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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

June 25, 2004  
Jefferson City, Missouri  
Volume 15

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

MORRIS L. WOODRUFF, Presiding,  
SENIOR REGULATORY LAW JUDGE.

STEVE GAW, Chairman,  
CONNIE MURRAY,  
ROBERT M. CLAYTON,  
LINWARD "LIN" APPLING,  
COMMISSIONERS.

REPORTED BY:

TARA SCHWAKE, CRR, CCR, RPR, CSR  
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1 PROCEEDINGS

2 JUDGE WOODRUFF: Let's come to  
3 order, please. Good morning, everyone, and  
4 welcome back to day five of GR-2004-0209. I  
5 believe we're going to begin this morning with a  
6 witness for MGE, Mr. McLaughlin.

7 MR. SWEARENGEN: That's correct,  
8 Your Honor.

9 JUDGE WOODRUFF: All right. If you  
10 want to go ahead and call your witness?

11 MR. SWEARENGEN: Call him at this  
12 time.

13 JUDGE WOODRUFF: Good morning, Mr.  
14 McLaughlin. Please raise your right hand, I'll  
15 swear you in.

16 (Witness sworn.)

17 MR. SWEARENGEN: Thank you, Your  
18 Honor. And we appreciate the Commission taking  
19 Mr. McLaughlin out of order this morning to  
20 accommodate his travel schedule. He is testifying  
21 on what has been described in the list of issues  
22 as the joint and common cost issue.

23 Perhaps to put that in a little bit  
24 better perspective before I inquire of the  
25 witness, let me just state for the record that

1     what we are really talking about on this issue at  
2     this point in time includes the costs of certain  
3     executives of the Company and related support and  
4     office costs and how much of those dollars should  
5     be recovered through rates.

6                     Briefly by way of background,  
7     Southern Union Company is run by an Executive  
8     Committee consisting of three people. The Staff  
9     proposes to allow for rate making purposes all of  
10    the costs associated with one of those  
11    individuals, but only part of the costs associated  
12    with the other two.

13                    The Staff makes this adjustment  
14    because it believes that these other two people  
15    function more as active board members of Southern  
16    Union as opposed to executive officers.

17                    The Staff also proposes to disallow  
18    the costs associated with two related  
19    administrative support personnel and some related  
20    office space. It's the Company's position that  
21    this proposed disallowance is simply an  
22    unsupported and arbitrary adjustment.

23                    We believe that the way in which  
24    Southern Union Company is structured is a question  
25    for the discretion of management, and in that

1     regard, Southern Union's executive management team  
2     provides the corporate leadership and expertise  
3     that we believe is necessary in providing gas  
4     service to its Missouri customers.

5                     Consequently, we believe that the  
6     allocated share of all of the costs associated  
7     with these other two members of the Executive  
8     Committee should be allowed in rates. And that  
9     includes the related support personnel and office  
10    space.

11                    My understanding that -- that all  
12    together, this issue is worth approximately  
13    \$600,000 in revenue requirement. And with that, I  
14    would inquire of the witness with your permission.

15                    JUDGE WOODRUFF: You certainly may.

16                    MR. FRANSON: Your Honor, hold on  
17    just a moment, if I may. First of all, I wasn't  
18    really expecting the opening statements at this  
19    point in time. That was not discussed, but when I  
20    got in here, that was already going on, so I  
21    didn't -- it wasn't appropriate to interrupt.

22                    However, are we going to just do the  
23    opening statement of MGE at this point and not  
24    allow the other parties to respond?

25                    JUDGE WOODRUFF: If you wish to do

1 an opening statement now, we'll let you do it now.  
2 If you want to wait until your witnesses are  
3 coming up in a few days, you can do it then.  
4 We'll leave it up to you.

5 MR. FRANSON: Actually, I think  
6 they're coming up today if I've got the schedule  
7 right.

8 JUDGE WOODRUFF: We've got several  
9 other things to go before then, we may or may not  
10 do it today. You may do it before your witness,  
11 like Mr. Swearengen has done --

12 MR. FRANSON: Before my witness will  
13 be just fine. Thank you.

14 JUDGE WOODRUFF: Go ahead and  
15 inquire.

16 MR. SWEARENGEN: Thank you.

17 MICHAEL J. McLAUGHLIN, testified as follows:

18 DIRECT EXAMINATION BY MR. SWEARENGEN:

19 Q Would you state your name for the  
20 record, please?

21 A Michael J. McLaughlin.

22 Q And you've been sworn this morning;  
23 is that correct?

24 A That is correct.

25 Q By whom are you employed and in what

1 capacity?

2 A Southern Union Company in its  
3 corporate office as Assistant Treasurer.

4 Q And how long have you been so  
5 employed?

6 A As Assistant Treasurer, since July  
7 of 2003.

8 Q Thank you. Did you cause to be  
9 prepared for this proceeding certain prepared  
10 rebuttal testimony in question and answer form?

11 A I have.

12 Q And do you have a copy of that  
13 testimony with you on the witness stand this  
14 morning?

15 A I do.

16 Q Is it your understanding that that  
17 testimony has been marked for purposes of  
18 identification in this case as Exhibit 18?

19 A That is correct.

20 Q Are there any changes that you wish  
21 to make with respect to that testimony at this  
22 time?

23 A No, there are not.

24 Q So if I ask you the questions that  
25 are contained in that testimony, would your



1     answers this morning be the same as contained in  
2     that document?

3             A       Yes.

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

7             A       Yes.

8                     MR. SWEARENGEN: With that, Your  
9     Honor, I would offer into evidence Exhibit 18, and  
10    tender the witness for cross examination.

11                    JUDGE WOODRUFF: Thank you. Exhibit  
12    18 has been offered into evidence. Are there any  
13    objections to its receipt? Hearing none, it will  
14    be received into evidence.

15                    All right. For cross examination,  
16    then, Kansas City and Joplin are not here this  
17    morning. Federal Agencies?

18                    MR. PAULSON: No questions, Your  
19    Honor.

20                    JUDGE WOODRUFF: Jackson County is  
21    not here. Midwest Gas?

22                    MR. CONRAD: Midwest has no  
23    questions, Your Honor.

24                    JUDGE WOODRUFF: Is Mr. Finnegan  
25    going to be here later, Mr. Conrad?

1 MR. CONRAD: I believe he is back in  
2 Kansas City, sir.

3 JUDGE WOODRUFF: Thank you. For  
4 Public Counsel, then?

5 MR. MICHEEL: No questions.

6 JUDGE WOODRUFF: For Staff?

7 MR. FRANSON: A few questions, Your  
8 Honor, thank you.

9 CROSS EXAMINATION BY MR. FRANSON:

10 Q Morning, Mr. McLaughlin. How are  
11 you today?

12 A Fine, thank you. How are you, Mr.  
13 Franson?

14 Q Just fine. First of all, you have  
15 your testimony in front of you?

16 A Yes, I do.

17 Q Do you also have Mr. Hyneman's  
18 testimony?

19 A Certain sections of his rebuttal  
20 testimony in front of me.

21 Q Probably the relevant sections on  
22 your issues?

23 A I would hope so.

24 Q We'll find out in due time. Mr.  
25 McLaughlin, have you ever been to Southern Union's

1 New York office?

2 A No.

3 Q Do you know what businesses Mr.  
4 Lindemann is involved in and runs from this New  
5 York office? I'm sorry, from his New York office?

6 A The primary business is run -- is  
7 the Southern Union business. Southern Union  
8 sublets space from Activated Communications, which  
9 is another of his business entities, which  
10 Activated divested most of their primary  
11 operations in 2000, but we do sublet about 20  
12 percent of the office space -- 80 percent of the  
13 space in New York from Activated.

14 Q Okay. And Activated is a company  
15 owned or controlled by Mr. Lindemann and his  
16 family?

17 A And Mr. Brennan, yes.

18 Q Okay. Do you know where Mr.  
19 Lindemann maintains his residence?

20 A Palm Beach, Florida; Greenwich,  
21 Connecticut.

22 Q Both places?

23 A Yes.

24 Q Do you know how much of Mr.  
25 Lindemann's time is devoted to Southern Union

1 business as -- as to any other businesses or  
2 activities Mr. Lindemann may be involved in?

3 A I don't believe we ever conducted a  
4 formal time study of where his -- the exact hours  
5 of time he spends on Southern Union compared to  
6 his other business interests.

7 Q Okay. Mr. McLaughlin -- I'm sorry.  
8 Could you turn to your rebuttal testimony?  
9 Specifically page 9, and please tell me when  
10 you're there.

11 A Okay.

12 Q Okay. Look at line 3, beginning  
13 there. Does it state the New York office is  
14 roughly equidistant from Providence, Rhode Island,  
15 where the Company's New England Gas division is  
16 headquartered, and Wilkes --

17 A Barre.

18 Q Wilkes-Barre, Pennsylvania, where  
19 both corporate headquarters and the Company's PG  
20 Energy division is located. Do you see that?

21 A Yes.

22 Q What is the significance of this  
23 statement as it is related to the allocation of  
24 costs to the New York office to MGE's rate payers?

25 A That has -- the fact that it's

1 roughly equidistant from both Providence and  
2 Wilkes-Barre has nothing to do with significance  
3 to MGE's rate payers, but it has to do with the  
4 convenience of the New York City office for the  
5 operation of the Company, which is not primarily  
6 to serve the -- well, the primary purpose of  
7 having an office in New York City is to meet with  
8 bankers and rating agencies and stock analysts and  
9 things like that.

10 It's not really to, you know, have  
11 convenient meeting places for just Company  
12 employees. It's for meeting with outside  
13 personnel, primarily.

14 Q Thank you. You led me into the next  
15 area I wanted to ask you about. Do you know or  
16 can you approximate how many -- or the number of  
17 times Southern Union executives traveled to New  
18 York City in 2003 to meet with bankers, credit  
19 rating agencies, and investors?

20 A The meetings occur very frequently.  
21 We meet with rating agencies several times a year  
22 with each of them, the three major ones, Standard  
23 & Poor's, Moody's, and Fitch Rating Service.

24 They spend a number of -- we have  
25 meetings with bankers to renew our credit

1 facilities and otherwise work on areas affecting  
2 the capital structure of the company, whether it  
3 be stock issuance or debt refinancing, things like  
4 that that occur in the normal course of business.

5 Q Okay. Are those meetings -- you  
6 can't tell me how frequently they occur?

7 A I couldn't tell you the exact number  
8 of times, but we -- it would be, in total meetings  
9 like that, would be dozens of times a year.

10 Q Okay. How many of those -- of these  
11 dozens of times a year, or whatever the number is,  
12 does Mr. Lindemann go to these meetings? Or are  
13 they primarily conducted by Mr. Karam?

14 A Mr. Lindemann attends all the -- the  
15 most crucial meetings. And he -- whenever he is  
16 in New York City and is available to meet with the  
17 credit rating, the rating agencies or investment  
18 bankers or equity analysts, he does so. During  
19 the last year when we had -- we were issuing  
20 common stock last year, Mr. Lindemann attended all  
21 the major meetings for that.

22 Q But you can't tell me how many  
23 meetings there were total with credit rating  
24 agencies?

25 A Not in total, but we did provide Mr.

1 Lindemann's calendar which showed the number of  
2 times he attended meetings. I believe it captured  
3 the majority of them, if not all of them, that he  
4 was in New York and attended meetings with parties  
5 like that.

6 Q Okay. And you can't tell me what  
7 the difference between a meeting with a credit  
8 rating agency and a crucial meeting with a credit  
9 rating agency is?

10 A Well, we do have periodic updates  
11 several times a year which are in the ordinary  
12 course of business that he might not necessarily  
13 attend. There are some we handle with just our  
14 CFO and the treasury staff, Mr. Marshall, who is  
15 our Treasurer. They handle the day-to-day contact  
16 with the rating agencies.

17 Q Okay. Let me ask you, do you know  
18 the number of meetings that were not related to  
19 merger and acquisition activities, but solely for  
20 the running of the Company's regulated utilities?

21 And by that, I -- let's start with  
22 that number of meetings with bankers. Do you know  
23 how many there were in that regard?

24 A Not offhand, no.

25 Q Okay. How about the same question

1 about credit rating agencies?

2 A He met with them several times last  
3 year, but I cannot say -- he attends generally the  
4 -- I'm sure he attended at least one or two last  
5 year that were not related to merger and  
6 acquisition activity.

7 Q How about with investors? Do you  
8 know how many times Mr. Lindemann was involved in  
9 meetings with investors that dealt solely with the  
10 running of the Company's regulated utilities?

11 A Well, any -- any investor -- I mean,  
12 the Company is the -- over 95 -- or over 98  
13 percent regulated, but the investors, whether you  
14 mean common equity investors or debt investors, he  
15 met with many of them last year. But last year we  
16 had several capital market issuances.

17 Q You said the Company is 98 percent  
18 regulated. Where are you getting that number?

19 A That's just a rough measure based on  
20 assets, revenues. By either measure, it's over  
21 that.

22 Q So of the Company's total assets and  
23 revenues, the Panhandle subsidiary's only 2  
24 percent?

25 A No, Panhandle is federal regulated.



1     It's not state regulated. Everything in -- the  
2     pan --

3             Q       Now I understand. You're including  
4     federal regulation -- federal and state regulation  
5     and that makes up your 98 percent?

6             A       Yes.

7             Q       Do you have any idea what other  
8     companies who don't have an office in downtown New  
9     York City have to do when they meet with members  
10    of the financial community?

11            A       I couldn't speculate as to what  
12    other companies do.

13            Q       Are you asserting here today that if  
14    Southern Union didn't have this New York office,  
15    it would not be able to meet with, let's start  
16    with credit rating agencies?

17            A       I'm stating that we've made a  
18    management decision to maintain an office in New  
19    York City. I would assume that we would be able  
20    to function if there was not one, but we made a  
21    management decision, we've chosen to operate our  
22    Company that way.

23            Q       Okay. Have you read Mr. Hyneman's  
24    surrebuttal in this case?

25            A       Yes.

1 Q And do you have that with you?

2 A Yeah.

3 Q Could you turn to page 31, please?

4 Okay. Where I'm directing your attention I  
5 believe is going to be specifically lines 14  
6 through 18. Could you look at that and then I  
7 have questions, but please tell me when you're  
8 finished looking at that.

9 A I am.

10 Q You see that the cost to Southern  
11 Union for the lease expenses here was 259,000 in  
12 2001, 257,000 in 2002, and went up to 690,000 in  
13 2003. Let me ask you, first of all, do you see  
14 that in Mr. Hyneman's testimony?

15 A Yes, I do.

16 Q Is that correct?

17 A I believe so, yes.

18 Q Can you explain why it more than  
19 doubled from 2002 to 2003? On the lease?

20 A I believe there was a change in the  
21 calculation of the lease cost sharing mechanism,  
22 is the -- one of the main drivers of it. There  
23 was also an increase of the actual rental cost of  
24 -- of the overall rental property.

25 Q How much was the rent increase?

1           A       The exact dollar amount, I couldn't  
2     say.

3           Q       Okay.  And who --

4           A       It was a combination of rent, real  
5     estate taxes and, you know, common charges.

6           Q       But it's one of Mr. Lindemann's  
7     other companies that leases this office space to  
8     Southern Union; isn't that correct?

9           A       Correct.  He is not the landlord,  
10    but he is -- we sublet from a company that he is  
11    affiliated with.

12          Q       Well, he primarily controls, I  
13    believe it was Activated Communications; isn't  
14    that true?

15          A       Yes, but he's not the landlord of  
16    the building is all I'm saying, yes.

17          Q       I understand he may not be the  
18    physically present landlord in the building, but  
19    he does control the company that leases this  
20    office space to Southern Union; isn't that  
21    correct?

22          A       Correct.

23          Q       And he also is on the, help me out  
24    here, it's the Executive Committee of the Board of  
25    Directors?

1           A       He is the Chief Executive Officer  
2       and a member of the Executive Committee, yes.

3           Q       And the members of the Executive  
4       Committee act in place of the board pretty much in  
5       the day-to-day business of the Company?

6           A       They -- yeah, they've been empowered  
7       by the Board of Directors to carry out most  
8       actions in the day-to-day management of the  
9       Company.

10          Q       Is there any conflict of interest,  
11       in your opinion, in Mr. Lindemann controlling  
12       pretty much both sides of the -- being in essence  
13       the landlord and the tenant? Do you see any  
14       conflict of interest?

15          A       I'm not an expert in those areas.

16          Q       Has that ever been a matter of  
17       discussion within Southern Union of any kind of  
18       concern?

19          A       There have been issues mentioned in  
20       the proxy statement regarding the cost sharing  
21       arrangements between Activated and Southern Union.  
22       I believe everything is fully compliant, but I'm  
23       not an expert.

24          Q       I'm not suggesting there's anything  
25       improper, I'm just asking if there had ever been a

1 discussion within Southern Union, to your  
2 knowledge.

3 A Not that I've been privy to, no.

4 Q Are you aware that Southern Union  
5 paid, just recently, just paid \$5 million to  
6 renovate the New York office of Mr. Lindemann and  
7 Mr. Brennan?

8 A We have made no claim for any of  
9 those costs in this proceeding through the --  
10 through any corporate rate calculations, but I am  
11 aware of it.

12 Q Do you know who at Southern Union  
13 requested this major renovation?

14 A No, I do not.

15 Q Do you know who at Southern Union  
16 approved this major renovation?

17 A Specifically, I don't recall who  
18 approved it, no.

19 Q Okay. Sir, do you agree that Mr.  
20 Lindemann and his family, as owners of 20 percent  
21 of a -- over 20 percent of Southern Union's common  
22 stock, exert significant influence over the  
23 operations of Southern Union?

24 A Um, you know, as Chairman and Chief  
25 Executive of the Company, he exerts a certain

1 amount of influence. I'm not sure if it's  
2 dependent upon the level of stock ownership of he  
3 and his family.

4 Q Well, between the stock ownership of  
5 himself and his family, both at -- as an owner of  
6 the Company, CEO of the Company, and Chairman of  
7 the Board, is it fair to say he exerts significant  
8 influence over Southern Union?

9 A He exerts influence over our  
10 day-to-day management and our policies and  
11 procedures. We do have a majority of outside  
12 Directors on the Board of Directors that obviously  
13 take part in all major management decisions, so I  
14 wouldn't say he has any kind of total control or  
15 ownership control of the Company.

16 Q Okay. Let me ask you, do you know  
17 that the relationship between Mr. Lindemann and  
18 Mr. Brennan in Activated Communications has to be  
19 reported to the Security and Exchange Commission  
20 every year?

21 A I'm sorry, could you just clarify  
22 the question?

23 Q Okay. Okay. You know the  
24 relationship between Mr. Lindemann and Mr. Brennan  
25 and Activated Communications, a company they own,

1     you with me so far?

2             A       Mm-hmm.

3             Q       That that has to be reported to the  
4     Security and Exchange Commission every year in  
5     Southern Union's -- well, actually in the  
6     Company's proxy statement?

7             A       Yes.

8             Q       Okay. Thank you. Do you know why  
9     that has to be done?

10            A       Well, any affiliated transactions  
11    get reported generally in the -- any material  
12    affiliated transactions get reported in the proxy.

