have in my testimony the
6 Bluefield standard which talks about similarly
7 situated companies of comparable risk in the same
8 region of the country.

9 Q Let me ask you this. Is it correct
10 that Hope and Bluefield relates to corresponding
11 risks in the general area of the country, in your
12 opinion?

13 A Repeat the question, please?

14 Q Hope and Bluefield standard deals
15 with corresponding risks of companies in the
16 general area of the country, in your opinion?

17 A Hope and Bluefield stand for many
18 things and that's certainly seminal amongst them,
19 yes.

20 Q Would you agree with me that rate of
21 return witnesses are what you relied upon when you
22 were a Commissioner to make your decisions?

23 A In -- in terms of looking at the
24 record evidence, that is certainly part of the
25 analysis that I went through as a Commissioner,

1 yes. Part of the analysis.

2 Q Do you recall when I took your
3 deposition?

4 A Yes, I do.

5 Q Do you recall when you were asked
6 this question, Question: Well, when you were a
7 Commissioner, how did you do that?

8 Answer: I looked at the rate of
9 return witnesses' analysis and looked at the cross
10 examination against that testimony and determined
11 who I thought had done the most appropriate model
12 and who had the most effective rationale to back
13 up the recommendation.

14 Question: So you just looked within
15 the record?

16 Answer: Of course.

17 A Yeah, that's correct, but I don't
18 think that was the question you just asked me a
19 minute ago. You just -- did I look at the
20 witnesses, and I think the answer that you just
21 quoted from my deposition clearly says I looked at
22 more than that.

23 MR. MICHEEL: Your Honor, I need to
24 get an exhibit marked. I think it will be Exhibit
25 No. --

1 JUDGE WOODRUFF: 44, I believe.

2 MR. MICHEEL: No, we're in the 200s,
3 Your Honor.

4 JUDGE WOODRUFF: 218 -- or excuse
5 me, 220.

6 MR. MICHEEL: 220 sounds right.

7 (Exhibit No. 220 marked for
8 identification.)

9 Q (By Mr. Micheel) Mr. Quain, I'm
10 handing you what's been marked as Exhibit 220, and
11 I'll read it to you, but it is your data request
12 response to Public Counsel Data Request 5006, and
13 let me read that to you, sir.

14 The question that was asked in Data
15 Request 5006, which has been marked as Exhibit
16 220, was, how does Witness Quain define a, quote,
17 "similarly situated," close quote, company as he
18 uses the term at page 4 of his direct testimony?

19 Answer: Mr. Quain provided the
20 following response: My testimony does not purport
21 to define a similarly situated company. I use the
22 term similarly situated company in reference to
23 controlling legal standard established by the
24 United States Supreme Court in the Hope Natural
25 Gas and Bluefield cases.

1 Was that your answer, sir?

2 A Yes, sir, it was.

3 Q And is this a data request that was
4 propounded upon you by the Office of Public
5 Counsel, sir?

6 A Yes, sir, it was.

7 MR. MICHEEL: I would move the
8 admission, Your Honor, of Exhibit 220.

9 JUDGE WOODRUFF: All right. 220 has
10 been offered into evidence. Are there any
11 objections to its receipt?

12 MR. HACK: None.

13 JUDGE WOODRUFF: All right. It will
14 be received.

15 Q (By Mr. Micheel) So it's correct,
16 sir, that your testimony does not purport to
17 define a similarly situated company, is that
18 correct?

19 A My testimony does not purport to
20 make an analysis of what constitutes similarly
21 situated companies. My testimony purports to
22 point out that that is part of the standard set
23 forth in Hope and Bluefield and is part of the
24 analysis that this Commission must go through in
25 making its ultimate determination.

1 MR. MICHEEL: I need to get another
2 exhibit marked, Your Honor. It would be Exhibit
3 211 -- or 221, and it's MGE's response to Public
4 Counsel Data Request 5004.

5 (Exhibit 221 marked for
6 identification.)

7 Q (By Mr. Micheel) This is DR 5004,
8 Mr. Quain.

9 A Okay.

10 Q And I'm just going to read a partial
11 response to this data request just to speed things
12 along, Mr. Quain, if that's okay.

13 A Very well.

14 Q The question asked was, specifically
15 list the utility companies Witness Quain believes
16 to be similarly situated utilities to Southern
17 Union Company, d/b/a Missouri Gas Energy.

18 Please explain in detail why Witness
19 Quain believes the utilities stated are similarly
20 situated to Southern Union Company, d/b/a Missouri
21 Gas Energy.

22 And a part of your answer was, sir,
23 Mr. Quain provided the following response: The
24 purpose of my testimony is not to compare MGE to
25 similarly situated utilities, nor even identify

1 any such utilities.

2 Do you recall that data request,
3 sir?

4 A Yes, sir, I do.

5 Q And there's more of the answer
6 there, but just does that refresh your
7 recollection?

8 A It does.

9 Q And is that -- was that your answer
10 to the data request, sir?

11 A Yes, because it doesn't speak to the
12 purpose of my testimony. There is -- there are
13 plenty of witnesses in this case that deal with
14 that issue. The purpose of my testimony is to
15 deal with it from a different perspective.

16 MR. MICHEEL: I would move for the
17 admission, Your Honor, of Exhibit 221.

18 JUDGE WOODRUFF: Exhibit 221 has
19 been offered into evidence. Are there any
20 objections to its receipt?

21 MR. HACK: None.

22 JUDGE WOODRUFF: Hearing none, it
23 will be received.

24 Q (By Mr. Micheel) And it's correct
25 that your testimony is not to compare MGE to

1 similarly situated utilities, nor even to identify
2 any such utilities; is that correct?

3 A That is not the purpose of my
4 testimony. The purpose of my testimony is very
5 different than that and I would like to explain.
6 If the Judge would permit me.

7 MR. MICHEEL: Your Honor, he's
8 answered my question. I'd like to move this
9 along. We're already behind schedule.

10 JUDGE WOODRUFF: Certainly. You're
11 asking the questions.

12 MR. MICHEEL: There's no reason.

13 JUDGE WOODRUFF: I agree.

14 MR. MICHEEL: I need to get another
15 exhibit marked, Your Honor, and this will be
16 Exhibit --

17 JUDGE WOODRUFF: 222.

18 MR. MICHEEL: 222. Takes me back,
19 Room 222, maybe?

20 JUDGE WOODRUFF: That dates you, Mr.
21 Micheel.

22 MR. MICHEEL: It is MGE's response
23 to Public Counsel Data Request 5003.

24 (Exhibit 222 marked for
25 identification.)

1 Q (By Mr. Micheel) Mr. Quain, do you
2 have in front of you what's been marked for
3 purposes of identification as Exhibit 222?

4 A Yes, sir.

5 Q And the question is, does Witness
6 Quain believe that a principal goal of the rate
7 making process to enhance a utility's
8 creditworthiness? If yes, please provide any and
9 all information Witness Quain relied on to arrive
10 at this conclusion.

11 And your answer is, no, a principal
12 goal of the rate making process is not to enhance
13 a utility's creditworthiness. Rate making's
14 principal goal is to balance the interests of a
15 regulated utility and its shareholders with those
16 of the consuming public, and to provide the
17 utility with a fair rate of return.

18 Indeed, rate making could never
19 ensure the enhancement of a utility's
20 creditworthiness which, like that of any business,
21 depends upon countless factors and events. Even
22 so, an important objective in rate making is not
23 to degrade a utility's creditworthiness, impairing
24 its ability to attract investment capital.

25 Was that your answer, sir?

1 A Yes, it was.

2 Q And is that true and correct to the
3 best of your ability, sir?

4 A I believe it's consistent with the
5 statement I made on my direct testimony.

6 MR. MICHEEL: With that, Your Honor,
7 I would move the admission of Exhibit 222.

8 JUDGE WOODRUFF: Are there any
9 objections to its receipt?

10 MR. HACK: No.

11 JUDGE WOODRUFF: It will be received
12 into evidence.

13 Q (By Mr. Micheel) And you still hold
14 that belief; is that not true? Correct?

15 A My belief is, sir, that utilities
16 commission's obligation is to balance the interest
17 of shareholders and rate payers. It is not a
18 guarantee to the utility that they will earn the
19 return simply to provide a fair return and a
20 reasonable opportunity to earn that return.

21 Q Is it correct that rate of -- the
22 rate of return decision in a rate case requires
23 the exercise of judgment based upon an evaluation
24 of particular facts presented in each proceeding?

25 A Yes, as well as application of the

1 law and public policy.

2 Q Is it correct there's no one precise
3 answer to the question as to what constitutes the
4 proper rate of return for a utility?

5 A There is no one precise answer,
6 which makes the job extremely difficult; thus, the
7 purpose of my testimony.

8 Q Is it correct there's no one precise
9 answer as to what constitutes the appropriate
10 return on equity for a utility?

11 A My response would be the same to
12 that question as to the previous one.

13 Q Would you agree with me that you are
14 not an expert in determining the cost of equity
15 capital for a public utility and do not hold
16 yourself out as one?

17 A No, I hold myself out as a public
18 policy witness having had the experience of
19 sitting on the Commission and 21 years in rate
20 regulation.

21 MR. MICHEEL: Your Honor, I ask that
22 that answer be stricken and that he be directed to
23 answer my question, which is, does he hold himself
24 out as an expert in determining the cost of
25 capital for a public utility. So I ask that he be

1 directed to answer that question.

2 JUDGE WOODRUFF: I think he answered
3 no and added some embellishment; we'll strike the
4 embellishment.

5 Q (By Mr. Micheel) Is it correct that
6 you became acquainted with Mr. Oglesby because MGE
7 was interested in developing better relationships
8 with the Missouri Public Service Commission?

9 A That was my assignment as it related
10 to MGE, yes, sir.

11 Q Is it correct that the specific
12 advice you gave Mr. Oglesby was to be truthful and
13 honest?

14 A That was part of the advice I gave
15 him. Certainly that was advice that I gave him.

16 Q And it's correct more specific
17 advice you gave him was that he has -- that his
18 reputation and credibility is absolutely paramount
19 before the Commission?

20 A Again, that was part of the --
21 you're going back to my deposition, and let's be
22 fair about what we talked about there.

23 I said paramount with any utility --
24 dealing with a utility commission has to be
25 paramount, and your relationship has to be a

1 reputation for truth and honesty in developing
2 good working relationships with the regulatory
3 community.

4 Q And it's correct if your deposition
5 indicated that if you say you're going to do
6 something, then you better do it. Correct?

7 A And I also said that if you're not
8 going to do something, make sure that you indicate
9 that you're unwilling to do it as well.

10 Q Is it correct that when you were a
11 Commissioner, you expected every utility to keep
12 their word on what they said they were going to
13 do?

14 A If they told me they were going to
15 do something, then I expected them to follow their
16 word, just as I would do mine.

17 MR. MICHEEL: Your Honor, I need to
18 get another exhibit marked. This is going to be
19 Exhibit 223. And this is a decision of the
20 Pennsylvania Public Utility Commission in the case
21 entitled Pennsylvania Public Utility Commission
22 versus National Fuels Gas Distribution
23 Corporation. It appears at 83 Pa PUC 262.

24 (Exhibit 223 marked for
25 identification.)

1 Q (By Mr. Micheel) Mr. Quain, I'm
2 going to hand you a copy of this report and order,
3 and I'm going to read you some items. Let me just
4 give Mr. Hack a different copy.

5 Mr. Quain, is it correct that you
6 were a Public Utility Commissioner in the State of
7 Pennsylvania for a number of years?

8 A Yes, sir, I was.

9 Q And in that capacity, you made
10 decisions as a Commissioner?

11 A Yeah, about 2,000 a year, official
12 decisions.

13 Q And those official decisions were
14 reported in the Pennsylvania PUC reports?

15 A I don't believe all of them were. I
16 think there were selected decisions reported in
17 the public utility reports.

18 Q And let me represent to you and ask
19 your counsel to check, if I have not handed you
20 the document that's been marked as Exhibit 223, a
21 decision that appears in the Pennsylvania public
22 utility reports.

23 MR. HACK: I'm sorry?

24 MR. MICHEEL: Is this a decision
25 that appears in the Pennsylvania public utility

1 reports?

2 MR. HACK: Yes, it does. Would you
3 advise the witness of the year?

4 Q (By Mr. Micheel) December 6, 1994,
5 sir. And I'm looking on page 6 of 53 there, and
6 it indicates Commissioners present, David W.
7 Rolka, R-o-l-k-a; Chairman Joseph Rhodes,
8 R-h-o-d-e-s, Jr.; Vice Chairman John M. Quain,
9 Lisa Crutchfield, and John Hanger, H-a-n-g-e-r.

10 And were you a Commissioner in
11 Pennsylvania in December 6th, 1994, sir?

12 A What you read, sir, was not
13 accurate. It may be what it says there, but
14 that's not the titles that we held at that time.
15 I want to make sure that we're clear on that.

16 Yes, the answer to your question is
17 I was there, but I was not Vice Chairman.

18 MR. MICHEEL: Mr. Hack, I mean,
19 could you confirm with me that on page 6 of 53 of
20 this document that's from LexisNexis, it indicates
21 that Mr. Quain was, indeed, was the Vice Chairman?
22 I'm not going to quibble with him.

23 MR. HACK: The document says what
24 Mr. Micheel says it says. Mr. Quain's --

25 THE WITNESS: I will tell you, sir,

1 I was never Vice Chairman.

2 JUDGE WOODRUFF: Just to clarify in
3 looking at the document, it looks to be
4 misleading. Apparently Dave Rolka was Chairman,
5 Joseph Rhodes was Vice Chairman?

6 THE WITNESS: That's correct, sir.
7 I was a minority Commissioner at the time. I was
8 there seven, eight months at the time.

9 JUDGE WOODRUFF: The document
10 appears to be incorrectly punctuated.

11 MR. MICHEEL: I'm sorry for that. I
12 just read it --

13 THE WITNESS: I understand. I just
14 want to make sure it was correct.

15 Q (By Mr. Micheel) You were a
16 Commissioner at that time?

17 A I was a minority Commissioner at
18 that time, having been appointed the April before
19 -- I was a minority Commissioner at that time,
20 yes.

21 Q If you could, and I don't -- let me
22 -- let me ask, we'll turn to page 26 of 53 of that
23 document, and that's dealing with an issue on
24 weather normalization and the proper years to use.
25 Is that an issue that you had to deal with when

1 you were a Commissioner, sir?

2 A In some cases, yes. But I -- I will
3 be honest with you, I don't have recollection as
4 to which cases.

5 Q Well, let me read into the record
6 from this National Fuels Gas Distribution case,
7 something that is in this decision. It says upon
8 our consideration the positions of the parties, we
9 reject the proposal of NFGD to adopt a ten year
10 period of degree day data for revenue weather
11 normalization.

12 We agree with the OCA and the OTS
13 that the Company has not provided sufficient
14 support for its proposal for us to abandon the
15 recognized standard of 30 years of data.

16 MR. MICHEEL: And let me ask Mr.
17 Hack, did I read that correctly, sir?

18 MR. HACK: Yes.

19 Q (By Mr. Micheel) Does that indicate
20 in the National Fuels Gas Distribution Corporation
21 case, when you were a Commissioner, that
22 Pennsylvania PUC decided to use a 30 year weather
23 time for weather normalization?

24 A To be perfectly honest with you,
25 Counselor, I have zero recollection as to the

1 facts surrounding this. The passage that you read
2 does nothing to refresh my recollection.

3 But it seems that a decision was
4 made based upon the evidence of record in that
5 proceeding, and the conclusion reached that the
6 evidence did not support the change. I just have
7 no recollection. I'm sorry.

8 Q Well, you don't doubt what the order
9 says, do you, sir?

10 A Well, they had Chairman and Vice
11 Chairman wrong. I -- I don't doubt that that's
12 what it says in the order at the time.

13 Q Is it correct that when you were a
14 Commissioner in Pennsylvania, the Commission
15 utilized 30 years of data for weather
16 normalization on this case?

17 A Sir, I don't recall because I'm not
18 here to testify on weather normalization, so I
19 didn't do any preparation with regard to the facts
20 and circumstances surrounding those issues. I'm
21 sorry, I just wasn't aware that we were going to
22 get into this, so I haven't gone back to try to
23 study or analyze these issues.

24 Q Also on page 27 of 53, it indicates
25 that National Fuels had wanted a weather

1 normalization clause?

2 A Say that again, please?

3 Q That National Fuels wanted a weather
4 normalization clause?

5 A I -- the order speaks for itself. I
6 have no independent recollection. I'm sorry.

7 Q On page 34 of 53 of the order, the
8 Commission states, accordingly, we will adopt a
9 recommendation of the ALJ to reject the weather --
10 the WNC, which stands for weather normalization
11 clause, but not his supporting reasoning. The
12 exceptions of the OTS to the extent consistent
13 with the proceeding discussion and denied in all
14 other respects.

15 Does that indicate that the
16 Commission rejected the weather normalization
17 clause?

18 A I'm sorry, you'd have to read it
19 again because it -- it rejected his reasoning and
20 adopted other reasoning, so I'm not exactly sure.
21 Again, I have -- was not prepared to talk about
22 weather normalization. I have no recollection.

23 If I had known, I could have helped
24 you out by looking back at these kinds of things,
25 but I didn't know we were talking about weather

1 normalization.

2 Q Well, are you aware that MGE wants a
3 weather normalization clause in this proceeding,
4 sir?

5 A And that's about all I'm aware of
6 with regard to weather normalization. That's not
7 what I'm here to talk about.

8 Q Let me read you a fuller quote. It
9 says upon our careful consideration of the
10 positions advanced by the parties herein, we will
11 adopt a position advanced by the OTS in its reply
12 exceptions. We agree with the OTS that approval
13 of the WNC would send the wrong message to rate
14 payers regarding conservation and would ultimately
15 discourage customer conservation.

16 Based upon the foregoing discussion,
17 we reject, with prejudice, NFGD's proposal to
18 establish a WNC. Accordingly, we will adopt the
19 recommendation of the ALJ to reject the WNC, but
20 not his supporting reasoning. The exceptions of
21 the OTS to the extent consistent with the
22 proceeding discussion and denied in all other
23 respects. The exceptions of NFGD are denied in
24 their entirety.

25 Does that indicate to you that when

1 you were a Public Service Commissioner, a weather
2 normalization clause was rejected?

3 A I recollect, and again, this is not
4 why I'm here to testify so I'm going strictly on
5 recollection, is that the Pennsylvania Commission
6 had adopted a weather normalization during my
7 tenure.

8 I wish I was aware that we were
9 going to be talking about this, I could be much
10 more helpful. As I said, I voted on about 2,000
11 cases a year. I was there eight and a half years.
12 I don't have specific recollection.

13 I think you are reading accurately
14 from the order, the order speaks for itself, but I
15 don't think it's fair to represent that that was
16 the only time we looked at this issue when I was
17 there. I just don't recollect.

18 And I think it's unfortunate that we
19 weren't able to flag this as an issue when to talk
20 about it. I could have provided you the proper
21 context.

22 MR. MICHEEL: Your Honor, I just ask
23 that it all be stricken. I just asked when he was
24 a Commissioner, whether they voted to reject a
25 normalization in this case.

1 JUDGE WOODRUFF: And he was
2 explaining, I'm going to overrule that objection.

3 MR. MICHEEL: So from now on, the
4 witnesses get to explain?

5 JUDGE WOODRUFF: I've ruled on a
6 specific request.

7 MR. MICHEEL: I need to mark -- I
8 would move the admission of Exhibit 223, Your
9 Honor.

10 JUDGE WOODRUFF: 223 has been
11 offered, are there any objections?

12 MR. FRANSON: None on behalf of
13 Staff, Your Honor.

14 MR. HACK: My only objection is why
15 we need to admit a decision that can be cited in
16 the briefs without being a part of the evidence.

17 JUDGE WOODRUFF: What is the
18 relevance of this?

19 MR. MICHEEL: Well, it indicates
20 that one of their witnesses, when he was a
21 Commissioner setting public policy in the State of
22 Pennsylvania, rejected a weather normalization
23 clause. And so I think it -- it goes to the issue
24 about whether or not weather normalization clauses
25 are good public policy, and it indicates the

1 reasoning for the rejection in this case. So I
2 think it's directly relevant to issues raised in
3 this proceeding.

4 In Missouri, cross examination is
5 not limited pursuant to 536, I believe it's 070,
6 to matters contained only in their testimony.
7 It's matters that are relevant to the proceeding.

8 And the issue of a weather
9 normalization clause and whether or not we should
10 have a weather normalization clause in this
11 proceeding is directly relevant to an issue that
12 MGE has raised, Your Honor.

13 JUDGE WOODRUFF: Mr. Hack?

14 MR. HACK: MGE has made no objection
15 to any of Mr. Micheel's cross examination of this
16 witness. What we have raised for the Judge's
17 attention is what I believe is the accepted
18 process, that precedent be a decisional authority
19 in the Court's, or decisional authority in other
20 jurisdictional administrative proceedings can be
21 cited to in the briefs without being, quote,
22 admitted into the record. I think it's
23 inappropriate as evidence.

24 MR. MICHEEL: Well, yesterday and
25 the first three days, we admitted portions of a

1 Commission decision in the St. Joe Light & Power
2 case into the record in this case. They've been
3 up on the board. You know, I don't know how this
4 is harmful in some way.

5 JUDGE WOODRUFF: Well, it's harmful
6 in that it's adding several hundred pages of
7 documents -- of document to the record which I see
8 very little, if any, relevance. I'm going to
9 overrule the document, it's not admitted into
10 evidence.

11 Q (By Mr. Micheel) Witness Quain, Mr.
12 Quain, is it your belief that the Commission here
13 will not discharge its statutory duties in
14 deciding this case based on the evidence presented
15 and the public policy of the State of Missouri?

16 A No, sir, and I don't believe I've
17 ever even made the slightest reference or
18 inference of that.

19 Q Do you believe that -- that the
20 costs of you presenting testimony in this
21 proceeding should be included in the rate case
22 expense that my clients have to pay in this
23 proceeding?

24 A I am not offering myself as a rate
25 case expense witness. I leave that to other

1 witnesses. That is not my decision.

2 Q My question is, do you believe it
3 would be appropriate to include your costs in rate
4 case expense in this proceeding?

5 A I have made no analysis of what the
6 policy and state of the law in Missouri is with
7 regard to rate case expense recovery. It differs
8 from jurisdiction to jurisdiction. Again, it's
9 not the purpose of my testimony and I am not
10 offering an opinion on that.

11 MR. MICHEEL: Thank you for your
12 time, Mr. Quain.

13 JUDGE WOODRUFF: Thank you. Next
14 would be Staff.

15 MR. FRANSON: Thank you, Your Honor.

16 Your Honor, I believe this is
17 Exhibit No. 848. I am going to offer into the
18 record the deposition of Mr. John Quain, and I
19 will pass that out at this time, Your Honor.

20 Your Honor, Exhibit 848 is the
21 deposition of John Quain taken on May 5th, 2004.
22 I now offer that into evidence.

23 JUDGE WOODRUFF: Let me take a look
24 at it quick here.

25 MR. HACK: Judge?

1 JUDGE WOODRUFF: Yes, Mr. Hack.

2 MR. HACK: We would simply request
3 an explanation of the purpose of offering the
4 entirety of the document. If there are relevant
5 excerpts of the document to the cross examination
6 the Staff would like to explore, certainly that is
7 appropriate. However, simply dumping the document
8 in wholesale would not seem to be the appropriate,
9 efficient procedure.

10 MR. FRANSON: Your Honor, that would
11 be a credible objection if that was the practice
12 followed by MGE. It is not. The testimony --

13 JUDGE WOODRUFF: Well, I don't
14 really care what MGE's practice has been in the
15 past. What is the purpose of putting this entire
16 document in?

17 MR. FRANSON: Your Honor, it is
18 pursuant to Rule 57.07 where I have an absolute
19 right to do it.

20 JUDGE WOODRUFF: To dump information
21 into the record?

22 MR. FRANSON: No, sir, that isn't
23 what it says. It says deposition can be offered
24 by any party for any reason.

25 JUDGE WOODRUFF: Yes, but they still

1 have to be relevant. Can you explain to me the
2 relevance of offering this entire document into
3 the record?

4 MR. FRANSON: Yes, I can, Your
5 Honor. In the briefs there are things in here
6 that I want to be able to cite to, and I cannot do
7 that if this is not in the record. And that is
8 why it is being offered.

9 And it's being offered in its
10 entirety because if it is not, then all of the
11 parties are denied an opportunity to cite it. I
12 have not had the opportunity to go in and say,
13 okay, I want to do this page, this page, and this
14 page. I simply haven't had that opportunity. And
15 I cannot know until we get there what I am going
16 to want to use in here.

17 That is why I am offering the entire
18 thing, and I believe it is appropriate.

19 JUDGE WOODRUFF: Mr. Hack?

20 MR. HACK: Your Honor, the document
21 indicates on its cover that it is -- it was
22 transcribed on May 5th. Today is June 24th.
23 There has certainly been plenty of opportunity to
24 review the document, to make plans from the
25 document, to establish what counsel believes is

1 relevant from the document.

2 Certainly Mr. Micheel was able to do
3 so in his cross examination of Mr. Quain, and we
4 think that's the appropriate procedure.

5 MR. FRANSON: Your Honor, I simply
6 don't agree. First of all, the purposes for which
7 this is being offered have not occurred yet; in
8 that when it is briefing time, if this isn't in
9 evidence, not only Staff, but all the other
10 parties, if they so desire, cannot use it. That
11 is why it is being offered. And I believe it is
12 appropriate to do so.

13 We've already addressed the issue of
14 whether or not the Commission has to read the
15 entire thing; no, it doesn't. This is being
16 offered as part of the record, it is being offered
17 for the availability of it in the record, and
18 Staff will plan to use it in its briefs.

19 And to deny it would simply deny
20 Staff and any other party who wants to cite
21 anything in here that opportunity. It would deny
22 the Commission valuable evidence.

23 JUDGE WOODRUFF: What valuable
24 evidence?

25 MR. FRANSON: Things that are in

1 here, Your Honor.

2 JUDGE WOODRUFF: There might be
3 stuff in there that we don't know yet. Is that
4 what you're telling me?

5 MR. FRANSON: There's quite a bit in
6 there that you don't know. That's right.

7 JUDGE WOODRUFF: Well, it could have
8 been cited in surrebuttal testimony, in Staff's
9 rebuttal testimony. You can cite it, specifics of
10 it at this time in cross examination.

11 MR. FRANSON: I also want to be able
12 to use it in briefs in this case, Your Honor.

13 JUDGE WOODRUFF: Certainly anything
14 that's cited in the rebuttal or surrebuttal or
15 your cross examination can be used in the -- in
16 your briefs. I don't understand why this entire
17 two-inch thick document needs to be added into the
18 record.

19 MR. FRANSON: Well, Your Honor,
20 first of all, we've already got a precedent for
21 this in the case. Other depositions have come in.
22 And if this is denied -- and I'll tell you quite
23 frankly, I have one more, that's the deposition
24 Mr. Oglesby, and that is my last one.

25 To be consistent in this case, all

1 other things aside, they need to come in. Because
2 if this is denied, then -- and the deposition of
3 Mr. Oglesby is denied, then what we have is MGE
4 putting in their depositions. And when they did
5 that, there was no objection on my part because I
6 believed and I still believe the Rules of Civil
7 Procedure specifically allow this.

8 And I, again, move for the admission
9 of Exhibit 848.

10 JUDGE WOODRUFF: All right. I am --
11 I am not convinced it's a good policy to do this
12 and I certainly don't agree that it's required by
13 the rules, but since I've let in other depositions
14 in similar circumstances, I'm going to go ahead
15 and allow it in. Exhibit 848 is admitted into
16 evidence.

17 MR. FRANSON: May I proceed, Your
18 Honor?

19 JUDGE WOODRUFF: You may.

20 CROSS EXAMINATION BY MR. FRANSON:

21 Q Morning, Mr. Quain. My name is
22 Robert Franson, we met once before in a
23 deposition.

24 A I remember it.

25 Q I have a few questions for you this

1 morning. You ready to go?

2 A Yes, sir, I am.

3 Q You don't need a break or anything?

4 A No, I'm fine, Mr. Franson. Thank
5 you.

6 Q Thank you. Now, Mr. Quain, I'm
7 going to direct some attention to your direct
8 testimony. I'm going to read something to you, if
9 that's all right.

10 A It might be helpful, Mr. Franson,
11 for the Judge's purposes to explain why everybody
12 is being so kind to read for me, or I can explain
13 for the Judge's benefit.

14 Q Perhaps that would be best explained
15 by you.

16 THE WITNESS: Your Honor, I -- as we
17 discussed during my deposition, I happen to be
18 legally blind and am unable to read a printed
19 page. Counselors have been, both from the OPC and
20 Staff and others, have been very understanding of
21 that fact and are accommodating me by reading
22 things aloud so that I can digest them, whereas
23 another witness may just simply read it to
24 themselves.

25 And I just didn't want that to go

1 unmentioned so you would be wondering why these
2 gentlemen are being so kind to read things aloud.

3 JUDGE WOODRUFF: I appreciate that.
4 For the record, Mr. Micheel had informed me of
5 that situation beforehand. But I thank you for
6 that.

7 MR. FRANSON: Thank you.

8 Q (By Mr. Franson) Mr. Quain, in your
9 testimony, direct testimony, pages 2 through 3,
10 you state one of the rate making process principal
11 goals should be establishing rates at a sufficient
12 level to attract the capital essential to secure a
13 sound infrastructure. Do you recall stating that?

14 A Yes, sir, I do.

15 Q Have you read the rebuttal testimony
16 of Mr. James Oglesby in this proceeding?

17 A Yes, I have read it. I have not
18 committed it to memory. There was an awful lot of
19 stuff coming in in rebuttal and surrebuttal stage.
20 I think I read it. I don't know that I recall
21 specifically how this ties to this section you
22 just read.

23 Q I'll try and help you out, then.

24 A Okay.

25 Q Would you agree that Mr. Oglesby

1 states in his rebuttal testimony that it would be
2 difficult, if not impossible, for MGE to obtain
3 funding from Southern Union for discretionary --
4 discretionary capital expenditures in Missouri if
5 the Staff or Office of Public Counsel's rate of
6 return recommendations were adopted in this case?

7 A I believe that's what he said, yes.

8 Q Okay. From your perspective as a
9 former state regulator and as public policy
10 witness here today, do you believe it is
11 appropriate for a multi jurisdictional utility to
12 have a policy that it will invest more in those
13 jurisdictions that offer the highest rate of
14 return?

15 A Sir, there are different categories
16 of investments. And I think my testimony was
17 referring to one category of investments, Mr.
18 Oglesby was referring to a different category.
19 Some investments are mandatory in order to make
20 sure that you maintain safe and reliable service.
21 That goes to maintaining infrastructure at an
22 adequate level to ensure safe and reliable
23 service.

24 That is entirely a different
25 category of investment than discretionary

1 investments which go beyond safe and adequate
2 service, but may go more to desirability of
3 efficiency, et cetera. And I believe Mr. Oglesby
4 is referring to that second category of
5 investment, where I was referring to the first.

6 Q Well, let's talk about that second,
7 and that was actually my question. Let's talk
8 about the discretionary investments which you've
9 now explained. Thank you.

10 Do you believe, as a policy witness
11 and as a former state regulator, that it is
12 appropriate for a multi jurisdictional utility,
13 that it have a policy that it will invest more in
14 jurisdiction -- and again, this is the
15 discretionary capital expenditures, that they'll
16 invest more in the jurisdictions that have the
17 highest rates of return?

18 MR. HACK: Objection, Your Honor,
19 form of the question, assumes facts not in
20 evidence. There have been no laying of any
21 foundation to establish any policy in this matter.

22 JUDGE WOODRUFF: Sustained. Could
23 you rephrase your question?

24 MR. FRANSON: Certainly, Your Honor.

25 Q (By Mr. Franson) Now, Mr. Oglesby

1 [sic], and I'm asking this in your capacity as a
2 former state regulator and as a policy witness on
3 behalf of MGE, do you believe that a multi
4 jurisdictional utility should have a policy -- and
5 let me put it this way.

6 Is it a good policy that that
7 utility will invest more discretionary capital in
8 jurisdictions that offer the highest rate of
9 return?

10 A The -- it's a complicated question,
11 Counselor, and let me do my best to answer it as
12 fairly and accurately as I can.

13 The law says that a public utility
14 commission is not a super board of directors of a
15 company. The company retains a large measure of
16 discretion in its operations. Discretion and
17 discretionary investments go hand in hand. That's
18 why getting the return at an adequate level and an
19 opportunity to earn that return is so very
20 important.

21 You cannot force capital into a
22 state, into investment beyond what's mandated by
23 law. But you want to. You want to make sure that
24 discretionary funding, which can be discretionary
25 as to when you spend it, when you spend it or if

1 you spend it, two different kinds of discretionary
2 funding, you want to be able to attract that, too.

3 So you can have more than the
4 minimum mandated by law, but really service that's
5 exemplary because that's in the best interest of
6 the stockholders and the rate payers.

7 So discretionary funding going one
8 place or another is not at all inconsistent with
9 law; it is, however, the desirability to set rates
10 of return at a level that you attract that
11 discretionary funding into your state, into your
12 system.

13 Q Okay. Again, my question remains.
14 Is it good policy for a multi jurisdictional
15 utility making this decision to have a policy that
16 they will invest more discretionary capital
17 expenditure -- more discretionary capital
18 expenditures in those jurisdictions where it
19 receives the highest rate of return?

20 A I think the obligation of a
21 regulator is to make an attractive decision for a
22 utility who has that discretion, not required by
23 law, but has that discretion. I want to attract
24 that investment into my state, so I don't see any
25 inconsistency at all.

1 In fact, it goes to the very point
2 as to why I'm here, is to talk about the ability
3 to and desirability of attracting capital.
4 Attracting that investment either from the
5 investment community in the first instance or from
6 a parent company down to its divisions in the
7 second instance to make sure you get more than the
8 minimum required by law.

9 But you have a promotion of public
10 policy from the Commission on the one hand and
11 desirability to invest discretionary funds on the
12 other hand for the benefit of both stockholders
13 and rate bearers.

14 Q Okay. Mr. Quain, we're not getting
15 where I want to go. I am not asking how the
16 decision's made, we've already established it's
17 made by management.

18 My question is that your perspective
19 as a witness for MGE, as a policy witness, former
20 state regulator, you have a multi jurisdictional
21 utility, and this utility has a policy that it
22 will invest more discretionary capital in the
23 jurisdictions that offer the highest rates of
24 return. Is that a good public policy and is it a
25 good company policy?

1 MR. HACK: Objection to the form of
2 the question, it assumes facts not in evidence.
3 There has not been any laying of a foundation to
4 establish the existence of any policy one way or
5 the other. And if he wants to ask a hypothetical
6 question, then I would suggest that it be clearly
7 phrased as a hypothetical question.

8 JUDGE WOODRUFF: I was under the
9 impression that it was a hypothetical question.
10 Mr. Franson, do you agree it's a hypothetical
11 question?

12 MR. FRANSON: I believe that is my
13 intent, and I also believe the evidence will
14 clearly show this is -- for now, yes, it is a
15 hypothetical question. The evidence -- there's a
16 witness coming up very soon where this same
17 subject will come up again.

18 JUDGE WOODRUFF: All right. The
19 objection is overruled on the grounds that it is a
20 hypothetical question. You can answer it as a
21 hypothetical question.

22 THE WITNESS: I'm trying, Your
23 Honor, and I apologize if I have not hit the mark.
24 I thought that I had.

25 I think as a regulator, you have to

1 take the world as you find it, and that is you
2 can't control all outcomes. That's not practical,
3 not even allowed by law. And as a result, you
4 have to provide both incentives and disincentives
5 to do certain things. And you do that by the way
6 you set rates and the way you set rates of return
7 in the instance we're talking about here.

8 So as a regulator, when I sat in
9 those chairs, I looked at it as my obligation to
10 make sure I attracted as much of that
11 discretionary spending into my state as I could
12 within reason, balancing the rate payer interest
13 against the stockholder interest, because I
14 couldn't require it.

15 And I see nothing -- if it's not
16 illegal and it's not bad public policy on its
17 face, I saw it as my obligation to make sure that
18 I set returns and an opportunity to earn that
19 return in a way that I made sure my state got its
20 fair share of investment dollars that were out
21 there. Because clearly there's not enough to go
22 around everywhere. Clearly someone's going to
23 lose out on discretionary funding because there's
24 simply not enough dollars to handle it all.

25 So what I tried to do as a matter of

1 public policy, and I think good public policy, was
2 to make sure I looked at that, because a good
3 infrastructure puts you in a position to attract
4 new companies into your service territories and be
5 able to spread those fixed costs over a much wider
6 customer base. And that's the benefit to
7 everybody.

8 Q (By Mr. Franson) Okay, Mr. Quain,
9 let's try it this way. Hypothetical question,
10 number one premise, you have a multi
11 jurisdictional utility. It is, we'll say, five
12 states.

13 Premise number two. This multi
14 jurisdictional utility is unhappy because it has
15 not been getting, in its opinion, the rates of
16 return that it feels it should get out of a
17 particular state.

18 Premise number three. This multi
19 jurisdictional utility is in state X for a rate
20 case.

21 Premise number four. The president
22 of the division of this multi jurisdictional
23 utility in this state where they are seeking a
24 rate increase says if you adopt the lower
25 recommended rates of return and reject the

1 company's rate of return, then we will not make
2 discretionary capital expenditures.

3 Question: Is that good policy for
4 this multi jurisdictional utility?

5 A Mr. Franson, I'm really not trying
6 to give you a hard time. I think that's the world
7 as we live in it, and we can't ignore the world in
8 which we live when we do any kind of public policy
9 setting. That's what makes this a difficult job.

10 The Commission has an obligation to
11 enforce the law, but also has an obligation to
12 promote public policy as it sees fit. And a
13 utility has a right to manage its operations as it
14 sees fit.

15 And so the answer to your question,
16 I think I've answered. You can't require
17 investment above and beyond what's mandated by
18 law. You have to attract it.

19 And that's what goes to the very
20 heart of the issue that we've been talking about
21 for the last couple days. Setting the return
22 properly and an opportunity to earn that return.
23 That will attract discretionary funding, and
24 that's what we all want, to attract discretionary
25 funding.

1 We want to improve beyond the
2 minimum required by law. You want high quality
3 service for the benefit of your rate payers as
4 well as your shareholders.

5 Q So you believe it is appropriate in
6 that hypothetical question for the utility to make
7 it known if the rates of return are not high
8 enough to please it, that it will not make
9 discretionary capital investments more than
10 required by law?

11 A Again, sir --

12 Q Pretty much a yes or no, Mr. Quain.
13 I let you dump a lot here, let's try yes or no.

14 A That's the world as we find it. I'm
15 sorry. It's not a matter of policy. That's the
16 capital society.

17 JUDGE WOODRUFF: Let me interrupt
18 here because I think the counsel and the witness
19 are talking past each other without really hearing
20 each other.

21 Counsel is asking you about the
22 policy from the perspective of the company, and
23 you're responding from the perspective of the
24 Commission. I think he's asking you to respond
25 from the perspective of the Company. Is that

1 correct?

2 MR. FRANSON: Yes, Your Honor.

3 JUDGE WOODRUFF: Can you respond
4 from the perspective of the Company? He's asking
5 whether that is a good policy on behalf of the
6 Company, not whether it's good policy on behalf of
7 the Commission.

8 THE WITNESS: Your Honor, that helps
9 immensely. I thought he was asking from a
10 regulatory policy perspective.

11 I think that's fully within the
12 rights of the company to do that. I couldn't
13 offer an opinion on to the parameters of that, but
14 I think that's fully within the right of a company
15 to exercise its dollars in a way above and beyond
16 that mandated by law.

17 Q (By Mr. Franson) Okay. Same
18 perspective, same premise. What if the
19 jurisdiction with the lower rate of return has the
20 most need for infrastructure investment?

21 A If the -- if the jurisdiction in
22 question has the most need for infrastructure
23 investment, I think as a matter of policy you'd
24 want to attract that discretionary funding and
25 ought to be looking at ways to do that.

1 Q Okay. Now, let's consider it from
2 what we've just gone through from the regulator's
3 point of view, specifically the Commissioner
4 sitting up here making a decision in this
5 hypothetical multi jurisdictional company and
6 hypothetical area.

7 Are you suggesting that the
8 Commission should consider and get into a bidding
9 war with other states for capital investment,
10 specifically discretionary capital investment?

11 A I wouldn't characterize it at all as
12 a bidding war. I think I would characterize it as
13 being healthy competition for a limited amount of
14 investment dollars and making sure that my state
15 got my fair share of those investment dollars.

16 And that requires you absolutely to
17 look at what other states, your colleagues making
18 the very same difficult decision, are doing to try
19 to attract capital into that jurisdiction.
20 Absolutely.

21 Q Okay. Mr. Quain, have you made any
22 kind of review or analysis of MGE's total
23 operating and capital costs over time?

24 A No, sir, I have not.

25 Q Okay. So you wouldn't know whether

1 MGE has -- is an increasing cost company over its
2 history in the State of Missouri?

3 A I would assume that if it's like any
4 other LDC, it's very capital intensive operation.

5 Q And would that assumption consider
6 taking into account both operating and capital
7 costs?

8 A I don't know about operating. That
9 differs throughout the industry. Certainly
10 capital costs, every LDC that I've ever looked at
11 -- and you're right, I have not looked at it in
12 detail, but as a general proposition, the natural
13 gas industry, just like the water industry, is
14 capital intensive.

15 Q Would you agree that a utility does
16 not consistently earn its authorized rate of
17 return -- let me go back.

18 Would you agree that a utility that
19 does not consistently earn its authorized rate of
20 return because its costs are increasing should
21 file for rate increases?

22 You need me to repeat that?

23 A Yes, I think so. I -- about four
24 different answers went through my mind.

25 Q We want to get the right and

1 truthful one. So let's try again.

2 A They're all truthful, just a matter
3 of perspective, I suppose.

4 Q Okay. Let's say that you've got a
5 utility that has not earned, and this a --
6 consistently earned its authorized rate of return
7 because its costs are increasing. Follow me so
8 far, Mr. Quain?

9 A Yes, I do.

10 Q And this utility is operating in a
11 state such as Missouri where they have to file for
12 a rate increase if they want increased revenue.
13 Do you think in that instance that this utility
14 should file for rate increases?

15 A It's all a matter of degree, sir, as
16 you well know. When a utility looks at filing the
17 rate increases, there are pluses and minuses to
18 doing that.

19 There's obviously extraordinary
20 costs to filing rate cases and the preparation and
21 presentation of it. There's also a cost in taking
22 management and staff personnel who otherwise would
23 be devoting 100 percent of their time to
24 operations of the company, pulling off those -- a
25 lot of those kinds of daily operations to focus on

1 trying to litigate a rate case. So there's a lot
2 of decisions that go into that -- into that mix.

3 So it's not -- I wouldn't suggest
4 that it would be an absolute, that if your costs
5 are increasing, you automatically file a rate
6 increase. I think the decision is more complex
7 than that.

8 Q But that's certainly one available
9 option?

10 A Oh, sure. So are -- so are
11 decreasing your costs, yeah.

12 Q Or a combination of the two. Both
13 filing for rate increase and decreasing your
14 costs. Would that also be --

15 A And the -- it's not limited to just
16 those three alternatives, yes.

17 Q Okay. If the utility's costs
18 increase above the level last used to set rates,
19 is it a failure of regulation if that utility does
20 not earn authorized rate of return because of
21 those cost increases?

22 A Repeat the question, please?

23 Q Certainly. If utility's costs
24 increase above the level used to last set its
25 rates, is it a failure of regulation if that

1 utility does not earn authorized rate of return
2 because of those cost increases?

3 A It -- there are lots of assumptions
4 in that question that I'm not sure I can accept
5 without comment. I mean, embedded in your
6 question is that the rates --

7 Q Hold on, Mr. Quain. Let's go
8 through each one.

9 A Okay, fine.

10 Q If utility's costs increase above
11 the last level used to set rates. Okay. We have
12 a company. It had its rates last set, doesn't
13 really make any difference when. Its rates were
14 set properly pursuant to the rate making process,
15 and this company is experiencing increasing costs.
16 So far any problem with these premises?

17 A I want to make sure I heard your
18 premise right. That the rates in the first
19 instance were set accurately. They accurately
20 reflected the costs at that time, and we're now
21 talking about costs over accurately set rates with
22 a fair rate of return? Is that what we're talking
23 about?

24 Q Yes. And let's even make it a
25 little bit different.

1 A Because I don't think that's we're
2 -- the argument is here. I just want to make sure
3 we're talking about a different circumstance.

4 Q Well, thank you. You sent me down
5 another road here. Let's assume we have a
6 utility. Let's also assume it's MGE and it's the
7 division of Southern Union.

8 Let's assume that in August of 2001,
9 the result of their last rate increase went into
10 effect, and as part of that, there was a unanimous
11 stipulation and agreement of the parties. It was
12 put to the Commission and approved by the
13 Commission. So they had the rates in effect.
14 Now, let's say that the costs are increasing, so
15 they filed a rate case. But leave that out, aside
16 for just a moment.

17 Is it necessarily a failure of
18 regulation if that utility does not earn its
19 authorized rate of return because of these costs
20 increases? And Mr. Quain, I'm asking you to focus
21 on strictly is it a failure of regulation if the
22 utility is not earning its authorized rate of
23 return and has these cost increases?

24 A No, and I don't think anyone here
25 has suggested that that's the sole cause or even

1 the cause. I think it's a combination.

2 Q Okay. Thank you. Mr. Quain, I'm
3 going to refer to page 7, lines 22 through 23 of
4 your direct testimony, and read a sentence there.

5 As a general proposition, regulators
6 must guard against keeping rates artificially low,
7 even though that may seem a popular decision in
8 the short-term. Does that sound familiar from
9 your direct testimony?

10 A Yes, it does.

11 Q Okay. Is it your belief that the
12 Missouri Public Service Commission in the past has
13 kept MGE's rates artificially low?

14 A My statement I don't think suggests
15 that. I think my statement suggests that there
16 needs to be both a short-term and a long-term view
17 to the rate setting process.

18 Q Okay. Mr. Quain, that wasn't my
19 question. I understand what your testimony may
20 not have directly said that was your opinion about
21 MGE, but I'm asking you now. Do you believe
22 Missouri Public Service Commission in the past has
23 kept MGE's rates artificially low?

24 A I think the Commission, Mr. Franson,
25 needs to make inquiry into that issue. I have

1 not. But you have testimony from Mr. Noack that
2 suggests that eight years in a row, they have
3 failed to earn their authorized rate of return.

4 I think that begs the question, why
5 is that so? And it's probably a combination of
6 facts, but certainly that question ought to be
7 asked and answered as you take a fresh look as to
8 how to set rates here.

9 Q Okay. So is it fair to say you
10 don't have an opinion either way on the subject?

11 A I have relied on the testimony of
12 Mr. Noack With regard to the statement I just
13 made.

14 Q Okay. Do you believe, to the best
15 of your knowledge here today, that Mr. Noack's
16 testimony is correct in its entirety and that this
17 Commission has set rates too low for --

18 A I don't think that's what he said.

19 Q What did he say?

20 A Well, I think he says that as a
21 matter of fact, the authorized rate of return has
22 not been achieved. And it's not been achieved
23 over an extended period of time.

24 And I think part of the rate making
25 process doesn't look at anything in isolation, but

1 looks very much at trends. And when a trend is
2 suggested eight years in a row you failed to earn
3 your authorized rate of return, something has to
4 be looked at in terms of a fresh look.

5 And I think what Mr. Noack is
6 suggesting, and what I've suggested, is this is an
7 appropriate time to take a fresh look in terms of
8 setting rates prospectively.

9 What happened in the past happened
10 in the past. No one's suggesting that there's
11 blame attached to that. It's really not
12 particularly relevant to the analysis. What's
13 relevant is what can we learn from the past in
14 terms of making sure we set rates prospectively at
15 the proper level.

16 Q Have you read all of the testimony
17 of Mr. Oglesby?

18 A Yes, sir, I believe I have.

19 Q Okay. And you don't agree that in
20 his direct testimony, he does lay blame on this
21 Commission for MGE failing to authorize -- to
22 achieve their authorized rates of return?

23 A I didn't -- I honestly didn't read
24 it that way, Mr. Franson. I haven't looked at his
25 direct in a couple of days, but I honestly didn't

1 read it that way. I think what he --

2 Q Okay, thank you, Mr. Quain, you
3 answered my question. Another question, have you
4 made any kind of study of MGE's cost of capital in
5 this proceeding?

6 A No, sir.

7 Q Okay. Do you have an opinion as to
8 whether the Staff's, Public Counsel, or MGE's rate
9 of return recommendations in this case is closer
10 to MGE's actual cost of capital?

11 A Repeat the question, please?

12 Q Certainly. Do you have an opinion
13 as to whether the Staff's -- well, let me break it
14 down for you.

15 Are you aware that Staff has made a
16 rate of return recommendation in this case?

17 A Yes, I am.

18 Q And the Office of Public Counsel has
19 done the same?

20 A Yes.

21 Q And MGE has done that?

22 A Yes.

23 Q Do you have an opinion of whether
24 the -- which one of those three's, the Staff, the
25 Office of Public Counsel, or MGE, rate of return

1 recommendation in this case is closer to MGE's
2 actual cost of capital?

3 A I have not made an analysis, nor do
4 I offer a specific opinion on cost of capital for
5 the reason that you asked in your previous
6 question. I'm not presenting myself as a cost of
7 capital witness any more than I was talking with
8 Mr. Micheel about presenting myself as a weather
9 normalization witness.

10 Q Okay. So fair to say, though, that
11 you're here and you give a fair amount of
12 credibility to Mr. Noack and Mr. Oglesby's
13 testimony?

14 A Yes, I have relied on their
15 testimony in reaching some of the conclusions in
16 terms of the law and public policy on the areas in
17 which I'm testifying, yes, sir.

18 Q Thank you. Okay. Let's go down --
19 we'll call it hypothetical to be sure we're on
20 clear ground here.

21 Assume that a regulatory commission
22 makes a determination of what a utility's cost of
23 capital should be in a rate proceeding. It's been
24 determined, it's in effect. Or I'm sorry, let me
25 rephrase that.

1 They're in the process of making the
2 determination of a utility's cost of capital.
3 Commission's making its decision.

4 Should that Commission, if it
5 believes that that cost of capital is
6 significantly lower than what other jurisdictions
7 are awarding to similar utilities, raise its
8 allowed rate of return above the utility's cost of
9 capital if doing so allows it to better compete
10 for investment dollars?

11 A It's a complex question, sir, and
12 let me answer it as fairly and as completely as I
13 can.

14 We all know that cost of capital
15 testimony is very dependent upon lots of
16 assumptions that go into modeling them, and that's
17 why you have the full range of recommendations
18 that you have here.

19 And so there is never a situation
20 that I've been presented with where you focus in
21 and say one number is absolutely correct. It's
22 always a range. And there's always a range of
23 reasonableness as you look at the credibility of
24 the witnesses after cross examination and you look
25 at your obligations to apply Hope and Bluefield

1 and good public policy.

2 And it's that range that allows a
3 commission to use its best judgment as to what
4 public policy objectives it's trying to achieve.
5 Because it's not a precise science. It's, at
6 best, inputs and modeling, trying to determine
7 what the perception of the investor is to attract
8 that discretionary capital that we were talking
9 about, and other capital.

10 So I think when you get to that
11 point, you've looked at the record evidence,
12 you've made your determination as to who you think
13 is a credible witness, who is not, you look at the
14 cross examination, you remind yourself of the
15 obligations under Hope and Bluefield, then I think
16 it's very appropriate to look at how your
17 colleagues, dealing with this very same issue,
18 dealing with the exact same difficulties of
19 balancing rate payers and shareholder interest,
20 have made that decision.

21 Because they've gone through the
22 same process, they have the same legal
23 obligations, and they're trying to attract the
24 same capital dollars that you are. And at that
25 point, I think it's very appropriate to look

1 within that range that you're comfortable with as
2 to what public policy messages or incentives or
3 disincentives that you're trying to send to the
4 investment community and to the utility.

5 Absolutely I do.

6 Q Okay. Not sure what you answered
7 there. Let's try again, and please, let's go
8 through each assumption and then please focus on
9 my question.

10 Assume that a regulatory commission
11 makes a determination of what a utility's cost of
12 capital is in a rate proceeding. That decision --
13 you're right in the middle of making that and
14 they've determined the following:

15 The Commission believes the cost of
16 capital is significantly lower than what other
17 jurisdictions are awarding to similar utilities.
18 Should this Commission that we're talking about,
19 this hypothetical Commission, raise its allowed
20 rate of return above the utility's cost of capital
21 if doing so allows it to better compete for
22 investment dollars?

23 A I'm sorry, sir, I thought I answered
24 that question.

25 Q No, I don't agree.

1 A Well, I'm sorry that you don't
2 agree. Let me try it again.

3 I think it -- embedded in your
4 assumption is that there is a specific number that
5 everybody will agree upon is the exact number.
6 And again, I don't think that's the real world.
7 It's never that way. I've done lots of these and
8 I've never seen it.

9 There's always a range. And when
10 you look at that range, you're going through the
11 same analysis your colleagues in other states have
12 gone through. So by very nature you're all
13 looking at the natural gas industry, you're all
14 trying to reach a reasonable return.

15 And so you ought to be absent some
16 extraordinary circumstance within the same range.
17 You ought to be. There are plenty of cases out
18 there that are kind of bunched within a certain
19 range and others that aren't.

20 But if you're going through the
21 process in a fair and open and objective way, I
22 think you're going to find yourself with a -- an
23 ultimate range that you feel comfortable with.

24 Q Okay. Mr. Quain, I don't know if
25 you're not understanding my question, I'm not sure

1 what the problem is, let's try again.

2 My question is not about all of the
3 ranges and everything that's been filed in a
4 particular case. My question is, a Commission is
5 sitting. They've heard all the evidence. They
6 have made their determination. The Commission's
7 already decided in this hypothetical what a
8 utility's cost of capital is in a rate proceeding.
9 It's already been determined. We'll call it X.

10 Should that Commission in making its
11 decision -- the Commission also believes the cost
12 of capital that it has determined, it believes
13 it's an accurate cost of capital, it has
14 determined that that is significantly lower than
15 what other jurisdictions are awarding the same
16 utilities. Those are the premises.

17 Should this Commission raise its
18 allowed rate of return above the utility's cost of
19 capital if doing so allows it to better compete
20 for investment dollars?

21 A You just changed the question, Mr.
22 Franson.

23 Q Okay. Then answer that question,
24 please.

25 A Your first question was they were in

1 the process of determining it, now you're saying
2 it's determined.

3 MR. FRANSON: Your Honor, object as
4 non-responsive.

5 JUDGE WOODRUFF: He's trying to
6 clarify the question.

7 MR. FRANSON: Perhaps we need to
8 forget what's gone on so far and let me ask my
9 question --

10 JUDGE WOODRUFF: You've asked your
11 question. Rather than testifying, if you can get
12 together on what the question is, we'll get
13 together on this a lot faster.

14 MR. FRANSON: Then perhaps the court
15 reporter can read back my last question.

16 THE REPORTER: "My question is, a
17 Commission is sitting. They've heard all the
18 evidence. They have made their determination.
19 The Commission's already decided in this
20 hypothetical what a utility's cost of capital is
21 in a rate proceeding. It's already been
22 determined. We'll call it X.

23 "Should that Commission in making
24 its decision -- the Commission also believes the
25 cost of capital that it has determined, it

1 believes it's an accurate cost of capital, it has
2 determined that that is significantly lower than
3 what other jurisdictions are awarding the same
4 utilities. Those are the premises.

5 "Should this Commission raise its
6 allowed rate of return above the utility's cost of
7 capital if doing so allows it to better compete
8 for investment dollars?"

9 THE WITNESS: It seems to me it's
10 part and parcel of your determination, you have to
11 go through that analysis. That's what Hope and
12 Bluefield says. Look at other companies similarly
13 situated in other areas of the country. And part
14 and parcel of the determination is that analysis.

15 If you've made your determination
16 without conducting that analysis, then you haven't
17 completed your analytical review of the question.

18 Q (By Mr. Franson) Okay.

19 A So you can't -- you can't determine
20 the ultimate cost of capital unless you go through
21 that analysis, it seems to me.

22 Q Okay. The idea here is the
23 Commission is deliberating in this question. They
24 have determined, from all the evidence, that the
25 company's actual cost of capital is X.

1 Question: When that Commission
2 considers everything after they determine actual
3 cost of capital, they determine that this is quite
4 a bit lower than other jurisdictions, should the
5 Commission sitting in this hypothetical case raise
6 its allowed rate of return above the utility's
7 actual cost of capital if doing so allows this
8 utility to better compete for investment dollars?

9 Actually, that's a very narrow
10 hypothetical, and I'm asking you to focus on that
11 answer.

12 A I'm trying, sir, but you're assuming
13 that compare it to other states is not part of
14 that determination, and I'm saying to you I think
15 it absolutely is. If you find yourself severely
16 out of whack with the determinations in other
17 jurisdictions, what I would do is go back and
18 check my analysis as to how I reached the number
19 to begin with. Because I shouldn't be far out of
20 whack.

21 And it says to me that maybe there
22 is -- there's something else that I have to look
23 at, or I have to make a determination that I
24 absolutely want to be aware from what other
25 industry authorized rate of returns are for a

1 specific reason, because it's not appropriate in a
2 specific instance.

3 But unless I make that
4 determination, and I should have a good reason for
5 that, I think I'd go back and check my analysis in
6 the first instance.

7 Q Okay. Are you familiar with
8 Regulatory Research Associates?

9 A Yes, I am.

10 Q Also known as the RRA?

11 A Yes, sir.

12 Q What is that? Agency? It's not an
13 agency?

14 A It's not an agency, it's an
15 organization that makes its living by analyzing
16 regulatory decisions and regulatory findings
17 across the country and provides a service to the
18 investment community as to how, based upon that
19 information, a view of the regulatory climate in
20 each states exists. Investors use that as a tool
21 for their investment decisions.

22 Q Mr. Quain, let's move on a little
23 bit. On page 3 and 4 of your surrebuttal
24 testimony, isn't it true that you express some
25 concern about the large disparity between Staff

1 and Public Counsel's return on equity
2 recommendations when compared to the -- to our
3 jurisdictions in that comparison being from RRA?

4 A Yes, over time. Over time. I
5 wasn't focusing on any one decision, but over
6 time, I made that statement, yes.

7 Q Okay. So you are aware of the
8 history of recommendations by various parties in
9 previous MGE rate cases?

10 A I relied on the exhibit prepared by
11 Mr. Dunn which identified those data points, and I
12 relied on that -- his compilation of those data
13 points. I didn't do an independent analysis of
14 it, but I -- what I looked at was the trends that
15 result from that analysis.

16 Q Now, you aren't suggesting that the
17 State of Missouri should, or its Commission in
18 making their decision in this case should say,
19 okay, we -- we abdicate our responsibilities,
20 there is a number, it's X, we're going with X?

21 A No, the context of my comments was
22 as set forth in my testimony in response to the
23 comment made by Witness Murray that the Staff
24 didn't believe it was appropriate, I forget exact
25 words he used, to look at other state

1 jurisdictions, and I think it's very appropriate.

2 And I didn't want to rely
3 specifically on a single comment in testimony. I
4 wasn't sure that I understood quite what Mr.
5 Murray meant when he didn't think it was
6 appropriate for the Commission to look at other
7 jurisdictions.

8 So when I saw Mr. Dunn's graph, it
9 seems to corroborate that that is, in fact, what
10 the Staff's position was. That we look at this in
11 isolation without looking at other jurisdictions,
12 and I think that inappropriate.

13 Q Okay. That wasn't my question, Mr.
14 Quain. My question is, you are not suggesting to
15 the Missouri Public Service Commission that they
16 should just abdicate their responsibilities and
17 say, well, you know, we've got these ROEs that are
18 low, we've got another one that's high, we'll just
19 resolve it by taking the RRA average. You aren't
20 suggest that, are you?

21 A No, I haven't said that anywhere.
22 In fact, I've said to the contrary.

23 JUDGE WOODRUFF: All right. He
24 answered yes -- he answered no.

25 Q (By Mr. Franson) Okay. Mr. Quain,

1 you are -- I believe we've established you are
2 familiar with the various ROEs, returns on equity,
3 offered by the Staff, Public Counsel, and MGE in
4 this case, right?

5 A Yes, sir, roughly, yes.

6 Q And you have some concerns, and you
7 think the Missouri Public Service Commission
8 should consider that between Staff and Office of
9 Public Counsel's ROEs, that they're so below the
10 RRA that that's something that should be of
11 concern to the Commission. Is that correct?

12 A Yes. I said it's a matter of
13 concern and inquiry, I think.

14 Q Okay. How about the fact that MGE's
15 requested ROE in this proceeding is approximately
16 100 basis points above recent RRA averages.
17 Should that disparity be a source of serious
18 concern and inquiry by the Commission as well?

19 A I think the Commission has to look
20 at all of the evidence. But I would add that when
21 you look at the RRA data that you referenced,
22 there are a number of companies, number of
23 decisions above the 12th and above -- 12 and
24 above, which I think Mr. Dunn is at 12, if I
25 remember. And there's some below.

1 So I think you have to take that
2 into consideration and balance all the interest
3 after you look at the credibility of the
4 witnesses.

5 MR. FRANSON: Your Honor, my
6 question is yes or no, and I would move that
7 anything after yes be stricken. And also there's
8 a reference to various things of RRA that are not
9 in evidence, and that should also be stricken.

10 MR. HACK: Your Honor, Mr. Franson
11 asked an open-ended question. Mr. Quain provided
12 a response and information. His response is based
13 on his knowledge and his evidence.

14 JUDGE WOODRUFF: Could the court
15 reporter please reread the question?

16 (Off the record.)

17 JUDGE WOODRUFF: All right. We're
18 back from our break. Before we took our break,
19 there was an objection to a question and I had
20 asked the court reporter to read that back. Can
21 you do that now?

22 THE REPORTER: "How about the fact
23 that MGE's requested ROE in this proceeding is
24 approximately 100 basis points above recent RRA
25 averages. Should that disparity be a source of

1 serious concern and inquiry by the Commission as
2 well?"

3 JUDGE WOODRUFF: And the objection
4 was that that was non-responsive, his answer was
5 non-responsive; is that correct?

6 MR. FRANSON: I believe so. I kinda
7 lost track.

8 JUDGE WOODRUFF: Okay. I'm going to
9 overrule the objection. The answer can stand as
10 offered. Ask your next question.

11 MR. FRANSON: Quite frankly, I've
12 forgotten his answer to that question. But we'll
13 move on.

14 Q (By Mr. Franson) From your
15 perspective as a former regulator and establishing
16 a rate of -- okay. Rephrase.

17 From your perspective as a former
18 regulator, is establishing a rate of return well
19 above an industry average good public policy?

20 MR. HACK: Objection, assumes facts
21 not in evidence. If it is a hypothetical, please
22 phrase it as such.

23 MR. FRANSON: Well, Judge, I'm not
24 going to at this point unless you direct me to
25 phrase it as a hypothetical. The reason is yes,

1 the evidence is there.

2 We have the RRA average, we have
3 MGE's requested ROE. And we have an average right
4 around 11. We have MGE's requested ROE of 12,
5 that is 100 basis points difference. So yes, it
6 is in evidence. And I have a very good faith and
7 factual basis for this question.

8 JUDGE WOODRUFF: Mr. Hack?

9 MR. HACK: Simply to be a bit more
10 precise, the evidence reflects that the current
11 ROE authorizations, on average for other
12 jurisdictions, is 11.1, so it is not 100 basis
13 points, but 90.

14 JUDGE WOODRUFF: All right. Your
15 objection is overruled. You can go ahead and
16 answer the question.

17 THE WITNESS: Could I have the
18 question again, please?

19 MR. FRANSON: I will have to ask the
20 court reporter.

21 THE REPORTER: "From your
22 perspective as a former regulator, is establishing
23 a rate of return well above an industry average
24 good public policy?"

25 THE WITNESS: If I was going to

1 establish a rate of return well above the industry
2 average, as you've stated well above the industry
3 average, I would look at the reasons why I was
4 doing that, just as I would look at it if I was
5 coming up with a decision that was well below the
6 industry average. It's part of the determination.
7 But I think the industry average as I discussed is
8 a guide and part of your deliberative process.

9 Q (By Mr. Franson) Are you
10 recommending that this Commission set MGE's return
11 on equity at a level at least equal to the current
12 RRA industry average?

13 A No, sir, I have not done that. I
14 have said that they should take into consideration
15 as a part of its deliberative process the
16 authorized returns on our jurisdictions.

17 Q In your opinion, and this is both as
18 a former regulator and as an attorney, can allowed
19 returns on equity that are significantly under the
20 RRA average violate the Hope and Bluefield
21 standard?

22 A Can I have the question again,
23 please?

24 Q Certainly. In your opinion, and I'm
25 asking this both as an attorney and as a former

1 regulator, can allowed returns on equity that are
2 significantly under the RRA average violate the
3 Hope and Bluefield standard?

4 A It can, sure.

5 Q Okay. Likewise, in your opinion,
6 also as a former state regulator and attorney, can
7 allowed ROEs that significantly exceed the RRA
8 average violate the Hope and Bluefield standards?

9 A Certainly.

10 Q Okay. In your tenure with the
11 Pennsylvania Commission, did the Commission employ
12 the historic test year model to set rates?

13 A In conjunction with the future test
14 year model. They looked at both.

15 Q Okay. You understand what I mean by
16 the term uncollectibles?

17 A If you mean by that bad debt
18 expense, yes.

19 MR. FRANSON: Actually, let me
20 withdraw that question, Your Honor. I don't have
21 any further questions.

22 JUDGE WOODRUFF: All right. Thank
23 you. I have no questions from the bench. There
24 will be no recross. Any redirect?

25 MR. HACK: Just a little bit, Your

1 Honor.

2 REDIRECT EXAMINATION BY MR. HACK:

3 Q Maybe we'll go backwards, start with
4 Mr. Franson's questions. Do you know what the
5 first quarter '04 RRA report shows for average ROE
6 authorizations?

7 A Yes, 11.1 percent.

8 Q And do you know what the midpoint of
9 the Staff ROE recommendation is?

10 A Set forth in my testimony, I believe
11 it's 9.02 percent on equity.

12 Q And if I told you that the
13 difference between those two numbers was 208 basis
14 points, would you disagree with me?

15 A I would not.

16 Q Do you know what the midpoint of the
17 OPC ROE recommendation is in this case is?

18 A My recollection is 9.175.

19 Q And if I calculated the difference
20 between that number and the RRA average number of
21 11.1 and told you it was approximately 192 basis
22 points, would you have reason to disagree with me?