13            Q       Thank you. Okay. Now, I'm -- okay.  
14    Mr. McLaughlin, did you include Southern Union's  
15    corporate incentive compensation in your corporate  
16    allocations study?

17            A       Yes, it was.

18            Q       Okay. Now, under this executive  
19    compensation plan that Southern Union has, I think  
20    it's sometimes called the bonus plan; is that  
21    correct?

22            A       There have been several differing  
23    comp plans over the years, but that's a fair  
24    description.

25            Q       Okay. The one that's currently in

1 effect, is that called the executive compensation  
2 plan?

3 A I believe that's how they refer to  
4 it in the proxy.

5 Q Would you agree that the sole  
6 criteria for payment under the Southern Union's  
7 executive compensation plan is consolidated net  
8 income?

9 A It's not the sole criteria. It is  
10 one of the major criteria of it.

11 Q There are other criteria?

12 A I believe so. Yes.

13 Q Are --

14 A I'm assuming it's the same criteria  
15 that applied to the rest of Southern Union  
16 corporate compensation plan of which I'm a part.

17 Q Okay. But you don't know for sure,  
18 sitting here today, you aren't sure?

19 A I believe the terms and conditions  
20 of that bonus plan are exactly the same as for the  
21 rest of the corporate employees as far as the  
22 goals and -- that are contained in it. But the  
23 primary driver of it, as noted in the proxy, is  
24 consolidated net earnings.

25 Q I'm having a little problem with you



1 believe. You don't know for sure?

2 MR. SWEARENGEN: Judge, could I just  
3 interject a comment at this point? As I  
4 understand the way the issues have been structured  
5 in this case, the incentive compensation plan  
6 issue both at the corporate and at the MGE level  
7 is scheduled to be heard later with another  
8 witness. This witness is not here for that  
9 purpose, and that may be the reason why he is not  
10 able to answer counsel's questions.

11 JUDGE WOODRUFF: Response?

12 MR. FRANSON: Yes. This witness has  
13 particular knowledge of the financial aspects of  
14 Southern Union and has specific knowledge of the  
15 money that's actually paid under these programs.  
16 He may not know all the details of the program,  
17 but he does, in fact, have specific knowledge of  
18 the finances.

19 And maybe I just need to move on  
20 down the list, but there are some financial  
21 aspects of this that I wanted to go into. And  
22 this is the only time Mr. McLaughlin testifies.  
23 And I know he has filed testimony on other aspects  
24 of this case, some of which we've already talked  
25 about.

1                   But we do have opening cross  
2       examination, and I certainly believe it's  
3       relevant. But Judge, I will try and move through  
4       that rather quickly.

5                   JUDGE WOODRUFF: All right. If he  
6       doesn't have specific knowledge, we'll assume he  
7       doesn't have specific knowledge. Go ahead and ask  
8       the next question.

9                   MR. FRANSON: Okay. Your Honor, at  
10      this time I need to have a document marked as an  
11      exhibit.

12                  JUDGE WOODRUFF: All right.

13                  MR. FRANSON: And if I'm counting  
14      right -- actually, I've lost track.

15                  JUDGE WOODRUFF: This will be 850.  
16      Which brings up another point for later, we need  
17      copies of the Oglesby deposition yet. When we  
18      were dealing with that yesterday, I told you to do  
19      it at the end and we forgot about it. Just at the  
20      next break.

21                  MR. FRANSON: Just a matter of  
22      carrying it down.

23                  JUDGE WOODRUFF: That's fine. But  
24      we're at 850.

25                  MR. FRANSON: Okay.

1                   (Exhibit 850 HC marked for  
2     identification.)

3                   MR. FRANSON: Your Honor, this  
4     document is -- has been marked highly  
5     confidential; however, I will try and tailor my  
6     questions, and I'm sure that Mr. Swearengen and  
7     Mr. Hack, who are both in the room, will be  
8     diligently watching, as I will too, to avoid  
9     disclosing any highly confidential information.

10                  JUDGE WOODRUFF: We'll call this 850  
11     HC, then.

12                  MR. FRANSON: Thank you.

13                  Q     (By Mr. Franson) Sir, have you had  
14     an opportunity to review what's been marked as  
15     Exhibit 850 HC?

16                  A     Yes.

17                  Q     Okay. Without disclosing numbers or  
18     anything that may actually be highly confidential,  
19     could you tell us what this document is?

20                  A     It's a schedule disclosing officer  
21     and director incentive compensation it says for  
22     the year ended December 31, 2003.

23                  Q     Okay. And again, not giving any  
24     specifics, would you believe these numbers to be  
25     correct?

1           A       It does not appear that there's any  
2 data here for the year 2003, but the -- I'm -- I  
3 could assume that the data for 2001 and 2 --

4           Q       Hold on. Okay. That's one of the  
5 things I want to go into that we need to be very  
6 careful, that could be highly confidential. Would  
7 you agree that 2001 and 2002 are correct?

8                   MR. SWEARENGEN: Your Honor, before  
9 he answers that question, once again, I'd like to  
10 note for the record that this issue is actually  
11 scheduled to be tried later, and I don't want the  
12 witness to -- to answer and assume subject to  
13 check or anything of that sort.

14                   JUDGE WOODRUFF: All right.  
15 Certainly only answer, Mr. McLaughlin, if you know  
16 the answer. And we're not going to ask you --

17                   THE WITNESS: I do not know whether  
18 or not these are correct.

19           Q       (By Mr. Franson) Okay. You didn't,  
20 in fact, prepare the allocations of joint and  
21 common cost allocations in this case?

22           A       Yes, and I do know in the JCC study  
23 that I prepared that there were levels included  
24 for incentive compensation in there that I do not  
25 believe correspond to this schedule at all. And

1 I'm not sure where this schedule was developed.

2 MR. FRANSON: Okay. May I have just  
3 a moment?

4 JUDGE WOODRUFF: Certainly.

5 MR. FRANSON: Your Honor, at this  
6 time I'd like to leave 850 HC in, because there  
7 will be another witness at a later time that will  
8 discuss this.

9 JUDGE WOODRUFF: Okay. It is  
10 marked, but it's not been offered at this point.

11 MR. FRANSON: And I'm not planning  
12 to offer it at this point. There is something I  
13 would like to ask this witness, but because it is  
14 regarding something in the contents of this  
15 document that's at least referred to, I believe we  
16 need to go to HC.

17 JUDGE WOODRUFF: Will it result in  
18 the disclosure of confidential information?

19 MR. FRANSON: I believe it will.

20 JUDGE WOODRUFF: All right. Let's  
21 go ahead and go to in camera session. All right.  
22 Anyone who needs to leave, please do so. All  
23 right. At this point we're in camera.

24 (REPORTER'S NOTE: At this point an  
25 in camera session was held which is contained in

1     Volume 16 of the transcript.)  
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1           Q        (By Mr. Franson)  Sir, besides  
2       yourself -- well, no.  Let's move on.  Okay.

3                       Have you ever met George Lindemann?

4           A        I have spoken on the phone with him  
5       a number of times.  I've never been able to travel  
6       to New York at that times to meet him.

7           Q        So you've never met him in person?

8           A        Not personally, just over the phone.

9           Q        How about Mr. John Brennan?

10          A        Many times.

11          Q        You have met him?

12          A        Oh, yeah.

13          Q        Have you discussed with Mr.  
14       Lindemann his role at Southern Union?

15          A        I never specifically sat down and  
16       discussed his role in the Company.  That's not my  
17       position to do so.

18          Q        I understand that, but sometimes  
19       things come up in conversation.  You never had  
20       that -- been present at a discussion of Mr.  
21       Lindemann's role in Southern Union?

22          A        No.

23          Q        Okay.  What about Mr. Brennan's  
24       role?  Have you ever either personally had a  
25       conversation with him or been involved in one or

1 present for one regarding -- resolve -- regarding  
2 Mr. Brennan's role in Southern Union?

3 A No, I'm certainly aware of what both  
4 their roles are, but I have never asked them their  
5 personal opinions as to what their role of the  
6 Company is.

7 Q Okay. Do you know where Mr.  
8 Lindemann's primary residence is?

9 A I believe Palm Beach is his primary  
10 residence, although he -- Palm Beach and Greenwich  
11 are his primary residences.

12 Q That's Palm Beach, Florida and  
13 Greenwich, Connecticut?

14 A Yes.

15 Q Do you know how often Mr. Lindemann  
16 travels between Florida and New York?

17 A Frequently, but I cannot tell you  
18 the exact number of times per year. I would  
19 assume it fluctuates as his business needs  
20 dictate.

21 Q Would you agree that Mr. Lindemann  
22 and Mr. Brennan do not devote their full time  
23 being involved in the operations of Southern  
24 Union?

25 A I can't speak to that.



1                   MR. FRANSON: Your Honor, I'm going  
2 to ask some questions about the calendar. Quite  
3 frankly, and at this point, I guess, first of all,  
4 Judge, I need to caution everybody, I don't  
5 believe this has been submitted as highly  
6 confidential, but it consists of loose pages. So  
7 I caution everybody ahead of time in that regard  
8 to be careful.

9                   MR. SWEARENGEN: For the record, I  
10 just want to inquire what I need to be careful  
11 about.

12                  MR. FRANSON: Well, you in  
13 particular, Mr. Swearengen, you don't want to open  
14 this and drop all pages on the floor.

15                  MR. SWEARENGEN: Thank you.

16                  JUDGE WOODRUFF: You want to go  
17 ahead and mark these as a group exhibit?

18                  MR. FRANSON: Yes. One exhibit.  
19 That's why I was being careful.

20                  JUDGE WOODRUFF: And these are  
21 appointment calendars for these four gentlemen; is  
22 that right?

23                  Q        (By Mr. Franson) Mr. McLaughlin,  
24 can you look at --

25                  JUDGE WOODRUFF: Mr. Franson, before

1     you start, these are appointment calendars for Mr.  
2     Lindemann, Brennan, Karam, and Kvapil?

3                   MR. FRANSON:  I believe it's just  
4     Lindemann that is actually here.  I believe the  
5     top page mentions that there was a request, but I  
6     believe this one is exclusively Mr. Lindemann.

7                   JUDGE WOODRUFF:  Thank you.

8                   Q     (By Mr. Franson)  Mr. McLaughlin, if  
9     you could look at this without necessarily -- take  
10    your time and please tell me when you've had an  
11    opportunity to review what's been marked as  
12    Exhibit 851.

13                  A     I've seen this before.

14                  Q     Okay.  Can you tell us what this is?

15                  A     It's an appointment calendar of Mr.  
16    Lindemann's that provides some details as to where  
17    he was during the year.

18                  Q     Okay.

19                  A     Certain meetings and appointments.

20                  Q     Okay.  At the bottom of each page,  
21    of each calendar day, would you agree that there  
22    is a notation that would tend to indicate where  
23    Mr. Lindemann was on a particular day?

24                  A     I assume that's what it's supposed  
25    to represent.

1           Q       Okay.  Would you look at the months  
2     January through April of 2003, which is what I  
3     believe I just handed you?

4           A       Okay.

5           Q       Okay.  And tell me if you would  
6     agree that Mr. Lindemann spent almost all of his  
7     time in the State of Florida?

8           A       I believe that is the time of year  
9     in which he spends the most time in Florida is  
10    during the winter.

11          Q       Okay.  So the answer to my question  
12    would be yes, that between January and April of  
13    2003, that you would agree that Exhibit 851  
14    showed Mr. Lindemann spent most of his time in  
15    Florida?

16          A       Yes.  And when he's in Florida, he  
17    conducts business telephonically.

18                 MR. FRANSON:  Your Honor, I would  
19    ask that that last part be stricken as  
20    non-responsive.  I did not ask --

21                 JUDGE WOODRUFF:  It was  
22    non-responsive and it will be stricken.

23          Q       (By Mr. Franson)  Now, would you  
24    look at the months November of 2003 through  
25    February of 2004, and please tell me when you've

1 done that?

2 A Okay.

3 Q Okay. Would you agree with me that  
4 Mr. Lindemann spent a high percentage of his time,  
5 perhaps as much as 90 percent, in the State of  
6 Florida?

7 A He spent a high percent of his time  
8 there, yes.

9 Q Thank you. Now, do you know if Mr.  
10 Lindemann's ever spent a day from January 2003 to  
11 the end of 2004 at Southern Union's headquarters  
12 in New York City?

13 A Offhand without checking, I could  
14 not tell you.

15 Q And what about their corporate  
16 headquarters in Wilkes-Barre, Pennsylvania?

17 A To the best of my knowledge, he has  
18 not been in Pennsylvania during that period of  
19 time.

20 Q Are you aware that boards of  
21 directors of corporate entities usually consist of  
22 different committees; is that a fair statement?

23 A Yes.

24 Q Would you agree that many boards of  
25 directors, if not most, have an executive

1 committee similar to the Executive Committee of  
2 Southern Union?

3 A I don't have any specific knowledge  
4 on that topic.

5 Q Okay. When did you become an  
6 employee of Southern Union?

7 A I would guess technically after they  
8 acquired our Pennsylvania division where I  
9 formerly worked. I didn't move to the corporate  
10 group until October 2001.

11 Q Okay. October 2001. When was MGE  
12 acquired by Southern Union, if you know?

13 A 1994, I believe?

14 Q Okay. Now, I need to ask you to  
15 turn to -- I believe this appears at page 8, line  
16 7 of your rebuttal testimony. Could you turn  
17 there, please?

18 And if you need to review, actually,  
19 that entire question and answer beginning at line  
20 1 running through line 15 on page 8, that would  
21 certainly be understandable. In fact, if you  
22 would do that and tell me when you've had the  
23 opportunity to do that?

24 A To reread it? Okay.

25 Q Yes.

1           A       Okay.

2           Q       Specifically I'm addressing your  
3       attention to the line that begin -- beginning at  
4       line 7 where it says Messrs. Lindemann and Brennan  
5       have been providing their leadership to the  
6       Company's management team since prior to the  
7       acquisition of MGE, and their management  
8       philosophy resonates throughout the Company's  
9       operations.

10                   What's the basis of that statement  
11       if you've only been with Southern Union since, I  
12       believe, October of 2001?

13           A       I'm familiar -- I've familiarized  
14       myself with the history of Southern Union since  
15       the acquisition -- you know, since the takeover of  
16       the original Southern Union Gas by Mr. Lindemann's  
17       group.

18           Q       Okay. This part about their --  
19       their management philosophy resonating throughout  
20       the Company, how can you know that if, one, you've  
21       never met Mr. Lindemann but only talked to him on  
22       the phone, how could you know that his philosophy  
23       resonates throughout the Company's operations?

24           A       Because as Chairman of the Board and  
25       Chief Executive of the Company, he dictates, you

1 know, a large portion of the Company's philosophy.  
2 They are -- they have final approval over capital  
3 budgets, operating budgets.

4                   They make major personnel decisions  
5 as far as who is the President and COO of the  
6 Company. They are -- they have intimate contact  
7 with the executive officers of the Company on a  
8 frequent basis. They are the leaders of the  
9 Company. And I don't think I need to meet them in  
10 person to realize that.

11           Q       Okay. And they're able to do this  
12 even though, in particular Mr. Lindemann, is  
13 rarely at the Company's New York office or the  
14 corporate offices in Wilkes-Barre, Pennsylvania?

15           A       Yes.

16           Q       You prepared Southern Union's joint  
17 and common cost study in this case; is that  
18 correct?

19           A       I did not develop the model, but  
20 yes, I populated the data points, yes.

21           Q       Okay. So you used a model and you  
22 -- and you oversaw its preparation?

23           A       That is correct, yes.

24           Q       And that forms a basis for the  
25 allocation of cost to MGE in your testimony; is

1       that correct?

2               A       That is correct.

3               Q       Isn't it true that part of that  
4       compensation study is corporate incentive  
5       compensation?

6               A       There is corporate incentive  
7       compensation included in that JCC study, yes.

8               Q       Okay. Let's go to page 8 of your  
9       rebuttal testimony. Okay. Bear with me just a  
10      moment.

11                      Mr. McLaughlin, would you agree that  
12      over the past ten years, Southern Union has made  
13      several major acquisitions, including the recently  
14      acquired Panhandle Eastern Pipeline Company?

15              A       Yes.

16              Q       In fact, Southern Union's just  
17      announced a new acquisition, hasn't it?

18              A       A new potential acquisition. It's  
19      too early to say whether or not it will actually  
20      be consummated or not.

21              Q       But it's Southern Union's desire to  
22      consummate a new acquisition?

23              A       Yes.

24              Q       And generally what is that new  
25      acquisition?



1           A       It's a pipeline -- a group of  
2 pipeline companies called Cross Country Energy.

3           Q       And would you agree the amount of  
4 acquisition is approximately 2.3 billion?

5           A       Yes, that is correct.

6           Q       Okay. And is it fair to say that  
7 Mr. Lindemann and Mr. Brennan are involved heavily  
8 in Southern Union's acquisitions, including the  
9 most recent one that they're proposing to do?

10          A       They certainly have approved the  
11 Company's intent to acquire them, yes.

12                 MR. FRANSON: Okay. No further  
13 questions of this witness, Your Honor.

14                 JUDGE WOODRUFF: Thank you. Then  
15 we'll come up for questions from the bench --

16                 MR. FRANSON: Actually -- no. I'm  
17 finished.

18                 JUDGE WOODRUFF: All right. Thank  
19 you. Questions from the bench. Commissioner, do  
20 you have any questions?

21                 COMMISSIONER APPLING: No questions.

22                 JUDGE WOODRUFF: All right. I have  
23 no questions, so no recross. And any redirect?

24                 MR. SWEARENGEN: Just a couple, Your  
25 Honor.

1 REDIRECT EXAMINATION BY MR. SWEARENGEN:

2 Q Mr. McLaughlin, is it fair to say,  
3 based on your experience in the utility industry,  
4 that utility executives travel extensively?

5 A Yes.

6 Q So would you agree that,  
7 particularly with respect to senior executives,  
8 it's not uncommon that they may not be present at  
9 their principal office 365 days out of the year?

10 A That is correct. Especially for a  
11 multi jurisdictional utility such as Southern  
12 Union.

13 Q Are you aware of anything that is  
14 peculiar to the State of Florida that would  
15 prohibit Mr. Lindemann from conducting business on  
16 behalf of Southern Union Company while he was  
17 physically present in that state?

18 MR. FRANSON: Your Honor, objection  
19 to the form of the question. I don't know that --  
20 it's very general and it would require -- the  
21 answer to that question would require this witness  
22 to have specific knowledge that's probably beyond  
23 the scope of most people about the State of  
24 Florida. So really it's to the form of the  
25 question.

1 JUDGE WOODRUFF: Overruled. You can  
2 answer the question.

3 Q (By Mr. Swearengen) You may answer  
4 the question.

5 A I am unaware of any condition in the  
6 State of Florida that would prevent him from  
7 operating business.

8 Q You indicated that you talked to Mr.  
9 Lindemann on the phone, or you have talked to Mr.  
10 Lindemann on the phone from time to time?