23 A I would not.

24 Q And are you aware of what MGE's ROE
25 recommendation is in this case?

1 A I believe it's 12 percent.

2 Q And can you calculate the difference
3 between 12 percent and 11.1 percent in number of
4 basis points, please?

5 MR. FRANSON: You aren't going to do
6 that one yourself, Rob?

7 THE WITNESS: I wish you would, but
8 I think it's 90 basis points.

9 Q (By Mr. Hack) Mr. Franson asked you
10 a number of questions about the RRA information
11 and how it may factor into the decision making
12 process on rate of return.

13 Can you explain how you as a former
14 regulator, when you were a regulator, may have
15 used that information in making rate of return
16 decisions in those cases that you were presented
17 with?

18 A Yes. I -- when I came to the
19 Commission as a Commissioner in the spring of '93,
20 when sitting with my colleagues, the ones
21 identified I think by counsel as listed on the NFG
22 decision, I think that's -- they were the five
23 that were there at the time, I was made aware of
24 Regulatory Research Associates and how important
25 that set of Commissioners viewed it and how

1 important it was to understand what the RRA report
2 was.

3 And was asked to, on several
4 occasions, even with the former chairman, to go to
5 Wall Street and talk about the regulatory climate
6 of Pennsylvania. And the reason we did that was
7 we were viewed by RRA as being a below average
8 Commission at the time in terms of a regulatory
9 environment.

10 We didn't want to go too high
11 because you didn't want to look too much towards
12 the utility, but you certainly didn't want to be
13 too low because that affected the cost of capital
14 as investors perceived regulatory risk in your
15 Commission.

16 So we were asked on a number of
17 occasions, I think I went once with the former
18 chairman, and went every single year at least once
19 up to RRA. To balance the interests of
20 shareholders and rate bearers.

21 And the reason I did that was, to
22 me, cost of capital is an extraordinarily
23 important determination, and if you get it wrong,
24 investors are going to require higher return on
25 the investment in your -- in your state, or worse

1 yet, not encourage investment in your state at
2 all.

3 And I viewed it my obligation to
4 make sure that the utilities in Pennsylvania were
5 in a position to be healthy, to be fair and
6 balanced to shareholders and rate bearers, but
7 also to have systems in a condition that would
8 allow us to attract new business into
9 Pennsylvania, new operations to get particularly
10 large industrial and commercial operations into
11 Pennsylvania, so I could take that fixed cost of
12 the system and spread it over a wider customer
13 base.

14 And the RRA determination of how
15 they viewed our Commission, any commission, I
16 think is an important determination in that
17 regard. And once I got RRA to reevaluate the
18 Commission, it took some time, I then went to the
19 Governor and said this is a good place, when you
20 talk about economic development in the Common
21 Wealth of Pennsylvania, talk about the robustness
22 and healthiness of the infrastructure of the
23 utilities, because that's what industrial and
24 commercial customers in part look at.

25 They certainly look at the rates,

1 but they also want to make sure if they set their
2 operations up in a particular state, the systems
3 are on a reliable basis. So to me it was a very
4 integral part of my obligation as a Commissioner
5 to make sure that investors viewed our Commission
6 not as being pro utility, but rather being
7 balanced and fairly balanced.

8 Q Mr. Franson also asked you a
9 question or two regarding Mr. Oglesby's direct
10 testimony, and in particular, the sections dealing
11 with challenges presented by -- by past regulatory
12 action from the Company perspective. Do you
13 recall that line of questioning?

14 A I do, and I think we had a
15 disagreement on how we interpreted that testimony.
16 I viewed Mr. Oglesby, who I think is an
17 extraordinarily credible individual and very, very
18 honest and sincere in his approach, and I think
19 the Commission will view that when he testifies,
20 as saying that we've got a problem here, and the
21 past is the past, but prospectively we need to
22 take a fresh look at these issues so that we can,
23 regardless of how the mistakes or inaccuracies
24 occurred prospectively, we can correct them going
25 forward.

1 And I believe that's how I viewed
2 his testimony and I believe that's the spirit in
3 which it was offered.

4 Q How would you have looked at that
5 kind of testimony when you were a Commissioner?

6 A To me --

7 MR. FRANSON: Your Honor, I'm going
8 to object because this calls for speculation and I
9 believe it's beyond the scope of anything that's
10 happened here.

11 JUDGE WOODRUFF: I'll sustain the
12 objection.

13 Q (By Mr. Hack) Mr. Franson also
14 asked you questions about the filing of rate cases
15 in situations where earning shortfalls are
16 present. Do you recall that line of questions?

17 A I do.

18 Q Do you have an opinion as to how
19 frequently is reasonable or unreasonable for
20 companies to be required to file general rate
21 cases?

22 A In my opinion, the -- the obligation
23 -- the objective is to get the rate elements, the
24 cost of service elements, right. And to not
25 create an environment where you expect utilities

1 to come in on a frequent basis. It's an
2 extraordinarily expensive proposition, to rate
3 bearers, to shareholders, to the Commission in
4 terms of processing those cases.

5 And where we could get stability in
6 rates by setting the rates properly at the proper
7 level with the fair rate of return, that was my
8 objective. So I didn't try to create an
9 environment where utilities would have to
10 regularly return to -- to try to catch up and make
11 whole their -- their cost incurrence through an
12 increase in rates.

13 I think the objective is rate
14 stability wherever possible. And that begs the
15 question, how do you set rates in a manner that
16 allows proper cost recovery, but also calls for a
17 reasonable interval of time between rate cases
18 rather encouraging the regular filing of rate
19 cases? It's too much of a strain on everybody,
20 including the regulatory process.

21 Q Would you -- you also had a
22 discussion with Mr. Franson about infrastructure
23 investment versus the discretionary capital
24 expenditures. Do you recall that line of
25 questioning?

1 A Yes, sir, I do.

2 Q Can you just very, very quickly and
3 clearly delineate your understanding of the
4 difference between infrastructure investment
5 versus discretionary capital expenditure?

6 A There are, in any public utility
7 code, certain mandates set forth in terms of the
8 obligation of the utility, and one of those
9 mandates is to provide safe and reliable service.
10 The provision of safe and reliable service carries
11 with it, in my mind, a legal obligation to make
12 certain investments in the infrastructure. That
13 is what I would consider and call mandatory
14 investments in order to meet your legal
15 obligations.

16 There is a whole second category of
17 investments that are not mandated by law, not
18 required by law, not required to provide your
19 legal obligation under the public utility code,
20 but rather would enhance the provision of service
21 either through quality or efficiencies or
22 operations, and those discretionary investments
23 need to be made at -- by the decision of the
24 management of the utility.

25 And therefore, you want to -- you

1 want to have those investments coming into your
2 state and so you want to create a regulatory
3 environment that attracts those investments. The
4 second category of discretionary investments.

5 Q The first bout of hypotheticals Mr.
6 Franson discussed with you related to a so-called
7 policy related to discretionary capital
8 expenditures in relation to authorized returns.
9 Do you recall --

10 A I do.

11 Q Do -- do -- do you at this time
12 agree that Mr. Franson's -- that the facts assumed
13 in Mr. Franson's hypothetical reflect the facts as
14 you know them to be reflected in the evidence in
15 this case?

16 A I do not agree with Mr. Franson's
17 categorization -- the hypothetical I took as a
18 hypothetical without relation to the facts that
19 are in evidence or to be put in evidence in this
20 case.

21 Q Mr. Micheel had a discussion with
22 you about creditworthiness and its relationship to
23 the regulatory process?

24 A Yes, sir.

25 Q Please describe your understanding

1 of how creditworthiness factors into the
2 determination of an appropriate rate of return.

3 A In my mind, you go back to the legal
4 obligations in the Hope and Bluefield that say
5 that you are to provide rates sufficient for
6 utility to earn a reasonable return and attract
7 capital. Under efficient, and I forget the other
8 adjective. Under efficient management.

9 Mr. Micheel and I were talking
10 about, I think we were talking about, my
11 recollection is, whether that was considered a
12 guarantee or an opportunity. To me, Hope and
13 Bluefield talk in terms on the one hand
14 opportunities; on the other hand, confiscation,
15 and it's the balance between those two parameters
16 that one has to set rates.

17 There is no requirement that a
18 return be guaranteed. There is a requirement that
19 you set a fair and reasonable return and a fair
20 opportunity to earn that return in order to
21 attract capital and maintain creditworthiness.

22 Q Mr. Micheel also had a discussion
23 with you about whether or not there were any
24 single precise correct answers in any particular
25 case on the question of rate of return and return

1 on equity. Do you recall that?

2 A I do.

3 Q Do you have an opinion as to whether
4 there can be obviously wrong answers in relation
5 to those -- those items in a particular case?

6 A Certainly there can be obviously --
7 there can be obviously wrong answers. But that's
8 what makes this particular issue so very
9 difficult, which is why I offered testimony,
10 having gone through that, as to what the proper
11 way is to reach a decision.

12 I'm not offering decisions -- or
13 rather, recommendations on how that decision
14 should be made, but rather this is a very
15 confusing and very difficult issue by -- evidenced
16 by the fact that now three days have been spent on
17 this issue.

18 And fundamentally, the decision
19 maker has to come down to its fundamental
20 obligations in order to make sure that the
21 decision is made properly.

22 And that is looking at Hope and
23 Bluefield, trying to determine the record evidence
24 after proper consideration of cross examinations,
25 application of the law as set forth in briefs,

1 looking at what's going on in other jurisdictions
2 to make sure that the end result is reliable and
3 credible, and then you make your ultimate
4 determination.

5 Q Mr. Micheel also had a colloquy with
6 you about the topic of keeping one's word. Do you
7 recall that?

8 A Yes, sir.

9 Q I'm going to offer you a
10 hypothetical set of facts on that topic.

11 Assume for me, if you will, that a
12 commitment is made some time ago, perhaps as long
13 as eight years ago. Assume also for me that there
14 has been demonstrated progress towards achieving
15 the objective set forth in that commitment. Can
16 you do that?

17 A Sure.

18 Q Assume also for me that the
19 commitment has not yet been achieved. Got me
20 there?

21 A Yes.

22 Q In your opinion, Mr. Quain, has the
23 individual entity, organization making the
24 commitment violated its word?

25 A It's a very sparse set of facts.

1 There are obviously lots of different occasions
2 where people disagree whether commitments have
3 been made or not been made. I think what's
4 important is that good faith efforts on everyone's
5 attempt are made in order to reach and fulfill a
6 commitment and discussions along the way take
7 place.

8 And there have been lots of
9 occasions, even when I have been asked to make a
10 commitment or thought I heard a commitment, where
11 people disagreed with whether they had actually
12 made a commitment or what the gradations of that
13 commitment were.

14 I think the important thing for
15 regulatory relationships is that dialogue take
16 place between the regulator, meaning the
17 Commissioners and its Staff, and the Company to
18 make sure that people understand what progress and
19 approach is being taken and the attempt to try to
20 fulfill commitments that were made.

21 Q Mr. Micheel also had a discussion
22 with you about a decision of the Pennsylvania PUC
23 and a National Fuel natural gas rate proceeding,
24 do you recall that?

25 A Yes, National Fuel Gas.

1 Q And in particular, he asked you
2 about a couple of specific topics. The first was
3 the appropriate measure of -- of weather for
4 defining normal. Do you recall that?

5 A I do recall that, yes.

6 Q And is it your belief -- well, let
7 me do this. How does -- does a Commission or a
8 Commissioner reach conclusions on issues such as
9 that in rate proceedings such as the National Fuel
10 case?

11 A I don't -- you know, as I told Mr.
12 Micheel, I don't honestly recall the NFG decision.
13 There were just too many of them. I can tell you
14 that first you have to be persuaded by the
15 evidence of record, and the passages that were
16 read to me indicated that the Commission was not
17 persuaded by the evidence of record at that time.

18 There was also in the context of the
19 deliberative process amongst Commissioners
20 different issues and different concerns that one
21 Commissioner may have that another does not and
22 vice versa. And the objective is in terms of
23 reaching some sort of final decision that you go
24 through a process of trying to determine what the
25 totality of the end result's going to be and how

1 the individual elements are going to play into
2 that result.

3 I don't recall honestly about the
4 weather normalization clause. I do -- I do
5 believe that that's not what we did later with
6 regard to weather normalization. Clearly as it
7 sets forth on the face of this order, the decision
8 of that Commission at that -- in that case, where
9 I stood on that particular issue with regard -- I
10 just doesn't recall. I don't remember if I was
11 persuaded, not persuaded, or whatever.

12 But I -- it was not -- it was not
13 the -- it was not the custom, still is not the
14 custom in Pennsylvania, unless you ultimately
15 disagreed very strongly and had very strong
16 convictions about a particular issue that you just
17 felt was absolutely dead wrong that you filed a
18 dissent.

19 Generally the votes were polled on
20 issue by issue basis, and an ultimate decision was
21 made. And I -- and I mean this sincerely. If I
22 had known that we were going to get into weather
23 normalization, I might be able to give more
24 complete answers as to what the process was on
25 this decision.

1 I could have gone back and looked at
2 it and what ultimately future decisions were by
3 the Pennsylvania Commission on this issue, because
4 I do believe that they were different ultimately.
5 Again, I'm not here to testify about weather
6 normalization, I didn't do background research and
7 analysis on it, I'm going strictly by long-term
8 recollection.

9 Q Might the evidence in this case
10 regarding weather normalization or weather
11 mitigation be quite different than the evidence in
12 the National Fuel case?

13 A Absolutely, and I've made no
14 determination or analysis with regard to the issue
15 in this case either.

16 Q Do you have any independent
17 recollection in broad terms of the relationship
18 between gas price levels, natural gas commodity
19 gas price levels in or around 1994 in comparison
20 to natural gas price levels today?

21 A I'm sorry, I don't recall.

22 MR. HACK: Thank you very much, sir.

23 JUDGE WOODRUFF: All right. Thank
24 you, Mr. Quain. You can step down.

25 THE WITNESS: Thank you, sir.

1 JUDGE WOODRUFF: And you are
2 excused. I believe the next witness on the list
3 is Carlton Ricketts. Good morning. Please raise
4 your right hand.

5 (Witness sworn.)

6 JUDGE WOODRUFF: You may be seated,
7 and you may inquire when you're ready.

8 CARLTON RICKETTS, testified as follows:

9 DIRECT EXAMINATION BY MR. HACK:

10 Q State your name for the record,
11 please.

12 A Carlton Ricketts.

13 Q Mr. Ricketts, did you cause to be
14 prepared and submitted in this proceeding certain
15 direct and surrebuttal testimony which have been
16 premarked for identification purposes direct as
17 Exhibit 12, surrebuttal testimony as -- two
18 versions, Exhibit 13 NP for the non-proprietary
19 version and 13 HC for the highly confidential
20 version?

21 A Yes, I have.

22 Q Do you have any changes or
23 corrections that need to be made to that testimony
24 or those testimonies at this time?

25 A I do not.

1 Q If I were to ask you the questions
2 posed in Exhibits 12, 13 NP, and 13 HC today,
3 would your answers be substantially the same?

4 A Yes, they would.

5 Q And are those answers true and
6 correct to the best of your information,
7 knowledge, and belief?

8 A Yes, sir.

9 MR. HACK: With that, MGE would move
10 the admission of Exhibits 12, 13 NP, and 13 HC,
11 and tender the witness for cross.

12 And I do perhaps have a question
13 regarding procedure. I did not submit a highly
14 confidential document in an envelope or anything
15 like that. Is that okay?

16 JUDGE WOODRUFF: I don't have any
17 problem with that.

18 MR. MICHEEL: I -- I just have a
19 question. I do not understand why there are any
20 HC matters in this case. It appears that the
21 responses that are attached as HC deal with items
22 that happened at the local public hearing.

23 MR. FRANSON: If this is highly
24 confidential, we might want to go off the record.
25 I don't know where this is going, but into HC

1 matters possibly.

2 MR. MICHEEL: I'm just asking why
3 it's HC, because I don't understand because it's
4 response to public hearing testimony, Your Honor,
5 and I tend to want to have the biggest public
6 record possible.

7 MR. HACK: Personally, as -- not --
8 as a Company representative, we -- we designated
9 the material highly confidential because it did
10 contain customer specific information, one.

11 Two, our tariffs require that we not
12 make public customer specific information absent
13 an order of the Commissioner authorizing us to do
14 so. We have not done so in any attempt to shield
15 our response from public inquiry or view.

16 And if the Commission believes it's
17 appropriate for these -- for these documents not
18 to be highly confidential, then we would certainly
19 honor and abide by that determination.

20 JUDGE WOODRUFF: What we're talking
21 about here, as I recall, was the specific
22 resolution of customer complaints that were raised
23 at the -- particularly the Kansas City public
24 hearing; is that correct?

25 MR. HACK: That is correct, Your

1 Honor.

2 JUDGE WOODRUFF: And as I recall, it
3 goes into details in each case as to what
4 precisely was done with each complaint, and in
5 some cases why that complaint was not -- was found
6 to be valid or found not to be valid.

7 MR. HACK: That is correct, Your
8 Honor. We were trying to be sensitive to those
9 matters.

10 JUDGE WOODRUFF: I think those
11 matters are appropriately considered to be
12 confidential.

13 MR. HACK: Thank you.

14 JUDGE WOODRUFF: As to those
15 individuals. Obviously, they're not here today to
16 say yes, it could be released or not be released.
17 So I think to be safe, they should be considered
18 confidential.

19 MR. HACK: Again, I would offer
20 Exhibits 12, 13 NP, and 13 HC, and tender the
21 witness for cross.

22 JUDGE WOODRUFF: All right.
23 Exhibits 12, 13 NP, and 13 HC are offered into
24 evidence. And I believe this is the only time Mr.
25 Ricketts will be testifying. Is that correct?

1 MR. HACK: Yes.

2 JUDGE WOODRUFF: Any objections to
3 the receipt of Exhibits 12, 13 NP, and 13 HC?
4 Hearing none, they will be received into evidence.

5 MR. FRANSON: Your Honor, I'm asking
6 for some direction here. We've had the discussion
7 about parts of Exhibit 13 HC and specific customer
8 names and specific information to customers. That
9 public hearing, as I recall, each of these folks
10 testified. So at least some of the information,
11 including the identities of these folks, are
12 public.

13 So if we want to ask a question that
14 might include a customer's name, how are we going
15 to do that? Are we going to mention the
16 customer's name, or do we have to go to -- into
17 highly --

18 JUDGE WOODRUFF: I would suggest
19 that if you want to go into anything beyond what
20 was mentioned at the public hearing, and that
21 would include any responses that MGE did -- made
22 towards that customer specific complaint, then it
23 would go to -- go into HC. And that's not hard to
24 do.

25 MR. FRANSON: Thank you, Your Honor.

1 JUDGE WOODRUFF: All right. For
2 cross examination, then, Kansas City and Joplin
3 are not here. Federal Agencies?

4 MR. PAULSON: No questions, Your
5 Honor.

6 JUDGE WOODRUFF: Jackson County and
7 Midwest Gas? Mr. Conrad, did you have any
8 questions?

9 MR. CONRAD: No questions, Your
10 Honor.

11 JUDGE WOODRUFF: All right. For
12 Public Counsel?

13 MR. MICHEEL: Yes, sir, Your Honor.

14 CROSS EXAMINATION BY MR. MICHEEL:

15 Q Mr. Ricketts, prior to working for
16 Missouri Gas Energy, you worked for Western
17 Resources, Inc.; is that correct?

18 A That's correct.

19 Q And has that company had some
20 trouble recently?

21 A I think it's well documented Westar
22 has had some troubles, yes.

23 Q And what was your position with
24 Westar when you left?

25 A Vice President in investor

1 relations.

2 Q And were you asked to leave Westar?

3 A Absolutely not.

4 Q And why did you leave Westar?

5 A I left on my free will, it was time
6 to pursue other opportunities. I had been there
7 for approximately 20 years and held various
8 positions, and again, just wanted to pursue other
9 opportunities.

10 Q You indicate in both your direct and
11 surrebuttal testimony that MGE has installed an
12 interactive voice response system. Is that
13 correct?

14 A That is correct.

15 Q And would you agree with me that
16 that interactive voice response system was put in
17 in response to the volume of customer calls that
18 MGE has been receiving and its -- its average
19 speed of answer and its abandoned call rate; is
20 that correct?

21 A We studied for a very long time
22 whether to upgrade that piece of technology, and
23 it was definitely time. That was not the sole
24 reason, but it was good business decision to do
25 so.

1 Q And would you agree with me that the
2 interactive voice response system is necessary for
3 MGE to provide safe and adequate service to its
4 customers?

5 A I think it's definitely a useful
6 tool. It's part and parcel of providing good
7 customer service, yes.

8 Q Is it necessary to provide safe and
9 adequate service to the customers? That's a yes
10 or no.

11 A I do not think it is absolutely
12 necessary, but it is very helpful.

13 Q If MGE did not have the interactive
14 voice response system, would MGE be able to attain
15 the customer service goals that it has with
16 respect to the average speed of answer and the
17 abandoned call rate?

18 A Because you have other tools
19 included, it's very possible.

20 Q Now, would you agree with me that
21 historically, MGE has had customer service
22 problems?

23 A Historically, I been here since
24 2002, in my tenure, I can't recall major problems,
25 but I'm not quite sure what you mean by that.

1 Q Well, would you agree with me that
2 historically, during your tenure, MGE hasn't met,
3 for example, the abandoned call rate or the
4 average speed of answer that the Company's
5 allegedly set for meeting?

6 A I wouldn't agree with that. I think
7 generally we have met those -- those standards.
8 There were times that we did not meet them.

9 Q So you would -- you would disagree
10 with me that there have been fiscal years when MGE
11 has not met those standards?

12 A Absolutely not, I would not
13 disagree. That's why I said generally. There
14 have been occasions and there were mitigating
15 circumstances that contributed to that. However,
16 generally, we have met them.

17 Q And those mitigating circumstances,
18 in your opinion, were that gas prices were high;
19 is that correct?

20 A I think high gas prices led to
21 several events that contributed. That was
22 definitely the major factor. But with high gas
23 prices comes high gas bills, adjustments to ABC
24 calculations, and several other things that would
25 indeed lead to that, yes.

1 Q And -- and the high gas prices isn't
2 something that MGE can control; isn't that
3 correct?

4 A I think that's a fair statement,
5 yes.

6 Q And the weather isn't something that
7 MGE can control; isn't that correct?

8 A That's correct.

9 Q And so wouldn't you agree with me
10 that there were other years MGE was able to meet
11 its customer service goals, is that correct, with
12 respect to average speed of answer and average
13 abandoned call rate?

14 A Absolutely. In fact, in 2002, we
15 had a abandoned call rate of 4.48 percent and an
16 ASA of 58 seconds. So yes.

17 Q And in 2002, the weather was warmer
18 than normal; isn't that correct?

19 A I think that is correct, yes.

20 Q And so these numbers for abandoned
21 call rate and average speed of answer are affected
22 by the weather. Isn't that correct?

23 A I think that's a fair statement,
24 yes.

25 Q And in your testimony, you only

1 recognize the -- when you failed to meet the ASA
2 and offer up the reason that the weather is colder
3 than normal; but on the other years when MGE is
4 meeting -- or what they allege to be the customer
5 service standards, you fail to mention the fact
6 that in those years, the weather was warmer than
7 normal and gas prices may have been lower than
8 normal, don't you?

9 A In my direct testimony, Mr. Micheel,
10 I have referenced several years of information,
11 including years that we have met those standards
12 and the years that we have not. So it is a
13 snapshot of several years, both meeting and not
14 meeting.

15 Q And my point is that that weather
16 knife cuts both ways, doesn't it, Mr. Ricketts?
17 When it's warmer than normal, all things being
18 equal, MGE's going to get less calls?

19 A MGE could indeed get fewer calls
20 when the weather is less than normal, yes.

21 Q And historically, that's what these
22 statistics show; isn't that correct?

23 A Weather is not the sole factor that
24 would drive the calls. There -- there are various
25 reasons that would drive the number of calls.

1 Q But weather is the only factor --
2 weather and high gas prices, those are the only
3 factors that you state for MGE's failure to meet
4 the customer service standards; isn't that
5 correct?

6 A Can you direct me to where you're
7 referring to, please?

8 Q Yes. Why don't you look at your
9 surrebuttal testimony, page 8, where you say what
10 OPC Witness Bolin's comparisons fail to consider,
11 however, is the impact high gas costs typically
12 have on the number of Commission referred
13 complaints and inquiries to MGE. Do you see that,
14 sir?

15 A Yes. I don't think that was used in
16 the context of saying that weather is the only
17 reason. But yes, I do see what you're referring
18 to.

19 Q And that's the only reason that you
20 offer up in your testimony, isn't it, sir?

21 A I'm not quite sure I'm following the
22 question.

23 Q Well, that's the only reason that
24 you offer up for MGE's failure to meet its
25 customer service standards is the fact that the

1 weather was colder, or gas prices were higher than
2 normal; isn't that correct?

3 A This particular portion of the
4 surrebuttal you're referring to, that is the only
5 item mentioned, if that's what you're asking.

6 Q Now, attached to your surrebuttal
7 testimony, you have some resolution of customer
8 complaints, do you not, from the public hearing?

9 A Yes, I do.

10 MR. MICHEEL: And I guess we should
11 probably go into HC just because I want to ask
12 questions about these schedules, Your Honor. So I
13 think that was your ruling, I just wanted to make
14 sure.

15 JUDGE WOODRUFF: Certainly. And I
16 ask that, of course, if you can keep the HC
17 together, so we don't have to --

18 MR. MICHEEL: I will do my best,
19 Your Honor.

20 JUDGE WOODRUFF: All right. We're
21 going to go off the internet. Anyone who is in
22 the room that needs to leave that has not signed a
23 confidentiality agreement needs to do so, and I'd
24 ask the attorneys look back and see if there's
25 anyone here that needs to leave.

1 MR. FRANSON: Staff doesn't see
2 anyone that needs to leave the room, Your Honor.

3 (REPORTER'S NOTE: At this point an
4 in camera session was held, which is contained in
5 Volume 14 of the transcript.)

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1 MR. FRANSON: Okay. Thank you. Are
2 we ready to proceed?

3 JUDGE WOODRUFF: All right. We're
4 back on the internet. We were in camera for a few
5 minutes and we're back in regular session.

6 Q (By Mr. Franson) What I'd like to
7 ask you, Mr. Ricketts, is about identity theft.
8 What is your understanding of identity theft?
9 What is it?

10 A My understanding is where someone
11 fraudulently takes over your identity and uses
12 that for their benefit.

13 Q Sounds like MGE has recently put in
14 some new policies. What are those policies in
15 regard to identity theft?

16 A Well, we made a couple improvements,
17 is what I would call it, to our policy. First of
18 all, as I said earlier, when you make mistakes,
19 the big thing is to learn from it. And in this
20 situation, we made three very clear improvements
21 to our process. That's not saying that the
22 process was incorrect, but we always look for
23 opportunities to improve the process.

24 Q Yes, sir.

25 A And the three things we did was,

1 first thing, was to understand that identity theft
2 is a major violation against the victim.

3 The second thing is each reported
4 case must be handled as though, in fact, it was
5 identity theft, until all the proper reports come
6 to fruition.

7 The third thing is instead of one
8 individual handling each case, we've assigned a
9 second as a check and balance in order to catch
10 all the details.

11 Q Okay. And what you've just
12 testified is that in Schedule CAR-3, attached to
13 your surrebuttal testimony, in fact, it --
14 actually, let me -- that's in 13 NP. Exhibit 13
15 NP, is it attached as Schedule CAR-3?

16 A That's correct.

17 Q Okay. Let me ask you this. When
18 someone notifies MGE, I've been a victim of a
19 crime, is there some kind of procedure in place to
20 follow up on that? For instance, do you require
21 proof that this person has, in fact, filed a
22 police report?

23 MR. HACK: Your Honor, I would
24 object to the overbreadth of the question. MGE
25 has no obligation to deal with crimes. If we have

1 specific instances of problems, then perhaps we
2 can talk about those.

3 JUDGE WOODRUFF: Overrule the
4 objection. Proceed.

5 Q (by Mr. Franson) Do you understand
6 my question, Mr. Ricketts?

7 A Would you rephrase it, please? Or
8 repeat it?

9 Q As part of this improved procedure
10 you're using, what I'm asking, is there a
11 follow-up where you, in fact, expect and want the
12 customer to provide you proof that this customer
13 has filed a police report?

14 A When a request is made for service,
15 we try to get proper identification. That's our
16 first goal. We want to make sure that the person
17 who is requesting the service is indeed the person
18 that we're dealing with.

19 Q Okay. I'm not sure you understood
20 my question. What I'm asking is, you've got a
21 current customer who says I've been a victim of
22 identity theft. What do you expect and require
23 that customer to do to help you and the customer
24 deal with that situation?

25 A I think, again, the basic thing that

1 we request from the customer is to show proper
2 identification in order to establish service.
3 That's our goal.

4 Q Okay. What I'm asking, let's assume
5 you've got a customer, the customer is -- you
6 recognize that someone is a customer, but you
7 learn that someone else is saying that they're a
8 victim of identity theft, that this person who
9 assumed your -- they say I am not a customer,
10 someone assumed my identity and did it
11 fraudulently. What I'm asking is, what is your
12 process to go through to verify that?

13 A Okay. What we are -- as stated in
14 the letter, what we do is we will provide service
15 to the customer, and then at a later time as
16 police reports, et cetera, becomes available, we
17 will ask that customer to give us the proper
18 information.

19 Q Okay. So what I'm asking really, is
20 there is a follow-up to this procedure?

21 A Yes.

22 Q Okay. Thank you. Let me go to 13
23 NP and ask you to look at Schedule CAR-1. Would
24 you get there, please, and tell me when you're
25 there? You find it, Mr. Ricketts?

1 A Yes, I have that. Is that the
2 notice of the closing of the --

3 Q Yes.

4 A Yes, I'm there.

5 Q And in fact, isn't that Case No.
6 GO-95-177?

7 A Yes.

8 Q Okay. Could you turn to page 2 of
9 your surrebuttal, the -- now, I'm talking about
10 the NP version, that would be 13 NP, specifically
11 lines 11 through 13, and could you please tell me
12 when you've had an opportunity to review that?

13 A Page 2?

14 Q Yes, sir.

15 A Lines, repeat that, please?

16 Q Lines 11 through 13.

17 A Okay.

18 Q And have you had an opportunity to
19 review those?

20 A Yes.

21 Q And in fact, isn't it true that
22 there is a case in -- at least one of them is
23 GM-2000-43 wherein MGE, and I don't know if it was
24 part of the stipulation agreement or what it was,
25 but isn't it true that there's certain customer

1 service reporting standards that continue to be in
2 effect?

3 A I'm not quite sure I'm aware of the
4 case you're referring to.

5 Q Okay. Does MGE make quarterly
6 reports to the Commission about its customers --
7 certain reports regarding certain measures of
8 customer service standards?

9 A Absolutely. Yes.

10 Q And you don't know whether that's
11 voluntary or whether it's part of a Commission
12 order?

13 A That is a -- that is a Commission
14 ordered report that we do on a quarterly basis is
15 my understanding.

16 Q Okay. But you wouldn't know the
17 case number or anything?

18 A I do not. No.

19 Q Okay. Mr. Ricketts, how does the
20 Company determine the satisfactions of its
21 customers with the level of service being
22 provided?

23 A Well, I think customer satisfaction
24 is really the overall customer experience. It's
25 -- when you make appointments, you keep your

1 appointments. When the customer has an issue, you
2 resolve the issue. You call back customers at a
3 time when it's convenient for them.

4 You send out accurate bills. You
5 read their meters on an ideal date. I think,
6 again, several major items that goes into what I
7 call the overall customer experience, and that is
8 how I would define quality customer service.

9 Q Okay. Mr. Ricketts, does the
10 company regularly try to ascertain customer
11 opinions of its service?

12 A I do not recall an opinion survey
13 from our customers recently.

14 Q Okay. How long have you been the
15 Vice President in charge of customer service?

16 A A little over two years.

17 Q Okay. So one hasn't been done in
18 your tenure of having customer service?

19 A That's correct.

20 Q And you don't know when the last
21 time that a survey was done?

22 A I do not.

23 Q Has the Company evaluated the cost
24 associated with the level of service it is
25 presently providing at its call center?

1 A Have we evaluated the cost?

2 Q The cost, yes, sir, associated with
3 the level of service you're currently providing at
4 your call center.

5 MR. HACK: I would object and -- not
6 so much an objection as a clarification as to what
7 is sought by the question.

8 JUDGE WOODRUFF: Can you explain
9 what --

10 MR. FRANSON: Yes, actually, I can,
11 Your Honor. One of the things that is at issue in
12 this case is reasonable costs and the level of
13 service that's provided. I'm asking if they've
14 done any evaluation, whatever type it may be,
15 associated with the level of service that's being
16 provided presently at the call center. Either
17 they have or they haven't.

18 JUDGE WOODRUFF: You can answer the
19 question if you can.

20 THE WITNESS: That is something we
21 do on a regular basis. As the Vice President of
22 business services, which includes customer
23 service, we try to balance costs with the level of
24 service.

25 And what we -- we've done, we try to

1 keep an adequate staffing level, we have
2 implemented technology. We've spent to the tune
3 of \$600,000 in the last several months on
4 technology. There is absolutely a balance there,
5 and that is something that's a part of my job as
6 fiscal responsibility to take a look at that.

7 Q (By Mr. Franson) Have, as part of
8 that, have you looked at what costs would be
9 incurred to attempt to provide higher levels of
10 customer service?

11 A I think the answer I just gave is
12 intended to provide a very high level of customer
13 service, and that is something we look at on a
14 regular basis.