11 A Numerous times, yes.

12 Q Do you ever recall talking to him on  
13 the phone while he was in the State of Florida?

14 A Yes.

15 MR. SWEARENGEN: I believe that's  
16 all I have. Thank you.

17 JUDGE WOODRUFF: I thank you. To go  
18 back to one more thing on this witness, Mr.  
19 Franson, you've never offered 851. Did you wish  
20 to do that?

21 MR. FRANSON: Not at this point.  
22 That will be offered when another witness is on  
23 the stand, Your Honor. Well, I'll offer it now,  
24 yes, I'll offer it.

25 JUDGE WOODRUFF: All right. That's

1 the calendar for Mr. Lindemann.

2 MR. FRANSON: I'm sorry, I  
3 misunderstood. Yes, I would like to offer 851,  
4 Your Honor. Thank you.

5 JUDGE WOODRUFF: Are there any  
6 objections to its receipt?

7 MR. SWEARENGEN: We have no  
8 objection. Thank you.

9 JUDGE WOODRUFF: It will be received  
10 into evidence, then.

11 And you can step down, sir, and you  
12 are excused and you can go ahead and catch your  
13 flight.

14 THE WITNESS: Thank you very much.

15 MR. SWEARENGEN: That was going to  
16 be my question, he can be excused from the  
17 proceeding?

18 JUDGE WOODRUFF: Yes.

19 MR. SWEARENGEN: Thank you very  
20 much. All right. Then I believe we will be  
21 moving back to the policy customer service rate of  
22 return adder issue with Mr. Oligschlaeger.

23 MR. FRANSON: Actually -- oh, yes.  
24 Your Honor, if we could break for five minutes,  
25 I'd like to put Miss Ross up. She has a dental

1 emergency a little bit later in the morning.

2                   Actually, I'm not sure -- actually,  
3 Miss Ross is here. I think she should be very  
4 brief, Your Honor.

5                   JUDGE WOODRUFF: All right. Let's  
6 go ahead and do Miss Ross first, then.

7                   Mr. Oligschlaeger, you can go sit  
8 down again.

9                   MR. FRANSON: Your Honor, Ms. Ross  
10 will be up at other times; however, since this is  
11 her first time up, I will be -- she has filed --  
12 well, I have to look. She's filed some corrected  
13 testimony.

14                   JUDGE WOODRUFF: Yes, I believe so.  
15 I'll go ahead and swear her.

16                   (Witness sworn.)

17                   MR. FRANSON: Thank you, Your Honor.  
18 I'll momentarily get out Miss Ross' testimony, but  
19 I think we'll run through -- okay.

20 ANNE ROSS, testified as follows:

21 DIRECT EXAMINATION BY MR. FRANSON:

22                   Q     Ms. Ross. Specifically, state your  
23 name.

24                   A     My name's Anne Ross.

25                   Q     How are you employed?

1           A       Yes, I am, by the Missouri Public  
2       Service Commission.

3           Q       How long have you been so employed?

4           A       Almost 15 years.

5           Q       Okay. What are your duties at the  
6       Commission?

7           A       I'm an economist in the energy  
8       department. I normally work with natural gas rate  
9       cases.

10                 MR. FRANSON: Judge, I'm going to  
11       have to ask your indulgence. My pages seem to  
12       have gotten mixed up here. I don't have Ms. Ross'  
13       exhibit numbers.

14                 MR. MICHEEL: 835, 836, 837, 838.

15                 JUDGE WOODRUFF: All right.

16                 MR. FRANSON: Thank you.

17           Q       (By Mr. Franson) Ms. Ross, you have  
18       filed testimony that has been offered -- that has  
19       been prefiled. Let's start with your direct  
20       testimony on -- that's been marked as Exhibit 835.  
21       Did you, in fact, prepare that?

22           A       Is that my direct testimony on  
23       revenue requirement? I filed direct twice.

24                 JUDGE WOODRUFF: 835 is direct, 836  
25       is the rate design.

1 Q (By Mr. Franson) Okay. 835 is your  
2 direct on --

3 MR. MICHEEL: Revenue.

4 MR. FRANSON: Revenue. Thank you.

5 Q (By Mr. Franson) It would be 835 on  
6 revenue. Do you have any changes to that exhibit?

7 A No.

8 Q Okay. 836 would be your direct on  
9 rate design. Do you have any changes to that  
10 exhibit?

11 A No.

12 Q Okay. 837 I believe would be your  
13 -- was filed as your -- did you file rebuttal?

14 A Yes.

15 Q Okay. 837 would be your rebuttal.  
16 Do you have any changes to that?

17 A Yes, I do. I have one change.

18 Q Okay. What is that?

19 A On page 3, line 20, I'd like to  
20 strike this is shown in the table below.

21 Q Okay. Is there any other changes to  
22 your rebuttal testimony?

23 A No.

24 Q Okay. Now, you filed corrected  
25 surrebuttal testimony; is that correct?

1 A Yes.

2 Q Okay. That would be Exhibit 838.

3 What changes between your surrebuttal testimony  
4 and your corrected surrebuttal testimony did you  
5 make?

6 A Do you mean what changes did I make  
7 to the testimony, or just in general, what changes  
8 did I make?

9 Q What specific changes lie in the  
10 pages of everything did you make to the testimony?

11 A I've got it right here.

12 Q Okay.

13 A On page 4, lines 8 through 11, I'd  
14 ask you to strike the sentence beginning with if  
15 this proposal can be supported by appropriately  
16 designed credits and if any increase in  
17 administrative costs associated with this proposed  
18 change is not burdensome, Staff will be willing to  
19 consider OPC's proposal to increase the number of  
20 levels of bill credits.

21 JUDGE WOODRUFF: Let me clarify  
22 something. These changes you're making are the  
23 changes that are in the corrected version?

24 THE WITNESS: Yes. And then I'd  
25 like to replace that with, in her rebuttal



1 testimony, Ms. Meisenheimer pointed out an error  
2 in the PGA rate used in the Staff analysis. After  
3 rerunning the analysis using the corrected number,  
4 Staff will support OPC's proposal to increase the  
5 number of the level of bill credits, as well as  
6 OPC Witness Meisenheimer's levels of bill credit  
7 for the Joplin area.

8 In addition, Staff proposes a bill  
9 credit for participants in the 101 to 125 percent  
10 FPL of \$10 a month for the five months of November  
11 through March.

12 Q (By Mr. Franson) Any other changes,  
13 Miss Ross?

14 A Yes.

15 JUDGE WOODRUFF: Let me interrupt  
16 here. I think everyone has seen this document, it  
17 was filed earlier. Rather than -- there may be --  
18 I don't know how extensive your corrections are,  
19 let me just ask the parties if they have any  
20 objection to the -- substituting the corrected  
21 surrebuttal for the surrebuttal that was  
22 originally filed?

23 MR. HACK: None here, Your Honor.

24 MR. MICHEEL: No, Your Honor.

25 JUDGE WOODRUFF: Then we can save

1     some time, I think. The original surrebuttal, I  
2     assume, you're not offering then; is that correct?

3                   MR. FRANSON: That is correct. We  
4     would propose that 838 be the corrected  
5     surrebuttal of Miss Ross.

6                   JUDGE WOODRUFF: All right. And let  
7     me deal -- there was a motion filed to deal with  
8     the corrected testimony. I assume no one objected  
9     to that either.

10                   That motion will be granted then and  
11     the original surrebuttal testimony of Anne Ross is  
12     not offered, the correct surrebuttal testimony is  
13     what you will be offering as 838. Okay. And are  
14     you offering it at this time?

15                   MR. FRANSON: Yes. I do need to  
16     tell you, though, Judge, Ms. Ross will be up --  
17     well, scheduled later next week, but I'll go ahead  
18     and offer her testimony at this time.

19                   JUDGE WOODRUFF: All right. As with  
20     my previous practice, I'm not going to rule on the  
21     admission of these documents at this time until  
22     she's testified at subsequent times. I'll show  
23     835, 836, 837, and 838 as offered.

24                   MR. FRANSON: Actually, Judge, I  
25     have one other question for Ms. Ross.

1           Q        (By Mr. Franson) Ms. Ross, your  
2 testimony, 835, 36, 37, and 38, if you were asked  
3 those same questions today, would your answers be  
4 the same?

5           A        Yes.

6           Q        And to your knowledge and belief, is  
7 your testimony truthful and correct in all  
8 respects?

9           A        Yes.

10                  MR. FRANSON: No further questions  
11 of the witness, and I proffer this witness for  
12 cross examination.

13                  JUDGE WOODRUFF: All right. Thank  
14 you. And for cross examination we go to Public  
15 Counsel?

16                  MR. MICHEEL: No questions for Ms.  
17 Ross on this particular issue.

18                  JUDGE WOODRUFF: Thank you. Kansas  
19 City and Joplin are not here. Federal Agencies?

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

22                  JUDGE WOODRUFF: Jackson County is  
23 not here. Midwest Gas?

24                  MR. CONRAD: No questions, Your  
25 Honor.

1 JUDGE WOODRUFF: MGE?

2 MR. HACK: Just a couple.

3 CROSS EXAMINATION BY MR. HACK:

4 Q Good morning, Ms. Ross.

5 A Good morning.

6 Q At page 19 of your rebuttal  
7 testimony, you include a table of LDC rates, and  
8 I'd like you to focus on the Atmos column, if you  
9 would, please. The tariff effective date shown  
10 for Atmos is 10/1/2002.

11 A That's correct.

12 Q Do you know when Atmos last  
13 completed a general rate case before the Missouri  
14 Commission?

15 A No, I don't.

16 Q And are -- is -- you're not  
17 intending, through showing this effective date of  
18 October 1, 2002, to convey that Atmos had a rate  
19 increase take effect October 1, 2002, are you?

20 A No, I'm not.

21 MR. HACK: May I approach the  
22 witness very briefly?

23 JUDGE WOODRUFF: You may.

24 MR. HACK: I don't intend to make  
25 these exhibits, but I would just like to ask her

1 to read some information from them.

2 JUDGE WOODRUFF: Go ahead.

3 Q (By Mr. Hack) Can you identify what  
4 I've just handed you, please, Ms. Ross?

5 A This is an Atmos Energy Corporation  
6 tariff for residential firm service, sheet No. 9.

7 Q Can you read the effective date on  
8 that tariff sheet, please?

9 A Yes. October 1, 2002.

10 Q And if you would read into the  
11 record the amount associated with the customer  
12 charge?

13 A Customer charge is \$7 per meter.

14 Q And also the amount associated with  
15 the commodity rate?

16 A The commodity rate is .17954 per  
17 CCF. Dollars per CCF.

18 Q I will now hand you one more  
19 document.

20 A Okay.

21 Q Could you identify that for the  
22 record, please?

23 A Okay. This is an Associated Natural  
24 Gas Company, division of Arkansas Western Gas  
25 Company, tariff, sheet 12, for the Butler, and I

1 can't read the rest, but area.

2 Q Are you aware of whether Atmos  
3 Energy Corporation acquired the Associated Natural  
4 Gas Company?

5 A Yes.

6 Q What's the effective date on that  
7 tariff sheet, please?

8 A January -- looks like January 10th,  
9 1998.

10 Q And would you -- would you read into  
11 the record, please, the customer charges?

12 A Yes. The customer charge is \$7 per  
13 meter. The commodity rate is .17954 dollars per  
14 CCF.

15 Q And those are the same rates as  
16 shown on the tariff sheet corrective October 1,  
17 2002, do you recall?

18 A Yeah, I believe they are.

19 Q Thank you. Does that information  
20 indicate to you, at least, that the Atmos rates  
21 have been in effect since sometime in early 1998?

22 A Yes.

23 MR. HACK: Thank you. That's all.

24 JUDGE WOODRUFF: Thank you.

25 Questions from the bench? Mr. Clayton, do you

1 have any questions? All right. Mr. Appling? All  
2 right. Any redirect?

3 MR. FRANSON: Yes, Your Honor, very  
4 briefly.

5 REDIRECT EXAMINATION BY MR. FRANSON:

6 Q Ms. Ross, Mr. Hack asked you some  
7 questions directed at your rebuttal testimony,  
8 page 19. Do you have those questions?

9 A Yes, I do.

10 Q And he asked you questions about  
11 Atmos Energy. Is that correct?

12 A Yes.

13 Q Do you know the last time that Atmos  
14 Energy was in for a general rate case?

15 A No.

16 MR. FRANSON: No further questions,  
17 Your Honor.

18 JUDGE WOODRUFF: All right. Ms.  
19 Ross, you can step down and deal with your dental  
20 emergency. Hope it's nothing too serious.

21 All right. I believe, then, we're  
22 up for Mr. Oligschlaeger.

23 MR. FRANSON: Your Honor, could we  
24 take a five minute break before putting him up  
25 there?

1 JUDGE WOODRUFF: All right. Let's  
2 go ahead and take a break. We'll come back at  
3 9:40.

4 MR. FRANSON: Thank you.

5 (Off the record.)

6 JUDGE WOODRUFF: All right. Let's  
7 go back to work here. All right. We're back on  
8 the record and Mr. Oligschlaeger is on the stand.  
9 And you've already been sworn earlier in this  
10 proceeding and so you're still under oath.

11 THE WITNESS: All right.

12 JUDGE WOODRUFF: All right? And  
13 Staff, you can proceed.

14 MR. FRANSON: Your Honor, I have no  
15 questions for this witness other than to state he  
16 does have -- he's obviously here on the policy  
17 subject and his testimony has already been marked,  
18 but pursuant to the common practice that we are  
19 using here, it has not been admitted into  
20 evidence. But his testimony has been previously  
21 marked as Exhibits 828, 829, and 830.

22 My understanding is I don't believe  
23 this is the last time he's up.

24 JUDGE WOODRUFF: All right. So I  
25 assume you're tendering him for cross examination?



1                   MR. FRANSON: I am tendering him for  
2 cross examination, Your Honor.

3                   JUDGE WOODRUFF: Public Counsel?

4                   MR. MICHEEL: I have no questions  
5 right now for Mr. Oligschlaeger.

6                   JUDGE WOODRUFF: Kansas City and  
7 Joplin are not here. Federal Agencies?

8                   MR. PAULSON: No questions, Your  
9 Honor.

10                  JUDGE WOODRUFF: Jackson County is  
11 not here. Midwest Gas?

12                  MR. CONRAD: No questions.

13                  JUDGE WOODRUFF: MGE?

14                  COMMISSIONER CLAYTON: Judge, before  
15 we start, could we get the witness to identify  
16 what issue he's on, for my benefit? Would that be  
17 okay?

18                  MR. HACK: Absolutely.

19                  THE WITNESS: Okay. It's my  
20 understanding I am testifying on what's been  
21 designated as the policy slash customer service  
22 slash rate of return adder issue.

23                  It is generally my position  
24 representing the Staff that no increase to MGE's  
25 rate of return should be made to the -- by the

1 Commission in this proceeding related to MGE's  
2 level of management efficiency and level of  
3 customer service in this proceeding.

4 COMMISSIONER CLAYTON: So this is  
5 the 25 bonus points issue?

6 THE WITNESS: Yes.

7 COMMISSIONER CLAYTON: Thank you.

8 JUDGE WOODRUFF: You may proceed.

9 (Witness previously sworn.)

10 MARK OLIGSCHLAEGER, testified as follows:

11 CROSS EXAMINATION BY MR. HACK:

12 Q Good morning.

13 A Good morning.

14 Q What are operating and maintenance  
15 expenses?

16 A Operating and maintenance expenses  
17 are those costs incurred by a utility to run the  
18 day-to-day -- successfully run the day-to-day gas  
19 utility business.

20 Q Can you just perhaps provide some  
21 specific examples of the kinds of things that are  
22 included in operating and maintenance, or O and M  
23 expenses?

24 A Well, sure. Obviously, the  
25 maintenance expenses associated with your plant

1 and equipment would be included. Administrative  
2 and general costs, the kind of -- what are usually  
3 called overhead costs associated with payments to  
4 your executives, pensions and benefits and so on.  
5 Salaries to your employees would certainly be  
6 included --

7 Q Insurance?

8 A Insurance would be included.  
9 Customer related costs, including uncollectibles  
10 would be included.

11 Q Postage expense?

12 A Yes.

13 Q Okay. Do you believe that actions  
14 of management can affect the actual level of  
15 operating and maintenance expenses experienced by  
16 a gas utility like MGE?

17 A Yes.

18 MR. HACK: I'm going to put a -- I  
19 hope I'm going to put up a chart on Elmo. I may  
20 be stymied here.

21 MR. MICHEEL: Rob, you need the step  
22 stool here to turn this one on.

23 MR. HACK: It would be helpful, I  
24 think, for the presentation if we could use it.

25 The chart that I'm going to put up

1 on the wall, and I hope we don't have smoke  
2 starting, will be a scheduled -- Schedule G1 from  
3 Mr. Noack's direct testimony comparing annual O  
4 and M expenses per customer among MGE, Ameren UE,  
5 Laclede, and MoPub for the years 1998 through  
6 2002.

7 Q (By Mr. Hack) Do you recall  
8 Schedule G1 from Mr. Noack's direct testimony?

9 A Yes, I do, and I believe I have that  
10 up here.

11 Q Okay. And in fact, in your rebuttal  
12 testimony at page 3, lines 18 through 21, you  
13 indicated that you did not disagree that MGE's  
14 annual O and M expenses per customer as presented  
15 in Mr. Noack's testimony are lower than Laclede's,  
16 Ameren UE's, and MoPub's; is that correct?

17 A That is correct.

18 MR. HACK: This is where I need the  
19 chart.

20 JUDGE WOODRUFF: I can change the  
21 camera view so that you can see Elmo on the  
22 monitor. Would that be helpful?

23 MR. HACK: If the Commission can see  
24 it, that's the important --

25 JUDGE WOODRUFF: Let me try and do

1       that.  Let's go off the record for a moment.

2                       (Off the record.)

3                       JUDGE WOODRUFF:  Let's go back on  
4       the record.

5               Q        (By Mr. Hack)  Mr. Oligschlaeger, do  
6       you have before you schedule G1 of Mr. Noack's  
7       direct?

8               A        Yes, I do.

9               Q        Let me see if I can get there now.  
10      I'll ask you to focus on the MGE column for a  
11      minute.  Please compare the annual O and M expense  
12      per customer for 1998, FY 1998 to FY 2002.  How  
13      much did MGE's annual O and M expense increase  
14      during that five year period?

15              A        If my math is in -- is correct, it  
16      increased by 50 cents per customer.

17              Q        For that same time period, how much  
18      did Laclede's annual O and M expense per customer  
19      increase?

20              A        Approximately \$27.

21              Q        And for Ameren UE?

22              A        Approximately \$107.

23              Q        And for MoPub?

24              A        Approximately \$67.  Per -- and all  
25      of those figures were per customer.

1           Q       Correct.  Would it be reasonable to  
2       conclude, on the basis of that information, that  
3       simple comparison, that MGE has been able to  
4       mitigate O and M cost increases from 1998 in  
5       comparison to 2002 to a greater degree than the  
6       other companies shown on the chart?

7           A       I would agree with the caveat I have  
8       done no study of what MGE's actions were in regard  
9       to O and M expenses compared to Laclede's, Ameren  
10      UE's, and MoPub's.