15 Q Okay. I want to ask you about this
16 virtual hold system at your call center. What is
17 that?

18 A As the name implies, when a customer
19 calls in, they are put in a queue to wait for
20 their turn. This technology gives the customer
21 the opportunity to wait in queue, and at that time
22 when it's their turn, they would -- excuse me.
23 They would be given the opportunity to wait in the
24 queue or receive a call back when it is their
25 turn.

1 And so if the customer chooses to be
2 called back, they leave a number to be called, and
3 again, they are virtually held in the queue. So
4 when it is their turn, the customer will be given
5 further -- first of all, approximately the time of
6 -- the duration of the call back. When it's their
7 turn in the queue, they will be called back. And
8 they will be taken care of at that time.

9 The second part of that is the
10 customer is given the opportunity to receive a
11 call back at any other time in the future that is
12 convenient for them. So it is a great piece of
13 technology that we discovered and implemented that
14 in April of '04.

15 Q Do you consider this virtual hold
16 system to be a success?

17 A Thus far, absolutely.

18 Q Do you consider the virtual hold
19 system to be a discretionary expenditure of MGE or
20 one that you're required to make?

21 A In the true evident sense of the
22 word discretionary, it is discretionary. It is
23 not something that's a requirement. It is
24 something that, again, we try to provide high
25 quality customer service and we made a decision to

1 spend the dollars in an effort to help us achieve
2 that.

3 Q Okay. Mr. Ricketts, would you be
4 able to tell me anything about the automated meter
5 reading that you referred to in your testimony,
6 about what the Company's thoughts were at the time
7 in the mid '90s, or would that be beyond your
8 knowledge?

9 A That was prior to my arrival at MGE.

10 Q Okay. Mr. Ricketts, you referred to
11 a work force automation project which installed
12 computer terminals in trucks with completion of
13 service orders in the field; is that correct?

14 A That's correct.

15 Q Why did the Company look into this
16 technology?

17 A Well, we're always looking for ways
18 to improve what we do and provide high quality
19 customer service in a very efficient manner. And
20 we looked at the system, we decided that it would
21 make a big difference. Orders were being
22 completed in a much more timely manner, we would
23 eliminate some of the manual work involved in that
24 process, and made a decision to invest in the
25 technology.

1 Q Do you know how MGE became aware of
2 this technology?

3 A I do not. Again, that was before my
4 arrival at the company.

5 Q Okay. On page 4 of your direct
6 testimony, would you take a moment to turn there,
7 please, and tell me when you're there?

8 A I'm there.

9 Q Okay. You note that performance
10 standards were implemented in the call center in
11 the year 2002. Is that correct?

12 A Correct.

13 Q Okay. Are you aware of whether
14 performance standards are in use in other call
15 centers in Missouri utilities?

16 A I am not aware. In fact, I have
17 checked with a couple utilities, one in -- excuse
18 me, they're both on the Kansas side, and they do
19 not have these standards. This is something that
20 -- we're a union environment, and performance
21 standards are not popular in union environments.

22 And we were successful in getting,
23 through a partnership that we have with the union,
24 the opportunity to work together and implement
25 these standards. And we think they've made a

1 tremendous difference in our operation.

2 Q Okay. Mr. Ricketts, on page 5, you
3 talk about enhancements or improvements to the
4 Company's website to allow customers to pay their
5 gas bills and retrieve information from their
6 accounts. Is that correct?

7 A That's correct.

8 Q Okay. How did the Company become
9 aware of this technology, if you know?

10 A I couldn't tell you exactly how, but
11 again, it's something that we look at on a regular
12 basis for opportunities to enhance the tools that
13 we have in place.

14 Q Okay. Are you aware whether other
15 utilities, and this is just your knowledge, in the
16 State of Missouri offer these kinds of abilities
17 to customers?

18 A I am really not aware of the tools
19 that they -- that they use. My guess is that in
20 their effort to provide good customer service,
21 they should and probably do look at those tools.

22 Q Has -- you refer on page 5 also to
23 the interactive voice response.

24 A Yes.

25 Q Is that, in fact, now complete and

1 in place?

2 A Yes, it is. We've fully implemented
3 that in April.

4 Q April of 2004?

5 A That's correct.

6 Q What are the -- the specific
7 upgrades and when were -- was each installed? And
8 what I'm referring to is your -- the upgrading of
9 the IVR that you were talking about. What are the
10 specific upgrades and when was each implemented?

11 A Well, there are several phases, and
12 the major ones, I would say, is voice activated,
13 that was a part of the upgrade, so this has a
14 voice activated feature. And the biggest things,
15 as I pointed out in my testimony, is the ability
16 to have the customers make payments by check or
17 debit card, credit card. Those upgrades were
18 very, very good for the customers.

19 They can also make a pay arrangement
20 on their own. Which is -- gives the customer an
21 opportunity to not wait in a queue, to get their
22 calls answered. They have the ability to make a
23 very short-term pay agreement on their own through
24 the IVR.

25 So those, I would think, are the

1 major enhancements. And the last phases,
2 including these, the ones I mentioned, took place
3 in March/April time frame.

4 Q Okay. Has the Company monitored
5 utilization by customers of these options on the
6 website?

7 A It's very -- it's really in its
8 infancy because, again, these came to fruition in
9 late March/early April, but indeed, we are
10 tracking those stats, yes.

11 Q Okay. Let me turn to page 3 of your
12 surrebuttal, and I'd like to ask you to go to the
13 -- 13 NP, so we don't run any danger of getting
14 highly confidential information. Are you there?
15 13 NP?

16 A Page 3?

17 Q Yes, sir.

18 A Yes, I am.

19 Q Okay. On page 3, you state you are
20 not satisfied with the contact center performance
21 for the fourth quarter of 2003 and the first
22 quarter of 2004. Is that correct?

23 MR. HACK: Objection. I would
24 simply state that the word statistics needs to be
25 added.

1 MR. FRANSON: I guess, Your Honor,
2 I'm not familiar with an objection where the
3 suggestion is a word needs to be added. So I'll
4 -- I'll ask you to rule on my question. If it's
5 improper, I'll rephrase it.

6 JUDGE WOODRUFF: Is the problem that
7 he misstated the testimony?

8 MR. HACK: Misstated the testimony,
9 yes, sir.

10 JUDGE WOODRUFF: Where was it again?

11 MR. HACK: Page 3, lines 15 and 16.

12 MR. FRANSON: Actually, I just said
13 page 3, but --

14 JUDGE WOODRUFF: Are you just
15 repeating --

16 MR. FRANSON: Your Honor, I'll be
17 happy to rephrase the question.

18 Q (By Mr. Franson) Mr. Ricketts,
19 isn't it true that on page 3, beginning at line 15
20 and going all the way to page 4, line 7 -- if you
21 could review that, please?

22 A I have.

23 Q Okay. Isn't it true that you state
24 you are not satisfied, and I believe it says, with
25 the contact center performance statistics from the

1 fourth quarter of calendar year 2003 through the
2 first quarter of calendar year 2004. Why are --
3 why not?

4 A Well, you've asked me to read 15
5 through 22 and then 1 through 7. Just in a
6 nutshell, what I've said in those lines is I'm
7 very satisfied with the overall performance.
8 However, if you were to look at just those
9 statistics, I was not satisfied.

10 And the reason for that is the ASA
11 were in the -- in triple digits. And the ACR was
12 well above 20 percent for the time period in
13 question, those six months. So absolutely I was
14 not satisfied with that. But we continued to work
15 hard and tried to work towards our goals.

16 Q Do you have certain specific
17 objectives that you believe your call center
18 should be held to?

19 A We certainly have a merger
20 commitment with the Commission not to exceed 75
21 seconds on the ASA and not to exceed 8.5 seconds
22 on the ACR. And we work very hard not to exceed
23 those numbers.

24 Q Okay. If you could turn to 13 NP,
25 the NP version of your surrebuttal, page 1,

1 specifically lines 17 through 18. And what I'm
2 focusing on is a sentence to that extent,
3 therefore, OPC Witness Bolin's testimony,
4 discussion of events from years past may be of
5 some usefulness. Do you see that sentence?

6 A Yes, I do.

7 Q Okay. My question is, do you have
8 any reason to disagree, and what I'm talking about
9 is strictly the -- the history the OPC Witness
10 Bolin puts into her testimony.

11 A I'm not quite sure I'm following the
12 question.

13 Q Does Miss Bolin discuss a history of
14 events and history of MGE's customer service?

15 A Yes.

16 Q Okay. Now, strictly the history,
17 not talking about any opinions Miss Bolin might
18 have, do you disagree with the history that she
19 set out?

20 A I'm not quite sure I'm in a position
21 to agree or disagree with it. I was not here at
22 the time.

23 Q Okay. Thank you. Now, I want to
24 turn your attention to one other thing. Have you
25 seen the testimony of Staff Witness Bernsen?

1 A Yes, I have.

2 Q Okay. Have you had an opportunity
3 to review the schedules attached to her direct
4 testimony? And specifically I'm talking about
5 Schedule 2, 3, and 4. I'm sorry, 2, 3 -- 2
6 through 6.

7 A I do not have those with me. If I
8 can --

9 Q I'll get -- we'll come right to
10 that. My question is, previously have you had an
11 opportunity to review that?

12 A Briefly, yes.

13 MR. FRANSON: Your Honor, if I may
14 approach the witness?

15 JUDGE WOODRUFF: You may.

16 Q (By Mr. Franson) Mr. Ricketts, I'll
17 hand you that.

18 A Okay.

19 Q Okay. If you -- if you could take
20 an opportunity to review what I've handed you is a
21 copy of the direct testimony of Deborah Bernsen,
22 and what I -- I offer you the opportunity to
23 review the entire document, certainly, but what
24 I'm going to be asking you about is Schedules 2,
25 3, 4, 5, and 6 attached to Miss Bernsen's

1 testimony.

2 A Okay.

3 Q And please tell me when you've had
4 an opportunity to review the document.

5 A I have.

6 Q Okay. Do you have any reason to
7 disagree with the accuracy of the data that's in
8 Schedules 2, 3, 4, 5, and 6 of Miss Bernsen's
9 testimony?

10 A I have no reason, no.

11 MR. FRANSON: Okay. Your Honor, if
12 I may approach the witness again?

13 JUDGE WOODRUFF: You may.

14 Q (By Mr. Franson) Thank you. I'll
15 trade you.

16 A Okay.

17 Q Okay. Mr. Ricketts, I've handed you
18 the rebuttal testimony of Deborah Bernsen, Staff
19 witness. Could you take an opportunity to review
20 that, please?

21 A In its entirety, or a specific --

22 Q The schedules in particular.

23 A I have.

24 Q Okay. Are there, in fact, two --
25 specifically Schedules 1 and 2 attached to Miss

1 Bernsen's testimony?

2 A Yes.

3 Q Have you had a chance to review
4 those?

5 A Briefly, yes.

6 Q Do you have any reason to disagree
7 with the accuracy of those schedules?

8 A I do not.

9 MR. FRANSON: Your Honor, if I may
10 approach the witness and retrieve that document,
11 and then I have no further questions of this
12 witness.

13 JUDGE WOODRUFF: All right. I have
14 no questions from the bench, so there will be no
15 recross. Any redirect?

16 MR. HACK: Very briefly.

17 REDIRECT EXAMINATION BY MR. HACK:

18 Q Do you recall discussing with Mr.
19 Franson the not to exceed targets of 75 seconds
20 ASA and 8.5 percent ACR?

21 A Yes, I do.

22 Q And are those targets expressed in
23 terms of annual averages, Mr. Ricketts?

24 A Yes, they are.

25 Q You also had a -- a conversation

1 with Mr. Micheel regarding, and I don't believe we
2 need to get into HC information, the testimony of
3 Mr. Bernard during the Kansas City local public
4 hearing; is that correct?

5 A Yes, I did.

6 Q And I just want to clarify for the
7 record, would it be accurate to state that to the
8 extent your schedule and your testimony
9 corroborates what Mr. Bernard said, to that
10 extent, will you agree with him?

11 A Yes, I would.

12 Q Are we able to corroborate anything
13 else he has said, Mr. Bernard, in his testimony?

14 A I am not.

15 MR. HACK: Thank you.

16 JUDGE WOODRUFF: All right, then.

17 Mr. Ricketts, you may step down.

18 THE WITNESS: Thank you.

19 JUDGE WOODRUFF: And it's about time
20 for lunch. For scheduling matters, Mr. Oglesby I
21 believe is next on the list.

22 MR. HACK: Yes, he is.

23 JUDGE WOODRUFF: Do the parties know
24 how long this might take for Mr. Oglesby?

25 MR. MICHEEL: Nope.

1 JUDGE WOODRUFF: We're looking at
2 substantial cross on him?

3 MR. FRANSON: I wouldn't subscribe
4 Staff's cross examination of Mr. Oglesby as
5 substantial. I would say it would probably be
6 similar in time to what we had with Mr. Ricketts,
7 maybe slightly longer.

8 MR. MICHEEL: I have more than that,
9 Your Honor.

10 JUDGE WOODRUFF: All right. I know
11 we talked about needing a future witness --

12 MR. HACK: We actually need for Mr.
13 Oglesby and for Mr. Hayes to be able to leave
14 today.

15 JUDGE WOODRUFF: What I'm saying is
16 after Oglesby, we'll go to Hayes as soon as we're
17 done with Oglesby.

18 MR. FRANSON: And I will notify --
19 Your Honor, I, first of all, want to apologize if
20 there was any inappropriate comments on my part
21 when we were discussing a deposition earlier.

22 I also want to bring up there is one
23 more that I will be offering, that is the
24 deposition of Mr. Oglesby. I just wanted you to
25 be aware of that, and that is our last one.

1 JUDGE WOODRUFF: I think you
2 mentioned that at the time. Sometimes things get
3 a little heated on my part, too, so mutual
4 apologies are in order. Thank you.

5 We'll break for lunch, come back at
6 1 o'clock.

7 MR. FRANSON: And Your Honor, we're
8 starting with Mr. Oglesby at that time?

9 JUDGE WOODRUFF: Yes.

10 (Off the record.)

11 JUDGE WOODRUFF: All right, we're
12 back from lunch. And Mr. Oglesby is at the stand,
13 and if you'll raise your right hand, I'll swear
14 you in.

15 (Witness sworn.)

16 JUDGE WOODRUFF: Please be seated,
17 and you may inquire.

18 JAMES OGLESBY, testified as follows:

19 DIRECT EXAMINATION BY MR. HACK:

20 Q State your name for the record,
21 please.

22 A James Oglesby.

23 Q Mr. Oglesby, have you caused to be
24 prepared and submitted in this proceeding certain
25 direct, rebuttal, and surrebuttal testimony that

1 have been marked respectively as Exhibits 14, 15,
2 and 16?

3 A Yes, I have.

4 Q Do you have any changes or
5 corrections to those testimonies at this time?

6 A No, I do not.

7 Q If I were to ask you today the
8 questions posed in those testimonies, would your
9 answers be substantially the same?

10 A Yes, I believe they would.

11 Q And are those answers true and
12 correct to the best of your information,
13 knowledge, and belief?

14 A Yes, I believe that's true.

15 MR. HACK: With that, MGE would move
16 the admission of Exhibits 14, 15, and 16, and
17 tender Mr. Oglesby for cross examination. This is
18 the only time he'll be up.

19 JUDGE WOODRUFF: Exhibits 14, 15, 16
20 have been offered into evidence. Is there any
21 objection to their receipt? Hearing none, they
22 will be received into evidence.

23 All right. For cross examination,
24 Kansas City and Joplin are not here. Federal
25 Agencies?

1 MR. PAULSON: No questions, sir.

2 JUDGE WOODRUFF: Jackson County and
3 Midwest Gas are not here at the moment. Public
4 Counsel?

5 MR. MICHEEL: Yep.

6 CROSS EXAMINATION BY MR. MICHEEL:

7 Q Is it correct, Mr. Oglesby, that you
8 are the President and Chief Operating Officer of
9 Missouri Gas Energy?

10 A Yes, that is correct.

11 Q Are you the highest ranking
12 individual at MGE who is testifying in this
13 proceeding?

14 A Yes, I believe I am.

15 Q And you are the highest ranking
16 individual at the division MGE?

17 A Yes, I am.

18 Q Would you agree with me that you're
19 presenting testimony regarding regulatory policy
20 and legislative activities?

21 A Yes.

22 Q Would you agree with me this is the
23 first time you've testified before the Missouri
24 Public Service Commission?

25 A Yes, that is true.

1 Q Would you agree with me that you are
2 not an expert on regulatory policy?

3 A I would.

4 Q Would you agree with me you're not
5 an expert on consumer services issues?

6 A I believe that I have knowledge from
7 35 years experience about the operation of a
8 utility company.

9 Q Are you an expert on customer
10 service issues, sir?

11 A I believe, again, 35 years
12 experience would give me the opportunity to have
13 some knowledge about customer service issues as it
14 relates to, in particular, my company.

15 Q In your 35 years of experience, did
16 you ever work in the customer services department
17 at MGE or its predecessors?

18 A As a -- no, I did not.

19 Q So you've never worked in the
20 customer service department; is that correct?

21 A That is correct.

22 Q And you've never had any
23 responsibilities with respect to customer service
24 issues; isn't that correct?

25 A That's not correct.

1 Q Other than your job today, you
2 haven't had any responsibilities; is that correct?
3 Direct responsibilities?

4 A Several years ago I had some direct
5 responsibilities as it relates to customer
6 service.

7 Q And what were those
8 responsibilities?

9 A I oversaw part of the customer
10 service operation in the Joplin/Monett area.

11 Q And you've never worked directly in
12 the customer service department; is that correct?

13 A Never worked directly, no, sir.

14 Q Have you ever taken any specialized
15 classes with respect to customer service?

16 A As it relates to MGE's customer
17 service department?

18 Q Yes.

19 A No, I have not.

20 Q Or any other type of special
21 customer service classes?

22 A I have taken classes and seminars on
23 customer -- how to handle customers in a customer
24 service platform, yes.

25 Q Would you agree with me that you are

1 not an expert regarding the treatment of
2 legislative activity costs and rate cases?

3 A I would agree with that.

4 Q Would you agree with me that at your
5 deposition on April 23, '04, you testified that
6 you don't consider yourself an expert in anything?

7 A That is true. I believe I did say
8 that.

9 Q Did you prepare your direct
10 testimony, Exhibit 14, by yourself?

11 A I did not prepare it by myself, no.
12 I prepared it with the consultation and help from
13 Rob Hack and his staff.

14 Q Isn't it correct that a substantial
15 portion of your direct testimony is word for word
16 identical from the direct testimony of Steven W.
17 Cattron in Case No. GR-2001-292?

18 A I believe that is a true statement.

19 Q Why did you copy substantial
20 portions of Witness Cattron's testimony?

21 A I would say to you that I feel that
22 maybe Mr. Cattron may have copied some of my
23 thoughts and feelings several years ago in
24 conversations I had with Mr. Cattron as it relates
25 to the operation of MGE.

1 MR. MICHEEL: May I approach the
2 witness, Your Honor?

3 JUDGE WOODRUFF: You may.

4 MR. MICHEEL: Just for the record,
5 this is already in the record attached as a
6 schedule to Ms. Bolin's rebuttal testimony.

7 JUDGE WOODRUFF: Okay. What is it?

8 MR. MICHEEL: It's a copy of the
9 direct testimony of Steven W. Cattron in Case No.
10 GR-2001-292.

11 JUDGE WOODRUFF: Thank you.

12 MR. HACK: Doug, could you tell me
13 what schedule that is?

14 MR. MICHEEL: It's her rebuttal
15 testimony, I think it's KKB-9. If you'd like, Mr.
16 Hack, I have an extra copy of Mr. Cattron's
17 testimony.

18 MR. HACK: Sure.

19 MR. MICHEEL: If that would help
20 you, sir.

21 JUDGE WOODRUFF: Is that Bolin's
22 rebuttal or surrebuttal, sir?

23 MR. MICHEEL: Rebuttal testimony,
24 Your Honor. I have a copy for you, too, Your
25 Honor, if you'd like. I made extra copies.

1 JUDGE WOODRUFF: I can find it here,
2 I'm sure.

3 MR. MICHEEL: Let me know when
4 you're ready, Your Honor.

5 JUDGE WOODRUFF: Oh, I'm ready any
6 time.

7 Q (By Mr. Micheel) Oh. Mr. Oglesby,
8 could you turn to page 15 of Mr. Cattron's
9 testimony, and I'm focusing on the question and
10 answer beginning on lines 14 through line 23.

11 A Okay.

12 Q Could you read that to yourself,
13 sir, and let me know when you're ready?

14 MR. FRANSON: I'm sorry, Mr.
15 Micheel, could you repeat that page reference,
16 please?

17 MR. MICHEEL: Sure. Page 15, lines
18 14 through 23.

19 THE WITNESS: Okay, I've read that.

20 Q (By Mr. Micheel) Is it correct that
21 that question and answer deals with MGE's alleged
22 inability to achieve its authorized return because
23 of MGE's safety line replacement program and the
24 requirements of an annual capital expenditures of
25 more than \$15 million annually?

1 A Yes.

2 Q Correct you did not mention any of
3 those expenditures for safety line replacement
4 program in your testimony in this case because
5 House Bill 208, the infrastructure replacement
6 surcharge, now allows MGE to recover those costs
7 with a surcharge from rate payers?

8 A What was the question?

9 MR. MICHEEL: Could you just read it
10 back?

11 THE REPORTER: "Correct you did not
12 mention any of those expenditures for safety line
13 replacement program in your testimony in this case
14 because House Bill 208, the infrastructure
15 replacement surcharge, now allows MGE to recover
16 those costs with a surcharge from rate payers?"

17 THE WITNESS: That's true.

18 Q (By Mr. Micheel) Would you agree
19 with me that the infrastructure replacement
20 surcharge will allow MGE to recover the safety
21 line replacement costs and other costs covered by
22 the law via a surcharge?

23 A Yes.

24 Q Would you agree with me that all
25 things remaining equal, the ISRS legislation will

1 allow MGE to better authorize its returns?

2 A Yes, I believe that would be true.

3 Q Would you agree with me that MGE's
4 ISRS took effect on April 1, 2004, and will remain
5 in effect until October 2, 2004?

6 A I can't -- I can't tell you the
7 exact dates.

8 MR. MICHEEL: I need to get an
9 exhibit marked, Your Honor. It's a highly
10 confidential exhibit, so I guess we'll need to go
11 into that mode.

12 JUDGE WOODRUFF: Actually, do you
13 need to ask highly confidential questions, or --

14 MR. MICHEEL: I think some of the
15 questions I'm going to ask deal with the question
16 that I asked, and so --

17 JUDGE WOODRUFF: Okay.

18 MR. MICHEEL: Yes would be the short
19 answer, I guess is what I'm trying to say.

20 JUDGE WOODRUFF: All right.

21 MR. MICHEEL: It's Exhibit --

22 JUDGE WOODRUFF: It will be 224.

23 224 HC.

24 MR. MICHEEL: And it's MGE's
25 response to Public Counsel Data Request 5032.

1 JUDGE WOODRUFF: All right. At the
2 request of Public Counsel, we will be going into
3 an in camera session here. I'll take this off the
4 internet.

5 MR. MICHEEL: And Your Honor, I need
6 to apologize, I did not bring enough copies for
7 everyone, that's my fault, and I will -- I do have
8 a copy for Mr. Hack since it's his witness, and I
9 apologize for that, Your Honor.

10 JUDGE WOODRUFF: If you want to take
11 some of these, since we're not fully loaded at the
12 bench.

13 MR. MICHEEL: That'd be great.

14 JUDGE WOODRUFF: And I might also
15 add that anyone who's in the room that needs to
16 leave, please do so now. And if the attorneys
17 would look back and make sure no one's here that
18 shouldn't be here? I think I recognize most of
19 the faces back there, so.

20 (Exhibit 224 HC marked for
21 identification.)

22 (REPORTER'S NOTE: At this point an
23 in camera session was held, which is contained in
24 Volume 14 of the transcript.)

25

1 JUDGE WOODRUFF: That's fine. It's
2 easy to miscount sometimes. Let's go back on --
3 into regular session. We're back on the internet,
4 we're back in regular session, and you can proceed
5 with your cross examination.

6 Q (By Mr. Micheel) Is it correct that
7 Mr. Cattron was your predecessor as the Chief
8 Operating Officer and President of Missouri Gas
9 Energy?

10 A Yes, it was.

11 Q Is it correct that the 8.5 percent
12 abandoned call rate and the 75 second average
13 speed of answer stem from a settlement in Case No.
14 GM-2043, Southern Union's application to merge
15 with Pennsylvania Enterprise?

16 A I believe that's correct.

17 Q It's correct that the Staff, Public
18 Counsel, and Southern Union filed their unanimous
19 stipulation and agreement on October 8, 1999?

20 A I don't know the date.

21 Q You haven't reviewed it?

22 A I have not reviewed it, no.

23 MR. MICHEEL: This is attached also
24 as a schedule in Ms. Bolin's rebuttal testimony,
25 but I would just like to approach the witness to

1 refresh his recollection. May I approach the
2 witness?

3 JUDGE WOODRUFF: Certainly.

4 Q (By Mr. Micheel) I'm handing you a
5 copy of the unanimous stipulation agreement in
6 GM-2043, sir. And I think we did this in your
7 deposition, too. If you could turn to the back
8 page of that, does it indicate that a service copy
9 was mailed October 6th, 1999?

10 A I'm not sure what you mean. Oh,
11 yes, it does.

12 Q And then if you could turn one page
13 in? Does that indicate that Paul Boudreau signed
14 on behalf of Southern Union Company?

15 A Yes, it does.

16 Q And I signed on behalf of the Office
17 of the Public Counsel?

18 A You certainly did.

19 Q So does that refresh your
20 recollection that it was sometime in October, like
21 October 6th of 1999?

22 A Well, it doesn't refresh my
23 recollection because I have not reviewed this
24 document other than when we did the deposition.

25 Q Did you see it in the deposition?

1 A Yes, I did.

2 Q Did you disagree with my dates at
3 that time?

4 A No, I did not.

5 Q Do you have any reason to believe
6 that those dates are incorrect?

7 A Absolutely not.

8 Q Is it correct that your belief that
9 the 8.5 percent abandon call rate and the 75
10 second average speed of answer was a standard set
11 by your predecessor, Mr. Cattron?

12 A Yes, that is my belief.

13 Q Is it -- and you're aware that Mr.
14 Cattron filed testimony in GR-2001-292 on November
15 7th, 2000, are you not?

16 A No, I'm not.

17 Q Do you have a copy of Mr. Cattron's
18 testimony there in front of you that I gave you
19 earlier today?

20 A Yes, I do.

21 Q And on the front cover does it
22 indicate direct testimony of Steven W. Cattron,
23 Jefferson City, Missouri, November 7th, 2000?

24 A Yes, it does.

25 Q Does that refresh your recollection?

1 A Yes, it does.

2 Q And if you'll turn to the back page
3 of that, is there an affidavit of a Steven Cattron
4 sworn and subscribed on November 6th, 2000?

5 A Yes, there is.

6 Q And the notary public is Kim Henzi,
7 H-e-n-z-i? You know Miss Henzi?

8 A Yes, I do.

9 Q Does she work for the Company?

10 A Yes, she does.

11 Q Does that indicate Mr. Cattron
12 signed an affidavit on November 6?

13 A Yes, it does.

14 Q Would you agree with me that Mr.
15 Cattron filed his direct testimony after the
16 settlement in GM-2000-43, which was dated October
17 6, 1999?

18 A Yes.

19 Q Would you turn to page 8 of Mr.
20 Cattron's testimony, sir?

21 A Yes.

22 Q And I'm focusing -- there's only one
23 question on that page, do you see that?

24 A Yes, I do.

25 Q Could you read that question and

1 answer into the record?

2 A In its order in Case No. GR-98140,
3 the Commission found that MGE had not yet fully
4 complied with commitments made in its prior rate
5 case No. GR-96-285 and reminded the parties that
6 such commitments remain in effect until such time
7 as an order relieving MGE of such commitments is
8 issued. Are you aware of that statement?

9 Answer: Yes, I take very seriously
10 all commitments made by MGE to the Commission. It
11 is my intention that MGE live up to each and every
12 such commitment. As more specifically reported in
13 the direct testimony of MGE Witness Karen M.
14 Czaplewski, it is my belief that, except for not
15 reaching the ASA, average speed of answer, goal of
16 45 seconds, MGE has fulfilled all of the
17 commitments it has made to the Commission.

18 You want me to continue on?

19 Q That's enough, sir. Is it correct
20 the commitment Mr. Cattron is talking about is
21 MGE's commitment to this Commission which is based
22 on a Commission order that MGE have an abandon
23 call rate of 5 percent and an average speed of
24 answer of 45 seconds?

25 A I don't see the 5 percent there, but

1 the 45 seconds is there, yes, sir.

2 Q And is it correct that Witness
3 Catttron stated that it was his intention, quote,
4 "that MGE live up to each and every such
5 commitment," close quote?

6 A That is true.

7 Q Is it correct that there is no
8 Commission order relieving MGE of its commitment?

9 A As far as I know, there is no such
10 order.

11 Q So is it correct that this
12 commitment for 5 percent abandon call rate and a
13 45 second average speed of answer was recommended
14 by MGE?

15 A Yes.

16 Q Is MGE going to live up to the
17 commitment it made to the Commission and comply
18 with the Commission's order in that regard?

19 A It is my intent to comply with any
20 commitments that were made. I was not fully aware
21 of -- of this commitment, which is my fault, I
22 should have been made aware of it, I should have
23 made myself aware of it.

24 I intend to -- to meet all
25 commitments as necessary. I do, however, believe

1 that the 45 second goal as is committed to is
2 something that we have to balance with the costs
3 associated with that goal.

4 MR. MICHEEL: Your Honor, I'm just
5 going to ask -- you know, my question was pretty
6 simple. Are you going to live up to that
7 commitment. And now he's rambling on, and Mr.
8 Hack's going to have every -- every chance to do
9 it.

10 JUDGE WOODRUFF: Your objection is
11 sustained. Please just answer the questions and
12 your attorney will give you a chance to elaborate
13 if you need to.

14 Q (By Mr. Micheel) Is it correct, Mr.
15 Oglesby, that you didn't even know how the 8.5
16 percent abandon call rate and the 45 second
17 average speed of answer compare to gas industry
18 averages?

19 A That is true.

20 Q Is it correct MGE commissioned a
21 call center evaluation by Theodore Barry &
22 Associates that is attached as Schedule KKB-4 to
23 Ms. Bolin's rebuttal testimony?

24 A I am not aware of that document.

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

1 rebuttal testimony with you, sir?

2 A No, I do not.

3 MR. MICHEEL: Just bear with me,
4 Your Honor, I need to get my copy.

5 JUDGE WOODRUFF: Which schedule is
6 it?

7 MR. MICHEEL: I believe it's KKB-3,
8 Your Honor.

9 JUDGE WOODRUFF: Thank you.

10 MR. MICHEEL: I'm sorry. KKB-4.
11 May I approach the witness and hand him a copy of
12 --

13 JUDGE WOODRUFF: You certainly may.

14 Q (By Mr. Micheel) This is a call
15 center evaluation for Missouri Gas Energy by
16 Theodore Barry & Associates. It's attached to Ms.
17 Bolin's rebuttal testimony in this matter, sir.

18 A Okay.

19 Q If you could, sir, turn to the page
20 of that testimony that has promptness of call
21 answering and abandonment rates, that page? Or
22 perhaps I could turn there for you if that would
23 be quicker.

24 A It's quite a lengthy document. I do
25 have -- I do -- I did find this, page 7?

1 Q Yes, sir.

2 A Mm-hmm.

3 MR. HACK: Your Honor, I believe
4 there needs to be some, at least, attempt at a
5 foundation laid for this document.

6 JUDGE WOODRUFF: It's already in
7 evidence. Well, actually it's not from Bolin's
8 testimony, I guess.

9 MR. MICHEEL: I can do that.

10 JUDGE WOODRUFF: Yes, please do.

11 Q (By Mr. Micheel) Could you turn to
12 the first page, sir?

13 A Certainly.

14 Q The cover page of the document.
15 Does it say call center evaluation, Missouri Gas
16 Energy, TB&A Consultants to management?

17 A Yes.

18 Q And then down at the bottom it says
19 TB&A Consultants, Management?

20 A I do not see that.

21 Q Okay. You don't see that on the
22 bottom, the first page, the very cover page?

23 A Yes. I do see that on the front
24 page.

25 Q And -- and does the first page under

1 the introduction indicate that Southern Union
2 Company provides gas delivery services to retail
3 customers in parts of several states, does that
4 indicate to you that -- that Southern Union
5 Company, MGE, commissioned this study?

6 A I have no -- I have no way to know
7 that they commissioned the study, but it does
8 appear that way from the document.

9 Q Does it say the goals of evaluation
10 purpose of the analysis is to provide a baseline
11 for MGE to use for benchmark of performance and
12 customer service telephone answering?

13 A Where does it say that?

14 Q Under goals of evaluation on your
15 page, it's -- say Schedule 7-4?

16 A I see it now. Yes.

17 Q Does that indicate those are the
18 goals?

19 A Yes, it does.

20 Q And you were with MGE during Case
21 No. GR-98140, were you not?

22 A Yes.

23 Q And you were aware that the Company
24 hired Theodore Barry & Associates to look at the
25 call center, were you not?

1 A I'm vaguely aware of that, yes.

2 Q And you're aware it was a large
3 issue in GR-98140, were you not?

4 A Yeah, I was vaguely aware of it. I
5 was in field operations at that time.

6 MR. MICHEEL: I think I've laid an
7 appropriate enough foundation, Your Honor, that
8 this is indeed an MGE document and a study for MGE
9 to allow me to continue questioning.

10 MR. HACK: I would object, Your
11 Honor, and state simply that Mr. Oglesby has not
12 yet been able to testify or asked the question if
13 he's ever seen this document before in his life.

14 JUDGE WOODRUFF: I'll overrule the
15 objection. Go ahead and proceed.

16 Q (By Mr. Micheel) Can you turn to
17 the promptness of call answering and abandonment
18 rate section, sir?

19 A I have that.

20 Q Is it correct that it's got a column
21 there that says annual performance average speed
22 of answer industry average 60 seconds?

23 A Yes.

24 Q Is it correct that the evaluation
25 indicates that the industry average for the

1 abandon call rate is 7.5 percent?

2 A Yes, it is. What is the date of
3 this document, by the way?

4 Q It was conducted sometime in the
5 '98, '99 -- '98 time frame, sir. I don't see a
6 date on the document.

7 A That's -- you know, that seems like
8 that's several years ago to be relevant to today.

9 Q Well, why don't you answer my
10 questions, and your attorney's going to have a
11 chance to answer your questions. Or ask you some
12 questions, and you can answer Mr. Hack's
13 questions.

14 Would you agree with me that
15 according to the TB&A evaluation, MGE's standards
16 are below average call rate according to this
17 document?

18 A Yes, I would, according to this
19 document. This old document.

20 Q And are you aware that the Office of
21 Public Counsel asked MGE for copies of any other
22 studies they had with respect to -- to the call
23 center and call center studies and call center
24 performance? Were you aware they asked a data
25 request for that?

1 A I'm not aware of that. I would
2 assume they would have, but I am not aware of
3 those.

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

6 JUDGE WOODRUFF: You may.

7 Q (By Mr. Micheel) Mr. Oglesby, I'm
8 handing you the Company's response to Data Request
9 No. 5027, which says please provide complete
10 copies of studies, action plans, Company policies
11 regarding service quality, e.g., abandon call
12 rate, average speed of answer in place or prepared
13 by MGE from 1994 to date.

14 Could you please read into the
15 record the Company's response to that data
16 request?

17 A Please refer to the attached PDF
18 files. MGE customer service personnel, spelled
19 wrong, have thoroughly reviewed files in an effort
20 to find material from 1998 forward responsive to
21 this request. Except for the attached material,
22 MGE has been able to find nothing else. Our
23 objection still stands as to earlier material.

24 Q And the documents that are attached
25 to that answer were the rebuttal testimony of Lisa

1 Kremer in Case No. GR-2001-292; is that correct?

2 A It appears that's correct.

3 Q And there is another rebuttal
4 testimony, the rebuttal testimony of Gary Bangert
5 of the Staff in Case No. GR-91 -- or GR-91292; is
6 that correct?

7 A What was the name?

8 Q Bangert. B-a-n-g-e-r-t. I believe
9 that's how Mr. Bangert pronounces it. I don't
10 want to mangle anyone's name.

11 MR. MICHEEL: If it'll help, I can
12 approach the witness and show him.

13 THE WITNESS: Yeah, that might --
14 that might help.

15 MR. MICHEEL: Okay.

16 JUDGE WOODRUFF: Please do.

17 THE WITNESS: There's no name on
18 this. Is that the one you're talking about?

19 Q (By Mr. Micheel) Here you go.
20 That's an attachment to it.

21 A Oh, okay.

22 Q There you are, sir.

23 A Okay. I have it.

24 Q Are those the only two documents
25 that MGE provided in response to those data

1 requests?

2 A According to what you've given me,
3 that's all I know of is these two.

4 Q Do you have any doubts that I've not
5 given you the complete response, sir?

6 A No, I don't.

7 Q And I asked for all studies that MGE
8 had completed, did I not, sir?

9 A No, you did not. You said -- the
10 request was please provide complete copies of
11 studies. It didn't say all.

12 Q Okay. So it's your understanding
13 that MGE could have kept some studies away from me
14 in response to that because I didn't ask for all
15 of them?

16 A I have -- I have no way of knowing
17 what you -- what they provided you other than what
18 you provided me here.

19 Q Do you know what MGE's obligations
20 are in response to discovery requests in this
21 proceeding, sir?

22 A I would assume it's to give you all
23 the information that they have.

24 Q Do you think MGE complied with those
25 requests, sir?

1 A I would certainly hope so.

2 Q If you could, turn to page 15 of Ms.
3 Kremer's testimony that is attached, the first
4 testimony attached.

5 A Okay.

6 MR. HACK: Excuse me. May I see
7 that?

8 MR. MICHEEL: Yes, sir. Did you
9 want a copy, Mr. Hack?

10 MR. HACK: Yes.

11 MR. MICHEEL: I don't want to keep
12 you out of the loop, sir.

13 Q (By Mr. Micheel) Could you -- have
14 you turned to page 15 of Ms. Kremer's testimony?

15 A Yes, I have.

16 Q Could you read into the record for
17 me, starting -- the question starting on line 7
18 through line 16?

19 A Question: How did the Company
20 arrive at its current targets of 45 seconds for
21 ASA and 5 percent for ACR?

22 As described to Staff during an on
23 site visit at the Company on March 22, 2001, with
24 Mr. Paul Blankenship, MGE's contact center
25 manager, these -- I can't read the word -- were

1 considered best practices at the time Mr.
2 Blankenship authored the customer action plan.
3 These, and the word I cannot --

4 Q It's indices.

5 A Indices? Were also used by Mr.
6 Blankenship's previous employer, First Data, and
7 are commonly used as an accepted industry norm.
8 Neither the Staff nor the Company's customers
9 requested or required MGE to establish its current
10 ACR and ASA targets; these targets were developed
11 internally and the costs of such are included in
12 rates that customers pay.

13 Q Now, does that indicate that the 45
14 second ASA and the 5 percent for the abandoned
15 call rate was an internal MGE policy that they
16 established?

17 A Yes, it does.

18 Q And certainly there's no evidence in
19 this proceeding that MGE has met those levels with
20 respect to those two goals; isn't that correct?

21 A That is correct.

22 Q Is it correct that MGE wants to
23 increase customer rates by \$2 million in this
24 case, in part because of its alleged superior
25 abandoned call rate and average speed of answer?

1 A I think the issue is high quality
2 customer service, which is a lot more than just
3 ACR and ASA.

4 Q And I said in part, did I not?

5 A Yes, you may have.

6 Q And those are two of the component
7 parts that MGE has pointed to for its alleged
8 superior management efficiency and customer
9 service; is that correct?

10 A That's correct.

11 Q And those aren't even meeting
12 industry standards, isn't that correct, according
13 to MGE's own study?

14 A According to this old study, that's
15 correct.

16 Q And you didn't have any newer study,
17 did you, Mr. Oglesby?

18 A Not that I know of.

19 Q Now, do you have a copy, again, of
20 Mr. Cattron's testimony?

21 A Yes, I do.

22 Q And my question to you is, sir,
23 you've already admitted that you -- you used
24 substantial portions of Mr. Cattron's testimony,
25 and my question to you is, why did you delete from

1 your prepared direct testimony in this case the
2 question and answer that appears on page 8 of Mr.
3 Cattron's testimony?

4 A I don't know that I deleted
5 anything. I think I sat down evidently prepared
6 direct testimony.

7 Q A substantial part of your direct
8 testimony is word for word with Mr. Cattron's
9 direct testimony in GR-91292. Isn't that correct?

10 A A lot of it is, yes.

11 Q And this question and answer on page
12 8 of Mr. Cattron's testimony does not appear in
13 your direct testimony in this case, does it?

14 A It does not.

15 Q Why did you delete this question and
16 answer from that testimony? Why isn't it
17 appearing in this case?

18 A I can't -- I have -- I don't have an
19 answer for you.

20 Q You don't know?

21 A I don't know.

22 Q Before you prepared your direct
23 testimony in this case, did you read all of Mr.
24 Cattron's testimony in the previous case?

25 A No, I did not.

1 Q Did somebody just give you excerpted
2 portions of Mr. Cattron's testimony in the
3 previous case?

4 A No. No. I believe what I said
5 earlier was the fact that I had had conversations
6 with Mr. Cattron a couple years ago, well, longer
7 than that now, but some of the issues that I was
8 concerned with at that time seemed to appear in
9 that testimony.

10 I had prepared my direct testimony
11 with the help of the regulatory folks. And it
12 would seem that a lot of the issues that we have
13 had for several years have not relatively changed
14 that much.

15 Q Is it pure coincidence that your
16 testimony is word for word verbatim with Mr.
17 Cattron's testimony?

18 A I would say it's not pure
19 coincidence. I would say that a lot of issues
20 that are out there today were the same issues that
21 apparently Mr. Cattron had several years ago.

22 Q Is it correct in preparing your
23 direct testimony in this case you did nothing to
24 determine the standards MGE had committed to this
25 Commission to meet with respect to the abandoned

1 call rate and the average speed of answer?

2 MR. HACK: Objection, asked and
3 answered.

4 JUDGE WOODRUFF: Overruled.

5 THE WITNESS: Ask the question,
6 please, again?

7 MR. MICHEEL: Could you read it
8 back?

9 THE REPORTER: "Is it correct in
10 preparing your direct testimony in this case you
11 did nothing to determine the standards MGE had
12 committed to this Commission to meet with respect
13 to the abandoned call rate and the average speed
14 of answer?"

15 THE WITNESS: It is correct that I
16 was not aware of those commitments.

17 Q (By Mr. Micheel) And you -- and I
18 asked you in your deposition, did I not, did you
19 do anything to endeavor to find out whether or not
20 your predecessor had items in place with respect
21 to the abandon call rate and the average speed of
22 answer?

23 And you answered, the abandon call
24 rate, the goals for the abandoned call and average
25 speed of answer was in place, as I indicated, and

1 no, I did not go back to research to see if there
2 was any other standard that had been put in place.

3 Question: And don't you think it
4 was important to do that?

5 Answer: No, I did not.

6 Is that your testimony, sir?

7 A Yes. Yes, it was.

8 Q Is that still your testimony?

9 A Yes, it is.

10 Q Would you agree with me if this
11 Commission determines, after hearing all the
12 evidence, that MGE is providing only average
13 customer service, that MGE should not receive a \$2
14 million increase in its rates for alleged
15 management efficiency?

16 A I don't believe -- I believe the
17 Commission will look at this in a manner that will
18 provide the proper resolution to the issue.

19 MR. MICHEEL: Your Honor, I ask that
20 that answer be stricken. I asked him to assume
21 that the Commission determines that MGE, based on
22 the evidence, is only providing average customer
23 service, and whether or not if the Commission
24 makes that determination, it's appropriate that
25 the Company receive a \$2 million increase for

1 management efficiency.

2 JUDGE WOODRUFF: The answer was
3 non-responsive and will be stricken.

4 THE WITNESS: Ask the question
5 again, please.

6 MR. MICHEEL: Could I just ask you
7 to read it back, please?

8 THE REPORTER: "Would you agree with
9 me if this Commission determines, after hearing
10 all the evidence, that MGE is providing only
11 average customer service, that MGE should not
12 receive a \$2 million increase in its rates for
13 alleged management efficiency?"

14 THE WITNESS: If the evidence so --
15 so proves, I would agree with that statement.

16 Q (By Mr. Micheel) Do you have a copy
17 of your direct testimony with you, sir, Exhibit
18 14?

19 A Yes. Yes, I do.

20 Q Could I ask you to turn to page 11
21 of that testimony?

22 A Yes.

23 Q Are you there, sir?

24 A Yes, I am.

25 Q And on page 11 at lines 10 through

1 11, you state that although unanticipated
2 expenditures do crop up from time to time which
3 impair achieved returns, the incidence of such
4 events is relatively infrequent in MGE's history.
5 Is that your testimony, sir?

6 A Yes, it is.

7 Q Would you agree with me that there
8 are some expenditures that crop up as a result of
9 management decisions made by Southern Union and
10 MGE that impair MGE's rate of return or ability to
11 achieve its rate of return?

12 A I'm not sure I understand the
13 question.

14 Q Well, let me redo it. You indicate
15 in your testimony that from time to time there are
16 matters that crop up that impair MGE's ability to
17 achieve its authorized rate of return. Is that
18 correct?

19 A That's correct.

20 Q And would you agree with me that
21 some of those items that pop up are created by
22 explicit management actions by either the
23 corporate headquarters or your divisional
24 decisions. Is that correct?

25 A And that -- that is possible, yes.

1 Q And those are management decisions;
2 is that correct?

3 A That -- that is a possibility.

4 Q Would you agree with me that
5 Southern Union's decision to sell its Texas
6 operations resulted in higher expenses for MGE,
7 all things remaining equal?

8 A I would say that the -- the L and M
9 cost was increased due to the fact that we --
10 actually, I think the L and M cost went down with
11 Texas, so I guess I would have to disagree with
12 that statement.

13 MR. MICHEEL: Your Honor, we need to
14 go back in camera again and go back to Exhibit
15 224.

16 (REPORTER'S NOTE: At this point an
17 in camera session was held, which is contained in
18 Volume 14 of the transcript.)

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1 JUDGE WOODRUFF: Okay. We are back
2 on the internet, and I apologize, the number, it
3 leaked out, that I didn't get the sound shut off
4 on the internet while we were gone. But anyway,
5 we're back in regular session.

6 Q (By Mr. Micheel) Would you agree
7 with me, Mr. Oglesby, that these increased
8 expenses adversely affected MGE's returns?

9 A No, I would not necessarily agree
10 with that.

11 Q And that's not what you told your
12 superiors, the SUC Board of Directors?

13 A At that time, yeah. Since that
14 time, with the -- with the personnel that we have
15 brought to Missouri, I think it's actually
16 improved the ability of our operation to actually
17 lower operating costs. With, you know, payroll,
18 all those kind of issues that are now internal.

19 Q So it's your testimony that bringing
20 all that internal instead of spreading it out over
21 a small larger operation, your costs are lower?

22 A I don't have the numbers in front of
23 me, but I believe that overall it was a positive
24 move for Missouri Gas and Energy.

25 Q Is it correct that you estimate that

1 Mr. Snider spends considerably less than 50
2 percent of his time on legislative activities?

3 A You know, I -- I believe that I did
4 indicate that that was my belief. I have not
5 actually tracked, you know, Mr. Snider's time to
6 see what the actual percentages would be.

7 Q Let me follow up on that. You were
8 required to estimate how Mr. Snider spends his
9 time because the Company has absolutely no
10 procedures in place for accounting for the time
11 associated with and the costs of lobbying related
12 activities; isn't that correct?

13 A Other than the calendars and -- that
14 we have, yes.

15 Q And indeed, in your deposition, you
16 were asked this question. Are you aware of any
17 Company procedures for accounting for the time
18 associated with and the costs of lobbying related
19 activities not only for yourself, but for other
20 employees?

21 Answer: Say that again?

22 Question: Okay. Is there any
23 Company procedures for accounting that deal with
24 the time that you spend with legislative or
25 lobbying activities?

1 Answer: No, not that I'm aware of.

2 Question: Do you know whether
3 there's any such procedures for any other Company
4 employees?

5 Answer: Not that I'm aware of.

6 A I remember that, yes.

7 Q So how did you make your estimation
8 that Mr. Snider spends 50 percent of his time
9 doing something else?

10 A I believe that, you know, with
11 special projects that he has and other issues that
12 he needs to be dealing with. It's just purely a
13 subjective estimate.

14 Q Now, in response to an earlier
15 question, you also indicated that we could look at
16 Mr. Snider's calendars, did you not?

17 A Yes, he does keep a calendar.

18 MR. MICHEEL: Your Honor, I need to
19 approach the witness. I'm not going to make this
20 an exhibit because it's already an exhibit on KK
21 -- KBB -- excuse me, 6, but I've got copies if --
22 I'm going to hand it to the witness.

23 JUDGE WOODRUFF: Go right ahead.

24 MR. MICHEEL: Rob, did you need a
25 copy?

1 MR. HACK: I've got it.

2 MR. MICHEEL: Okay.

3 Q (By Mr. Micheel) Mr. Oglesby, I'm
4 handing you a copy of a data request response, a
5 partial data request response --

6 MR. HACK: I'm sorry, which
7 testimony is that for here?

8 MR. MICHEEL: Bolin rebuttal, I
9 believe. Oh, Bolin direct, I'm sorry.

10 MR. HACK: Thank you.

11 MR. MICHEEL: Sure. Did you want a
12 copy of this, Your Honor?

13 JUDGE WOODRUFF: That's not
14 necessary.

15 MR. MICHEEL: Okay.

16 Q (By Mr. Micheel) Is this a copy of
17 Mr. Snider's calendar, sir? Do you see at the
18 bottom the name Paul Snider?

19 A Oh, yes, I do, thank you. It is his
20 calendar.

21 Q Let's just go through his calendar
22 here. Do you see on the first line there, the
23 third number, it says 12 p.m., call Steelman's
24 office?

25 A What, in January?

1 Q Yes, we're going to go through it
2 month by month.

3 A I do see that, yes.

4 Q Is that Senator Steelman?

5 A I would assume that's the case, yes.

6 Q Do you see, next line, 2 p.m., MEDA
7 Spencer Stuart call?

8 A I see that.

9 Q Missouri Energy Development
10 Association?

11 A Yes.

12 Q Wednesday, 8:30 a.m., Jefferson
13 City, drove my car, others taken; is that correct?

14 A Yes.

15 Q 11:30 a.m., media lunch with other
16 utilities; is that correct?

17 A That's what it says.

18 Q Next day, 8 a.m., Jefferson City; is
19 that correct?

20 A Yes.

21 Q Next day, 1:30 p.m., MEDA conference
22 call; is that correct?

23 A Yes, it is.

24 Q 8 a.m., the next line on the next
25 month I guess, it's to Tuesday, Jeff City (the

1 Capitol) for Utility Committee, lunch and other
2 assorted meetings, rode with Rob and Jim?

3 A Yes, I see that.

4 Q And is that Rob Mr. Hack?

5 A I would say that, yes.

6 Q And is that Jim Mr. Oglesby?

7 A Yes, it is.

8 Q You see that on Thursday where it
9 says KC Chamber State Affairs lunch, Chamber
10 Boardroom?

11 A Yes, I do.

12 Q You see on the Tuesday, 8 a.m., Jeff
13 City for hearing on PSC bill, drove green car?

14 A I see that.

15 Q Next day, Jeff City still, plus MEDA
16 search meeting?

17 A I see that.

18 Q At 12 p.m., Spencer Stuart at Jeff
19 City country club?

20 A I see that.

21 Q Next Thursday, KC Chamber State
22 Affairs lunch, Chamber Boardroom, 12 p.m. 11 --
23 1:30, MEDA conference call, do you see that, sir?

24 A Yes, I do.

25 Q Does that indicate that those are

1 all legislative activities, sir?

2 A It would indicate that those are all
3 basically legislative activities or activities
4 associated with some kind of legislative activity.

5 Q Let's go to February 2003, sir. You
6 see on Monday on the first line 8:30 a.m.,
7 lobbyist conference call?

8 A Yes, I see that.

9 Q You see on the next day, 8:30 a.m.,
10 drove my car to Jeff, Jeff City hearings on SB,
11 which stands, I believe, for Senate Bill 290?

12 A Yes, I see that.

13 Q You see on the Friday, it says 8
14 a.m., St. Louis for MEDA executive interviews?

15 A I see that.

16 Q The next day, 8:30 a.m., lobbyist
17 conference call?

18 A I see that.

19 Q Next day, 8 a.m., drove white
20 Taurus; 12 p.m., Senator Bartle, you see that?

21 A Yes.

22 Q Jeff City for hearing on access to
23 capital bill and prep for SB290?

24 A I see that, yes.

25 Q The next Thursday, 7:30 a.m.,

1 Mayor's prayer breakfast?

2 A Yes, I see that.

3 Q Next day, KC Chamber State Affairs
4 lunch? You see that?

5 A Yes, I do.

6 Q Next Monday, 8:30 a.m., lobbyist
7 conference call?

8 A Yes.

9 Q Next Wednesday, 8 a.m., Jeff City
10 for prep for House hearing?

11 A Yes.

12 Q Next day, 8 a.m., Jeff City, prep
13 for House hearing?

14 A Yes.

15 Q Next Monday, 8:30 a.m., lobbyist
16 conference call, you see that?

17 A I see birth class. Oh, I'm on --

18 Q You're on Friday, sir. Stick with
19 Monday. I hope everything went well in that,
20 though. I wish him the best.

21 A Yes, I see Monday now.

22 Q 8:30 a.m., lobbyist conference call?

23 A Yes.

24 Q 9:30 a.m., MEDA board meeting?

25 A Yes.

1 Q And again, that's the Missouri
2 Energy Development Association?

3 A Yes.

4 Q And then 1:30, St. Joe ordinance, my
5 office?

6 A Yes.

7 Q Next day, Jeff City, Commerce
8 executive session and House CET hearing?

9 A Yes.

10 Q Next day, 8 a.m., Jeff City, may
11 still be here from 2/25?

12 A Yes.

13 Q Next day, may still be in Jeff City
14 for meeting with MEDA and Kinder?

15 A Yes.

16 Q And do you think that Kinder is a
17 reference to Senator Kinder?

18 A I would say that, yes.

19 Q You would or wouldn't?

20 A Yeah, I would.

21 Q Next day, Central Labor Council
22 coffee, 7:30 a.m.; 12 p.m., KC Chamber State
23 Affairs lunch, Chamber Room?

24 A Yes.

25 Q Those are all lobbying or

1 legislative activities, are they not, sir?

2 A They would appear to be, yes.

3 Q Next, March 2003, first Monday, 8:30
4 a.m., lobbyist conference call; is that correct?

5 A That is correct.

6 Q Tuesday, 1:30, United Way luncheon?

7 A Yes.

8 Q Next, Monday, 8:30 a.m., lobbyist
9 conference call?

10 A Yes.

11 Q Next, Tuesday, 8 a.m., Jeff City for
12 House committee vote on MEDA bills?

13 A Yes.

14 Q Next, Jeff City continued, eminent
15 domain bills?

16 A Yes.

17 Q Next, Thursday, information for Pam
18 about legislative progress?

19 A Yes.

20 Q And is that Pam, do you believe Pam
21 Levetzow?

22 A I would believe so, yes.

23 Q Next day, 12 p.m., KC Chamber State
24 Affairs luncheon?

25 A Yes.

1 Q That next Monday, 8:30 a.m.,
2 lobbyist conference call?

3 A Yes.

4 Q That Thursday, 5:30 p.m., John
5 Burnett fund-raiser?

6 A Yes.

7 Q That next Monday, 8:30 a.m.,
8 lobbyist conference call?

9 A Yes.

10 Q Next, Wednesday, 5 p.m., event for
11 Paul Levota, do you see that?

12 A Yes, I do.

13 Q And is Representative Levota a
14 representative -- a democratic representative from
15 Jackson County?

16 A I do not know.

17 Q Do you know if he's a
18 representative?

19 A No, I do not. Don't recognize the
20 name.

21 MR. MICHEEL: May I approach the
22 witness, Your Honor?

23 JUDGE WOODRUFF: You may.

24 Q (By Mr. Micheel) I'm handing you a
25 copy of a 1990 92nd General Assembly roster,

1 asking if you see the name Paul Levota?

2 A Yes, I do.

3 Q And does that spelling conform with
4 the spelling in --

5 A Yes, it does.

6 Q And those are all lobbying
7 legislative items, are they not, sir?

8 A They would appear to be, yes.

9 Q April, 2003. On Friday, you see a
10 10 a.m. MEDA conference call, do you not?

11 A What day?

12 Q Friday.

13 A I got it, yes.

14 Q Okay. The next Monday, 8:30 a.m.,
15 lobbyist conference call; is that correct?

16 A That's correct.

17 Q And then, for example, on Tuesday
18 there's nothing. Wednesday, there's one
19 statement. Friday, you see a 12 p.m. KC Chamber
20 State Affairs lunch?

21 A Yes.

22 Q That next Monday, you see an 8:30
23 a.m. lobbyist conference call?

24 A Yes.

25 Q 8 a.m. the next Wednesday, you see

1 Jeff City for updates?

2 A Yes.

3 Q That Friday, you see Wheeler
4 meeting, Einstein's in Westport?

5 A Yes.

6 Q Would that be Senator Wheeler from
7 Jackson County?

8 A I don't know.

9 Q Next, Tuesday, 8:30 a.m., lobbyist
10 conference call at 8:30?

11 A Yes.

12 Q MEDA conference call at 10 a.m.?

13 A Yes.

14 Q 8 a.m., Jeff City?

15 A Yes.

16 Q 9 a.m., meeting with David Barklage
17 with Andy?

18 A Yes.

19 Q Do you know if David Barklage is a
20 lobbyist over at the legislature?

21 A I do not know Mr. Barklage.

22 Q Do you know if Mr. Barklage was one
23 of the -- one of the top assistants of Senator
24 Kinder?

25 A No, I do not know that.

1 Q Do you see a 12 p.m. Chamber of
2 Commerce State Affairs lunch?

3 A Yes.

4 Q 5:30 p.m., HRCC fund-raiser?

5 A Yes.

6 Q 8:30 a.m., lobbyist conference call?

7 A Yes.

8 Q Next day, Tuesday, 3 p.m., MEDA
9 meeting?

10 A Yes.

11 Q Those are all lobbying, legislative
12 related, are they not?

13 A I would say they are legislative
14 activity type things, yes.

15 Q May, 2003, you see Thursday, 8 a.m.,
16 Jeff City?

17 A Yes.

18 Q And let me just ask you this. You
19 -- Missouri Gas Energy doesn't serve Jefferson
20 City, do they? That's Ameren UE?

21 A That's correct.

22 Q That next Monday, 8:30 a.m.,
23 lobbyist conference call; is that correct?

24 A Yes.

25 Q The next Tuesday, 8 a.m., Jefferson

1 City; is that correct?

2 A Yes.

3 Q Next, Wednesday, 8 a.m., Jefferson

4 City; is that correct?

5 A Yes.

6 Q And then a Blunt fund-raiser, the
7 Carriage Club in Kansas City; is that correct?

8 A That's correct.

9 Q And would that be a fund-raiser for
10 Secretary of State Matt Blunt?

11 A I would assume that.

12 Q And he's running for governor, the
13 republican candidate?

14 A Yes.

15 Q Next Friday, Jeff City, do you not?

16 A Yes.

17 Q 9 a.m., barbecue?

18 A Bland barbecue.

19 Q Is that Senator Bland?

20 A I'm unaware.

21 Q What about Dolan, Clemens? Do you
22 know if that's Senator Dolan?

23 A I don't know.

24 Q 12 p.m., Chamber of Commerce State
25 Affairs lunch?

1 A Yes.

2 Q Next line, lobbyist conference call

3 at 8:30?

4 A Yes, I do.

5 Q 11 a.m., AIM, Burton, do you see

6 that?

7 A Yes.

8 Q Is AIM Associated Industries of

9 Missouri?

10 A I don't know.

11 Q Do you know if Mr. Burton is the

12 head of that group?

13 A No, I do not.

14 Q You see 11:30 a.m., Steelman?

15 A Yes, I do.

16 Q Does that indicate Senator Steelman

17 to you?

18 A I would assume that.

19 Q Next, Wednesday, Jeff City at 8

20 a.m.?

21 A Yes.

22 Q Right below that, Wilson bill?

23 A Yes.

24 Q That next day, 8 a.m., Jeff City; is

25 that correct?

1 A Yes.

2 Q The next Wednesday, you see a 10:30
3 a.m. MEDA conference call?

4 A Yes.

5 Q The next day, you see a 5 p.m.
6 Bishop fund-raiser?

7 A Yes.

8 Q And those are all lobbying
9 legislative items, aren't they?

10 A I don't know, I don't know Bishop.
11 I would have to assume these are legislative
12 activities, yes.

13 Q Let's go to June '03. Let me ask
14 you this. When you were making your determination
15 of how Mr. Snider spent his time, did you even
16 bother to look at his calendars?

17 A No, I did not.

18 Q On June 2003, you see on Tuesday, 8
19 a.m., Jeff City?

20 A Yes.

21 Q And then down 17th, 8 a.m., Rex
22 Rector's golf tournament?

23 A Yes.

24 Q And do you know Representative
25 Rector?

1 A I don't believe that I do.

2 Q Do you know that he's a
3 representative, one of the committee chairs of the
4 House Utilities Committee?

5 A Yes, I recognize the name.

6 Q Do you see that MEDA board meeting
7 at 8 a.m.?

8 A Yes, I do.

9 Q Wednesday at 12:30, lobbyist
10 meeting?

11 A Yes.

12 Q 5 p.m., reception for Senator
13 Gibbons?

14 A Yes.

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

16 A Yes.

17 Q 7:30 a.m., Adams Pointe, tee time?

18 A Yes.

19 Q And have you reviewed Ms. Bolin's
20 testimony in this case?

21 A No.

22 Q So you don't know she has attached
23 their receipts for golf that Mr. Snider did on
24 that day with your lobbyists?

25 A No, I do not.

1 Q And maybe yourself?

2 A No.

3 Q Have you ever golfed with your
4 lobbyists?

5 A I may have one time.

6 Q You see the next day, 9 a.m., ask
7 Rick about PAC reports?

8 A Yes.

9 Q And that's Political Action
10 Committee acronym?

11 A Yes.

12 Q Do you see on Thursday the 26th,
13 5:30, fund-raiser for Senator Loudon, L-o-u-d-o-n?

14 A What day?

15 Q It's the 26th, Thursday, June.

16 A Oh, okay. I see it. It's kind of
17 faded out. I see it.

18 Q And those are all legislative
19 lobbying things, are they not?

20 A I don't know Senator Loudon, but it
21 does say that here, so I assume that's a
22 legislative activity.

23 Q And dinner with lobbyists, that's a
24 legislative activity?

25 A Yes.

1 Q MEDA board meeting?

2 A Yes.

3 Q Golfing, Rex Rector's golf
4 tournament, that would be a legislative type
5 activity or lobbying activity, would it not?

6 A I assume so.

7 Q Because Mr. Snider on a Tuesday at 8
8 a.m., those are probably -- those are work hours,
9 aren't they?

10 A Yes. Tuesday at 8 a.m.?

11 Q Yes, sir.

12 A Yes.

13 Q Okay. Let's go to July of '03.
14 First date there, 12 p.m., Senator Shields golf
15 tournament, you see that?

16 A Yes, I do.

17 Q And that would be Senator Shields
18 from -- I guess he's from the St. Joseph area?

19 A I don't know.

20 Q Next day is breakfast with Joe and
21 Andy, you see that?

22 A Yes, I do.

23 Q And are those MGE's outside
24 lobbyists?

25 A Yes, they are.

1 Q Do you see the next line there, 12
2 p.m., Rector golf tournament on Wednesday?

3 A Yes, I do.

4 Q Then the next Monday, 12 p.m., MEDA
5 Steering Committee meeting?

6 A Yes, I do.

7 Q Then 8 a.m., MEDA Steering Committee
8 meeting; and then next Wednesday, MEDA Steering
9 Committee meeting?

10 A Yes, yes.

11 Q On the next Tuesday, says call bank,
12 Black Caucus, Royals, do you see that?

13 A Yes.

14 Q Are you aware that the
15 African-American legislators have a caucus called
16 the Black Caucus?

17 A Yes, I was.

18 Q And does that indicate that's --

19 A That's what that indicates.

20 Q 11:30, Raytown legislative lunch?

21 A Yes.

22 Q 4 p.m., call Rex about breakfast on
23 Thursday?

24 A I see that.

25 Q That Thursday, 7:30 a.m., Rex Rector

1 breakfast?

2 A Yes, I see it.

3 Q That next day, 9:30 a.m., Craig

4 Bland, do you see that?

5 A Yes, I do.

6 Q Do you know if that's Representative
7 Craig Bland, B-l-a-n-d?

8 A No, I do not.

9 Q Do you know if he's a
10 representative?

11 A No, I do not.

12 MR. MICHEEL: May I approach the
13 witness?

14 JUDGE WOODRUFF: You may.

15 Q (By Mr. Micheel) Show you the
16 picture of Representative Craig Bland, District
17 43, Jackson County.

18 A Okay.

19 Q Does that name match up with the
20 name on the calendar?

21 A The name does match up, yes.

22 Q The next Tuesday, call Sharon at
23 Black Caucus, do you see that?

24 A Yes, I do.

25 Q Are those all legislative lobbying

1 type activities?

2 A It would appear so.

3 Q Let's go to August, 2003. Says on
4 that Friday, it says call Craig Bland. See that?

5 A Yes, I do.

6 Q That Wednesday at 3:30 p.m., the
7 next Wednesday, lobbying meeting? See that?

8 A Oh, yes, I do.

9 Q And then the next Tuesday, the 19th,
10 Willoughby dinner, do you see that?

11 A Yes, I do.

12 Q And would that be Representative
13 Willoughby, the -- one of the Joint Chairmans of
14 the Utility Commission?

15 A I don't know. I would assume that,
16 but I don't know that.

17 Q Do you know Representative
18 Willoughby?

19 A I have met him, I believe.

20 Q And you know he's a representative?

21 A Yes.

22 Q Do you see on the next Tuesday at 3,
23 Craig Brown?

24 A Yes, I do.

25 Q And do you know that Mr. Brown is

1 the Executive Director of Missouri Energy
2 Development Association?

3 A Yes, I do.

4 Q You see 6 p.m., House democratic
5 fund-raiser?

6 A Yes, I do.

7 Q And are all those political lobbying
8 type things that I just read?

9 A Those are legislative type
10 activities.

11 Q September, 2003. If I look at
12 Monday, it says democratic breakfast with Renee,
13 does it not? The second Monday? September 8?