11          Q       Is it your testimony, Mr.  
12      Oligschlaeger, that mitigation of O and M cost  
13      increases is beneficial to customers when it comes  
14      time to set rates for a company?

15          A       I would agree in general it is  
16      beneficial as long as adequate customer service --  
17      or quality of customer service levels are  
18      maintained.

19          Q       Can you compare and contrast for me  
20      the Atmos Energy service territory in Missouri  
21      versus MGE's service territory?

22          A       To my knowledge, Atmos controls  
23      various areas of Missouri, not all of which I  
24      believe are interrelated or connected.  They  
25      control the former Associated Natural Gas

1 territories, the former United Cities Gas  
2 territories, and there may be one or more other  
3 discrete service territory areas that they have in  
4 Missouri.

5 Comparison to MGE, I think, as I  
6 stated in my testimony, MGE does I think serve  
7 some rural areas. They also serve the urban  
8 metropolitan area of Kansas City, Missouri. And I  
9 don't believe Atmos serves a comparable type of  
10 area.

11 Q So Atmos, to your knowledge, doesn't  
12 serve a major metropolitan or urban area in  
13 Missouri?

14 A Well, that depends probably on how  
15 you define major, but I would consider the major  
16 ones to be probably Kansas City and St. Louis, and  
17 to my knowledge, Atmos does not serve either.

18 Q Do you have an opinion as to whether  
19 gas utilities operating in urban areas may have  
20 different O and M expense characteristics than gas  
21 utilities operating in rural areas?

22 A They may have.

23 Q Now, in reference to your rebuttal  
24 testimony, page 10, lines 16 through 18?

25 A Yes.

1           Q       Would you agree that in terms of  
2     impact on a company like MGE's revenue strain,  
3     that it is not weather alone that produces the  
4     impact, but weather in combination with the  
5     structure of the company's rates?

6           A       I am aware generally that there are  
7     different ways to kind of -- to accommodate  
8     weather impacts as they affect the company's  
9     rates. So I believe I would agree with your  
10    statement.

11          Q       And is the design of MGE's rates a  
12    factor under human control?

13          A       That factor is, yes.

14          Q       Is the selection of what measure to  
15    use for the representation of normal weather in  
16    setting MGE's rates a factor under human control?

17          A       Yes.

18          Q       Is the decision as to whether the  
19    load attrition adjustment should be made in  
20    setting MGE's rates a factor under human control?

21          A       Yes.

22          Q       In reference to your rebuttal  
23    testimony, page 15, lines -- actually page 15,  
24    line 19 through page 16, line 3, have you  
25    undertaken any analysis to compare MGE's actual



1 uncollectible write-offs under the period FY 1996  
2 to FY 2003 with the level used to set rates?

3 A I personally have not done that. I  
4 believe such an analysis appears in Mr. Harrison's  
5 rebuttal testimony.

6 JUDGE WOODRUFF: Mr. Hack, are you  
7 done with the chart that we have on display?

8 MR. HACK: Yes, I am, but I will  
9 probably be using another one in just a minute.

10 JUDGE WOODRUFF: All right. We'll  
11 just leave it up there, then.

12 MR. FRANSON: Your Honor, is that  
13 what everybody is seeing on the internet right  
14 now?

15 JUDGE WOODRUFF: Yes.

16 MR. HACK: I'll be very quick.

17 COMMISSIONER CLAYTON: Is that an  
18 exhibit?

19 MR. HACK: This is schedule G1 to  
20 Mr. Noack's direct testimony. I think it's --  
21 I'll be going to the other chart in just a second.

22 Q (By Mr. Hack) Is it your testimony,  
23 Mr. Oligschlaeger, that MGE experienced greater  
24 than normal residential customer usage during the  
25 year encompassing the winter of 2000/2001?

1           A       Obviously that depends on how you  
2       define the word normal. I believe there is a  
3       chart in Dr. Cummings' direct testimony that shows  
4       that customer usage during that year was greater  
5       than the other years depicted in Dr. Cummings'  
6       chart.

7           Q       In fact, you testified in your  
8       rebuttal testimony, did you not, that -- and I'll  
9       -- it's page 16, lines 12 through 15.

10                  Question: Did MGE enjoy a benefit  
11       from the cold weather during the winter of  
12       2000/2001 that gave rise in part to the level of  
13       increased uncollectibles, question mark?

14                  Answer: Yes, the abnormally cold  
15       weather also increased MGE's sales of gas and  
16       hence its revenues.

17                  Do you recall that testimony, Mr.  
18       Oligschlaeger?

19           A       Yes, I do.

20           Q       You made reference to a -- to some  
21       information from Mr. Cummings' direct testimony?

22           A       Yes, I did.

23           Q       And it was comparing actual  
24       residential use per customer to the rate case  
25       amount of usage per customer, do you remember

1     that?

2             A       I believe so.

3             Q       I've got a chart on the -- on the  
4     TV, can you see that?

5             A       I believe, I see it comes from Mr.  
6     Oglesby's direct. I have that up here, it would  
7     probably be easier just to refer to that.

8             Q       Could you refer to that, Mr.  
9     Oligschlaeger?

10            A       I have it.

11            Q       And does -- does Mr. Oglesby refer  
12    to Mr. Cummings as the source of the information  
13    for this chart?

14            A       Yes, he does.

15            Q       The Staff has not disputed the  
16    accuracy of this information anywhere in its  
17    testimony, has it?

18            A       Not to my knowledge.

19            Q       Does this information show that for  
20    the period FY '99 through FY '03, MGE's actual  
21    usage per residential customer consistently fell  
22    short of the rate case usage per residential  
23    customer?

24            A       That is what this chart depicts,  
25    yes.

1           Q       Do you know what period FY '01  
2 covers in this analysis? That is, what months and  
3 years?

4           A       My belief would be that would be  
5 July 2000 through June 2001.

6           Q       FY '01 therefore includes what you  
7 have characterized in your rebuttal testimony the  
8 winter -- sorry. Strike that.

9                   FY '01 therefore includes the period  
10 you have characterized in your testimony as  
11 containing abnormally cold weather?

12          A       Yes.

13          Q       But this information shows that  
14 MGE's actual use per customer in FY '01 fell short  
15 of the rate case usage per customer, correct?

16          A       That is what this chart depicts.

17          Q       Do you have any idea what  
18 residential customers, in terms of numbers,  
19 represent as a percent of total customers on MGE's  
20 system?

21          A       They certainly -- they are a  
22 majority. Beyond that, I cannot state with any  
23 confidence.

24          Q       Would you have reason to dispute an  
25 approximation of 85 percent?

1           A       That does not sound unreasonable.

2           Q       Do you have any idea what  
3       residential customer distribution revenues  
4       represent as a percent of total distribution  
5       revenues on MGE's system?

6           A       No.

7           Q       Would an approximation of roughly 70  
8       percent cause you to raise your eyebrows?

9           A       That information could probably be  
10       obtained from the Staff's accounting schedules. I  
11       don't have that with me. If necessary, I can  
12       assume that, but.

13          Q       Does MGE presently have a weather  
14       normalization clause in its Commission approved  
15       tariffs?

16          A       I don't believe so.

17          Q       You would agree, then, that if MGE  
18       experiences warmer than normal weather in its  
19       service area, that it cannot bill customers for  
20       usage that would be more representative of normal  
21       weather?

22          A       I believe that would be a  
23       consequence of warmer than normal weather, yes.

24          Q       Can MGE or Southern Union spend the  
25       moneys associated with revenues for which it does

1 not bill customers or collect from customers?

2 A Well, MGE can obviously obtain money  
3 from other sources, but if the sales are less than  
4 assumed under normal levels, then yes, you cannot  
5 use revenues you do not receive to write checks.

6 Q And you would agree, would you not,  
7 that MGE experiences expenses in any given year  
8 that may differ -- or that differ from the  
9 normalized level used in setting rates, correct?

10 A Certainly.

11 Q For example, conditions may require  
12 that MGE ask its employees to work an unusually  
13 high amount of overtime, correct?

14 A That could happen, or the opposite  
15 could occur.

16 Q If that occurs, the unusually high  
17 amount of overtime, would you agree that MGE must  
18 pay its employees for that actual amount of  
19 overtime worked?

20 A I believe so.

21 Q And MGE could not refuse to pay its  
22 employees for the actual amount of overtime worked  
23 in excess of normal on the basis that that amount  
24 was not included in rates, correct?

25 A That would not be a good business

1 practice, I would agree.

2 Q Do you agree, Mr. Oligschlaeger,  
3 that the utility regulatory rate making process is  
4 intended to provide the subject utility with a  
5 fair opportunity to achieve its authorized rate of  
6 return?

7 A Yes, I do.

8 MR. HACK: Thank you, sir.

9 JUDGE WOODRUFF: Thank you.

10 Questions from the bench? Commissioner Clayton?

11 BY COMMISSIONER CLAYTON:

12 Q Just real quickly, it's your  
13 position that the Company's not -- that it is not  
14 warranted to award 25 basis points to MGE for  
15 management efficiency; is that correct?

16 A Yes, and there are several reasons  
17 for that.

18 Q Okay. Is there ever a level of  
19 management efficiency that should be rewarded by  
20 an additional number of basis points in a rate of  
21 return?

22 A I think it's the Staff's position,  
23 and this is based upon past Commission rulings,  
24 that adjustments to rate of return are generally  
25 not appropriate to either reward or, if you will,

1     punish either exceptionally good management  
2     performance or exceptionally bad management  
3     performance.

4             Q       So that's a no?

5             A       That's a no.

6             Q       Okay.  Is there ever a level of  
7     customer service or any other type of, quote  
8     unquote, excellent work that should be rewarded  
9     through a rate of return adjustment?

10            A       There could be.  The Commission in  
11     the past has lowered rates of return based on poor  
12     customer service.  It is not -- I haven't  
13     necessarily myself done any kind of work to  
14     determine what an appropriately high level of  
15     customer service might be that would qualify for  
16     that kind of increased rate of return.  And it is  
17     our testimony in this case that MGE's current  
18     customer service level would not qualify, in any  
19     case.

20            Q       Would you agree or disagree that the  
21     Company is operating with a high level of  
22     management efficiency?

23            A       I believe -- I -- I wouldn't  
24     necessarily either agree or disagree with that.  I  
25     mean, the O and M levels shown on Mr. Hack's chart



1 are what they were. I think --

2 Q Do you agree that the numbers on  
3 that chart are accurate?

4 A I do not dispute the accuracy of  
5 those numbers.

6 Q Okay. Then if we accept the numbers  
7 that are on Schedule G1, would you agree or  
8 disagree, or can you either, that the Company's  
9 operating efficiently with a high level of  
10 management efficiency?

11 A Well, the numbers on the chart are  
12 intended to compare them, MGE, to other utilities,  
13 and that's kind of where I'm having difficulty  
14 saying MGE is good, Laclede is bad and so on,  
15 because I haven't, and I don't think anyone has  
16 really presented evidence as to why those  
17 differences exist. And there may be valid, good  
18 reasons for those differences, perhaps differences  
19 outside the control of the managements of both  
20 companies. Or all of the companies depicted.

21 Q So that information was submitted in  
22 testimony, you're just not -- no one -- no one on  
23 Staff -- or maybe there's another witness that  
24 would discuss this, whether or not those numbers  
25 indicate a certain level of efficiency for the

1 Company?

2 A Let me be clear. Obviously, lower O  
3 and M numbers are better than higher, all things  
4 being equal, and as long as your customer service  
5 levels are not impacted by the reduced level of  
6 costs.

7 Q Are they fair comparisons? Is it an  
8 apples to apples comparison, or is it an apples to  
9 oranges comparison? Of -- of operational costs  
10 between companies?

11 A Well, they're counting the same  
12 costs, so it's fair in that sense. But without  
13 some sort of deeper review of each of the  
14 operations of each of those companies depicted, I  
15 would hesitate to draw hard and fast conclusions  
16 from them.

17 Q So you all didn't do the necessary  
18 analysis to determine whether they're operating  
19 highly efficient or not?

20 A Compared to other utilities, no, and  
21 I don't believe any party has presented that  
22 evidence.

23 Q Isn't that what they're suggesting,  
24 though, with those numbers? There used to be a  
25 chart on that screen, but isn't that what they're

1 suggesting those numbers indicate?

2 A That is, but they -- MGE has not  
3 presented any evidence in terms of the nature of  
4 its operations and how they may be alike or  
5 different from Laclede, Ameren UE, or Aquila.

6 Q You stated at the start of -- when I  
7 started asking you these questions that Staff  
8 would never take a position for the opposite of  
9 what this request is in terms of a penalty for  
10 poor level of management efficiency. Is that a  
11 fair restatement of your comment?

12 A Well, again, that's part -- I  
13 actually sponsored or helped sponsor such an  
14 adjustment in the 1989 Southwestern Bell case  
15 which lowered the company's return on equity. And  
16 the Commission at that time said if there are  
17 allegations of management inefficiency, we don't  
18 want to see that quantified, so to speak, in a  
19 rate of return adjustment.

20 Q I want to know what your position  
21 is. Past Commissions -- Commissions come and go,  
22 right?

23 A That's been my experience.

24 Q I heard that the other day.  
25 Commissions come and go, and Staff stays forever,

1 right? You don't have to answer that.

2 A Staff as a collective body stays  
3 forever, yes.

4 Q From your point of view, do you  
5 believe it is appropriate ever to have a penalty  
6 for a low level of management efficiency or a low  
7 level of customer service? And your answer may be  
8 different for either one of those.

9 A Okay. For management efficiency,  
10 you can do it, I think, one of two ways. One, you  
11 can try to isolate the specific impacts of the  
12 management efficiency and propose adjustments to  
13 revenues, expense, and rate bases appropriate to  
14 remove those impacts from customer rates.

15 Or you could take a perhaps more  
16 broader approach, particularly that's difficult to  
17 quantify some of these impacts, and say let's just  
18 take it out of rate of return or return on equity.

19 Q On management efficiency, which do  
20 you advocate for, or either, or neither?

21 A I don't know that I have strong  
22 opinions. You can do either. I would say  
23 certainly probably the first approach is  
24 preferable if you can actually identify and  
25 quantify the negative impacts on the company's

1 costs.

2 Q So you'd go to the actual element  
3 that is causing the inefficiency and say this is  
4 where I'm going to penalize you rather than focus  
5 on the overall rate of return?

6 A That would be my personal  
7 preference.

8 Q So if I -- I think from the general  
9 nature of your testimony, it would be your  
10 preference to do a specific adjustment on a  
11 specific issue rather than focus on the overall  
12 rate of return. Is that a fair statement?

13 A Again, that is a fair statement from  
14 my preference, and it's also what the Staff --  
15 Staff's approach is currently.

16 Q Is there a flip side of that where  
17 you have perhaps a high level of efficiency, would  
18 you give a bonus adjustment on a particular  
19 element?

20 A You could do that. And again, to  
21 the extent you know specifically what the company  
22 is doing better, it is perhaps possible that the  
23 company could seek some sort of unusual treatment  
24 in a rate proceeding not to pass on all of those  
25 benefits to customers; in other words, to keep

1     some of those efficiencies, and there are various  
2     mechanisms or means, you could do that if that  
3     were appropriate.

4             Q       Have you ever made any type of  
5     adjustment like that, or recommendation?

6             A       Um, no. And generally -- again,  
7     we're kind of getting into a broad subject area  
8     here. In the past for several companies, we've  
9     taken a more global approach and implemented an  
10    incentive sharing plan or sometimes called  
11    performance based regulation plan where you take a  
12    look at the company's overall earnings levels, and  
13    to the extent they exceed some preset return on  
14    equity or rate of return level, they get to keep a  
15    part of it and pass back a part of that to  
16    customers through rate credit. So that's kind of  
17    a broader, perhaps, approach to some of what I'm  
18    talking about.

19            Q       Do you believe that if it is  
20    possible to have penalties, that there should in  
21    turn be a possibility for a bonus? For -- for  
22    good works? Or do you believe that they are not  
23    connected and that one can be available or  
24    possible without the other?

25            A       Um, I think I do address in my

1 testimony -- I'm not sure I would agree with the  
2 word penalty as it's been used by the Company in  
3 this case. Probably more imprudence type  
4 adjustments are what we're discussing there.

5 But having said that, I think it is  
6 generally my belief and the Staff's belief that  
7 under normal circumstances, the rate regulatory  
8 scheme in this state does provide in and of itself  
9 the opportunity for rewards in the sense of what  
10 the Company's talking about.

11 If the Company can create  
12 efficiencies, be more productive, and it can raise  
13 its return, rate of return, return on equity above  
14 the levels currently authorized by the Commission,  
15 they get to keep that difference for a period of  
16 time before ultimately all or part of that is  
17 passed back to customers in a general rate  
18 proceeding.

19 Q Okay. As part of Staff's overall  
20 approach to a rate case, does Staff or you, or I'm  
21 not sure how to best phrase the question, take a  
22 position on the overall level of customer service  
23 and management efficiency?

24 A I'll address customer service first.  
25 I think typically we do look at customer service

1 based on the various measures and indices we're  
2 aware of and that are commonly kept by the  
3 utilities. And we did so certainly in this case  
4 perhaps with greater emphasis than in some other  
5 cases because the Company specifically requested  
6 the adder related at least in part to that.

7 In terms of management efficiency,  
8 that -- in the sense that we look at their costs,  
9 and if we can identify that a utility appears to  
10 be operating inefficiently or incurring excessive  
11 costs, we would try to figure out why and propose  
12 appropriate regulatory treatments for that.

13 Q Did Staff in this case find a high  
14 level or a number of inefficient or inappropriate  
15 costs in their operation of the Company?

16 A I believe in this case it was more a  
17 case of those costs that we proposed to disallow  
18 we believe are inappropriate on philosophical  
19 grounds, so to speak, from passing on to  
20 customers, such as, you know, lobbying costs or  
21 advertising costs, corporate type costs and so on.

22 Q And not necessarily -- and not  
23 necessarily inefficient or inappropriate or --  
24 basically what I'm saying is that they're running  
25 the Company reasonably well?



1           A       From the -- I -- have we made  
2       allegations that the Company is in certain areas  
3       being ineffective in its management or not  
4       properly productive? I do not believe we have  
5       made those specific allegations in this case.

6           Q       You haven't made allegations that  
7       they're -- that they are not running  
8       inefficiently? There are three negatives in  
9       there, I think.

10                   Look, are they an efficient Company  
11       or not? They average? Higher than average? In  
12       terms of efficiency, lower than average?

13           A       Okay. Based just -- just looking at  
14       the O and M numbers, they appear to have lower O  
15       and M expenses than other utilities in this state.

16           Q       Which would be indicative of a  
17       higher level of efficiency, yes or no?

18           A       Well, it's -- yes, but then it, you  
19       know, it could be -- if you looked at it more  
20       closely, there may be good reasons why other gas  
21       utilities have to spend more. Sorry, we have not  
22       done that analysis. No one has made those kinds  
23       of company to company comparisons.

24           Q       Okay. Would you say that -- and you  
25       may not be the appropriate witness as it relates

1 to customer service. Do you -- is any of your  
2 testimony relating to levels of customer service?

3 A No, I defer to Staff Witness Bernsen  
4 on those matters.

5 COMMISSIONER CLAYTON: Okay. Well,  
6 then, I'll pose -- I'll pose that question to her  
7 about whether or not --

8 JUDGE WOODRUFF: She's done.

9 COMMISSIONER CLAYTON: Oh, she's  
10 done? Well, then, I'll not pose that question to  
11 her.

12 Q (By Commissioner Clayton) So if I  
13 ask the question whether -- where MGE ranks in  
14 Missouri utilities, of whether they have a high  
15 level efficiency or their level of efficiency  
16 being at the top of the pack, the middle of the  
17 pack, the lower of the pack, your answer is that  
18 we didn't run an analysis on that.

19 A We did not do any kind of a study of  
20 Laclede, Aquila, or Ameren UE to determine why  
21 their costs may be different than MGE's and what  
22 the reasons were for that, whether they're good,  
23 bad, or indifferent.

24 Just to add quickly one thing. We  
25 did add evidence, or in my rebuttal testimony,

1     about Atmos Energy, and they appear to be  
2     generally, I think it's safe to say, at generally  
3     the same cost level as MGE in the last year, 2003.

4             Q       And what does that indicate?

5             A       It doesn't necessarily indicate  
6     anything except it --

7             Q       Why did you do it, then?

8             A       A broader -- it expanded the  
9     universe of major gas utilities in the state from  
10    the Company selection of four to what we thought  
11    was a more appropriate selection of five.

12            Q       Oh. Okay. But it still doesn't  
13    tell us on this issue whether or not they're  
14    operating efficiently or not. It just sounds like  
15    the Staff doesn't have a position.

16                    I mean, it's an issue that's been  
17    raised in the case, and I'm not sure if -- it  
18    doesn't sound like Staff has a position because  
19    there wasn't enough analysis done. That's what I  
20    seem to be inferring, I don't know if that's  
21    accurate or not.

22            A       Let me state, again, MGE appears to  
23    be saying we're better run than these other  
24    companies, okay, and you need to really do more  
25    than look at annual report numbers for these other

1 gas utilities to try to determine why these  
2 differences exist.

3 Q Okay. They made the statement, they  
4 made the claim, they provided some analysis, and  
5 now you're just saying well, they haven't shown us  
6 enough. Is that what you're saying?

7 A I think that -- that's accurate,  
8 yes.

9 Q Okay.

10 A And, you know, not to be defensive  
11 about this, but --

12 Q I understand. It's just I ask a  
13 question and I kinda get back something that's not  
14 exactly what is an answer, so I get confused and  
15 then I got to come back and reask the question.

16 A Right. Our scope in this case in  
17 the time we had available and so on, I don't  
18 believe it would have allowed for the kind of  
19 really detailed analysis of all the operations of  
20 all these LDCs in the state to really give you a  
21 hard and fast answer.

22 Q Okay. How much more time would you  
23 have needed to perform that analysis?

24 A Um, that -- that's difficult -- we  
25 have to operate, obviously, within the eleven

1 month time clock --

2 Q Eleven months wasn't -- that's not  
3 enough time?

4 A Well, the problem, and not to get  
5 into details, most of us, through no fault of our  
6 own or the Commission's or the utility's, are  
7 involved in more than one project.

8 The Aquila rate proceedings were  
9 going on, and we -- we did not have the option of  
10 devoting 100 percent of our time for the last  
11 eight months on MGE as much as, perhaps, that  
12 would have been good in some respects.

13 COMMISSIONER CLAYTON: Okay. All  
14 right. Thank you very much.

15 THE WITNESS: Mm-hmm.

16 JUDGE WOODRUFF: Mr. Gaw, do you  
17 have questions?

18 COMMISSIONER GAW: Still recovering  
19 from that last comment. Sorry.

20 BY COMMISSIONER GAW:

21 Q Are there models that you have seen  
22 to utilize incentives to encourage a company to do  
23 better or discourage a company from doing worse in  
24 regard to customer -- dealing with their customers  
25 and customer service?

1           A       Customer service specifically?

2           Q       Yes.

3           A       Well, I think the models we're  
4 talking about, you can do that through rate of  
5 return, return on equity, and the Commission has  
6 done that before.

7           Q       Well, okay. Let's -- let's -- let  
8 me back up here for a moment. I want to get this  
9 perspective.

10                   When we talk about incentives or --  
11 or penalties in this context, are you generally  
12 talking about adjusting within a rate case the  
13 rate of return so that going forward the rate of  
14 return is a little better or a little worse  
15 depending upon their being rewarded or penalized  
16 until the next rate case?

17           A       Right. The Company's use of the  
18 word punishment applies to both what the  
19 Commission has done in the past with rate of  
20 return as well as adjustments to expenses.

21           Q       I want to know whether as a basic  
22 concept, when we are talking about these  
23 incentives, we're talking with the -- an  
24 adjustment to rate of return, we're talking about  
25 doing that in the context of a rate case so that

1     those incentives, or whatever they are, stay in  
2     place until the next rate case comes around?

3             A       Right.

4             Q       Is there another model dealing with  
5     customer service that allows for an adjustment of  
6     some reward or whatever is being utilized that is  
7     moved dependent upon some reporting back of how  
8     consumer services are working going forward from a  
9     rate case?

10            A       Okay. I'm not totally sure this is  
11     what you're getting at --

12            Q       I'm not sure either. Go ahead.

13            A       Yes. But in the past when this  
14     Commission on an experimental basis has utilized  
15     earnings sharing plans, usually any earning  
16     sharing that went to the company was also  
17     dependent upon maintenance of adequate customer  
18     service standards and indices.

19                    In other words, you would not have  
20     allowed them to retain a certain amount of  
21     revenues above their normal return on equity if  
22     they weren't providing adequate customer service.

23                    Now, that's not the model in place  
24     now for MGE here, or probably for any Missouri  
25     utility.

1           Q       That's not really the model I'm  
2     talking about either, and there may not be such a  
3     model, but it's closer.

4           A       Mm-hmm.

5           Q       If there were -- have you ever heard  
6     in -- including your experience in research and  
7     study with other states of a model that allows  
8     adjustments to -- to either the rate of return as  
9     it's going forward or to some allowance to -- to  
10    retain revenues based upon whether or not consumer  
11    service ratings are going up or going down, going  
12    forward from the rate case?

13          A       Well, I'm fairly confident there  
14    might be such models in other jurisdictions. I  
15    cannot personally testify to them.

16          Q       Okay. What you were talking about a  
17    while ago had to do with whether they had to stay  
18    within a certain range of a number on consumer  
19    services in order to get the sharing mechanism  
20    that was -- that was put into place.

21                 And I'm throwing out the sharing  
22    mechanism and asking you whether or not something  
23    could be built in to deal with an adjustment to --  
24    to -- to rates of return which depended upon, on  
25    going forward, an adjustable amount dependent upon



1     how much better or how much worse they were doing  
2     with customer service?

3             A       I would think you could set up a  
4     grid with different customer service values and  
5     have a -- a neutral zone in the middle where there  
6     would be no adjustment, say, to rate of return.  
7     If they significantly exceeded the normal levels,  
8     you could up ticket. If they consistently were  
9     down below where they needed to be, you could  
10    reduce their authorized rate of return on those  
11    grounds.

12            Those kinds of things are possible.  
13    I'm not sure, you know, with what degree of -- you  
14    know, you have all kinds of problems. There may  
15    be valid reasons for customer service statistics  
16    to go down, or there may be reasons they will go  
17    up even without necessarily a lot of action or  
18    effort from the company.

19            So I'm -- but those are kind of  
20    inherent, those problems are inherent to any  
21    scheme you would set up for that.

22            Q       They would be, not to just this kind  
23    of a concept?

24            A       Right.

25            Q       All right. So, but you don't know

1 of any model like that, you can't point me to any  
2 models like that or -- that have been utilized by  
3 this Commission or other states?

4 A I personally cannot. I hate to  
5 refer back to witnesses that have already left the  
6 witness stand, but it's possible, for example,  
7 that Staff Witness Bernsen might have some  
8 information about that.

9 COMMISSIONER GAW: We were told she  
10 was gone.

11 JUDGE WOODRUFF: She's in the room  
12 right now.

13 COMMISSIONER GAW: Oh, she's back.

14 Q (By Commissioner Gaw) Okay. Well,  
15 if -- would Staff -- would -- you don't know  
16 whether Staff would have -- would have problems  
17 with that kind of a concept, do you?

18 A Um, as I stated, Commissioner  
19 Clayton's -- I think we would have some problems  
20 with management efficiency, per se. Customer  
21 service is less clear-cut.

22 Q I'm not on management right now, I'm  
23 on customer service.

24 A I think we would be open to  
25 exploring that idea.

1           Q     All right. Obviously, it would take  
2     some follow-up work, then, if you were going to  
3     have reports back that would have to be --  
4     verification that those numbers were correct and  
5     things of that sort, you'd have to have a standard  
6     established about the grid concept that you talked  
7     about? All of those things?

8           A     Yes. That would require some  
9     effort.

10          Q     I think the Judge has got his --  
11     this whole plan already written out over here.  
12     Let me ask you about management efficiency a  
13     little bit more, follow up on Commissioner  
14     Clayton.

15                     What -- what is the -- the very  
16     basic concept of management efficiency when you're  
17     -- when you're looking at some sort of a -- a  
18     reward or incentive system? Is it -- is it the  
19     same kind of thing where you look at what's  
20     happened in the past up before the rate case and  
21     then suggest that there ought to be an adder or a  
22     -- or some lessening of a rate of return based  
23     upon what they've done since the last rate case?  
24     Or something different than that?

25          A     In terms of management efficiency, I

1 think if you wanted to do something outside what's  
2 normally done in rate proceedings, you would want  
3 to set up a system where in advance you would kind  
4 of specify what's expected, what kind of results  
5 are expected in order to achieve a reward, or  
6 perhaps to -- I hate to use the term be punished,  
7 but I'm not sure what the opposite of reward is,  
8 and then let the utility -- give them an  
9 opportunity to do what they can and compare the  
10 actual results to what have been set out  
11 previously as perhaps being in the reward zone or  
12 the -- the punishment zone.

13 Q What would we be looking at on  
14 numbers if we were doing that? What kinds of  
15 things would -- would you want to see?

16 A In the past in terms of the  
17 incentive sharing plans, you look at their  
18 earnings. And -- because that gives the company a  
19 broad variety of ways to try to improve their  
20 operations, whether it's trying to increase  
21 revenue levels, reduce capital expenses, or reduce  
22 their operating expenses. Again, being very much  
23 concerned that nothing they do impedes or harms  
24 adequate customer service.

25 COMMISSIONER GAW: I'm going to

1 stop. Thanks, Judge.

2 JUDGE WOODRUFF: Commissioner

3 Appling?

4 COMMISSIONER APPLING: I think my  
5 colleagues have asked all the right questions, so  
6 I have no questions.

7 JUDGE WOODRUFF: All right. Go back  
8 to recross, then? Based on questions from the  
9 bench, beginning with Public Counsel.

10 MR. MICHEEL: I have a few.

11 JUDGE WOODRUFF: Go ahead.

12 RECROSS EXAMINATION BY MR. MICHEEL:

13 Q Mr. Oligschlaeger, Commissioner  
14 Clayton and I believe Commissioner Gaw asked you  
15 about, and I guess, O and M expenses and a high  
16 level of efficiency of other LDCs. Do you recall  
17 those questions?

18 A Yes, I do.

19 Q Do you know if just earlier this  
20 year Ameren UE Gas Company came in for a base rate  
21 case?

22 A Yes, they did.

23 Q Did the Staff do a complete audit of  
24 Ameren UE's books and records?

25 A I believe they did.

1           Q       Did the Staff make any sort of claim  
2       in that rate case that Ameren UE's management was  
3       inefficient or ineffective?

4           A       Not that I recall.

5           Q       And that's despite the fact that --  
6       that Ameren UE has higher O and M costs apparently  
7       based on the form 1 -- the limited information  
8       contained in Schedule G1 to Mr. Noack's direct?

9           A       That's correct.

10          Q       Did Aquila -- I mean, I think on the  
11       chart it's called MoPub, but you understand that  
12       to be Aquila Gas Company?

13          A       Yes, I do.

14          Q       Did Aquila -- was Aquila recently in  
15       for a gas rate case before this Commission?

16          A       Yes, they were.

17          Q       Did the Staff do a complete audit of  
18       Aquila's books and records?

19          A       Yes.

20          Q       Did the Staff make any sort of claim  
21       in that rate case after auditing the books and  
22       records that Aquila's management was in any way  
23       inefficient?

24          A       Not that I recall.

25          Q       And that's something the Staff would

1 look at, would they not?

2 A If we had major concerns about any  
3 level of inefficiency in any of their aspects of  
4 their operations, that would be addressed in our  
5 testimony to the Commission.

6 Q And let's go to the next one.  
7 Laclede Gas Company. They've been in, I guess,  
8 within the last three years for a rate case, have  
9 they not?

10 A I believe their last one was in  
11 2002.

12 Q Okay. 2002. And did the Staff do a  
13 complete audit of Laclede Gas Company's books and  
14 records in 2002?

15 A Yes, we did.

16 Q Did the Staff make any sort of claim  
17 that despite the O and M costs that Laclede may  
18 have, that their management was inefficient?

19 A I don't believe we did.

20 Q And are all of the companies that  
21 we're talking about, do they have different cost  
22 structures?

23 A All utilities have different and  
24 unique cost structures.

25 Q Would they have perhaps different

1 union contracts?

2 A Yes.

3 Q Would they have perhaps served  
4 different parts of the state that may have  
5 different costs of living?

6 A Yes.

7 Q And may there be numerous other  
8 factors that are different between all of the  
9 utilities that affect O and M costs?

10 A Yes.

11 Q So do you think that -- that a  
12 comparison of O and M costs is really an  
13 appropriate comparison to determine management  
14 efficiency if you haven't done a study to control  
15 for all those variables?

16 A I would agree that would not be  
17 appropriate.

18 Q Now, Commissioner Clayton, I  
19 believe, asked you about inefficient costs, and  
20 you said well, you weren't aware of whether the  
21 Staff had found any. Let me ask you this. Do you  
22 think that it's an efficient operation for --  
23 well, let me -- let me ask you this.

24 Are you aware that the Staff has  
25 proposed to disallow the cost for some offices in



1 New York City?

2 A Yes.

3 Q And are you aware that Southern  
4 Union Company already has a headquarters office in  
5 Wilkes-Barre, I believe they call it,  
6 Pennsylvania?

7 A Yes, I am.

8 Q Do you think it's efficient  
9 management to have two or three offices all over  
10 the nation?

11 A Well, I think we're talking about  
12 semantics here. You can certainly view that as  
13 inefficiency, or you can view that as simply an  
14 inappropriate attempt at assignment of costs not  
15 related to Missouri Gas Energy -- to Missouri Gas  
16 Energy. I'm not -- that leaves you at the same  
17 place. We shouldn't pay for them.

18 Q Well, and my point is to the extent  
19 that -- that the Office of the Public Counsel or  
20 -- or the Staff has recommended adjustments to the  
21 per book cost level, those costs are either not  
22 necessary to serve rate payers in Staff and Public  
23 Counsel's view, and I understand the Company may  
24 have another view, or they're inefficient costs  
25 not needed to provide safe and adequate service to

1 customers, right?

2 A You can look at it from both  
3 viewpoints, yes.

4 Q So to that extent, this whole fight,  
5 for example, between the Staff's revenue  
6 requirement number of about 5 million and Public  
7 Counsel's number of 9 million and the Company's  
8 number of 45 million is all about those issues,  
9 isn't it?

10 A It would explain at least a good  
11 deal of the difference, yes.

12 Q So there's a lot of evidence in this  
13 case regarding management's efficiency or lack  
14 thereof.

15 A Again, if you view the different  
16 disallowances as pertaining to inefficiency, yes.  
17 I don't completely agree with that. For example,  
18 the New York corporate office might be totally  
19 efficient and a good deal when based upon the  
20 totality of Southern Union; it is just not needed  
21 or necessary for Missouri Gas Energy operations  
22 and we shouldn't pay for it.

23 MR. MICHEEL: Okay. Thank you, Mr.  
24 Oligschlaeger.

25 JUDGE WOODRUFF: All right. Kansas

1 City and Joplin not here. Federal Agencies, any  
2 questions?

3 MR. PAULSON: No questions, sir.

4 JUDGE WOODRUFF: Jackson County's  
5 not here. Midwest Gas?

6 MR. CONRAD: No questions, sir.

7 JUDGE WOODRUFF: MGE?

8 MR. HACK: I'll try to be brief.

9 Can we -- can we use the chart again, Your Honor?

10 JUDGE WOODRUFF: We'll try.

11 RECROSS EXAMINATION BY MR. HACK:

12 Q This is Schedule G1 from Mr. Noack's  
13 direct testimony. Do you recall that, Mr.  
14 Oligschlaeger?

15 A Yes, I do.

16 Q And you had a little conversation  
17 with Mr. Commissioner Clayton about calculating,  
18 perhaps, potential ways to calculate an amount of  
19 an efficiency adjustment. Do you recall those  
20 questions?

21 A I believe so.

22 Q I'm going to ask you to do a little  
23 math here. Is the value of the 25 basis point  
24 management efficiency adjustment that MGE has  
25 requested as shown on the reconciliation

1 approximately 2.3 or \$2.4 million?

2 A I believe that's roughly accurate.

3 Q Okay. If you would take the  
4 difference between the FY '02 O and M expense,  
5 annual O and M expense per customer of MGE, which  
6 is \$117.35, subtract that from the average --  
7 sorry, the annual O and M expense per customer of  
8 Laclede, which is \$193.29, can you do that for me?  
9 Or even just roughly?

10 A I believe that's a \$76 per customer.

11 Q Would you agree, Mr. Oligschlaeger,  
12 that MGE has approximately 500,000 customers?

13 A I believe that's accurate.

14 Q And if you -- and if the numbers  
15 we've been looking at on Schedule G1 are per  
16 customer numbers, correct?

17 A Yes.

18 Q Now, if MGE actually reported O and  
19 M expenses, annual O and M expenses equivalent to  
20 Laclede's, you would add \$76 to MGE's number.  
21 Correct?

22 A The difference between MGE's and  
23 Laclede's number for that period is \$76 per  
24 customer.

25 Q And if you were to annualize that

1 amount for a totality of MGE, would you multiply  
2 that by MGE's roughly 500,000 customers?

3 A It's a per customer number, yes.  
4 That would be --

5 Q And can you do that calculation,  
6 multiply 500,000 by \$76?

7 MR. FRANSON: Maybe I can speed it  
8 up. Try 38 million?

9 THE WITNESS: I agree with Mr.  
10 Franson.

11 MR. HACK: We're going to get you on  
12 the stand next.

13 MR. FRANSON: I can't wait.

14 Q (By Mr. Hack) So at least through  
15 this series of calculations, one could at least  
16 describe MGE's request as a request for an annual  
17 addition to revenue requirement of \$2.3 million in  
18 comparison to what we have portrayed as a greater  
19 level of efficiency by \$38 million. Would that be  
20 at least something you could do with these  
21 numbers?