14 A I see that, yes.

15 Q Says 8 a.m. -- or 9:30 a.m., veto
16 session, does it not?

17 A Yes, it does.

18 Q 8 a.m., veto session, does it not?

19 A Yes, it does.

20 Q 8 a.m., breakfast with Joe and Blunt
21 reps?

22 A Yes.

23 Q And is that one of your outside
24 lobbyists and apparently the representatives for
25 Secretary of State Blunt?

1 A I would assume that.

2 Q Do you see Monday, MEDA conference

3 call?

4 A Yes, I do.

5 Q Do you see on that Thursday at 9

6 a.m., PAC checks?

7 A Yes, I do.

8 Q Do you see on the next Wednesday,

9 7:30 p.m., Victor Callahan meeting?

10 A Yes, I do.

11 Q And is that the Jackson County

12 legislator?

13 A I don't know.

14 Q You don't know?

15 A I don't know him.

16 Q Okay. Are all those legislative

17 lobbying activities, with the exception of Victor

18 Callahan one which you're not aware?

19 A I would assume so.

20 Q October. 9 a.m., lobbyists's

21 meeting, you see that?

22 A Yes, I do.

23 Q Next day, Doug Tivin, golf?

24 A Yes.

25 Q That Friday, 10:30 a.m., Blunt

1 visit?

2 A Yes.

3 Q And that would be Secretary of State

4 Matt Blunt?

5 A I would assume that.

6 Q The next Tuesday, 10 a.m., St. Louis

7 MEDA meeting?

8 A Yes.

9 Q Next day, Victor Callahan event?

10 A I see that.

11 Q 8 a.m., State Chamber Legislative

12 Conference?

13 A Yes.

14 Q Next day, legislative conference?

15 A Yes.

16 Q The last Tuesday of the month, 11

17 a.m., Catherine Hanaway?

18 A I see that.

19 Q Do you know who Catherine Hanaway

20 is?

21 A I believe so, yes.

22 Q Is she the Speaker of the Missouri

23 House?

24 A Yes.

25 Q Do you see the 11 a.m. Luann

1 Ridgeway meeting?

2 A Yes, I do.

3 Q Do you know if that's Representative
4 Luann Ridgeway?

5 A I do not.

6 Q Do you know if there's a
7 Representative Luann Ridgeway?

8 A I do not.

9 Q Is there a Friday, 1:30 MEDA
10 conference call?

11 A Where we at now?

12 Q We're on the last day of October,
13 but I know this is a lot of stuff to go through.
14 He's a busy fellow.

15 A Yes.

16 Q And those are all lobbying type
17 activities, legislative activities, are they not?

18 A They are.

19 Q Let's go to November, 2003. And on
20 the third Monday, it says 2:30 p.m., PAC
21 Snider/Hack, you see that?

22 A Are you on November?

23 Q I am, sir.

24 A What day?

25 Q Monday. The third one on there.

1 It's Monday, the 17th.

2 A I'm sorry. Yes, I do see that.

3 Q Then Willoughby fund-raiser?

4 A Yes.

5 Q And then 10 a.m., strategy team, PAC
6 issues?

7 A Yes, I see that.

8 Q And those are all legislative
9 lobbying items, are they not?

10 A I would assume so.

11 Q Okay. December 2, 10 a.m., MEDA
12 meeting, do you see that, Jeff City?

13 A Yes, I do.

14 Q 11:30 a.m., lobbyist meeting?

15 A Yes, I do.

16 Q 11 a.m., Gross lunch?

17 A I see that.

18 Q And that would be Senator Gross,
19 would it not?

20 A I don't know.

21 Q Do you see 6 p.m., Koster
22 fund-raiser?

23 A Yes, I do.

24 Q And is that Chris Koster, the
25 current prosecutor, I believe, of -- oh, the

1 county that Harrisonville is in. It slips my
2 mind.

3 A I don't know.

4 MR. HACK: Cass, it would be.

5 MR. MICHEEL: Cass County. Thank
6 you, Mr. Hack.

7 Q (By Mr. Micheel) Do you see down
8 there on Wednesday, Kirkland, PAC, and Callahan
9 fund-raiser?

10 A Yes, I do.

11 Q And then the next day at 9:30 a.m.,
12 PAC stuff with Kirkland's group?

13 A I see that.

14 Q Again, stands for Political Action
15 Committee?

16 A I see that.

17 Q And those are all legislative
18 lobbying items, are they not?

19 A Yes.

20 Q January, 2004, Wednesday, 8 a.m.,
21 Jeff City; is that correct?

22 A Yes, it is.

23 Q Thursday, 8 a.m., Jeff City?

24 A Yes.

25 Q 9 a.m., MEDA meeting?

1 A Yes.

2 Q That next Monday, Jeff City; is that

3 correct?

4 A Yes.

5 Q 4 p.m., MEDA open house? On Monday,

6 the 12th of January, 2004?

7 A Okay. I see it.

8 Q And then KC Chamber event at 5, you

9 see that?

10 A Yes, I do.

11 Q And then he's back here the next

12 day, 8 a.m., Jeff City?

13 A Yes.

14 Q 10 a.m., MEDA meeting?

15 A Yes.

16 Q 12, Steelman's office?

17 A Yes.

18 Q And that's Senator Steelman?

19 A I would assume that.

20 Q Next Wednesday, 9, MEDA meeting, and

21 MEDA, OPC, PSC, Industry meeting?

22 A Yes.

23 Q The next day, Levota event? 5 p.m.?

24 A Yes.

25 Q 8 a.m., Peter Kinder event?

1 A Yes.

2 Q 11:30, lobbyist event?

3 A Yes.

4 Q And Peter Kinder, he's a Senator

5 from Cape Girardeau, is he not?

6 A I don't know.

7 Q Do you know if he was the Senate

8 Majority Leader?

9 A I do know that, yes.

10 Q Or Speaker Protem, excuse me.

11 A Yes, I do know that.

12 Q He's running for Lieutenant

13 Governor?

14 A Yes, I know that.

15 Q On Tuesday, 8 a.m., Jeff City?

16 A I see that.

17 Q 10:30 a.m., call Andy Blunt?

18 A I see that.

19 Q Do you know whether or not that's

20 Secretary of State Blunt's younger brother who is

21 a lobbyist here in town?

22 A Do not know him.

23 Q MEDA lobbyist meeting, 2 p.m.?

24 A What day are you on?

25 Q Right under the Andy Blunt call.

1 A I see it. Okay.

2 Q You see the Majority Fund?

3 A Yes.

4 Q That's at the Capitol Plaza here in
5 Jeff City?

6 A Yes.

7 Q You see Jeff City, 8 a.m.?

8 A Yes.

9 Q Meeting at 8 a.m. with Andy Blunt?

10 A Yes.

11 Q Next day, 8:30, Rex hearing, fuel
12 adjustment?

13 A Yes.

14 Q And that would be Rex Rector?

15 A I don't know.

16 Q Hearing on the fuel adjustment
17 clause, do you know if Representative Rector was
18 one of the people who was proposing the fuel
19 adjustment clause?

20 A I believe that is correct, yes.

21 Q You see that next day, labor
22 breakfast?

23 A Yes.

24 Q You see 9:30 a.m., Jetton?

25 A Yes.

1 Q Would that be Representative Rod
2 Jetton?

3 A I don't know. I don't know Mr.
4 Jetton.

5 Q How about 10:30 a.m., Barklage
6 again? 12 p.m., Chamber lunch.

7 A Yes, I see them.

8 Q Next Tuesday, 8:30 a.m., check on
9 Koster event.

10 A I see that.

11 Q That last Friday, Snider, PAC. Is
12 that correct?

13 A Yes, I see that.

14 Q Those are all legislative lobbying
15 type activities, are they not?

16 A All legislative type activities,
17 yes.

18 Q February. We're near the end here,
19 sir. February, 4 p.m., MEDA conference call; is
20 that correct?

21 A Yes, it is correct.

22 Q 8 a.m., Jeff City?

23 A Yes.

24 Q Wednesday, 8 a.m., Jeff City?

25 A Yes.

1 Q That next Monday, 3 p.m., Chris
2 Koster, Cass County Prosecutor?
3 A Yes.
4 Q 8 a.m., Jeff City?
5 A Yes.
6 Q 6 p.m., Callahan dinner?
7 A Yes.
8 Q 8 a.m., Jeff City?
9 A Yes.
10 Q 8:30 a.m., Barklage?
11 A Yes.
12 Q 9 a.m., Skaggs?
13 A Yes.
14 Q And that would be Representative
15 Skaggs?
16 A I don't know.
17 Q 10 a.m., Emery? You see that?
18 A Yes, I do see that.
19 Q Is that Representative Emery?
20 A I don't know.
21 Q That next Friday, lobbyist lunch?
22 A I see that.
23 Q That next Tuesday, Jefferson City?
24 A Yes, I see that.
25 Q That next Wednesday, Jefferson City?

1 A I see that.

2 Q That next Thursday, Vernon, Bland's
3 office?

4 A Yes, I see that.

5 Q That next Wednesday, Jefferson City?

6 A I see that.

7 Q Hanaway event at MEDA?

8 A I see that.

9 Q Lunch with Jim and Rex at Applebee's
10 in Grandview?

11 A Yes. I see that.

12 Q Is the Jim who had lunch with Rector
13 at the Applebee's at Grandview you?

14 A I believe maybe it was, yes.

15 Q So you've met Representative Rector?

16 A I believe I did that one time, yes,
17 I did.

18 Q And due to the fact that MGE doesn't
19 have any accounting standards in place, the
20 auditors for both the Staff and the Public Counsel
21 were required to look at Mr. Snider's calendar to
22 determine what he does, were they not?

23 A I believe that must be correct.

24 Q And if you looked at that calendar,
25 and we've just spent probably 30 minutes, maybe

1 more, going through all the legislative and
2 lobbying things he did, he does a lot of that,
3 doesn't he?

4 A It would appear that's the case,
5 yes.

6 Q And indeed, that's his main role at
7 MGE, isn't it?

8 A It's not his main role, but it
9 appears in this particular year, he -- he had a
10 lot of activities that related to legislative
11 activities, yes, that is true.

12 Q Is it correct that you provide the
13 Southern Union Company Board of Directors a
14 quarterly report regarding MGE?

15 A Yes, it is.

16 Q We've already admitted that into
17 evidence as Exhibit 224, have we not?

18 A Yes, we did.

19 Q And is it correct that one section
20 of that quarterly report relates to MGE's
21 legislative activities?

22 A I would have to look at the report.

23 MR. FRANSON: Your Honor, out of an
24 abundance of caution, I would remind everyone that
25 is an HC document.

1 MR. MICHEEL: I understand that.

2 I'm not asking him to read anything HC.

3 Q (By Mr. Micheel) For example, on
4 the first report, page 6, it says --

5 MR. MICHEEL: Rob, can I say this in
6 public?

7 MR. HACK: Hang on. Yeah.

8 Q (By Mr. Micheel) It says
9 regulatory/legislative?

10 A I see it, yes.

11 Q And you prepared those reports?

12 A Yes, I do.

13 Q And you report to the Southern Union
14 Board of Directors regarding that, do you not?

15 A I report this to corporate.

16 Q Okay. And you prepare those
17 reports, do you not, sir?

18 A Yes, I do.

19 Q Is it correct that MGE has eight
20 registered lobbyists with the Missouri Ethics
21 Commission?

22 A I'm not aware of how many are
23 registered. I'm sure we have some that are
24 registered just to comply with the law, but I'm
25 not aware of who they are or how many there are.

1 We do have two contract lobbyists that I'm aware
2 of.

3 MR. MICHEEL: I'd like to mark
4 another exhibit, Your Honor. I believe I'm up to
5 Exhibit 225.

6 (Exhibit 225 was marked for
7 identification.)

8 JUDGE WOODRUFF: Yes, 225.

9 MR. HACK: We would stipulate that
10 there are eight registered lobbyists for MGE, and
11 their names are Mr. Ricketts, Mr. Hack, Mr.
12 Oglesby, Ms. Levetzow, Mr. Snider, and then Mr.
13 Thompson and Mr. Arnold.

14 MR. MICHEEL: Well, Your Honor, with
15 that stipulation, I'd go ahead and move the
16 admission of Exhibit 225, sir.

17 JUDGE WOODRUFF: All right. 225 has
18 been offered into evidence. Any objections to its
19 receipt? Hearing none, it will be received into
20 evidence.

21 Q (By Mr. Micheel) Is it correct, Mr.
22 Oglesby, that when you testified at your
23 deposition that you only mentioned Mr. Hack, Mr.
24 Snider, and yourself were engaged in lobbying
25 activities?

1 A I believe that is correct.

2 Q And you were wrong, weren't you?

3 A Yes, I was.

4 Q And when you testified at your
5 deposition, you said that Ms. Levetzow was not a
6 registered lobbyist; is that correct?

7 A That is correct.

8 Q And you were wrong?

9 A I was wrong.

10 Q Is it correct that you are a member
11 of the board of the Missouri Energy Development
12 Association?

13 A Yes, that is correct.

14 Q Is it correct that you attend MEDA
15 meetings and fund-raisers with candidates as part
16 of your job?

17 A I attend meetings, I would not say
18 that I have attended any fund-raisers to this
19 point.

20 Q Really.

21 A As it relates to MEDA.

22 MR. MICHEEL: Okay. I need to get
23 another exhibit marked, Your Honor.

24 JUDGE WOODRUFF: 226.

25 (Exhibit 226 marked for

1 identification.)

2 Q (By Mr. Micheel) Mr. Oglesby, I've
3 handed you what's been marked for purposes of
4 identification as Exhibit 226.

5 A Yes.

6 Q Does that appear to be a copy of
7 your calendars that you keep?

8 A It does, yes.

9 Q Now, let's just go through those
10 calendars. On February -- starting on February
11 '03, at 5 p.m., does it say J.E. Dunn
12 Construction, Barnes for Mayor reception? That's
13 on February 11th, Tuesday?

14 A Tuesday, the 11th?

15 Q Yes, sir, at 5 p.m. J.E. Dunn
16 Construction, Barnes for Mayor reception?

17 A It does say that. I did not attend
18 that.

19 Q On March 3, '03, 8 a.m., Jeff City,
20 MEDA board meeting at 10 a.m., Capitol Plaza?
21 Does it not?

22 A Yes, it does. I was trying to
23 remember if I actually attended that meeting. I
24 do believe I did.

25 Q And then on Tuesday, it says 5 p.m.,

1 fund-raiser?

2 A What day? March --

3 Q The next Tuesday. March 4th.

4 A It does say fund-raiser. I don't
5 have a clue what that was.

6 Q Could you turn to June '03, sir?

7 A Okay.

8 Q And I'm looking at that third Monday
9 there at 7 p.m., MEDA Board of Directors meeting
10 at Deville in Columbia; is that correct?

11 A Yes. I did not attend that.

12 Q The next Wednesday, 2 p.m., lobbyist
13 meeting at MGE?

14 A I see that.

15 Q The next Thursday, 7:30 a.m., golf
16 with lobbyists and Snider at Adams Pointe, Blue
17 Springs?

18 A Yes. I see that. And I did --

19 Q That's where you golfed with them?

20 A That's the one time I did golf with
21 them, yes, it is. And I had a very good score
22 that day, by the way.

23 Q I imagine you're probably very good.
24 Probably got a lot of time on your hands.

25 On July '03, 11:30 a.m., lunch with

1 Snider in Overton?

2 A What date?

3 Q Wednesday, the first Wednesday in
4 July. See that?

5 A Oh, yes, I do.

6 Q Okay. Turn to August, sir, August 6
7 at 3:30, Governor's race with slash Snider and
8 Overton, et cetera?

9 A What day?

10 Q That would be August 6th, Wednesday.

11 A Oh, I see. I see that. I do not
12 remember the --

13 Q That would be a reference to the
14 Missouri Governor's race?

15 A I would assume that's what it's
16 referenced to. I do not remember that, that
17 particular meeting.

18 Q Okay. September '03, if you could
19 turn to that page, 8 a.m., MEDA board meeting,
20 Laclede's office. Laclede is spelled incorrectly,
21 but I think that's --

22 A Say -- what date?

23 Q That would be the 11th of September.

24 A Yes. I did not attend that meeting
25 at Laclede's office.

1 Q September 23rd, it says 2 p.m.,
2 Overton slash Snider; 3 p.m., meeting with
3 Governor, Snider, off site?

4 A Yes, I see that.

5 Q And would that be with Governor
6 Holden?

7 A Yes, it was.

8 Q Did that meeting take place?

9 A Yes, it did.

10 Q Was that about legislation and
11 lobbying type activities?

12 A It was about -- yes, it was.

13 Q And you were there, too, right?

14 A I was there, yes.

15 Q Along with Mr. Snider?

16 A Yes, I was.

17 Q October '03, 5 p.m., Governor, it
18 says, 9:30 or 11:30; is that correct?

19 A What day?

20 Q It's a Tuesday, the first Tuesday in
21 October.

22 A I see it.

23 Q And then on that Friday, it says
24 10:30 a.m., Secretary of State Matt Blunt?

25 A What day? I'm sorry. I was trying

1 to find the original --

2 Q The Friday at 10:30 a.m., sir.

3 A Yes, I see that.

4 Q And that was -- you met with -- with
5 Secretary of State Blunt regarding his desire to
6 be the Governor, the next Governor, did you not?

7 A Yes, I did.

8 Q So that was lobbying, was it not?

9 A It was more his meeting than mine,
10 but yes. Probably would consider it lobbying.

11 Q In December of '03, it says 7:30
12 p.m., MEDA with Hack at Plaza III?

13 A What day?

14 Q First Wednesday in December.

15 A I don't believe I attended that
16 meeting.

17 Q Okay. Do you know if Mr. Hack did?

18 A No, I do not.

19 Q Next day, MEDA board meeting KCP and
20 L?

21 A Yes.

22 Q Did you attend?

23 A Yes.

24 Q 4 p.m., meeting with Joe Thompson?

25 A Yes, I did.

1 Q Is that your outside lobbyist?

2 A Yes, it is.

3 Q Did you attend that meeting?

4 A Yes, I did.

5 Q On January, sir, '04 now, on Friday,

6 the third Friday in the month, I see a 9:30 a.m.,

7 Speaker Protem Rod Jetton with Snider?

8 A Yes, I see that.

9 Q Did you attend that meeting?

10 A He came to my office.

11 Q And that's Speaker Protem Rod

12 Jetton?

13 A Yes.

14 Q So you've met Representative Jetton,

15 have you not?

16 A Apparently I have, yes.

17 Q Okay. Next day, February '04,

18 February 9th, 3 p.m., Chris Koster, Cass County

19 Prosecutor, with Snider, you see that?

20 A What day?

21 Q It is the second Monday of February.

22 A I see. Yes.

23 Q Did you meet with Mr. Koster?

24 A Yes, I did.

25 Q And is he running for a higher

1 office?

2 A Yes, he is.

3 Q And he was interested in lobbying
4 for your support?

5 A He came to my office to lobby for my
6 support. Yes, that's true.

7 Q So earlier when you said you didn't
8 know who he was, you were mistaken?

9 A Apparently I was. I don't recognize
10 all the names.

11 Q I understand that. On Wednesday --
12 the final Wednesday of February, it says 8 a.m.,
13 MEDA private fund-raiser for Catherine Brown, C.
14 Brown -- or for Catherine Hanaway, C. Brown; is
15 that correct?

16 A That is correct.

17 Q Did you attend that fund-raiser?

18 A No, I did not.

19 Q 11:30, depart with Snider for
20 Grandview on the final Friday of February?

21 A Yes, I see that.

22 Q Okay. It says 12 p.m., Rex Rector,
23 Chairman of House Utilities, Grandview at
24 Applebee's?

25 A Yes.

1 Q And we've already established you
2 went to that and that was lobbying related, was it
3 not?

4 A Yes, he's running for office.

5 Q So it's correct that you meet with
6 your outside lobbyists as part of your job?

7 A Yes.

8 Q And it's correct that you attend
9 fund-raisers and meet political candidates as part
10 of your job?

11 A Yes.

12 Q You understand that the Public
13 Counsel is not saying that MGE doesn't have a
14 right to conduct lobbying activities, it's just
15 that rate payers should not pay for those
16 activities; is that correct?

17 A I believe that's what your position
18 is, yes.

19 Q Is it correct that you assert --

20 MR. MICHEEL: I need to move the
21 admission of Exhibit 226, if I haven't.

22 JUDGE WOODRUFF: You have not. 226
23 has been offered into evidence, any objection?

24 MR. HACK: No.

25 JUDGE WOODRUFF: It will be

1 received.

2 Q (By Mr. Micheel) Is it correct that
3 you assert in your rebuttal testimony if either
4 the Public Counsel's or the Staff's rate of return
5 recommendation is adopted, MGE's operation would
6 be the lowest priority for any discretionary
7 capital expenditures?

8 A Yes.

9 Q Would you agree with me that
10 Southern Union would make any and all capital
11 expenditures needed to provide safe and adequate
12 service to MGE's customers if this Commission
13 adopts Public Counsel's rate of return or Staff's
14 rate of return?

15 A Can I hear the question again?

16 Q Sure. You want me to read it to you
17 again or have her read it back?

18 A It doesn't matter.

19 Q Would you agree with me that
20 Southern Union would make any and all capital
21 expenditures needed to provide safe and adequate
22 service to MGE's customers if this Commission
23 adopts Public Counsel's rate of return or the
24 Staff's rate of return?

25 A Yes.

1 Q Is it your testimony that MGE's
2 decision to implement an automated meter reading
3 system was strictly a discretionary decision?

4 A Yes.

5 Q Are you aware that prior to
6 implementing the automated meter reading system,
7 MGE had an unacceptably high number of estimated
8 meter reads?

9 A Yes.

10 Q Would you agree with me that the
11 Commission, based in part on MGE's failure to
12 properly read meters and high estimated meter
13 reads, determined MGE was not providing adequate
14 customer service in Case No. GR-96285?

15 A I'm not aware of that.

16 Q You weren't with the Company then?

17 A I was with the company, but I'm not
18 aware of that particular --

19 Q Well, in your testimony, you
20 indicated that the Commission reduce the Company's
21 rate of return for poor customer service in two
22 cases, are you not, sir?

23 A I have indicated that it appears
24 that our rate of return is lower than is adequate
25 to provide the type of operation that we need to

1 provide high quality customer service and
2 discretionary spending.

3 Q So you haven't said -- is it your
4 testimony today that you haven't said anything in
5 your testimony, your direct testimony regarding
6 the Commission -- Commission's willingness to
7 punish conduct it deems inappropriate?

8 A I have said that, yes.

9 Q And you're talking about the
10 Commission reducing customer service issues in
11 Case No. GR-96285 and GR-98140, are you not?

12 A Not sure about the case number, but
13 --

14 Q Okay. Why don't you turn to page 16
15 of your direct testimony so we're all sure.

16 A Okay.

17 Q You see that, sir?

18 A You talking about from line 2 to 15?

19 Q Lines 1 through 12 on my copy.
20 Where it says Case No. GR-96285 and Case No.
21 GR-98140 in your direct testimony? You're in Mr.
22 Cattron's. It's exactly the same, let me assure
23 you.

24 A Apparently not. Yes, I see that.

25 Q And you're aware that meter reading

1 was a -- was a problem back then, are you not,
2 sir?

3 A Yes, I am aware of that.

4 Q And do you think at that time that
5 the Company was providing the customers with safe
6 and adequate service?

7 A Yes, I do.

8 Q Despite the outrageously high levels
9 of estimated meters?

10 A Yes, the estimated meters were very
11 high at that time, I agree with that.

12 Q Is it correct that MGE is recovering
13 the cost related to the automated meter reading
14 system in rates from customers?

15 A Yes.

16 Q So customers are already paying for
17 that benefit once, are they not?

18 A Yes.

19 Q And yet that's part of the reason
20 the Company thinks it needs \$2 million more from
21 customers?

22 A I think the issue there is that we
23 believe that as we provide high quality customer
24 service in a lot of areas, not just meter reading,
25 not just ACR, ASA, that there should be reward for

1 that particular issue. As it relates to the
2 incentive type punishment to reward type thing.
3 You know --

4 Q You put -- MGE installed the
5 automated meter reading system, did it not, to
6 reduce the unacceptably high level of estimated
7 meter reads; isn't that correct?

8 A I would say that it was put into
9 place -- that was a part of the issue.

10 Q And another part of the issue was it
11 allowed you to reduce your force of meter readers;
12 isn't that correct?

13 A It did allow the opportunity to
14 reduce the number of meter readers, who meter
15 readers tend to have lots of -- lots of issues as
16 it relates to safety, they get hurt a lot, you
17 know, with a lot of issues. So they're out in all
18 kinds of weather and --

19 Q And that saved the Company some
20 money, did it not?

21 A I would say that it created an
22 efficiency for the Company by reducing the number
23 of staff out there and particularly in a group of
24 staff that were prone to injury.

25 Q Now, in your rebuttal testimony, you

1 provide other examples which you assert were
2 discretionary capital expenditures; is that
3 correct?

4 A Yes, I believe that is correct.

5 Q And the first example you have is
6 the work force automation in truck terminals; is
7 that correct?

8 A That is correct.

9 Q Was the installation of the work
10 force automation and the -- in truck terminals
11 necessary to provide MGE's customers safe and
12 adequate service?

13 A No.

14 Q Were any of those necessary to
15 provide safe and adequate service to the
16 customers?

17 A No.

18 Q And yet you believe the customers
19 should pay for those?

20 A I believe they are improvements in
21 the system that makes our ability to handle our
22 customer issues deal with the -- deal with the
23 service that the customers want, it improves that
24 ability. Improves our ability to -- to
25 appointments, as an example, it improves our

1 ability to get to a customer's house on time, when
2 the customer wants us there, rather than some of
3 the issues that we've had in the past.

4 Q And the cost of all of those
5 improved technologies, those are being included in
6 rates and paid for by customers; isn't that
7 correct?

8 A That is correct.

9 Q So they're already paying for all
10 that new technology once; isn't that correct?

11 A They're paying for the technology
12 that we have implemented, yes.

13 Q And then MGE wants to get another
14 little bump, another \$2 million because it made
15 them more efficient?

16 A I think the point there is on -- on
17 the bump, as you so eloquently put it, is the fact
18 that those are examples of procedures and
19 technology that has allowed us to greatly improve
20 our ability to deal with customers. There are
21 probably other types of technologies and processes
22 out there even yet undiscovered that would allow
23 for that.

24 I believe that if -- if there is a
25 way to incent a company, then, to continue to look

1 for those type of technologies, those type of
2 processes, those type of procedures, I believe
3 that's important.

4 I've been, you know, in this
5 business a long time. I feel like handling
6 employees is one area where incentives do work.
7 So if incenting employees works, incenting
8 companies should also help improve the other.

9 Q Do you think customers want to pay
10 you twice for that sort of stuff?

11 A No, I don't think they want to pay
12 us twice for it.

13 Q Did MGE receive any comments from
14 any customers, if you've taken the time to look
15 because you hadn't at the time of your deposition,
16 indicating that customers were in favor of this
17 rate increase?

18 A I have not had -- personally had any
19 comments either positive or negative from
20 customers.

21 Q And you didn't even think it was
22 important enough to find out, did you, Mr.
23 Oglesby?

24 A Yeah, I think it's important enough
25 to know. I do not have anyone that has contacted

1 me, so -- as it relates to that.

2 Q And you didn't ask any of your staff
3 members, did you?

4 A As it relates --

5 Q Whether or not MGE received any
6 complaints from customers regarding the level of
7 the proposed rate increase.

8 A Yes, I did ask the staff if anyone
9 had had any issues relating to the proposed
10 increase.

11 Q And what were you told?

12 A I was told that there were -- were
13 none other than the ones that had appeared in the
14 rate case hearings.

15 Q And who was that that told you that?

16 A Members of the senior staff.

17 Q And who is that?

18 A That is Steve Holcomb, Rob Hack,
19 Carl Ricketts, Pam Levetzow, Deborah Hayes.

20 Q Did you looked at Ms. Bolin's
21 testimony and seen the attached complaints that
22 she received from MGE that MGE received regarding
23 the proposed rate increase?

24 A I have not, no.

25 Q And you haven't seen any internally

1 either, have you?

2 A No, I have not.

3 Q Now, are those people that you just
4 listed, are they truthful folks?

5 A I would certainly hope so.

6 Q Is it correct that your rebuttal
7 testimony in this case was filed on May 24, 2004?

8 A Yes, I believe that is correct.

9 Q Are you aware that MGE has hired Dr.
10 Roger Morin to be a witness in this case?

11 A I'm only aware of it from what I
12 heard in the hearing room yesterday.

13 Q And that's the first time you became
14 aware that Dr. Morin was going to be a witness for
15 MGE in this case, yesterday in the hearing room?

16 A I believe it is, yes.

17 MR. MICHEEL: I need to get another
18 exhibit marked, Your Honor.

19 JUDGE WOODRUFF: All right. We're
20 up to 227.

21 (Exhibit 227 marked for
22 identification.)

23 Q (By Mr. Micheel) Let me just hand
24 you a copy of what's been marked for purposes of
25 identification as Exhibit 227, and that is the

1 Company's response to Staff Data Request 326. Do
2 you have that in front of you, sir?

3 A Yes, I do.

4 Q And does that indicate, please
5 provide a copy of all invoices submitted from Mr.
6 Morin to Southern Union in the past three years?

7 A Yes, it does.

8 Q And are there invoices attached to
9 that?

10 A Yes, there are.

11 Q And is that MGE's response to that
12 data request?

13 A It would appear so.

14 MR. MICHEEL: With that, Your Honor,
15 I'd move the admission of Exhibit 227.

16 JUDGE WOODRUFF: 227 has been
17 offered into evidence. Are there any objections
18 to its receipt? Hearing none, it will be received
19 into evidence.

20 Q (By Mr. Micheel) Does the accounts
21 payable transmittal document indicate that MGE is
22 paying Dr. Morin \$30,000 to testify in this case?

23 A Yes, it does.

24 Q And let me ask you that. Is this
25 the first time today that you became aware of

1 that? Because yesterday is the first time you
2 became aware that Dr. Morin was testifying in this
3 case.

4 A I think that as far as the name is
5 concerned, yes. I would say yesterday was the
6 first time that I recognized the name.

7 Q Let's look at that. Is there a
8 memorandum attached to Exhibit 227?

9 A Yes, there is a memorandum.

10 Q And it's to a Tom Karam from a Rob
11 Hack?

12 A Yes.

13 Q And who is Tom Karam?

14 A He is the President and Chief
15 Operating Officer of Southern Union.

16 Q And we all know who Mr. Hack is, do
17 we not? He's sitting here?

18 A Good looking guy.

19 Q And there's an approval on J -- it
20 says approval by Jim Oglesby, President and CEO,
21 5/27/04, and I see a signature there. Does that
22 look like your signature?

23 A That is my signature.

24 Q And does this memorandum indicate
25 that MGE has hired a consultant, a Roger Morin,

1 and the consultant's cost is \$30,000?

2 A Yes, it does.

3 Q Do you make a habit of spending
4 \$30,000 without knowing it? You just sign the
5 things Mr. Hack puts in front of you?

6 A I signed this at the recommendation
7 of Mr. Hack.

8 Q So you didn't read it?

9 A I did, I just didn't remember the
10 gentleman's name. It was not someone -- a name I
11 had ever heard before so I did not put the names
12 together.

13 Q So you weren't involved in the
14 decision to hire Dr. Morin; is that correct?

15 A I was not, no.

16 Q Is it correct that Dr. Morin dealt
17 strictly with Michael Fay, an attorney at
18 Kasowitz, Benson, Torres & Friedman?

19 A I don't know.

20 Q Do you know we took Dr. Morin's
21 deposition in this case?

22 A No, I do not know that.

23 MR. MICHEEL: It's already been
24 admitted into evidence. If I may -- if I may
25 approach the witness?

1 JUDGE WOODRUFF: Certainly.

2 Certainly.

3 Q (By Mr. Micheel) Dr. Morin's
4 deposition, it's already in evidence. I'm
5 looking, sir -- if I could just look over your
6 shoulder. I only have one copy, but it's already
7 in evidence. On page 9, lines 14 through 17,
8 could you read those into the record?

9 A Question: With regard to this
10 proceeding, who is your contact at Southern Union?

11 I don't have one, I'm dealing
12 strictly with Mr. Fay.

13 Q Thank you very much. Do you know
14 Mr. Fay?

15 A No, I do not.

16 Q Do you know if Exhibit 227 has
17 attached to it a letter from Roger Morin to
18 Michael Fay at Kasowitz, Benson, Torres &
19 Friedman?

20 A Is that -- is that the exhibit you
21 handed me?

22 Q Yeah. It's Exhibit 227, sir, the
23 one with your autograph approving.

24 A Yeah, I see that. Okay. What was
25 the question?

1 Q Is -- is the engagement letter that
2 -- that Witness Morin signed directed to Michael
3 Fay, an attorney at Kasowitz, Benson, Torres &
4 Friedman?

5 A Yes, it is.

6 Q And isn't it correct it wasn't until
7 after the fact, after Dr. Morin had been hired,
8 that you approved Dr. Morin's hiring?

9 A I approved the document on 5/27/04,
10 so it was after this letter.

11 Q So you approved his hiring on May
12 27th, '04; is that correct?

13 MR. HACK: Asked and answered.

14 JUDGE WOODRUFF: Overruled.

15 THE WITNESS: Yes, 5/27/04.

16 Q (By Mr. Micheel) And is it correct
17 that rebuttal testimony -- and Mr. Morin filed --
18 rebuttal testimony was filed on May 24th, '04; is
19 that correct?