22 A You can certainly do the math that  
23 way. I don't believe the Staff would ever agree  
24 to that kind of -- what you would term a reward  
25 based upon company to company comparisons.

1           Q       And also in discussion with Mr.  
2 Clayton, you talked about the Staff's perception  
3 that the traditional rate base rate of return rate  
4 making process provides incentives to companies.  
5 Do you recall that?

6           A       Yes.

7           Q       And as I recall, you described the  
8 incentive as being one where you set rates, and  
9 I'm not trying to put words in your mouth so  
10 please disagree with me if necessary, and then the  
11 Company had an opportunity to take actions after  
12 the rates were set to raise its rate of return  
13 above the authorized level, either through sales,  
14 efficiencies, whatnot, which efficiencies the  
15 Company would then be able to retain until rates  
16 were set in another subsequent rate proceeding.  
17 Is that generally what you were trying to state?

18          A       That is generally accurate, yes.

19          Q       And MGE has -- has provided  
20 information in this proceeding, has it not, that  
21 -- that you have not disagreed with showing that  
22 it has never achieved its authorized rate of  
23 return in the past eight fiscal years, correct?

24          A       Well, in general, I would not  
25 disagree with that. Never is a strong term, and

5                   My testimony also does state that  
6       there are certain factors which indicate that MGE  
7       will have a more favorable environment going  
8       forward for perhaps having the opportunity for  
9       such enhanced earnings through its reduced --  
10      current reduced capital budgets and through the  
11      ISRS mechanism which is now part of the law in the  
12      State of Missouri.

16 JUDGE WOODRUFF: It was  
17 non-responsive and will be struck.

19 JUDGE WOODRUFF: All right. Thank  
20 you. Redirect?

23 JUDGE WOODRUFF: You may.

25 Q Do you remember that last question

1 from Mr. Hack?

2 A Yes.

3 Q Anything you wanted to add after  
4 yes? Please add it.

5 A The point I addressed in my  
6 testimony is that while MGE has had a tendency to  
7 under earn in the past, there are certain factors  
8 that are now -- that have now occurred which, it  
9 is my belief and I believe it's a reasonable  
10 belief, that MGE's earnings situation will be  
11 improved on an ongoing basis.

12 First of all, because they are  
13 seeing reduced capital expenditures. Slurp  
14 [phonetic] expenditures are significantly less  
15 than what they were, say, in the early -- or the  
16 mid to late 1990s, as well as Southern Union as a  
17 whole is emphasizing economies and reduction in  
18 their capital expenditures.

19 And probably more importantly, the  
20 ISRS mechanism by which a significant part of  
21 MGE's capital additions are afforded single issue  
22 rate making treatment, or can be afforded single  
23 issue rate making treatment in the state.

24 Q Okay. Let me ask you, let's go to  
25 this management efficiency bump, 25 basis points.



1 Is it your understanding of that request from MGE  
2 that they want whatever overall rate of return is  
3 granted by this Commission plus 25 basis points,  
4 or is it just part of the overall rate of return  
5 should be -- should -- 25 points of that should be  
6 the --

7 MR. HACK: Objection, form, leading.

8 JUDGE WOODRUFF: Sustained. Also  
9 confusing.

10 Q (By Mr. Franson) Okay. What is  
11 your understanding of MGE's request on this 25  
12 basis point bump?

13 A It is my understanding, through the  
14 testimony of Company Witness Dunn, they are  
15 seeking a 12 percent return on equity to be  
16 established in this case, which I believe would  
17 result in an overall rate of return of somewhere  
18 around 9.5 percent. I don't have the exact  
19 number.

20 On top of whatever that overall rate  
21 of return would be using a 12 percent return on  
22 equity, they are requesting 25 additional basis  
23 points on account of alleged management efficiency  
24 and customer service.

25 Q Okay. Let's start with the concept

1 of management efficiency. Do you see anywhere in  
2 MGE's filed testimony in this case where that --  
3 MGE said this is what proper management efficiency  
4 is and gave a definition?

5 A No, sir.

6 Q And did MGE, other than the O and M  
7 cost chart which was up here, not up here anymore,  
8 say that in addition to this, here's other  
9 evidence that we have of management efficiency?

10 A I believe in addition to the O and M  
11 charts, they also had a comparative rate chart  
12 that I believe they intended to convey, basically  
13 also in support of their position in addition.

14 Q In addition to those two things,  
15 anything else?

16 A No, I don't believe so.

17 Q Okay. Now, going to customer  
18 service, did Staff present evidence on this issue?

19 A Yes, in the testimony of Staff  
20 Witness Bernsen.

21 Q Okay. In that testimony, did Staff  
22 indicate any problems with customer service in the  
23 case of MGE?

24 MR. HACK: Objection. This is  
25 beyond the scope of questions from the bench, Your

1 Honor.

2 JUDGE WOODRUFF: Well, there were  
3 questions about Ms. Bernsen's testimony. Where  
4 are you going with this?

5 MR. FRANSON: Well, Your Honor,  
6 there were overall questions from both during the  
7 cross examination and during Commissioner  
8 questions that touched on this management  
9 efficiency and the adder and all of the components  
10 thereof.

11 One of the components of that is  
12 customer service, and the question -- the  
13 suggestion is that MGE has this customer service,  
14 this is the Staff's policy witness, and he is the  
15 only over -- only one we've got up here with  
16 overall knowledge. Only question is, did Staff  
17 raise concerns about customer service.

18 JUDGE WOODRUFF: I'm going to -- I'm  
19 going to go ahead and allow the question to be  
20 answered.

21 THE WITNESS: Okay. Can you repeat  
22 the question?

23 Q (By Mr. Franson) Yes. Did Staff in  
24 its testimony raise concerns about customer  
25 service -- the customer -- levels of customer

1 service that MGE is providing?

2 A In Staff Witness Bernsen's direct  
3 and rebuttal testimony, she expressed certain  
4 concerns with recent measures of MGE's customer  
5 service standards for the latter part of 2003 and  
6 the first months of 2004.

7 And I believe it was noted that  
8 those -- that those -- that level is -- does not  
9 meet the targets that were previously set out for  
10 customer service, and the merger proceedings in  
11 the three or four years ago and with some targets  
12 for, I believe, average call response and average  
13 speed of answer were set in stipulations.

14 Q Okay. Also was it imparted in  
15 Staff's case that MGE is not procuring its gas  
16 supply as efficiently or as appropriate --

17 MR. HACK: Objection. This is well  
18 beyond the scope of any questions from the bench.

19 MR. FRANSON: On the contrary,  
20 Judge, the --

21 JUDGE WOODRUFF: There were general  
22 questions about the efficiency of the Company.  
23 I'll allow the questions.

24 Q (By Mr. Franson) Do you remember my  
25 question?

1           A       Can you repeat it?

2           Q       Yes. Do you know if Staff, as part  
3 of its overall case, has suggested MGE is not  
4 procuring its gas supply as appropriately or as  
5 efficiently as possible?

6           A       I am aware that we are seeking  
7 enhanced reporting of gas planning and gas  
8 reliability documents from the Company in this  
9 proceeding. I'm not aware specifically of --  
10 personally aware of the state of what the Staff  
11 believes, whether the current costs or the level  
12 of -- well, the current costs are prudent or not.

13          Q       Okay. Mr. Oligschlaeger, would you  
14 agree that a good level of management efficiency  
15 is expected because that's what management is paid  
16 to do?

17                   MR. HACK: Objection, leading.

18                   JUDGE WOODRUFF: Sustained.

19          Q       (By Mr. Franson) Well, Mr.  
20 Oligschlaeger, do you have an opinion about what  
21 is expected from management in general of a  
22 company like MGE?

23          A       I believe a certain level of  
24 management efficiency, productivity, and ability  
25 to operate at the lowest possible cost consistent

1 with good customer service is expected of all  
2 utilities in the state, regardless of any kind of  
3 risk reward mechanisms.

4 Q Okay. And would you agree that if  
5 management is operating inefficiently in a  
6 company, that that would be something that would  
7 have to be corrected?

8 A Yes.

9 Q Would you agree that there could be  
10 a correlation between cutting payroll costs and  
11 poor customer service?

12 MR. HACK: Objection, leading.

13 JUDGE WOODRUFF: Sustained.

14 Q (By Mr. Franson) Would you have an  
15 opinion on any connections between customer  
16 service and payroll costs?

17 A Yes. In -- it is possible that a  
18 company can be so understaffed that customer  
19 service levels deteriorate as a result. And in  
20 fact, there were allegations of such in the mid  
21 1990s regarding MGE that were the subject of  
22 several -- were addressed in several rate making  
23 proceedings in the mid to late 1990s.

24 Q Now, going back to Case No.  
25 GR-96-285, are you generally familiar with that

1 case?

2 A I am generally familiar with it.

3 MR. HACK: Objection. There were no  
4 questions from the bench regarding Case No.  
5 GR-96-285.

6 MR. FRANSON: Your Honor, I'm  
7 actually responding to both questions from the  
8 bench and prior cross examination. This is my  
9 only opportunity to do redirect, and I believe  
10 that based on that entirety, this is a fair  
11 question.

12 JUDGE WOODRUFF: Was it an earlier  
13 MGE rate case?

14 MR. FRANSON: Yes, it was.

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

17 Q (By Mr. Franson) Do you remember my  
18 question, Mr. Oligschlaeger?

19 A Yes, I am generally familiar with  
20 that case.

21 Q Were you present for the deposition  
22 of Mr. Oglesby in this case?

23 A Yes, I was.

24 Q Also in the prior rate case was  
25 there -- I believe the Company's term has been

1 penalty, but was there any financial repercussions  
2 regarding poor customer service in Case No.  
3 GR-96-285?

4 A It is my understanding from reading  
5 the order in that case that the Commission chose  
6 the low end of Staff's recommended return on  
7 equity range as a direct result of what it  
8 perceived as poor customer service on the part of  
9 the Company.

10 Q And do you remember in Mr. Oglesby's  
11 deposition whether he had any comments about that  
12 particular case?

13 A I do not recall.

14 Q Let's talk about this O and M  
15 comparison a moment. What exactly is O and M?

16 A Operation and maintenance costs  
17 comprise the majority of the expenses a company  
18 incurs in order to provide day-to-day service to  
19 its customers.

20 Q And I believe there has been  
21 reference to this chart that Mr. Hack had up here,  
22 and we've seen repeatedly that appears, I believe,  
23 in Mr. Noack's testimony.

24 Have you ever had an opportunity to  
25 review that chart that's been up here?



1           A       Yes, I have.

2           Q       And I believe you stated you have no  
3 reason to disagree with it being accurate?

4           A       We -- we checked the numbers. The  
5 numbers are accurate.

6           Q       Thank you. Now, if one is going to  
7 do a determination of what constitutes management  
8 efficiency, I believe you -- didn't you earlier  
9 state there would be -- you would need to look at  
10 some other things?

11          A       Beyond --

12          Q       Beyond O and M costs alone.

13          A       Beyond O and M costs, numbers that  
14 come from annual reports, yes.

15          Q       And my question is -- were you  
16 finished with your answer?

17          A       Yes, I was.

18          Q       Okay. Question: Did any party in  
19 this case throughout the entire evidence do any  
20 study beyond O and M expenses and rate  
21 comparisons?

22          A       Not to my knowledge.

23          Q       Would you agree that there are  
24 limits to the amount of influence MGE's management  
25 can have on the level of O and M costs?

1           A       Certainly.  Some level of O and M is  
2   controllable, some level is not controllable.  
3   It's based upon events outside the, you know, the  
4   control of Company management.

5           Q       Okay.  And would you agree that one  
6   of the ways that you could cut O and M expenses is  
7   to cut employee levels?

8           A       Certainly.

9                   MR. FRANSON:  I don't believe I have  
10  any further questions, Your Honor.

11                  JUDGE WOODRUFF:  All right.  Thank  
12  you, Mr. Oligschlaeger.  You can step down.

13                  MR. FRANSON:  Your Honor, may I ask  
14  a couple more questions?  Okay.  That's fine.

15                  JUDGE WOODRUFF:  I dismissed the  
16  witness.

17                  MR. FRANSON:  That's fine.  Thank  
18  you.

19                  JUDGE WOODRUFF:  Who is next on the  
20  list for -- I -- are we going through the gas  
21  storage inventory capacity and release now?

22                  MR. HACK:  Yes, Your Honor.

23                  MR. FRANSON:  Actually, Your Honor,  
24  that is some -- after gas storage inventory, are  
25  you planning to go to -- what are you planning

1 after that?

2 JUDGE WOODRUFF: Next on my list is  
3 the bad debt level, expense level. You need to do  
4 something else, let me know.

5 MR. FRANSON: Actually, we do. Rob,  
6 I think we -- Judge, I want to be -- tread real  
7 lightly here. The Company and Staff may have some  
8 filings coming forth that will influence how we  
9 deal with this. I think I'm going to ask Mr. Hack  
10 --

11 MR. HACK: This shouldn't have any  
12 effect on today. We can talk about that.

13 MR. FRANSON: If you get all the way  
14 through gas storage inventory, it would.

15 JUDGE WOODRUFF: We'll deal with  
16 that after we get through the next five witnesses,  
17 then.

18 The next witness, then, I believe is  
19 Mike Noack for MGE. Let's go off the record.

20 (Off the record.)

21 JUDGE WOODRUFF: All right. Let's  
22 go back on the record. And we've said, while we  
23 were off the record, was that we will go ahead and  
24 do all the mini openings for this new set of  
25 issues, beginning with the Company.

1                   MR. DUFFY: Good morning. My name  
2   is Gary Duffy, I'm with Brydon, Swearingen &  
3   England. My understanding is we're now going to  
4   try two issues simultaneously.

5                   According to the issue list that I  
6   saw, one of them is generally called the capacity  
7   release off system sales issue, and the other has  
8   to do with reporting requirements that the Staff  
9   is suggesting be ordered to MGE in this case.

10                  The essence of the first issue, the  
11   capacity release issue, is whether the Commission  
12   wants to set rates by making a guess, or whether  
13   you want to be completely accurate. You have the  
14   ability to do this in this capacity release issue  
15   because of the nature of the capacity release  
16   revenues.

17                  Capacity release revenues are  
18   produced when MGE has temporary excess pipeline  
19   capacity on interstate pipelines that it can sell,  
20   that it wants to sell, and that somebody else out  
21   there wants to buy that temporary capacity. It's  
22   not automatic, it's subject to a free and open  
23   market. There are no guaranteed sales or revenue  
24   levels from this particular item. In fact, there  
25   can be times when MGE can't even give it away.

1                   The crux of the issue is that MGE  
2     and no one else either can accurately predict what  
3     its capacity sales release revenues are going to  
4     be in the next three years because of changes in  
5     the configuration of the interstate pipelines that  
6     are involved.

7                   There is a new pipeline being built  
8     that you'll hear evidence about that will run  
9     generally from Cheyenne, Wyoming, down to the  
10    middle of southern Kansas.   Southeast direction.

11                  Now, when it does that, it will cut  
12    across four existing pipelines that generally run  
13    in a northeast direction from those gas producing  
14    fields up to Chicago, Detroit, those kind of  
15    areas.

16                  MGE has capacity on a pipeline known  
17    as Kinder Morgan's Pony Express pipeline.   That  
18    pipeline runs generally from Kansas City back to  
19    Cheyenne, Wyoming.   What's going on then is that  
20    this new pipeline called Cheyenne Plains will  
21    essentially follow the same path, not geographic  
22    exactly, but across the same other pipelines that  
23    are going in another direction.   So it's going to  
24    duplicate the capacity that MGE already has on the  
25    Kinder Morgan Pony Express pipeline.

1                   The evidence will show that this new  
2 pipeline is five times bigger than Kinder Morgan  
3 Pony Express pipeline. The evidence will show  
4 that its costs are going to be cheaper than what  
5 is now experienced on the Pony Express pipeline.  
6 The evidence will show that this new pipeline is  
7 supposed to be operational January of next year.

8                   And the evidence that MGE will  
9 produce will be that this will have a significant  
10 effect on the competition or capacity in this  
11 area. And essentially mean that MGE cannot  
12 accurately predict what its capacity release  
13 revenues are going to be in this situation by  
14 simply going back and looking at what they were in  
15 the past because the future is changing.

16                  What the Staff and the Public  
17 Counsel want the Commission to do from the  
18 prepared testimony is to put an assumed amount of  
19 annual revenues, Mr. Busch in his testimony calls  
20 it a baseline, into the calculation of base rates.

21                  Base rates are not PGA rates, and  
22 I'll try to explain the difference in just a  
23 second. But they want you to set a level of  
24 assumed revenues in base rates based upon what the  
25 past was. And in brief, our position is that's

1 not going to work because the future is not going  
2 to be relevant to what the past was.

3 Under their proposal, if the actual  
4 revenues we receive are less than that assumed  
5 level, then MGE is going to suffer because the  
6 rates you will have set in this proceeding are  
7 going to necessarily assume a level of revenues  
8 that won't exist. They'll -- they'll be  
9 fictitious. It would be like planning your  
10 retirement savings by assuming that you're going  
11 to make 15 percent return on your investments  
12 every year. And then trying to rely on that.

13 Conversely, if the actual revenues  
14 turn out to be less than this assumed baseline,  
15 MGE will benefit because, under their proposal,  
16 MGE gets to keep all of the revenues that are  
17 above the baseline. Mr. Busch calls that the  
18 ultimate incentive.

19 These -- now I'm going to try to  
20 explain to you where these revenues come from.  
21 These revenues are generated from the pipeline  
22 capacity that the rate payers pay for through the  
23 gas adjustment tariffs.

24 The PGA and the ACA, actual cost  
25 adjustment, process, is the tried, true, lawful

1 method that the Public Service Commission has used  
2 for decades now to pass through and recover gas  
3 costs. It's a part of the approved tariff and it  
4 makes up a very large portion of what the  
5 customer's bill is.

6 Gas costs recovered through the PGA  
7 include the transportation costs on the interstate  
8 pipelines, how we get the gas from the gas wells  
9 to Kansas City and the surrounding areas. When we  
10 pay the pipeline to reserve capacity on the  
11 pipeline so we can haul the gas that we buy to get  
12 it to Kansas City, that is how we reserve the  
13 capacity.

14 When we temporarily don't need all  
15 of that capacity, there are provisions in place  
16 whereby we can release -- we can offer that  
17 temporary capacity to somebody else and they pay  
18 us money for it, and that money then gets credited  
19 back to the rate payers. Right now it's under  
20 this mechanism that's in place where there is this  
21 assumed level in rates.

22 As you know, the PGA process  
23 functions so that customers pay only for actual  
24 and prudently incurred costs. MGE does not mark  
25 up gas costs. Customers pay only the actual



1 amount of the gas costs, meaning the cost of the  
2 gas itself, the actual transportation costs,  
3 things like that.

4           The process -- the PGA/ACA process  
5 uses historical annual audits that determine the  
6 exact costs after the fact, and then they match  
7 them with the revenues that are received. This is  
8 the -- the ACA process, then, functions to fine  
9 tune or true up to the actual aspect so that  
10 there, again, is no revenue, no profit generated  
11 over the sale of these gas.

12           Now, MGE's evidence will show that  
13 because the dollars that are spent to obtain the  
14 pipeline capacity itself are recovered through the  
15 PGA, that the revenues from selling any excess  
16 capacity temporarily logically ought to also be  
17 tracked through the PGA.

18           More importantly, we believe, in  
19 this situation, by handling them through the PGA,  
20 there's no need for you to guess about how much  
21 revenue might be produced one year from now, two  
22 years from now, or three years from now from our  
23 activity in trying to release this capacity on a  
24 temporary basis.

25           Whatever -- whatever the revenue is,

1     it would flow through the PGA under our proposal  
2     to put it back in the PGA where it was in the  
3     past.

4                     Then in order to encourage MGE to  
5     seek as much of this revenue as it can, because we  
6     have to -- you know, a part of the process is  
7     trying to convince people to buy it, trying to  
8     notify people that it's available, it takes some  
9     effort to sell it, MGE should be a part of an  
10    incentive sharing grid where -- and it's graduated  
11    and it's set out in the testimony, so that MGE has  
12    an incentive to go after as much of this as  
13    possible. In that sharing grid, MGE gets some of  
14    the revenues, the rate payers get some of the  
15    revenues.

16                    So there, under our proposal, there  
17    is no possibility of a big windfall to MGE because  
18    we would get over a -- an arbitrarily set number.  
19    And there's no possibility of a big loss to MGE  
20    because we wouldn't get under an arbitrarily set  
21    number.

22                    Because our evidence will show that  
23    no one can accurately predict what that revenue  
24    level is going to be because of these pipeline  
25    changes that are going to change the market

1 environment.

2                   Now, that's a quick overview of the  
3 issue and what you're going to hear. But I want  
4 the Commissioners to think about one thing in  
5 particular as you consider the evidence. The  
6 Staff and the OPC, I believe, will claim that they  
7 haven't set their baseline level too high, because  
8 they're using historical average numbers.

9                   Now, if MGE, who lives and breathes  
10 in this competitive market, was comfortable that  
11 that past number was going to be an accurate, or  
12 at least reasonable number for the future, I  
13 wouldn't be here and we wouldn't be trying this  
14 issue.

15                   Because if MGE thought that past  
16 performance was going to guarantee its future  
17 results in this particular situation, we would  
18 grab at the opportunity to take that number and  
19 make all this money under this ultimate incentive  
20 that the Staff and the OPC are proposing.

21                   Instead, the fact that we will  
22 present to you will show that it's not going to be  
23 at that level in the future, and that MGE will be  
24 actually harmed if you use a number based upon the  
25 past numbers because of the pipeline changes. The

1 world is going to change.

2 MGE's approach gives you the benefit  
3 of complete accuracy. All the revenues would go  
4 into the PGA and ACA process and be audited. You  
5 don't have to predict the future, and the rates  
6 will match with operating reality.

7 With MGE's sharing grid, MGE will  
8 have an incentive to pursue every one of those  
9 sales that it can, and the rate payers will  
10 benefit, along with MGE, from every dollar  
11 received.

12 If MGE is wrong about the revenue  
13 levels and they are much higher than the  
14 historical amounts would indicate, then the  
15 revenue sharing grid would automatically let the  
16 rate payers benefit from that.

17 If the Staff and the OPC are wrong  
18 about their assumed levels, either MGE is going to  
19 suffer economically for no good reason other than  
20 that they can't predict the future, or MGE is  
21 going to make a big windfall.

22 Our evidence will show that MGE's  
23 proposal is superior because it's simple,  
24 accurate, balanced, and fair.

25 Now, let me move into the reporting

1 issue, which is separate and apart from --

2 JUDGE WOODRUFF: Mr. Duffy, we were  
3 limiting the length of these time and you've  
4 actually gone over. I'll give you a minute to  
5 finish up.

6 MR. DUFFY: The second issue is  
7 basically the Staff filed testimony saying they  
8 want periodic reports having to do with gas  
9 purchasing and planning practices. We don't think  
10 that has anything to do with a rate case.

11 Our testimony was if the Commission  
12 wants this kind of information on a uniform basis,  
13 make a rule. You have no -- have shown no  
14 reluctance in making rules over the 90 years or so  
15 you've been in existence. You know how to make  
16 rules.

17 When you're making statements of  
18 general applicability to companies, that's where  
19 you put them. You don't have to order every  
20 single company to file an annual report, you put  
21 it in a rule and make it that way.

22 That's our major problem, and that's  
23 how our evidence will be structured on the  
24 reporting issue. That it needs to be a rule.  
25 Thank you.

1 JUDGE WOODRUFF: Thank you, Mr.  
2 Duffy. For Staff?

3 MS. SHEMWELL: Good morning.

4 JUDGE WOODRUFF: Go ahead.

5 MS. SHEMWELL: First, I'd like to  
6 address capacity release. MGE is a local  
7 distribution company, purchased capacity or space  
8 on an interstate pipeline, and that's how it gets  
9 its gas that it buys to its customers. When MGE  
10 has more supply than it needs, then it tries to  
11 market that space on the pipeline to other  
12 entities who may need the gas.

13 The revenue that MGE receives can be  
14 put in base rates as an offset to the revenue  
15 requirements, and that's the way it is currently.  
16 We figure an amount that we believe is reasonable  
17 and we include that as an offset to the revenue  
18 requirement. Or the revenue could be handled  
19 through the PGA to reduce the amount that  
20 customers pay for gas.

21 Currently it is in base rates, and  
22 if they earn more, they have an incentive to keep  
23 it. So they have an incentive under either plan.  
24 It's not just their plans for the PGA that would  
25 create an incentive, but they have an incentive.

1                   Putting it in the PGA eliminates all  
2 risk to MGE and puts the risk on the customers.  
3 So running it through you do get accuracy, but it  
4 also places all of the risk on the customer.

5                   Staff has recommended the current  
6 rate making treatment continue, that it be placed  
7 in base rates as an offset to revenue. Staff has  
8 determined a level of 1,340,000. MGE has stressed  
9 in its mini opening that it cannot accurately  
10 predict that it will not achieve past levels, and  
11 --

12                  JUDGE WOODRUFF: Miss Shemwell, if  
13 you'd speak into the mike a little more? Thank  
14 you.

15                  MS. SHEMWELL: And it's true, MGE  
16 can only speculate as to the impacts the new  
17 pipeline will have on its business. It's all  
18 speculation. Nobody knows.

19                  Since MGE customers through the PGA  
20 would pay for all of that, Staff recommends that  
21 MGE not have any sharing mechanism. Staff does  
22 not believe that MGE requires any incentive to do  
23 a good job for its customers.

24                  Part of the job is to release excess  
25 capacity, that reduces the customers' gas costs.

1 Staff believes that MGE has a responsibility to do  
2 that and does not require any additional incentive  
3 to do that if this is placed through the PGA.

4 Nor does the Staff agree that MGE  
5 should be able to reduce the amount of  
6 disallowance the Staff puts in the ACA/PGA audit  
7 process. They have produced that whatever they  
8 release is deducted from any disallowance Staff  
9 makes. I would suggest that that would be a  
10 predetermination that MGE had acted prudently and  
11 that the Commission should not agree to any  
12 predetermination of prudent conduct in gas buying.

13 Okay. So our recommendation is that  
14 it stay in base rates. In terms of reliability of  
15 reporting, Staff believes that companies in this  
16 state are charged with providing safe service,  
17 with serving their customers. They are monopolies  
18 and they have a duty to serve. That part of that  
19 is providing gas.

20 With LDCs, that's what they do is  
21 provide gas to their customers, and that they --  
22 Staff believes that they should do a good job  
23 doing that.

24 We think it's part of safety and  
25 part of reliability that they make plans to buy



1 enough gas and to see that it's delivered on the  
2 right day. That they do studies to determine how  
3 much gas they're going to need, especially on a  
4 peak winter day, and make arrangements ahead.  
5 And you have to do that by writing contracts that  
6 may go out several years. So we think good  
7 planning is necessary.

8               Staff has recommended that MGE be  
9 required to file with the Commission in the  
10 applicable case their natural gas plan that they  
11 have for providing service to their customers.  
12 And that they provide also capacity analysis and  
13 reliability every year.

14               Staff cannot, without adequate  
15 information, assure the Commission that MGE is  
16 doing a good job planning, and we feel that the  
17 Commission, while it cannot engage in day-to-day  
18 management, has authority to make sure that MGE is  
19 planning to provide gas service to its customers.

20               We think MGE as a company needs to  
21 have all these plans. How do they know how much  
22 gas they need to serve a particular area unless  
23 they're doing the studies?

24               One of Staff's concerns is that MGE  
25 transferred its entire gas supply department in

1 the middle of winter two years ago as a part of a  
2 sale and Mike Noack went to another affiliate.  
3 They had to rebuild their gas supply department,  
4 including records, during that time, and that's  
5 been one of Staff's ongoing concerns that is,  
6 frankly, unique to MGE.

7 MGE suggests that the Commission  
8 should do this through a rule. Staff does not  
9 believe that there needs to be any rule to require  
10 that a natural gas utility plan to serve its  
11 customers in a safe and effective and adequate  
12 manner. Thank you.

13 JUDGE WOODRUFF: Thank you. Public  
14 Counsel?

15 MR. MICHEEL: Yes, Your Honor.

16 May it please the Commission, this  
17 is what I call the Groundhog Day issue because it  
18 seems like I try it every case. And I've been  
19 arguing it, you know, I have dreams about it.  
20 I've been arguing about where capacity release  
21 revenue should be included and where off system  
22 sales revenue should be included and whether or  
23 not we should have an incentive.

24 We've had a couple of Commission  
25 decisions, and I think the Commission is generally

1     aware of those decisions, and they support the  
2     position of the Office of Public Counsel.

3                     That's not to say that the Company  
4     doesn't have every right to present some new  
5     evidence to you. But I think once you look at the  
6     evidence, you're going to come to the conclusion  
7     for all the same reasons that you came to the  
8     conclusions in the other place -- or in the other  
9     cases, that base rates is the appropriate place to  
10    put revenues for capacity release and off system  
11    sales.

12                    I don't disagree with Mr. Duffy's  
13    rendition of just the background of how and why we  
14    have capacity release and off system sales. I  
15    don't disagree with Miss Shemwell's  
16    recommendations and descriptions of the history  
17    and the background.

18                    But my difference is and the point  
19    that I want to make is placing capacity release  
20    and off system sales revenues, a level of revenues  
21    in base rates, a normalized revenue stream in base  
22    rates, the evidence will show appropriately  
23    balances the risks and rewards for both the  
24    Company and the shareholder.

25                    And it's interesting in this case,

1 on this issue in particular, that when there's  
2 some risk to the Company, right away they want to  
3 put it, chuff that risk off into the PGA where  
4 it's a dollar for dollar pass through until you --  
5 well, we'll do the best we can, but boy, oh, boy,  
6 we do a little bit better in that pass through if  
7 you'd give us some money for that, i.e., their  
8 incentive sharing grid.

9                   Look, the evidence is going to show  
10 my clients pay for all of the pipeline capacity.  
11 My -- that's prudently acquired. My clients pay  
12 for all the natural gas that's prudently acquired.  
13 So let's appropriately balance the risk and  
14 rewards.

15                   And the evidence that we're going to  
16 present through the testimony of Mr. James Busch  
17 is going to be the best way to balance those risks  
18 versus those rewards is to normalize a stream of  
19 revenues in base rates as we've suggested.

20                   Now, you're going to hear some  
21 evidence about what I call the ifs and buts and  
22 candy and nuts evidence. And that's if there's a  
23 new pipeline, but there may be a new pipeline,  
24 well, it might happen, and it's all a guess. The  
25 fact of the matter is no one knows what's going to

1     happen, but history tells us what the Company has  
2     been able to do. And if you base a reasonable  
3     level of capacity release off system revenues  
4     based on history, that will give the Company the  
5     proper incentive to perform properly.

6                     I just want to talk a little bit,  
7     this capacity release, off system sales is broken  
8     down into two questions. The second question is,  
9     is there an alternative, and the -- the  
10    alternative incentive proposal that MGE has  
11    requested.

12                    First, again, I point out the  
13    Commission has rejected that type of incentive  
14    proposal. Second, the evidence is going to be  
15    that inherent in this process, there's some  
16    ability, one, to release capacity, and two, to  
17    make off system sales. Just inherent built into  
18    the economics.

19                    Because MGE needs to have enough  
20    capacity to serve its customers for a peak day.  
21    When they don't have that capacity, they're  
22    required by prudent work to sell it off system.  
23    Or, when they have excess gas, they're required by  
24    just prudent operation to market that gas for off  
25    system sales.

1                   Look, there's absolutely no reason  
2     the evidence will show that they should be sharing  
3     first dollar. And when you look at the grid in  
4     Mr. Noack's testimony, he says on the first dollar  
5     of capacity release or off system sales that we  
6     release or that we sell, we deserve 15 cents.

7                   Well, the evidence is going to show  
8     there's no reason for that. My clients have paid  
9     for it. The evidence is going to show that my  
10    clients are paying the salaries for all of the  
11    people who are supposed to be doing this on behalf  
12    of the Company.

13                  The evidence will show that prudent  
14    gas managers would market the capacity release.  
15    Would market the off system sales. So there's  
16    absolutely no need for incentive.

17                  So if the Commission decides to  
18    shift all of the risk to my clients and put  
19    capacity release and off system sales revenues in  
20    the PGA, which I don't think you should do, but if  
21    you do that, absolutely not should you provide,  
22    and I put this in quotes because it's their term,  
23    an incentive for the Company to do that job.

24                  My clients are already providing  
25    that incentive. They are paying for the capacity,

1     they're paying for the gas, they're paying the  
2     salaries of these people to take care of these  
3     items.

4                     JUDGE WOODRUFF:  Thank you.  Midwest  
5     Gas wish to make an opening?

6                     MR. CONRAD:  No, Your Honor, thank  
7     you.

8                     JUDGE WOODRUFF:  Thank you.  Jackson  
9     County's not here.  Federal Agencies?

10                    MR. PAULSON:  No, sir.

11                    JUDGE WOODRUFF:  Kansas City and  
12     Joplin are not here.  So I'll ask MGE to call  
13     their first witness.

14                    MR. DUFFY:  Call John Hayes to the  
15     stand.

16                    JUDGE WOODRUFF:  Would you please  
17     raise your right hand?

18                    (Witness sworn.)

19                    JUDGE WOODRUFF:  Mr. Duffy, you may  
20     inquire.

21                    MR. DUFFY:  Thank you, sir.

22     JOHN M. HAYES, testified as follows:

23     DIRECT EXAMINATION BY MR. DUFFY:

24             Q       Would you state your name for the  
25     record, please?

1           A       It's John M. Hayes.

2           Q       Mr. Hayes, are you the same John  
3       Hayes that caused to be prepared and filed what's  
4       been marked for purposes of identification of  
5       Exhibit No. 17 in this proceeding entitled  
6       rebuttal testimony of John Hayes?

7           A       Yes, I did.

8           Q       Mr. Hayes, if I asked you the same  
9       questions that appear in that document this  
10      morning, would your answers be the same as they  
11      appear therein?

12          A       Yes, they would.

13          Q       Are those answers true and correct  
14      to the best of your knowledge, information, and  
15      belief?

16          A       Yes, they are.

17                 MR. DUFFY: Your Honor, at this time  
18      I move for the admission into evidence of Exhibit  
19      No. 17, and I tender the witness for cross  
20      examination.

21                 JUDGE WOODRUFF: All right. Exhibit  
22      17 has been offered into evidence. Are there any  
23      objections to its receipt? Hearing none, it will  
24      be received into evidence.

25                 For cross examination, Kansas City



1 and Joplin are not here. Federal Agencies? He's  
2 not here at the moment. Jackson County's not  
3 here. Midwest Gas?

4 MR. CONRAD: Your Honor, we'll pass  
5 the witness.

6 JUDGE WOODRUFF: Public Counsel?

7 MR. MICHEEL: Yes, Your Honor, I  
8 have just a few questions.

9 JUDGE WOODRUFF: Okay.

10 CROSS EXAMINATION BY MR. MICHEEL:

11 Q Mr. Hayes, are you an employee of  
12 Missouri Gas Energy?

13 A Yes, I am.

14 Q And is there a gas supply department  
15 at Missouri Gas Energy?

16 A Yes, there is.

17 Q And would you agree with me, sir,  
18 that your salary is included in rates?

19 A I would assume so. I'm not --  
20 couldn't answer that question.

21 Q And you would assume -- well, you  
22 don't know for sure?

23 A That my salary is -- I would -- yes,  
24 it is. Yes.

25 Q And that's paid by the rate payers?

1           A       Yes.

2           Q       Is it correct that MGE has --

3                   MR. MICHEEL: Well, let me get an  
4 exhibit marked, Your Honor. We are up to 226?

5                   JUDGE WOODRUFF: 229.

6                   MR. MICHEEL: Okay. Exhibit 229.

7                   (Exhibit 229 marked for  
8 identification.)

9           Q       (By Mr. Micheel) Do you have a  
10 copy, sir, of 229 which is the Company's response  
11 to Public Counsel Data Request 612?

12           A       I have one in my hands now, yes.

13           Q       And is that a question that the  
14 Office of Public Counsel requested regarding MGE's  
15 budget for capacity release and off system sales?

16           A       It appears so.

17           Q       And is that true and correct to the  
18 best of your knowledge and belief?

19           A       Yes, it is.

20                   MR. MICHEEL: With that, Your Honor,  
21 I'd move the admission of Exhibit 229.

22                   JUDGE WOODRUFF: All right. Exhibit  
23 229 has been offered into evidence. Are there any  
24 objections to its receipt? Hearing none, it will  
25 be received into evidence.

1           Q       (By Mr. Micheel) Is it correct that  
2       for fiscal year 2003, that MGE exceeded its  
3       budgeted level of capacity release and off system  
4       sales?

5           A       I believe that's correct, yes.

6           Q       And is it correct that for fiscal  
7       year '04, that MGE, as of March of this year, is  
8       within \$100,000 of its budget?

9           A       Yes, it is.

10          Q       So at least for those years, the  
11       budget has been pretty much right on target; is  
12       that correct?

13          A       That is correct.

14          Q       Now, you indicate in your testimony,  
15       I believe, sir, at page 10? That there are some  
16       possible new pipelines. Is that correct?

17          A       Yes.

18          Q       And the first pipeline that you talk  
19       about is the Advantage pipeline. Is that correct?  
20       Kinder Morgan has planned a pipeline called  
21       Advantage?

22          A       Yes, Advantage is one pipeline of a  
23       potential three pipelines that could be built out  
24       there.

25          Q       Why don't you answer that question.

1 Is Advantage one?

2 A Advantage is one, yes.

3 Q Okay. We'll just baby step it. You  
4 answer my questions and it will go a lot faster.

5 A Okay.

6 Q Another one is called the Western  
7 Frontier; is that correct?

8 A That is correct.

9 Q And would you agree with me that the  
10 Western Frontier plan is on hold?

11 A It is, yes.

12 Q And would you agree with me that the  
13 Advantage pipeline is on hold?

14 A I would not agree with you.

15 Q Would you agree with me that the  
16 Advantage pipeline has not filed its information  
17 with the Federal Energy Regulatory Commission yet?