20 A I don't know.

21 Q Well, look at the front cover of
22 your testimony, sir. I thought we had already
23 done this. Do you have your rebuttal testimony
24 there?

25 A Yes, I do.

1 Q Does it indicate it was filed on May
2 24th?

3 A Yes, it does.

4 Q So you approved the expenditure of
5 the \$30,000 for Dr. Morin's testimony after it had
6 already been filed; isn't that correct?

7 A After my rebuttal testimony had
8 already been filed?

9 Q After his rebuttal testimony had
10 already been filed.

11 A I approved it on 5/27/04.

12 Q And rebuttal testimony in this case
13 was due on May 24th; is that correct?

14 A I guess so.

15 Q So that's after he was hired?

16 A Okay.

17 Q Are you aware that Dr. Morin only
18 spent around 25 hours preparing his rebuttal
19 testimony in this case?

20 A No, I am not.

21 MR. MICHEEL: May I approach the
22 witness, Your Honor?

23 JUDGE WOODRUFF: You may.

24 Q (By Mr. Micheel) Again, this
25 document has already been put in the record from,

1 I believe it's Mr. Dunn's surrebuttal testimony.
2 And if I could, sir, on page 20 of that document,
3 if I could ask you to read in the question and
4 answer from line 11 through 14.

5 A Question: How many hours did you
6 work to develop the testimony that you presented
7 in this case?

8 Answer: I'll give you a rough
9 estimate, somewhere around 25 hours.

10 Q So he worked 25 hours on his
11 rebuttal testimony. That's Dr. Morin's sworn
12 testimony; is that correct?

13 A According to that, yes.

14 Q And MGE is paying him \$30,000. Is
15 that correct?

16 A That is correct.

17 Q Now, my arithmetic is not good, but
18 if Dr. Morin spent around 25 hours, and I'll give
19 him the 25 hours, on his testimony as stated under
20 oath in his deposition, and I divide 30,000 by 25,
21 that means MGE is paying him \$1,200 an hour?

22 A Sounds correct.

23 Q Do you want my calculator to do
24 that, or --

25 A No.

1 Q Do you think it's appropriate for
2 rate payers to pay Dr. Morin \$1200 an hour?

3 A I think that consultants to
4 prosecute cases like this have a fee. I'm not a
5 -- an expert on consultants or what their charges
6 are, so.

7 MR. MICHEEL: Your Honor, that
8 wasn't my question. I ask that it be stricken as
9 non-responsive. My question was, do you think
10 it's appropriate for rate payers to pay Dr. Morin
11 \$1200 an hour?

12 MR. HACK: Objection, the witness
13 said he didn't know and it's been asked and
14 answered.

15 JUDGE WOODRUFF: I'm going to go
16 ahead and grant the request to strike the answer.
17 Let's try it again.

18 Q (By Mr. Micheel) Do you think it's
19 appropriate, Mr. Oglesby, for rate payers to pay
20 Dr. Morin \$1200 an hour?

21 A I think there are costs associated
22 with processing a rate case. I think this is one
23 of those costs. I think the Commissioners will
24 take a fair look at the costs associated with it
25 and -- and proceed as they see fit.

1 Q Have you ever paid anyone \$1,200 an
2 hour to do anything?

3 A Personally, no.

4 Q Would you?

5 A Depends on what they were doing for
6 me.

7 Q If you had known prior to Dr. Morin
8 being hired that he would charge \$1,200 per hour,
9 would you still have approved hiring him?

10 A Um, I might have had serious
11 thoughts about it, yes.

12 Q And that's because \$1,200 is a lot
13 of money, isn't it?

14 A It is a lot of money. It is a huge
15 amount of money, yes.

16 Q Are you aware that MGE has retained
17 the law firm of Kasowitz, Benson, Torres &
18 Friedman in this case?

19 A No, I'm not.

20 Q You don't know who Mr. Herschmann
21 works for?

22 A I know Mr. Herschmann. I didn't
23 know the name of the firm that he worked for.

24 Q Is that his law firm?

25 A I don't know.

1 Q Okay. Do you have that exhibit in
2 front of you? Well, let me ask you this. So
3 you're not the person -- you're the CEO and
4 President of MGE; is that correct?

5 A Yes, that is correct.

6 Q But you're not the person who made
7 the decision to hire Kasowitz, Benson, Mr.
8 Herschmann's law firm, correct?

9 A That's correct.

10 Q Are you aware they charged \$81,171
11 in fees from December 12, '03 to March 31, '04 for
12 122.55 hours of work?

13 A No, I'm not aware of that.

14 MR. MICHEEL: I need to get another
15 exhibit marked, Your Honor.

16 JUDGE WOODRUFF: All right. Up to
17 228. And while we're doing that, Mr. Micheel,
18 we're about due for a break. Are you near the
19 end, or near a breaking point?

20 MR. MICHEEL: I'm starting a new
21 topic, this is a good place.

22 JUDGE WOODRUFF: Let's take a break.
23 We'll come back at 10 minutes after 3.

24 (Off the record.)

25 (Exhibit 228 marked for

1 identification.)

2 JUDGE WOODRUFF: Back on, apparently
3 we are very popular on the internet again. We're
4 back from break, an exhibit has been marked as No.
5 228.

6 Q (By Mr. Micheel) Mr. Oglesby, do
7 you have in front of you what's been marked for
8 purposes of identification as Exhibit 228?

9 A Yes, I do.

10 Q And that's Staff Data Request 292;
11 is that correct?

12 A That is correct.

13 Q And it's a request for invoices from
14 Kasowitz, K-a-s-o-w-i-t-z, Torres, T-o-r-r-e-s,
15 and Friedman, F-r-i-e-d-m-a-n, LLP?

16 A Yes, it is.

17 Q And is that a data request that Kim
18 Henzi -- Ms. Henzi answered?

19 A Yes, it is.

20 MR. MICHEEL: With that, Your Honor,
21 I'd move the admission of Exhibit 228.

22 JUDGE WOODRUFF: Any objections to
23 its receipt? Hearing none, it will be received
24 into evidence.

25 Q (By Mr. Micheel) Does this indicate

1 that this is a invoice from Kasowitz, Benson &
2 Torres?

3 A Yes, it does.

4 Q And do you see the attorneys on
5 there, Partner Michael M. Fay and Eric Herschmann?
6 It's on the third page of the document?

7 A Yes, I do see that.

8 Q And it shows that Mr. Fay worked on
9 this case 33.7 hours and Mr. Herschmann worked on
10 this case for this billing 85.35 hours?

11 A Yes, it does.

12 Q And Mr. Herschmann is the attorney
13 who was here earlier this week; is that correct?

14 A That is correct.

15 Q And does this indicate that from
16 December 12th, '03 to March 31, '04, that this law
17 firm billed your company \$81,171 for 122.55 hours
18 of work?

19 A Um, yes, it does.

20 Q Are you aware that \$81,171 divided
21 by the 122.55 hours equals paying these attorneys
22 662.35 per hour?

23 A I'll take your word for it.

24 Q Do you think it's appropriate for
25 MGE rate payers to pay MGE's attorneys \$662 an

1 hour?

2 A I think it's a cost associated with
3 the rate case that I believe the Commissioners
4 will have a chance to look at and make a
5 reasonable --

6 MR. MICHEEL: That wasn't a --
7 responsive, Your Honor. I asked is it appropriate
8 for rate payers to pay \$662 an hour. If he knows.
9 If he thinks it's appropriate or not.

10 JUDGE WOODRUFF: If you could please
11 answer that question?

12 THE WITNESS: Yes, I do.

13 Q (By Mr. Micheel) You do?

14 A Yes, I do.

15 Q And you think that's a typical cost
16 for attorneys, \$662 an hour?

17 A I don't know. I don't know what a
18 typical cost for an attorney is.

19 Q You don't ever review the invoices,
20 for example, from Brydon, Swearengen?

21 A I do not review a lot of invoices
22 for attorneys. Mr. Hack --

23 Q Do you think Brydon, Swearengen
24 charges \$600 an hour?

25 A I don't know.

1 Q Are you also aware that for that
2 122.55 hours of work, that Kasowitz, Benson
3 charged Missouri Gas Energy \$1,786.30 for meals?

4 A Yes. I see that on the document.

5 Q Now, that's -- if I divide that
6 122.55 hours by eight hours, that's about 15 and a
7 third eight hour business days. Would you accept
8 that?

9 A Yes.

10 Q And if I divide that 1,786.30 by the
11 15 and a third days, I guess \$116.67 for meals for
12 each day. Do you accept that?

13 A Yes.

14 Q If I divide that \$116 by three meals
15 a day, three squares, I get a cost of \$38.89 per
16 day per meal. You accept that?

17 A Yes, I do.

18 Q That's pretty good eating, isn't it?

19 A I would assume so, yes.

20 Q Do you believe that rate payers
21 should pay MGE attorneys almost \$39 a day for
22 meals for each meal for each day?

23 A I believe there are costs associated
24 with the rate case that are -- are legitimate
25 business expenses that should be paid by the rate

1 payers.

2 Q So you think that my clients should
3 pay for Mr. Herschmann to eat breakfast, lunch,
4 and dinner?

5 A Again, it seems like it's a
6 legitimate business expense as it relates to this
7 rate case, however...

8 Q Would you agree with me that the
9 infrastructure replacement surcharge legislation
10 was the most pro utility legislation in Missouri
11 since 1913?

12 A I don't know that, no.

13 MR. MICHEEL: I'm going to hand him
14 a copy of Schedule KKB-8, it's attached to Ms.
15 Bolin's direct testimony, Your Honor, in this
16 case.

17 JUDGE WOODRUFF: Very well.

18 Q (By Mr. Micheel) And I'm going to
19 ask you some prefatory questions, but I want you
20 to read this paragraph into the record. Is that a
21 memorandum, sir, that is dated September 15th,
22 2003, to you from Rob Hack?

23 A Yes, it is.

24 Q And could you read the first
25 sentence of that paragraph into the record?

1 A The ISRS legislation is the most
2 substantive piece of pro utility legislation not
3 affecting the telecommunication industry passed in
4 Missouri in decades. Perhaps since the Missouri
5 Public Service Commission was initially created in
6 1913.

7 Q So at least it's Mr. Hack's view
8 that the ISRS legislation is the most pro utility
9 legislation since 1913; is that correct?

10 MR. HACK: Objection, misstates the
11 evidence.

12 JUDGE WOODRUFF: In what way does it
13 misstate the evidence, Mr. Hack?

14 MR. HACK: The sentence is clearly
15 qualified by not affecting the telecommunications
16 industry and perhaps since 1913. There's two
17 qualifiers there.

18 JUDGE WOODRUFF: Okay. There are
19 qualifiers on there. You want to amend your
20 question?

21 Q (By Mr. Micheel) With those two
22 qualifications, does that indicate that it's the
23 most pro utility piece of legislation passed since
24 1913?

25 A It says that, yes.

1 Q And MGE's lobbyists and you and Mr.
2 Hack and Ms. Levetzow and Mr. Snider worked very
3 hard for that legislation to pass, did you not?

4 A Yes.

5 Q And it's a pro utility piece of
6 legislation, isn't it, sir?

7 A Yes.

8 Q And Mr. Hack wrote that memo to
9 give, I believe it is 5,000 or \$10,000 spot
10 bonuses to MGE's lobbyists; isn't that correct?

11 A To the lobbyists?

12 Q Yes. To your outside lobbyists.

13 A I don't see that.

14 MR. MICHEEL: May I approach the
15 witness, Your Honor? Speed this along?

16 THE WITNESS: We're getting awful
17 friendly.

18 MR. MICHEEL: I'm a friendly guy,
19 sir.

20 THE WITNESS: Yes, you are.

21 Q (By Mr. Micheel) Right there. I
22 recommend a spot bonus of 5,000 apiece for Andy
23 and Joe?

24 A Yes, I see that.

25 Q And that's because they did such an

1 outstanding job of getting that pro utility
2 legislation passed; is that correct?

3 A Yes, it is.

4 Q Do you think my clients should pay
5 for the costs of Company lobbyist, internal,
6 in-house Company lobbyists such as Mr. Snider who
7 worked very hard to get the most pro utility
8 legislation passed? Or one of the most pro
9 utility legislations passed perhaps since 1913 and
10 excluding telecommunications?

11 A Yeah, I believe it's very important.
12 I think the ISRS bill, first of all, is a bill
13 that is pro --

14 MR. MICHEEL: Your Honor, it's a yes
15 or no question.

16 JUDGE WOODRUFF: All right.
17 Objection sustained.

18 Q (By Mr. Micheel) Yes or no?

19 A What is the question? Read the
20 question.

21 Q Should my clients have to pay for
22 pro utility legislation being passed?

23 A I believe so, yes.

24 Q Let me retrieve Ms. Bolin's
25 testimony so we don't lose it.

1 Now, Mr. Oglesby, in your direct
2 testimony, I believe at page 7, you have O and M
3 comparisons for various other local distribution
4 companies; is that correct?

5 A That is correct.

6 Q And part of the basis for your
7 management efficiency proposed \$2 million rate
8 increase relating to that is the fact that MGE has
9 lower O and M expenses than Laclede Gas Company,
10 Ameren UE, and Missouri Public Service; is that
11 correct?

12 A That is a part of it, yes.

13 Q Is it your belief that Laclede Gas
14 Company is mismanaging their operation and
15 maintenance expense because they're higher than
16 MGE?

17 A Absolutely not.

18 Q Would it be appropriate for this
19 Commission to reduce Laclede's return on equity
20 due to the fact that they have such a high O and M
21 cost?

22 A No.

23 Q And why is that? They're horribly
24 inefficient compared to MGE.

25 MR. HACK: Objection, argumentative

1 and misstates the testimony.

2 JUDGE WOODRUFF: Overruled.

3 THE WITNESS: I don't think this --
4 this indicates that they are mismanaged
5 whatsoever. I think what we're trying to show
6 here is a comparison to give an indication that
7 for other companies in the State of Missouri, our
8 O and M cost is relatively low. It's strictly a
9 document that -- to show a comparison.

10 Q (By Mr. Micheel) So you would agree
11 with me that really O and M costs have nothing to
12 do with managing efficiency or inefficiency; is
13 that correct?

14 A No, I believe that O and M costs are
15 a part of managing a company efficiently and
16 correctly.

17 Q Okay. So MoPub on your chart has
18 the highest O and M cost; is that correct? At
19 \$185.21, correct?

20 A Yes.

21 Q So compared to all the other LDCs in
22 your chart, their management is the least
23 efficient; isn't that correct?

24 A I don't think that the indication
25 there is that they are efficient or not efficient.

1 I think what we're showing here is that as it
2 relates to other companies in the State of
3 Missouri, that we have low O and M cost and
4 efficient operation.

5 Q Well, if O and M costs don't
6 indicate that a company is inefficient, that's
7 what you're saying; isn't that correct?

8 A I'm saying that I believe that O and
9 M cost is a measure of how a company is being
10 operated.

11 Q Is it a measure of how efficient a
12 company's management is, Mr. Oglesby? Yes or no?

13 A Yes.

14 Q So MoPub's management vis-a-vis
15 every other utility local distribution company
16 here is inefficient. Isn't that correct?

17 A No.

18 Q Explain to me how that management,
19 with \$185 per O and M cost in 1998, is efficient.

20 A Again, I'm strictly saying this is a
21 chart to give an indication of the differences in
22 O and M costs in the State of Missouri as it
23 relates to some relatively comparable utilities.
24 And that what we're trying to show here is the
25 fact that as it relates to O and M costs, that I

1 believe that we do a very good job of operating
2 our company and holding the O and M costs down.

3 Q And based in part on that claim, you
4 want to get \$2 million more from my clients; is
5 that correct?

6 A Just on that claim, no.

7 Q Based in part on that claim.

8 A Based in part on that claim, I
9 believe there is opportunity for an incentive.

10 Q And my question to you is, if this
11 Commission determines, because you have a low O
12 and M cost, that MGE in part deserves a management
13 efficiency bump, wouldn't the converse be true,
14 that MoPub, due to their high O and M costs,
15 deserve a down bump?

16 A No, I don't -- I don't believe
17 that's the case at all.

18 Q So your rule only goes one way, up;
19 isn't that correct?

20 A No, I believe that there are issues
21 related to the different companies where the
22 Commission does see fit to have downward bumps.

23 Q So it's company specific. In other
24 words, to determine whether or not management is
25 efficient, the Commission should look at that

1 company's operations, not some other company's
2 operations; isn't that correct?

3 A Well, I believe that you have to
4 compare the operations to get a feel for the
5 differences in the operations. It's -- as it
6 relates to O and M costs.

7 Q Well, are there more differences in
8 the operations other than O and M costs?

9 A I would anticipate there are. No
10 two companies are totally equal.

11 Q Do you think that the -- the
12 management of Laclede Gas Company, Ameren UE, or
13 MoPub believe that because their O and M costs are
14 higher than MGE, they're managing their company
15 inefficiently?

16 MR. HACK: Objection, calls for
17 speculation.

18 MR. MICHEEL: If he knows.

19 JUDGE WOODRUFF: I'll sustain the
20 objection.

21 Q (By Mr. Micheel) Let me ask you
22 this. You don't know what Laclede, Ameren, and
23 MoPub think, do you?

24 A No, I don't.

25 Q And you didn't ask them, did you?

1 A No, I have not.

2 Q Do you think if you'd asked them,
3 they would have said we're managing our company
4 efficiently?

5 A I believe --

6 MR. HACK: Objection, calls for
7 speculation.

8 JUDGE WOODRUFF: Again, sustained.

9 Q (By Mr. Micheel) So you only use
10 the O and M costs when you want to give upward
11 bumps. It would be inappropriate for me to use
12 this chart to recommend a management efficiency
13 downgrade in a MoPub gas case; is that your
14 testimony?

15 A I believe that the Commission has
16 the opportunity in the regulatory process to look
17 at companies both for a downward bump or an upward
18 bump as it relates to how well the company is
19 being --

20 Q That wasn't my question. Would it
21 be appropriate to utilize this chart in a Missouri
22 public service rate case to indicate that their
23 management is not efficient because they have the
24 highest O and M levels?

25 A Again, I think this is strictly a

1 chart that compares the different O and M costs to
2 the different operations.

3 Q My question, again, was, would it be
4 appropriate to use that chart that way?

5 A I can't say what the Commission may
6 or may not rule on these issues.

7 Q You think it's important for the
8 Commission to look at these issues, do you not?

9 A I think it's important that the
10 Commission look at these issues, yes.

11 Q Let me ask you this. Let's assume
12 that MGE had the highest O and M costs of all
13 LDCs. Can you make that assumption?

14 A Well, is that a hypothetical --

15 Q It's a hypothetical.

16 A I have difficulty operating in a
17 hypothetical world. I have a real company to
18 operate with real people --

19 Q Let's just live in the fantasy world
20 for a little while. Let's assume MGE has the
21 highest O and M expenses. Can you make that
22 assumption?

23 A Yes.

24 Q Do you think it would be appropriate
25 for this Commission to give you a downgrade on

1 your rate of return because you had the highest O
2 and M costs?

3 A I think the Commission should look
4 at all parts of the operation including the O and
5 M costs.

6 Q It was a simple hypothetical. Would
7 it be --

8 MR. MICHEEL: Or if you will direct
9 him to answer?

10 JUDGE WOODRUFF: I will direct him
11 to answer.

12 THE WITNESS: Ask it again.

13 Q (By Mr. Micheel) Would it be
14 appropriate, assuming MGE has the highest O and M
15 cost of any LDC in the State of Missouri, would it
16 be appropriate for this Commission to give a
17 downward bump for rate of return for management
18 inefficiency because MGE had the highest O and M
19 cost?

20 A I believe that if you're going to
21 provide incentives, you should provide --

22 JUDGE WOODRUFF: That's a yes or no
23 question.

24 THE WITNESS: Ask the question
25 again, please.

1 let's get going here. Mr. Oglesby, do you have
2 your direct testimony in front of you?

3 A Yes, I do.

4 Q Okay. Would you turn to page 17 of
5 your direct testimony?

6 A Page 17?

7 Q Yes.

8 A Yes.

9 Q Actually, if you go back to page 16,
10 line 14 through page 17, line 6, and then please
11 tell me when you've had the opportunity to review
12 that.

13 A Okay.

14 Q And you've had a chance to review
15 that, Mr. Oglesby?

16 A Yes, I did. Thank you.

17 Q Okay. What responsibility does
18 Company management have to customers with respect
19 to the operations of the Company?

20 A I'm not quite sure how to answer
21 that question.

22 Q Well, what do you think --

23 A We have responsibility to operate
24 the Company in a prudent and physical manner.

25 Q Okay. Does the Company believe it

1 needs positive reinforcement to do a good job?

2 A Yes.

3 Q Above and beyond the rates that you
4 receive from the Public Service Commission?

5 A I believe that, you know, that an
6 incentive is a good way to manage a business.

7 Q Okay. What I asked was, above and
8 beyond the rates that you receive from the Public
9 Service Commission, in order to do a good job, do
10 you believe that the Company needs something
11 extra?

12 A I believe that the incentive works
13 to provide exceptional issues, yes.

14 Q Why does the Company believe that
15 this positive reinforcement should take a -- the
16 form of a rate of return adjustment?

17 A Seems like an opportune way to
18 manage it and have the Commission be able to -- to
19 look at it, prove it, monitor it.

20 Q Okay. Has the Company ever used
21 positive reinforcement in its own ways within the
22 Company?

23 A Yes, it has.

24 Q What have been the results of that?

25 A I think it's been -- in my years of

1 experience, I've seen positive reinforcement work
2 extremely well in some cases, and probably there
3 are a few cases out there where it created
4 mediocre performance.

5 Q Okay. Do you have your rebuttal
6 testimony?

7 A Yes, I do.

8 Q Okay. If you'd turn to page 2? I'm
9 sorry, I believe it's your surrebuttal. You only
10 filed direct and surrebuttal; is that correct?

11 A And rebuttal.

12 Q Okay. I believe -- okay. Actually,
13 please turn to page 2 of your surrebuttal.

14 A I have that.

15 Q Okay. Actually, let me speed this
16 up. Please turn to page 4 of your rebuttal
17 testimony.

18 A 4 of rebuttal?

19 Q Rebuttal. Do you have that in front
20 of you?

21 A Which one do you want?

22 Q Page 4 of rebuttal, Mr. Oglesby.
23 Please bear with me.

24 A Okay. Thank you.

25 Q Have you had an opportunity to

1 review page 4?

2 A The whole page? You didn't give me

3 --

4 Q Right. The whole page.

5 A Okay. Okay.

6 Q Okay. Isn't it true that you deny
7 on page 4 of your rebuttal testimony that the
8 Commission has to adopt MGE's rate of return
9 recommendation in order to keep funds for
10 discretionary capital funds flowing to Missouri?

11 A No, that's not true.

12 Q What part of that is incorrect?

13 A I believe that it makes it
14 difficult; I do not believe that it is -- it makes
15 it difficult to acquire discretionary capital
16 funds based on the rate of return in the Company.
17 You have to consider the fact that as a Missouri
18 Gas Energy -- as President of Missouri Gas Energy,
19 I compete for capital not on the outside, but
20 within the Southern Union organization.

21 Q Okay. I'm not -- is there a minimum
22 rate of return that the Commission could grant
23 that would help bring in discretionary capital
24 funds from Southern Union?

25 A I would say that all of the

1 testimony by expert witnesses have been -- that's
2 been put forward in this case and will be put
3 forward, and the Commission, I am sure, will make
4 a reasonable decision on -- on all of that
5 information. I would not venture a -- an amount
6 here today.

7 Q Well, isn't it fair to say that in
8 your testimony, specifically your rebuttal
9 testimony, you've said to the Commission, if you
10 adopt Staff rate of return or Office of Public
11 Counsel, it's going to cause problems for
12 discretionary capital in this state; isn't that
13 true?

14 A I have said that, yes.

15 Q Okay. So you've said before that's
16 a problem; is that correct?

17 A I've said that the ability for us to
18 even earn our authorized rate of return seems to
19 be extremely difficult. And even the authorized
20 rate of return --

21 MR. FRANSON: Okay, Your Honor, I'm
22 going to move this is non-responsive to my
23 question.

24 JUDGE WOODRUFF: All right.

25 MR. HACK: If I can help a little

1 bit, I think there's a misunderstanding of the
2 question. So if perhaps the question were phrased
3 in a different way or more clear way, the answer
4 would be responsive.

5 JUDGE WOODRUFF: The answer was
6 non-responsive. If you'd like to rephrase your
7 question.

8 MR. FRANSON: I will try.

9 Q (By Mr. Franson) Okay. Mr.
10 Oglesby, isn't it true you've said that there's a
11 problem if the Commission adopts the rate of
12 return recommended by the Staff or by the Office
13 of Public Counsel, it's going to cause you
14 problems regarding discretionary funds for capital
15 spending in this state?

16 A Yes.

17 Q Okay. Question: Wouldn't you like
18 to say to the Commission right here right today
19 the acceptable minimum number? Do you have that
20 authority to do it? What you would find
21 acceptable?

22 A If you're asking me that question
23 today, I would have to say the acceptable number
24 is in the number filed in the rate case, with a
25 rate of return of, I think it's 9.3 percent or

1 something like that.

2 Q You don't want to name any other
3 number here today?

4 A As a rate of return?

5 Q Yes.

6 A That would be -- I believe that's --
7 I believe that's what we filed in our rate case.

8 MR. FRANSON: No further questions,
9 Your Honor.

10 JUDGE WOODRUFF: All right. Thank
11 you. No questions from the bench. Commissioner,
12 do you have any questions?

13 COMMISSIONER APPLING: No.

14 JUDGE WOODRUFF: I don't have any
15 questions on recross, so we'll go to redirect.

16 REDIRECT EXAMINATION BY MR. HACK:

17 Q In terms of being able to attract
18 capital, Mr. Oglesby?

19 A Yes.

20 Q To be successful, do we need to be
21 competitive?

22 A Yes.

23 Q Do you believe that may provide
24 guidance to the Commission in establishing an
25 overall rate of return?

1 A Yes, I believe it absolutely would.
2 We're not only competitive in the capital market,
3 we compete for employees and gas procurement and
4 several other areas, too.

5 Q Mr. Micheel had some questions about
6 costs incurred by the Company related to this rate
7 case, and in particular related to the litigation
8 of the cost of capital issue, also known as the
9 rate of return issue; in particular, Mr. Micheel
10 mentioned Eric Herschmann's law firm and Professor
11 Roger Morin's fees.

12 A Yes.

13 Q Are you aware, sir, of the dollar
14 value, the total dollar value roughly of the rate
15 of return issue in this proceeding?

16 A Total value of the rate of return
17 issue in this proceeding?

18 Q If you're not, that's fine.

19 A No.

20 Q Would you argue with me if I told
21 you it was \$23 million?

22 MR. FRANSON: Your Honor, object,
23 asked and answered. The witness said he didn't
24 know.

25 JUDGE WOODRUFF: Sustained.

1 MR. FRANSON: So suggesting a number
2 would not --

3 JUDGE WOODRUFF: Sustained.

4 Q (By Mr. Hack) I will ask a
5 different question. If I told you it was \$23
6 million, would you have reason to disagree with
7 me?

8 MR. FRANSON: Same objection, Your
9 Honor.

10 JUDGE WOODRUFF: It's the same
11 question, so same result.

12 Q (By Mr. Hack) Mr. Micheel asked you
13 some questions about whether automated meter
14 reading was a necessary investment by the Company.
15 Do you recall that?

16 A Yes, I do.

17 Q Are there other ways to conduct
18 meter reading function other than automated meter
19 reading?

20 A Oh, absolutely.

21 Q And what are those ways?

22 A One way is with people and paper
23 books. There's also different types of technology
24 out there other than the type of technology that
25 we employ.

1 Q So if MGE had not invested in
2 automated meter reading, what -- can you tell the
3 Commission what impact that -- its meter reading
4 work force, that may have had on its meter reading
5 work force?

6 A Well, I think that it's an issue
7 that drives up your O and M cost. It's also a
8 people issue from a safety point of view. Meter
9 readers are notoriously out in all kinds of
10 weather and all kinds of situations and in
11 basements, people's homes that, in today's
12 environment, that put them extremely at risk.

13 So it's not just -- although that is
14 a part of it, improving the ability to read
15 meters, I think our -- the number of meters we
16 read now on an ideal day is like 99.3 percent.
17 But it's also an issue of our employees and issues
18 associated with our employees as it relates to
19 safety.

20 Q (By Mr. Hack) Mr. Oglesby, I'm
21 going to show you the direct testimony of Carl
22 Ricketts. And ask you to apprise the Commission
23 of the ACR performance in calendar year '02.

24 A 4.48 percent.

25 Q And the average speed of answer in

1 that year?

2 A 58 seconds.

3 Q Thank you. In your understanding,
4 is 4.8 percent less than 5 percent?

5 A Yes.

6 Q Do you have an opinion as to -- or
7 any -- an opinion as to whether a study of ACR and
8 average speed of answer statistics achieved by the
9 industry -- strike that. Let me grab another
10 document.

11 Mr. Micheel asked you some questions
12 about a call center evaluation, do you recall
13 those questions?

14 A Yes.

15 Q Do you have that document in front
16 of you?

17 A Yes, I do.

18 Q Will you look in the middle of the
19 front page of the document?

20 A Yes.

21 Q You see a date on there?

22 A Yes, I do.

23 Q What is that date?

24 A October 6, 1997.

25 Q What year are we in now?

1 A This is 2004 last time I looked.

2 Q How long ago was October of 1997?

3 A About eight years?

4 Q Do you know whether Theodore Barry &
5 Associates, who conducted this analysis, would
6 consider it reasonable to rely on nearly eight
7 year old or seven year old information for
8 purposes of assessing industry averages today?

9 A I don't know if they would or not.
10 I certainly would not, I don't think.

11 Q You spent a good portion of your
12 career in the field operations area, have you not?

13 A Yes, I have.

14 Q How much of your career has been in
15 field ops?

16 A I'd have to think a little bit about
17 that. From 1968 until 1987, I was in -- actually
18 in the field as a -- as a worker. 1987, I became
19 a supervisor in field operations.

20 Q And Mr. Micheel asked you a series
21 of questions about customer service. In your
22 opinion, do field operations personnel provide
23 customer service?

24 A Oh, absolutely.

25 Q And have you -- do you believe you

1 have -- what degree of experience do you believe
2 you have related to customer service?

3 A I have a lot of years experience in
4 the -- in field operations and in customer service
5 area. And you have to keep in mind that as it
6 relates to customer service, the largest portion
7 of our operation at MGE is actually in field
8 operations as it relates to customer service.

9 And we take the phone calls at the
10 phone center; however, we have servicemen out
11 there in the field that -- that work with
12 customers every day on -- at their premises, which
13 is a very good indicator of customer service
14 because of courtesy and professionalism and all
15 those things that are important to the customers
16 as it relates to the face-to-face meeting with our
17 employees.

18 And so I believe that the largest
19 portion of our operation as it relates to customer
20 service and good customer service and high quality
21 customer service is really with our field
22 employees. They do a very, very fine job, and I'm
23 very proud of them.

24 MR. HACK: Thank you, sir.

25 THE WITNESS: Thank you.

1 JUDGE WOODRUFF: Thank you, Mr.

2 Oglesby, you may step down and you are excused.

3 THE WITNESS: Do I get to take all
4 this paperwork with me, Judge?

5 JUDGE WOODRUFF: Whatever you
6 brought, you can take with you.

7 It's my understanding from what you
8 told me at the last break that Mr. Hayes does not
9 need to go out of order; is that correct?

10 MR. HACK: That is correct, Judge.

11 JUDGE WOODRUFF: All right. The
12 next name on the list, then, is for Public Counsel
13 and is Kim Bolin.

14 MR. MICHEEL: We would call Kimberly
15 K. Bolin, Your Honor.

16 JUDGE WOODRUFF: Thank you. Would
17 you please raise your right hand?

18 (Witness sworn.)

19 MR. FRANSON: Your Honor, I'm sorry
20 to interrupt and I apologize. I did have an
21 exhibit regarding Mr. Oglesby I was going to offer
22 into evidence, and that was his deposition. It
23 would be Exhibit 849, I'd like to offer that at
24 this time.

25 JUDGE WOODRUFF: All right.

1 MR. FRANSON: And I do have copies,
2 but I was asking before I did that.

3 JUDGE WOODRUFF: Sure. Well, as we
4 discussed this morning, I don't think it's the
5 best procedure to follow, but as I indicated that
6 I've done for all the others, so I'll do it for
7 this one, too.

8 MR. FRANSON: Your Honor, I will
9 inform you, to my knowledge, there is still one
10 deposition out there, but I'm not sure that I will
11 be talking to other Staff counsel about.
12 Hopefully another matter regarding that.

13 JUDGE WOODRUFF: All right. 849,
14 the Oglesby deposition has been offered into
15 evidence. Any objection to its receipt? Hearing
16 none, it will be received into evidence.

17 And if you just want to do that at
18 the end of the hearing, Mr. Franson, that will be
19 fine.

20 MR. MICHEEL: I just need to give
21 the court reporter Ms. Bolin's NP and HC copies of
22 her testimony.

23 THE REPORTER: Thank you.

24 MR. MICHEEL: May I inquire, Your
25 Honor?

1 JUDGE WOODRUFF: You may.

2 KIMBERLY BOLIN, testified as follows:

3 DIRECT EXAMINATION BY MR. MICHEEL:

4 Q Would you please state your name?

5 A Kimberly K. Bolin, B-o-l-i-n.

6 Q And how are you employed?

7 A As a public utility accountant with
8 the Missouri Office of the Public Counsel.

9 Q And are you the same Kimberly K.
10 Bolin who caused to be filed in this proceeding
11 your direct testimony which has been marked as
12 Exhibit 204 NP and Exhibit 204 HC?

13 A Yes, I am.

14 Q And you are -- are you the same
15 Kimberly Bolin who caused to be filed your
16 rebuttal testimony which has been marked for
17 purposes of identification as Exhibit 205?

18 A Yes, I am.

19 Q And are you the same Kimberly K.
20 Bolin who caused to be filed in this proceeding
21 your surrebuttal testimony which has been marked
22 as Exhibit 206?

23 A Yes, I am.

24 Q Do you have any corrections that you
25 wish to make to any of that testimony?

1 A Yes, I do.

2 Q Could you please state the first
3 correction?

4 A Yes. My first correction is in my
5 rebuttal testimony, and it is on page 4, line 2.
6 Instead of reading chapter 3 of the Commission's
7 rules, it should read chapter 13 of the
8 Commission's rules.

9 Q Do you have any other corrections
10 you wish to make?

11 A Yes, I do. In my surrebuttal
12 testimony, page 8, line 2, it should read instead
13 of August 1998, September 1998. And that is all I
14 have.

15 Q And if I asked you those questions
16 again in your direct, rebuttal, and surrebuttal
17 testimony, Exhibits 204 NP, 204 HC, and 205 and
18 206, would your answers be the same and true and
19 correct?

20 A Yes, they would.

21 MR. MICHEEL: With that, Your Honor,
22 I would offer the admission of those exhibits and
23 tender Ms. Bolin for cross examination.

24 JUDGE WOODRUFF: All right. 204 NP
25 and HC, 205, and 206 have been offered into

1 evidence. Any objections to their receipt?

2 Hearing none, they will be received --

3 MR. HACK: Your Honor, I'm sorry, I
4 was asleep. I would ask that you withhold ruling
5 on the rebuttal testimony until I have had a
6 chance to examine.

7 JUDGE WOODRUFF: On other issues,
8 you mean? Or on this one?

9 MR. HACK: On this issue.

10 JUDGE WOODRUFF: Okay. All right.
11 We'll defer ruling on 205 and 204 both NP and HC,
12 and 206 will be admitted into evidence.

13 And for cross examination, then, we
14 begin with Staff.

15 MR. FRANSON: No questions, Your
16 Honor.

17 JUDGE WOODRUFF: Kansas City and
18 Joplin are not here. Federal Agencies?

19 MR. PAULSON: No questions, sir.

20 JUDGE WOODRUFF: Jackson County and
21 Midwest have left for the day. MGE?

22 MR. HACK: Thank you.

23 CROSS EXAMINATION BY MR. HACK:

24 Q Good afternoon.

25 A Good afternoon.

1 Q When did you start working for the
2 Office?

3 A September of 1994.

4 Q And what have been your -- what is
5 your position with the Office?

6 A It's public utility accountant.

7 Q And what have been your primary
8 duties as a public utility accountant?

9 A Reviewing the books and records of
10 utility companies and reviewing other matters.

11 Q Such as?

12 A Limited to utility customer service
13 matters, operations.

14 Q What kind of work did you do prior
15 to assuming your position with the Office of
16 Public Counsel?

17 A I worked for the Department of
18 Revenue as a tax processing technician.

19 Q What is a contact center?

20 A Contact center as in -- could you
21 clarify that a little more?

22 Q What is a call center?

23 A Call center was where people call in
24 with problems and employees provide responses,
25 answers, suggestions.

1 Q Has the Public Counsel's Office
2 conducted any management audits during your tenure
3 there?

4 A Management audits of what exactly?
5 There's different --

6 Q Public utility --

7 A I have done some on sewer companies,
8 water companies. I have done various ones.

9 Q Which one -- please explain which
10 ones you have done.

11 A I have been on Osage Water Company,
12 we have gone and evaluated the way they answer the
13 phones there, the way they treat customers, the
14 way they handle how they record their customer
15 contacts.

16 Q Have you ever worked as a customer
17 service representative in a contact center?

18 A When I worked at Revenue, the
19 customers could come into my office and I would
20 deal with them personally.

21 Q You did not answer the phone,
22 though, in a call center?

23 A They had other people answering the
24 phones. I answered letters and direct walk-ins.

25 Q Have you ever supervised customer

1 service representatives in a contact or call
2 center?

3 A No, I haven't.

4 Q Have you ever hired customer service
5 representatives for a contact center or call
6 center?

7 A No, I have not.

8 Q Have you ever managed a contact
9 center or call center?

10 A No, I have not.

11 Q Have you ever supervised a manager
12 or managers of a contact or call center?

13 A No, I have not.

14 Q What does the term P grade mean?

15 A I am not familiar with that.

16 Q How does the term P grade relate to
17 contact or call center performance measures?

18 A I'm not familiar with the term.

19 Q Have you ever consulted with
20 companies on a paid professional basis, paid for
21 by the particular company involved, for the
22 purpose of evaluating the performance of any
23 contact or call centers?

24 A I have not done that.

25 Q You have gas service at your house?

1 A I have had it. I have had gas
2 service at a previous place. Right now I am
3 currently propane. It's not my decision. It's
4 where I live.

5 Q How long, if you can recall, how
6 long did you have gas service when you had it?

7 A Two to three years in my previous
8 residence.

9 Q Do you recall -- if you recall, how
10 many times did you call your gas service provider
11 during that two or three year period?

12 A I know of one time we smelled gas
13 and they came out to check. May have been another
14 time when they were doing something to our lines
15 and they had to -- left a note for us to call and
16 they would come back and relight our pilot lights.

17 Q So a couple of times in a two or
18 three year period?

19 A Yeah.

20 Q Have you ever visited MGE's contact
21 center?

22 A No, I have not.

23 Q Have you ever visited any of MGE's
24 operating facilities?

25 A I have been to MGE's office on

1 Broadway during an audit in Case No. 98140.

2 Q And when was that?

3 A Um, in '97, '98 time period.

4 Q How long were you there?

5 A I know during the audit it would be

6 a time span of anywhere from one to four days.

7 For approximately two months.

8 Q Have you ever visited with Mr. Ron

9 Crow, MGE's Director of customer service who has

10 primary management responsibilities for MGE's call

11 center?

12 A No, I have not.

13 Q Have you ever visited with Mr. Carl

14 Ricketts, MGE's Vice President of business

15 services, who has primary executive

16 responsibilities for MGE's customer service,

17 including the call center?

18 A No, I have not.

19 Q Do you know what average talk time

20 is?

21 A Is that -- I -- this is my

22 understanding of it, is the time that the customer

23 representative spends talking to the consumer. Or

24 the call-in person.

25 Q What is a typical or expected

1 average talk time for a natural gas utility
2 contact center over the course of a year?

3 A I have not seen any study relating
4 to that.

5 Q Do you know what the typical
6 turnover rate is for employees at a gas utility
7 contact center?

8 A I have not seen any documentation
9 concerning that.

10 Q Are MGE's customer service
11 representatives members of any collective
12 bargaining units?

13 A Mr. Ricketts said today that they
14 were part of a union, but I'm not familiar with
15 what the local is. What the name of it is.

16 Q Have you ever trained any customer
17 service representative or representatives for work
18 in a call or contact center?

19 A No, I have not.

20 Q Do you know how long it typically
21 takes to train a customer service representative
22 who works in a gas utility contact center?

23 A I do not.

24 Q What is not ready time as it relates
25 to the operation or performance of the contact

1 center?

2 A My understanding is when the -- the
3 customer representative is not able to answer the
4 phone, they are doing something else.

5 Q What is a typical or expected
6 average not ready time for a natural gas utility
7 contact center over the course of a year?

8 A I have not seen any study concerning
9 that.

10 Q Have you ever performed such a
11 study?

12 A No, I have not.

13 Q What is meant by the phrase calls
14 handled by automation?

15 A That would be calls handled by voice
16 -- voice automated system.

17 Q How does the level of calls handled
18 by automation relate to the operation or
19 performance of the contact center?

20 A I would assume they would help them.
21 Help make -- it would help the -- could you repeat
22 that question, please?

23 Q How does the level of calls handled
24 by automation relate to the operation or
25 performance of the contact center?

1 A I would assume the performance would
2 be improved.

3 Q What is a typical or expected level,
4 average level of calls handled by automation for a
5 natural gas utility contact center in 2004?

6 A I am not aware of that.

7 Q What was a typical or expected
8 average level of calls handled by automation for
9 natural gas utility call center in 1997?

10 A I have not reviewed that data.

11 Q What was the level of calls handled
12 by automation for MGE in 2003?

13 A I do not know that.

14 Q What was the level of calls handled
15 by automation for MGE in 1997?

16 A I have not seen that data.

17 Q What's the highest level of calls
18 handled by automation for a natural gas utility in
19 2004?

20 A I -- I do not know.

21 Q What training have you taken
22 regarding the operation, management, or evaluation
23 of the contact center?

24 A Training, could you be a little more
25 clear?

1 Q Have you had any seminars?

2 A No, but I have read TB&A study that
3 MGE had performed.

4 Q Did you talk with the TB&A personnel
5 who performed the study?

6 A No, but I read the testimony that
7 they filed in 98140 and read the study.

8 Q What education have you had
9 regarding the operation, management, or evaluation
10 of contact center or call center?

11 A I don't think any of my classes in
12 college or anywhere else have dealt with exactly
13 the call center for a utility company.

14 Q Who is, who are, or what is Theodore
15 Barry & Associates?

16 A They are a consulting firm that
17 evaluates call centers. I don't know if they do
18 specifically just for utility companies, or I
19 think they do a broad spectrum of companies
20 besides utility companies.

21 Q What's their area of expertise?

22 A Call centers, I would say.

23 Q Do you know?

24 A I know they performed a study
25 concerning the call center. I do not remember

1 their credentials at this time. I don't know the
2 credentials right now.

3 Q So you don't know what their area of
4 expertise is?

5 MR. MICHEEL: I believe that was
6 asked and answered, Your Honor. She said it was
7 call centers.

8 JUDGE WOODRUFF: Overruled. She can
9 answer the question, if she can.

10 THE WITNESS: One moment. I know
11 they have done utility companies --

12 Q (By Mr. Hack) What have they done
13 for utility companies?

14 A They have performed studies related
15 to customer services and distribution operations.
16 For utility companies.

17 Q Is that all?

18 A For gas and electric service.
19 According to Mr. Buckstaff's [phonetic] testimony
20 in 98140, that's all it says.

21 Q So the source of your information is
22 testimony from another case?

23 A On what TB&A does, yes.

24 Q You have no independent knowledge of
25 their business other than that?

1 A I have not talked to TB&A. To find
2 that out.

3 Q Do you know whether Theodore Barry &
4 Associates is still in existence?

5 A I am not aware of that.

6 Q The call center evaluation attached
7 to your rebuttal testimony is scheduled KKB-4.
8 What's the date on that evaluation?

9 A The cover sheet says October 6,
10 1997.

11 Q Do you know -- do you know over what
12 period of time the evaluation was conducted?

13 A It was around 1997. I do not know
14 which time period exactly. I don't know. Around
15 1997.

16 Q Page 6 of the evaluation contains
17 two boxes. The lower box towards the lower half
18 of the page has some information in it that
19 indicates its annual performance averages. Do you
20 see that?

21 A Yes, I do.

22 Q Do you know what period or what
23 months -- or what months and what years the
24 evaluation period covered for that box?

25 A It does not say.

1 Q I know that. Do you know what --

2 A No, I do not.

3 Q Do you know whether the individuals
4 at Theodore Barry & Associates who conducted the
5 call center evaluation would consider it
6 reasonable to rely on this evaluation, completed
7 in October of 1997, on the basis of data sometime
8 before then for the purpose of ascertaining the
9 industry average abandoned call rate and average
10 speed of answer in 2004?

11 A I have not seen another study by
12 TB&A, so I do not know what they would think now.

13 Q So you do not know?

14 A I do not know.

15 Q Why is an evaluation completed in
16 1997 and based on data obtained before that time a
17 reliable basis for drawing conclusions regarding
18 average ASA and ACR seven and a half years later?

19 A It is the only study that has been
20 provided to us from the Company.

21 MR. HACK: I would move to strike
22 Schedule KKB-4 from within Bolin's rebuttal
23 testimony on the basis that it is hearsay.
24 Furthermore, Theodore Barry & Associates is not
25 here today or during this hearing to talk about

1 this study.

2 Furthermore, call center operation
3 management performance evaluation requires
4 technical or other specialized knowledge not
5 possessed by individuals without specific
6 knowledge, skill, experience, training, or
7 education.

8 Based on her answers to the
9 questions I just asked, Ms. Bolin clearly does not
10 possess any special knowledge, skill, experience,
11 training, or education regarding call center
12 operation, management, or performance.

13 It's also clear that Ms. Bolin has
14 no earthly idea whether experts in the field of
15 call center management and/or performance
16 evaluation would consider it reasonable to rely on
17 the 1997 evaluation to draw conclusions about
18 average speed of answer and abandoned call rate
19 performance in 2004.

20 Ms. Bolin was also unable to explain
21 how an evaluation completed in October of 1997, on
22 the basis of data obtained before then, is a
23 reliable indicator of ASA and ACR average industry
24 statistics in 2004.

25 I would also move to strike a

1 certain portion of your testimony, page 6, lines 1
2 through 11, as drawing a conclusion based on that
3 hearsay testimony.

4 JUDGE WOODRUFF: Response, Mr.
5 Micheel?

6 MR. MICHEEL: Yes. I have a
7 response on several levels, Your Honor. This
8 particular study was admitted into evidence in
9 Case No. GR-94-190. It was attachment Schedule
10 7-2 to Miss Janet Hirschkin's [phonetic]
11 testimony.

12 Two, this is an admission against
13 interest. The study clearly was commissioned by
14 Missouri Gas Energy to provide call center
15 statistics related to the specific call center
16 that we have at issue.

17 Three, the Office of Public Counsel
18 requested any and all studies that MGE had
19 conducted with respect to the call center so Ms.
20 Bolin could review all the various items that Mr.
21 Hack indicated, and the Company objected to
22 providing any information past 1998, and all they
23 provided pursuant to Mr. Oglesby's testimony today
24 was the direct testimony, I believe, of Ms.
25 Kremer in the last rate case and Mr. Bangert in

1 the last rate case.

2 So I think that this information is
3 wholly appropriate to be attached as a schedule to
4 Ms. Bolin's testimony. It indicates that the last
5 study that MGE had with respect to call center
6 statistics were appropriate. It's already been
7 into evidence in this case.

8 I think Ms. Bolin's surrebuttal
9 testimony is already attached, and she attached
10 the testimony of Kendall Buckstaff, who was the
11 Managing Director of TB&A, the individual who
12 conducted this study.

13 If you just give me a second to
14 look at page 6, sir, lines 1 through 11?

15 JUDGE WOODRUFF: Go ahead.

16 MR. MICHEEL: I think that's wholly
17 appropriate, Your Honor. I think that Ms. Bolin
18 was entitled to review an MGE study, irrespective
19 of the date, because it is the last MGE study that
20 MGE had commissioned with respect to average speed
21 of answer and abandoned call rate.

22 And the Commission can give it
23 whatever weight it chooses, but I think that is an
24 entirely appropriate conclusion for Ms. Bolin to
25 render based on the information that is MGE

1 specific that she reviewed. And therefore, I
2 believe Mr. Hack's motion should be overruled.

3 JUDGE WOODRUFF: Mr. Hack, do you
4 have any further?

5 MR. HACK: The study was clearly not
6 a statement or admission by MGE. It's authored by
7 Theodore Barry & Associates. Our -- our objection
8 was not to Ms. Bolin's ability to review the
9 document, clearly we gave it to her, it exists.

10 The objection goes to its
11 unreliability because it is stale and out of date,
12 and to the fact that Ms. Bolin clearly has no
13 expertise that would qualify her to rely upon
14 hearsay information.

15 MR. MICHEEL: Your Honor, if I can
16 just respond to that hearsay part. An expert can
17 rely on hearsay, and she is an expert auditor in
18 utility matters, and she can rely on it. And she
19 testified that she had done management audits
20 before.

21 JUDGE WOODRUFF: I'm going to
22 overrule the objection and admit the exhibit and
23 the attachment and the entire exhibit.

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

25 JUDGE WOODRUFF: Thank you. Okay,

1 then, no questions from the bench. Commissioner,
2 do you have any questions?

3 COMMISSIONER APPLING: No questions.

4 JUDGE WOODRUFF: I have no
5 questions, so no recross. Any redirect?

6 MR. MICHEEL: Yes, I have some
7 redirect.

8 JUDGE WOODRUFF: All right. Thank
9 you.

10 REDIRECT EXAMINATION BY MR. MICHEEL:

11 Q Ms. Bolin, do you know if the Office
12 of Public Counsel requested any and all call
13 center studies that MGE had?

14 A Yes, we did, in fact, in a data
15 request.

16 Q And did MGE indicate to you that
17 from 1998 going forward, they had conducted no
18 other call center studies?

19 A That's correct.

20 Q And to the best of your knowledge,
21 is the call center study that you have attached as
22 KKB-4 to your rebuttal testimony the last call
23 center study that MGE had conducted?

24 A Yes, it is.

25 MR. MICHEEL: That's all I have,

1 Your Honor.

2 JUDGE WOODRUFF: All right. Thank
3 you. Ms. Bolin, you can step down.

4 Next name on the list is Debbie
5 Bernsen.

6 MR. FRANSON: Your Honor, if I may
7 have about five minutes?

8 (Off the record.)

9 (Witness sworn.)

10 DEBORAH BERNSEN, testified as follows:

11 DIRECT EXAMINATION BY MR. FRANSON:

12 Q Ma'am, please state your name.

13 A My name is Deborah Ann Bernsen.

14 Q Ms. Bernsen, how are you employed?

15 A I am employed as a utility
16 management analyst for the Missouri Public Service
17 Commission.

18 Q How long have you been so employed?

19 A I believe it's 28 years.

20 Q Okay. Ma'am, have you prepared
21 testimony in this case?

22 A Yes, I have. I prepared direct and
23 rebuttal testimony.

24 Q Okay. Did you prepare your direct
25 testimony on approximately April 15, 2004?

1 A Yes, I did.

2 Q And it's been previously -- well,
3 it's been offered as Exhibit 806. Do you have any
4 additions, deletions, corrections to your
5 testimony, your direct testimony?

6 A Not to my direct testimony, I do
7 not.

8 Q Okay. Let's go to your rebuttal
9 testimony. Did you also prepare rebuttal
10 testimony?

11 A Yes.

12 Q And was it prepared on or about May
13 24, 2004?

14 A Yes, that's correct.

15 Q And do you have any additions or
16 deletions or corrections to your rebuttal
17 testimony?

18 A Yes, I do.

19 MR. FRANSON: Okay. Hold on just a
20 moment, Miss Bernsen.

21 Your Honor, may I approach and have
22 the witness make this directly on Exhibit 807?

23 JUDGE WOODRUFF: Certainly.

24 Q (By Mr. Franson) Ms. Bernsen, if
25 you could state the first addition, deletion, or

1 correction you have to Exhibit 807?

2 A I have a correction on page 8 of the
3 rebuttal testimony at line -- starting at line 9.
4 There is a quote from a Southwestern Bell report
5 and order in Case No. TC-8914, at the end of line
6 10 it states the Commission stated, and then it
7 goes into a quote. However, the quote marks were
8 omitted.

9 Q Okay.

10 A So I need to add -- I guess the
11 simplest way to resolve that is simply to put
12 quote marks around that to indicate that that is a
13 direct quote out of the order.

14 MR. FRANSON: With Your Honor's
15 permission, I would ask the witness to make that
16 change.

17 JUDGE WOODRUFF: Is that the entire
18 paragraph, lines 11 through 20?

19 THE WITNESS: Right. It is.

20 JUDGE WOODRUFF: Okay.

21 Q (By Mr. Franson) Ms. Bernsen, have
22 you made that change on Exhibit 807?

23 A Yes, I've made it on the top copy.

24 Q Do you have any other changes,
25 additions, or deletions to your rebuttal

1 testimony, Exhibit 807?

2 A No, I do not.

3 MR. FRANSON: Your Honor, at this
4 time I would ask the witness to hand the two
5 exhibits, 806 would be the -- Ms. Bernsen's
6 direct; 807, Ms. Bernsen's rebuttal, and I would
7 offer them into evidence at this time.

8 JUDGE WOODRUFF: All right.
9 Exhibits 806 and 807 have been offered into
10 evidence. Are there any objections to their
11 receipt?

12 MR. HACK: No.

13 JUDGE WOODRUFF: Okay. Those
14 exhibits will be received into evidence.

15 MR. FRANSON: Thank you, Your Honor.
16 With that being done, I would tender the witness
17 for cross examination.

18 JUDGE WOODRUFF: Just to clarify, I
19 believe this witness is being offered at this time
20 for cross examination on more than one subject; is
21 that correct?

22 MR. FRANSON: I believe that's
23 correct, Your Honor. However, to refresh my own
24 recollection, I'm going to have to look at our
25 schedule that we're working by.

1 Ms. Bernsen is being offered for the
2 policy customer service rate of return adder,
3 there's also a subject of complaint inquiry
4 response time which has to do with customer
5 service. So yes, she, in fact, is.

6 The caveat to that, Mr. Noack, a
7 witness on the same subject, is listed in another
8 area, actually on original schedule for tomorrow
9 when we get to that, but that's what relates to
10 it, Judge.

11 JUDGE WOODRUFF: All right. Then
12 we'll go to cross examination beginning with
13 Public Counsel.

14 MR. MICHEEL: I have no questions of
15 this witness, Your Honor.

16 JUDGE WOODRUFF: Thank you. Kansas
17 City and Joplin are not here. Federal Agencies?

18 MR. PAULSON: No questions.

19 JUDGE WOODRUFF: Jackson County and
20 Midwest are not here. Mr. Hack?

21 CROSS EXAMINATION BY MR. HACK:

22 Q Good afternoon, Miss Bernsen.

23 A Good afternoon, Mr. Hack.

24 Q Let's talk about the response time,
25 PSC referred inquiry response time, briefly.

1 Do -- the Commission obviously has
2 regulatory authority over many companies other
3 than MGE. Correct?

4 A Yes, they do.

5 Q And the Commission Staff receives
6 complaints and/or inquiries from customers of
7 companies in addition to MGE; is that correct?

8 A Yes, they do.

9 Q Has the Staff determined that it
10 believes it is a good policy to require companies
11 to respond to Staff referred, Commission referred
12 inquiries or complaints within certain periods of
13 time?

14 A I believe -- Staff has discussed
15 this for quite a while. In fact, have had
16 informal discussions with many of the other
17 companies that we regulate, and in fact, have even
18 had verbal commitments from at least five of the
19 companies that I know of that they would be
20 willing to maintain and report this kind of
21 information. So this is not something brand new.

22 In addition, I believe there is a
23 formal reference to this type of reporting. It
24 was in the last Missouri American Water case that
25 I participated in that was added as a part of the

1 company's reporting relationship that they would
2 include their response time to Commission
3 complaints and inquiries.

4 Q I guess my question was really
5 simpler than that. Has the Staff decided that it
6 is a good policy to require this kind of action?

7 A I'd have to say that the Staff
8 probably has decided that, since we have had these
9 discussions and this has actually appeared in a
10 recent stipulation.

11 Q So -- so to the extent that the
12 Commission has acted upon this Staff policy, it is
13 done so through the approval of stipulations and
14 agreements; is that correct?

15 A Well, I believe the -- the
16 Commission accepted the stipulation, so apparently
17 the Commission did not have a problem with that.
18 I guess if you want to say that shows their
19 support for such a policy, I'm not sure if you
20 could interpret it that way, but certainly they
21 did not -- they did agree with the stipulation.
22 Accepted it.

23 Q Has the Commission ordered any
24 company to undertake this sort of requirement
25 outside of a stipulation and agreement?

1 A I don't believe the Commission has
2 ordered any company to do that outside of a
3 stipulation and agreement. I don't believe it
4 has.

5 Q Wouldn't it be the typical
6 Commission practice for requirements like this to
7 undertake a rule making proceeding?

8 A It may be. The Commission can use,
9 obviously, rule making procedures for what it
10 deems appropriate. But as you know, rule making
11 proceedings can be lengthy and tedious and -- and
12 sometimes actually I think some of the parties
13 lose in these kinds of rule making procedures.

14 Q Do you think it's fair that
15 requirements such as this apply to all similarly
16 situated companies?

17 A Frankly, I think it would be fair to
18 have this kind of requirement apply to all
19 companies. As I said earlier, there are a number
20 of companies that, just upon conversations with
21 Staff, have already agreed to do so without the
22 ordinance of a -- of a rule or Commission order.
23 So it seemed that this might be the sort of thing
24 that should be explored.

25 Q But it does not apply to all

1 companies in the State of Missouri at this time,
2 does it?

3 A There is no rule that applies it to
4 all of the companies in Missouri at this time.

5 Q And if the Commission adopts your
6 recommendation in this case, that requirement will
7 not apply to all companies in the State of
8 Missouri. Correct?

9 A This would only apply to MGE.

10 Q It would not even apply to all gas
11 companies in the State of Missouri?

12 A No, it would not. This is meant to
13 be more generic.

14 Q Um, in -- just to perhaps explore a
15 little bit, MGE does provide the Staff with
16 regular information regarding the time it takes to
17 respond to PSC Staff referred inquiries and
18 complaints, does it not?

19 A Right. As a part of the stipulation
20 in the Panhandle acquisition, the Company agreed
21 to provide the Staff with information about its
22 average response time to Commission forwarded
23 complaints. And so the Company does that within
24 its quarterly reporting to us.

25 Q So we are willing to agree to some

1 things. Correct?

2 A You certainly were. And you were,
3 in fact, willing to agree to give us your numbers,
4 which were to measure your performance as to an
5 answer within two business days.

6 MR. HACK: Mm-hmm. I'd like to have
7 an exhibit marked.

8 JUDGE WOODRUFF: Okay. You're up to
9 44.

10 MR. FRANSON: Your Honor, with
11 immediate concern, this DR is labeled highly
12 confidential. Right under the first page. So
13 perhaps we should be off the internet.

14 MR. HACK: I -- I believe we can do
15 this without revealing any top secret information.

16 JUDGE WOODRUFF: Okay. I don't have
17 a copy.

18 MR. HACK: I'm sorry.

19 (Exhibit 44 marked for
20 identification.)

21 MR. FRANSON: Mr. Hack, do you have
22 an exhibit number for this thing now?

23 MR. HACK: 44.

24 MR. FRANSON: Thank you.

25 Q (By Mr. Hack) Have you had a chance

1 to look at Exhibit 44, Ms. Bernsen?

2 A Yes, I have briefly glanced through
3 it.

4 Q And is it your response to MGE Data
5 Request No. 16 that you provided to MGE in this
6 case?

7 A Yes, it is.

8 Q Does it appear to be an accurate
9 replication of what you provided to MGE?

10 A I believe it's all here.

11 Q Generally, without talking about
12 numbers, what does the exhibit contain?

13 A The exhibit contains a couple of
14 different things. The first several pages relate
15 to call center performance data at several
16 different companies showing abandoned average
17 amount of call rate and average speed of answer
18 figures. The second type of information is a
19 number of estimated meter reads, and then the last
20 several -- the last four pages of the document
21 pertains to a number of complaints at particular
22 companies in Missouri.

23 Q Now, this material has been
24 designated as highly confidential?

25 A Yes, it was, I believe.

1 Q And in fact, the company names are
2 completely blotted out. Correct?

3 A Yes, they are.

4 Q So it's highly confidential as to
5 numbers, and even if you have the double secret
6 decoder ring to look at the document, you can't
7 tell what companies are attached to the
8 statistics, correct?

9 A Frankly, I could not tell you right
10 now.

11 Q That's what I mean. You cannot
12 tell.

13 A Yeah, I would have to go back to
14 where I pulled it together.

15 Q Now, does MGE submit this
16 information, this kind of information annually to
17 the Commission in a public format?

18 A MGE has a requirement per the
19 stipulation in that -- that to submit and file an
20 annual report summarizing their performance for
21 the year, documenting, discussing any deviations
22 from the performance, et cetera, and that is --
23 that is filed.

24 Q And is it filed publicly?

25 A Yes, it is. It's filed in the case.

1 MR. HACK: I would move the
2 admission of Exhibit 44.

3 JUDGE WOODRUFF: Let me ask some
4 questions to clarify. You've got various -- on
5 the first part, you've got call center performance
6 data involving Company A, Company B, C, and D.
7 Are these Missouri companies?

8 THE WITNESS: They are. And the
9 reason for -- you'll notice in some cases I have
10 four companies and other cases I might just have
11 one company. It's -- the data request was asking
12 for what I had in my possession.

13 JUDGE WOODRUFF: Okay.

14 THE WITNESS: And in some cases I
15 did not have data for that time frame that the
16 Company asked for. So that's why --

17 JUDGE WOODRUFF: But these are other
18 Missouri companies not including MGE.

19 THE WITNESS: Right. MGE is not
20 included.

21 JUDGE WOODRUFF: So this is
22 basically comparison to other companies?

23 THE WITNESS: And in this case they
24 asked for natural gas local distribution companies
25 operating in the State of Missouri specifically.

1 JUDGE WOODRUFF: All right. Thank
2 you for clarifying that for me. Exhibit 44 has
3 been offered into evidence. Are there any
4 objections to its receipt?

5 MR. FRANSON: Your Honor, I just ask
6 that it be denoted Exhibit 44 HC.

7 JUDGE WOODRUFF: Thank you very
8 much. It is Exhibit 44 HC, and it will be
9 received into evidence.

10 Mr. Hack, you can continue.

11 MR. HACK: Thank you.

12 Thank you, Ms. Bernsen. I'm done.

13 JUDGE WOODRUFF: All right. Then
14 we'll call for questions from the bench,
15 Commissioner?

16 COMMISSIONER APPLING: No questions.

17 JUDGE WOODRUFF: No recross. Any
18 redirect?

19 MR. FRANSON: Briefly, Your Honor.

20 REDIRECT EXAMINATION BY MR. FRANSON:

21 Q Miss Bernsen, specifically on the
22 reporting requirements, why are you seeking --
23 well, specifically, what information are you
24 seeking from MGE that they don't already provide?

25 A We are asking -- the Company

1 presently -- let me go back to -- to make this --
2 make it a little more sense here, show the
3 history.

4 At the time that we asked for --
5 during the Panhandle acquisition case when we
6 negotiated with the Company to provide information
7 on average response time to Commission forwarded
8 complaints, the Company indicated to us that it
9 kept those numbers within a scenario of answering
10 within two business days, as that was their --
11 their way of tracking it.

12 So they provided it to us that way.
13 We did not actually set a standard on that, that
14 was the Company's standard that they were
15 presently trying to -- they were trying to obtain.

16 In -- in this case, we are asking
17 for somewhat of a tweaking of that. We are asking
18 them to still report to us the information, but
19 we're asking them to essentially try to achieve an
20 objective of responding to those complaints that
21 are of a non-emergency nature within three
22 business days.

23 Q So I -- in -- in a way, you're
24 actually increasing the time, but you hope for a
25 higher compliance; is that correct?

1 A We're increasing the time, but we're
2 actually setting, I guess, an objective there, a
3 higher objective. Whereas in the past, the
4 Company's own objective was actually two days;
5 we're now saying take three days, but we'd like
6 you to try to meet as close to 100 percent as
7 possible within three days.

8 Q Okay. Any other additional
9 information you're seeking from MGE?

10 A No.

11 Q As far as -- okay. Has MGE stated
12 to you any other reasons they don't want to give
13 -- don't want to agree to this other than it
14 should be the subject of a general rule making?

15 A No, I believe in the testimony that
16 I read that the Company filed, that was their
17 major complaint was that they did not want to --
18 did not feel that this sort of a -- a reporting
19 was appropriate to be done this way, that it was
20 more appropriately done under the setting of a
21 rule making.

22 MR. FRANSON: No further questions,
23 Your Honor.

24 JUDGE WOODRUFF: All right, thank
25 you. And Ms. Bernsen, you can step down.

1 I do have a question about Exhibit
2 44 HC we just admitted. In looking at it, there
3 are no company names identified, as we indicated.
4 I'm just wondering, does it really need to be HC?

5 MR. FRANSON: Your Honor, if I
6 answer that, I need to go to HC. It's hard to
7 explain.

8 JUDGE WOODRUFF: Do you need to kill
9 me afterwards?

10 MR. FRANSON: No. Not today anyway.
11 But Your Honor, the answer to that --

12 JUDGE WOODRUFF: We can go to HC.

13 MR. FRANSON: I'd like to.

14 JUDGE WOODRUFF: I would like to
15 hear the answer.

16 MR. FRANSON: All right.

17 JUDGE WOODRUFF: We will go to in
18 camera so Staff can give me that answer.

19 (REPORTER'S NOTE: At this point an
20 in camera session was held, which is contained in
21 Volume 14 of the transcript.)

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1 JUDGE WOODRUFF: All right. We're
2 back in regular session. It's about ten minutes
3 till five, will there be any cross examination of
4 Mr. Oligschlaeger?

5 MR. HACK: Yes, but in all honesty,
6 Your Honor, if he's very cooperative --

7 MR. FRANSON: Judge, let's save that
8 tomorrow.

9 MR. MICHEEL: I can't get socked
10 into that issue again tonight.

11 JUDGE WOODRUFF: Let's quit for the
12 day, then. We'll end for today right now, come
13 back at 8:30 tomorrow morning with Mr.
14 Oligschlaeger.

15 (Off the record.)

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