18 A I am unaware of that information.

19 Q Do you know if they filed for  
20 approval from the Federal Energy Regulatory  
21 Commission?

22 A I do not, no.

23 Q Do you know whether or not an  
24 interstate pipeline has to receive approval from  
25 the Federal Energy Regulatory Commission before it

1 can begin operating?

2 A I would assume so, yes.

3 Q Do you know that it takes a number  
4 of years to get that approval from the Federal  
5 Energy Regulatory Commission?

6 A Yes.

7 Q And do you know that it will be a  
8 number of years before the Advantage pipeline is  
9 in service?

10 A Oh, yes. Yes.

11 Q And with respect to the Western  
12 Frontier pipeline, you're well aware that that  
13 pipeline has been shelved; is that correct?

14 A That is correct.

15 Q So neither of those two pipelines  
16 are going to be providing any competition for  
17 capacity release for Missouri Gas Energy; isn't  
18 that correct?

19 A In the near future, that is correct.

20 Q Well, within the next four or five  
21 years; isn't that correct?

22 A I would say Western Frontier in the  
23 next four or five years would be -- you know, no,  
24 that's not going to compete. Kinder Morgan  
25 Advantage in the next four or five years, yes, it

1       could be competing.

2               Q       So it's at least five years out; is  
3       that correct?

4               A       Two to three years.

5               Q       And plans change, do they not, sir?

6               A       Yes, they do.

7               Q       And indeed, MGE got a presentation  
8       from Williams pipeline regarding the Western  
9       Frontier pipeline, did it not, in early 2000?

10              A       I was not with MGE in early 2000,  
11       but I would assume so, yes, that is correct.

12              Q       And Williams came in and said we're  
13       going to start this new pipeline, didn't they?

14              A       Mm-hmm. Yes.

15              Q       And those plans changed, didn't  
16       they?

17              A       Yes, they did.

18              Q       And you can't tell the future, can  
19       you?

20              A       No.

21              Q       So you don't know whether or not the  
22       Western Frontier pipeline is going to be two to  
23       three years out, do you? Or --

24              A       It's unknown.

25              Q       Same thing with the Advantage

1 pipeline?

2 A That would be correct.

3 Q Okay. Now, you said there's a third  
4 pipeline, and it's the Cheyenne Plains pipeline;  
5 is that correct?

6 A That is correct.

7 Q Do you know if that's already been  
8 approved by the FERC?

9 A Yes, it has.

10 Q And are they constructing that  
11 pipeline?

12 A Yes, they are.

13 Q Are they finished constructing that  
14 pipeline?

15 A I do not know. Not to my knowledge.  
16 I do not know.

17 Q Do they have all the environmental  
18 permits necessary to construct that pipeline?

19 A I do not know the answer to that  
20 question.

21 Q Is it a large undertaking to build  
22 an interstate gas pipeline?

23 A Yes, it is.

24 Q Do you know if there are a lot of  
25 mountains and rocky areas out around Cheyenne,

1 Wyoming?

2 A I don't believe so, no.

3 Q That's a flat area?

4 A Where the hub is, the interconnect  
5 area, yes, I believe so.

6 Q Okay.

7 A I'm not familiar with all the  
8 dynamics of -- you know, all the aspects of  
9 building the pipe, where it's going, the  
10 permitting process, and all that stuff.

11 Q So you have no idea about the  
12 permitting process or the construction process of  
13 a major construction project, do you?

14 A I am not familiar with the details,  
15 no.

16 Q And you know it takes a great number  
17 of years to build a pipeline?

18 A It depends upon several different  
19 factors. If there's already some pipe in the  
20 ground, if they're converting an old oil pipe to a  
21 gas pipe, it's -- and the different environmental  
22 aspects, you know, the right-of-ways through land,  
23 so there's lots of steps that need to be taken  
24 care of depending upon, you know, the details of  
25 the pipe. It could take a very long time, it



1       could take somewhat of a short time.

2               Q       And sitting there today, you don't  
3       know how long it's going to take for the Cheyenne  
4       pipeline, do you?

5               A       I have not spent a great deal of  
6       time studying the details of the Cheyenne pipeline  
7       as far as the hows and whens of the project.

8               Q       So you don't know when it's going to  
9       go into service, do you, sir?

10              A       It has been told to me through  
11       several industry publications, and there's several  
12       people that are aware of this, that it will be  
13       placed into service sometime in January of 2005.

14                      MR. MICHEEL:  I am going to ask that  
15       that answer be stricken.  It wasn't responsive and  
16       it's hearsay.

17                      MR. DUFFY:  Your Honor, he did ask  
18       for his opinion about that.

19                      JUDGE WOODRUFF:  Can you tell me --  
20       or reread the question for me, please?

21                      THE REPORTER:  "So you don't know  
22       when it's going to go into service, do you, sir?"

23                      JUDGE WOODRUFF:  That sounds like an  
24       open-ended question.  I'll go ahead and allow the  
25       answer to stand.  You can ask your next question.

1           Q       (By Mr. Micheel) Other than reading  
2 these industry publications, you've done none of  
3 your own independent research, have you, to  
4 determine when the Cheyenne pipeline is going to  
5 go into place?

6           A       There's no reason for me to. I can  
7 look at public information.

8           Q       Do you know if MGE's going to seek  
9 capacity on the Cheyenne Plains pipeline?

10          A       At this point in time, we are not.

11          Q       And why is that?

12          A       I'm really not the person to answer  
13 that question. But I could tell you, you know,  
14 some -- what we're doing is -- you know, MGE, you  
15 know, they have to have, you know, X amount of  
16 capacity for the city.

17                   I believe at this point in time we  
18 have enough peak capacity under contract to serve  
19 our end use customers, and so there's really no  
20 need for us to acquire additional capacity to  
21 burden the rate payers for something at this point  
22 in time that we don't believe that we need.

23          Q       Well, let me ask you this. Do you  
24 have long-term contracts for capacity?

25          A       Yes, we do.

1           Q       And I would assume, and this is just  
2       me now, that MGE -- it's your belief, is it not,  
3       that the Cheyenne pipeline is going to be cheaper  
4       capacity than, for example, the Pony Express  
5       pipeline?

6           A       Yes, it will be.

7           Q       That's your belief?

8           A       According to the public information,  
9       that is correct.

10          Q       Okay. Shouldn't MGE be doing all it  
11       can be doing to lower the pipeline costs, pipeline  
12       capacity costs for its customers?

13          A       Well, the Cheyenne Plains will not  
14       be making a direct interconnect into the MGE  
15       service territory. The issue that we're talking  
16       about is capacity release revenues, and I am going  
17       to be -- my capacity release customers will either  
18       be buying off of Kinder Morgan or they're going to  
19       be buying off of Cheyenne Plains. So that's  
20       really not --

21          Q       Let me ask you this. For your  
22       capacity release customers that you have off the  
23       Kinder Morgan pipeline?

24          A       Yes.

25          Q       Where are you releasing that

1 capacity?

2 A I would be releasing that capacity  
3 into a third party pipeline. Which is another  
4 interconnecting pipeline.

5 Q My question is, historically, where  
6 has MGE released the capacity off of the Kinder  
7 Morgan Pony Express pipeline?

8 A Historically, we have released the  
9 capacity to another customer who is taking the gas  
10 into a different pipeline.

11 Q And what pipeline is that?

12 A There is multiple pipelines that  
13 they can take into. They can take into Panhandle,  
14 they can take into NGPL, they can take into  
15 Northern Natural Gas.

16 Q And where are those interconnect  
17 points?

18 A They are in the State of Kansas.

19 Q Where in the State of Kansas?

20 A At various locations in separate  
21 counties wherever the pipelines cross. I did not  
22 bring a map with me to tell you the exact  
23 location.

24 Q Okay. Well, would you agree that  
25 location is important?

1           A       I'm not sure if I understand the  
2 question.

3           Q       Well, where's the Cheyenne pipeline  
4 going to cross all these pipelines?

5           A       Probably a little farther to the  
6 south of where Kinder Morgan is currently  
7 interconnecting.

8           Q       So to the south of where Kinder  
9 Morgan is interconnecting, is that -- so anybody  
10 who's past that interconnection would have to be  
11 using Kinder Morgan; is that correct?

12          A       Not necessarily, no. The Cheyenne  
13 Plains and the Kinder Morgan will be  
14 interconnecting into these other pipelines.  
15 They're divided up into regions.

16                   For example, NGPL, they have a  
17 region that's called mid continent region. And  
18 they have like a pool, an NGPL mid continent pool  
19 where people who bring receipts into this pipe can  
20 then pool this gas.

21                   And so people desiring to get gas  
22 into NGPL, as far as they're concerned, it doesn't  
23 matter if they're pulling the gas off of Kinder  
24 Morgan or if they're going to be pulling the gas  
25 off the new interconnect Cheyenne Plains, it's all

1 the same to them.

2 Q We're not talking about gas, though,  
3 we're talking about releasing pipeline space.

4 A To move natural gas.

5 MR. MICHEEL: That's the only  
6 questions that I have of this witness, Your Honor.

7 JUDGE WOODRUFF: Thank you. For  
8 Staff.

9 MS. SHEMWELL: Thank you.

10 CROSS EXAMINATION BY MS. SHEMWELL:

11 Q Mr. Hayes, I'm Lera Shemwell, I  
12 represent the Staff in this case.

13 A Hello.

14 Q Hi. Mr. Hayes, how long have you  
15 been with MGE?

16 A Since January of 2003.

17 Q And have you yourself performed a  
18 capacity release analysis for MGE?

19 A For what time period?

20 Q Since you've been there.

21 A I do reporting of capacity release  
22 that I do on a current time period. I have not  
23 done an analysis for future time periods, no.

24 Q Will you agree with me that MGE does  
25 have responsibility to serve its customers well?

1 A Oh, yes.

2 Q Do you know MGE's total capacity  
3 release in 2002?

4 MS. SHEMWELL: I don't think that's  
5 HC, is it?

6 MR. DUFFY: What I was going to  
7 indicate, and it's MGE's position, it's MGE's  
8 position that the capacity release revenues that  
9 are shown in the HC schedules attached to Miss  
10 Allee's testimony and Mr. Busch's testimony, it's  
11 not necessary that they be considered highly  
12 confidential. If all we're talking about are the  
13 monthly or annual revenue numbers of capacity  
14 releases. We don't consider those to be highly  
15 confidential, so you may refer to them.

16 Q (By Ms. Shemwell) So, sir, do you  
17 know those numbers?

18 A Not off the top of my head, but I  
19 believe there's some charts around here somewhere  
20 that says, you know, what the 2002 numbers were.

21 Q But Mr. Duffy made clear in his  
22 opening and you said that you can't predict what  
23 they're going to be in the future, right?

24 A That is correct.

25 Q I think we did not discuss Kern

1 River in the list of three, page 10, lines 4  
2 through 8 of your rebuttal? You list some  
3 pipelines that you think may affect MGE in the  
4 future; is that right?

5 A I use Kern River as an example to  
6 show how prices could be affected in the past as  
7 to pipeline expansions coming out of the Rockies.

8 Q The Kern River goes to California,  
9 right?

10 A That is correct.

11 Q So it's not going to affect MGE in  
12 this case? You don't expect it to effect MGE's  
13 capacity release?

14 A It's not going to affect things on a  
15 go forward basis, no. It was meant to show how  
16 things can be impacted when a new pipeline does go  
17 into effect. And now that the new pipeline is in  
18 effect, it's flowing, it's going, you know, from  
19 here on there's not going to be any changes to the  
20 current environment due to Kern River.

21 Q Did you all agree -- did you agree  
22 with Mr. Micheel on an estimated service date for  
23 Advantage?

24 A That's probably if, you know, the  
25 big two letter word, if Advantage goes into place,



1 it would be several years from now.

2 Q So we can -- it might not, as you  
3 agreed with Mr. Micheel?

4 A That's true.

5 Q Let's talk about Cheyenne Plains.  
6 We've been reading some of that same public  
7 information. Have you read, or are you aware that  
8 when they open, they won't have compression  
9 available?

10 A I was not aware of that, no.

11 Q Would the lack of compression affect  
12 their ability to deliver gas?

13 A Yes, it would.

14 Q In your testimony, is there an  
15 estimate of a reduction in capacity release that  
16 you would predict after Cheyenne Plains goes into  
17 service?

18 A No, I did not predict anything.

19 Q And you also haven't done a study or  
20 a correlation analysis to try to determine that?

21 A It would be difficult to do so at  
22 this point in time based upon the uncertainty.

23 Q You don't think you could do a study  
24 to make some prediction?

25 A I can make a wild guess.

1           Q       Certainly we can agree that those  
2       aren't of particular value, but you used Kern  
3       River as an example, so --

4           A       Right. Kern River -- Kern River did  
5       make, you know, an impact, and now things have  
6       stabilized. The Rocky Mountain region, I don't  
7       know if I'm digressing here --

8           Q       A little.

9           A       The Rocky Mountain region is the new  
10      frontier for natural gas exploration. There's  
11      supposed to be a lot of natural gas up in the  
12      Rocky Mountains, and that's why they're building  
13      these pipelines coming out of the Rocky Mountains.

14          Q       Are they also building pipelines  
15      because demand increases?

16          A       That is correct.

17          Q       In terms of capacity requirements on  
18      your system, when is it highest for MGE? When are  
19      your demands highest?

20          A       For my end use customers?

21          Q       Mm-hmm.

22          A       It would be the -- I'd say the  
23      December, February time period.

24          Q       So it's much lower in July?

25          A       Yes. Oh, yes.

1           Q       So you would expect that more  
2 capacity could be released in July --

3           A       Yes.

4           Q       -- than in the winter months?

5           A       That is correct.

6           Q       Mr. Hayes, how do you -- or how does  
7 your department decide how much capacity it can  
8 release at any given time, either daily or  
9 monthly, however you're going to release it?

10          A       We usually -- we decide on a monthly  
11 and a daily basis both, yes.

12          Q       And how do you make the decision as  
13 to how much?

14          A       On a monthly basis, we will do a  
15 monthly supply plan, and usually -- for example,  
16 for our July plan, we would have done the July  
17 plan back on June 21st.

18                   And so we do a historical analysis  
19 of how much do our customers burn, and then we do  
20 an analysis as to our storage inventory levels,  
21 and then we decide okay, well, we need to make  
22 sure we have a reliable supply to our end use  
23 customers, make sure that we are prudently filling  
24 our storage for use in the wintertime.

25                   And then we try to, you know, use

1 the cheapest basins of natural gas to fulfill  
2 these requirements to the maximum operational  
3 limits that we can.

4                   Once that decision has been made and  
5 the gas supply plan is in place, we can then  
6 decide okay, here's leftover capacity, we can sell  
7 X amount for the month and let's maybe hang on to  
8 a little sliver to do on a daily basis in case  
9 maybe temperatures cool off or there's an  
10 operational opportunity to squeeze some more gas  
11 in for the end users.

12                   We don't want to slam the door on  
13 the end users with a monthly plan, leave a little  
14 flexibility out there. If they can get it, that's  
15 great; if not, we can sell that small piece on a  
16 daily basis.

17           Q       Who is an end user? Is that a -- is  
18 that all your customers? Is that how you're using  
19 that term?

20           A       Yes. Yes. Our customers.

21           Q       Have you provided these analyses to  
22 Staff in the ACA reviews?

23           A       I'm not sure if I understand the  
24 question.

25           Q       The analyses that you've done for

1 capacity release that you just described, have you  
2 provided those?

3 A Oh, yes, our supply and demand plan,  
4 yes, you get our supply/demand scenarios. We've  
5 sent those to you. The monthly reports.

6 Q Okay. So how do buyers, potential  
7 buyers find out about the capacity?

8 A On -- we'll talk about the Kinder  
9 Morgan pipeline. On the Kinder Morgan pipeline, I  
10 aggressively contact anybody and everybody who may  
11 have interest in the space on the pipeline.

12 And once I have established, you  
13 know, a customer base -- and that's not stagnant,  
14 even next week I may try to find more people who  
15 are interested in Kinder Morgan capacity. What I  
16 do then is once we finalize our plans like I  
17 described earlier for a one month capacity release  
18 on Kinder Morgan, I will post it on the Kinder  
19 Morgan website as biddable. And then I will  
20 notify every single person that I know, okay, it's  
21 posted, here's the offer number, here's when the  
22 bidding deadline ends.

23 And then everybody will go out  
24 there, and it's similar to an eBay type of bidding  
25 system. It's an eBay capacity release. So

1     everybody out there who has interest, they can see  
2     each other's bids.

3                     So it's kind of fun to watch it come  
4     in. They jump on top of each other until the  
5     deadline. That way I ensure the -- whoever is  
6     getting the capacity release revenues is going to  
7     get the maximum amount possible out there on the  
8     open market.

9             Q       So that's a -- maybe not publicly  
10    available, but generally available website?

11            A       Anybody who has a password to get  
12    into that website can see this activity.

13            Q       And watch it bid up?

14            A       Yes.

15            Q       Would you agree with me that there  
16    are many factors that affect the value of your  
17    capacity release, such as weather?

18            A       Yes.

19            Q       And growing use of natural gas, for  
20    example, to generate electricity could affect  
21    demand?

22            A       Yes.

23            Q       Or the value of the capacity  
24    release?

25            A       Yes.

1           Q       The price of natural gas may have an  
2     impact?

3           A       The price of natural gas between the  
4     Rocky Mountains to the mid continent has a huge  
5     effect.

6           Q       Or in fact, any supply area that you  
7     would use, differences in those prices could  
8     affect the value of your capacity release?

9           A       Yes.

10          Q       What if a pipeline were to be  
11     damaged? Some natural event damages a pipeline,  
12     that factor?

13          A       Mm-hmm. Oh, yes. Yes.

14          Q       On page 11, you indicate in your  
15     testimony -- I'm sorry, I don't know that I have a  
16     line. Line 6, you're saying that shippers will  
17     now logically seek to obtain capacity release.

18                   Did you contact these shippers to  
19     visit with them about what they're going to do?

20          A       No, I have not.

21          Q       So you don't know what their plans  
22     are?

23          A       No.

24          Q       Do you release capacity on other  
25     pipelines than Kinder Morgan?

1           A       Yes, we do.

2           Q       So Southern Star or Panhandle, for  
3       example?

4           A       Southern Star, yes.

5                   MS. SHEMWELL: That's all I have.  
6       Thank you.

7                   JUDGE WOODRUFF: Thank you. I  
8       believe that's all the cross examination, so we'll  
9       move up to questions from the bench. Chairman  
10      Gaw, do you have a question?

11                  COMMISSIONER GAW: Thank you. I  
12      just want to follow up briefly on one -- one line  
13      of questioning.

14      BY COMMISSIONER GAW:

15           Q       Would you say that -- that the  
16      demand for natural gas has been increasing level  
17      or decreasing?

18           A       It has been increasing.

19           Q       And did the increase in the demand  
20      of natural gas itself impact the demand for  
21      capacity?

22           A       It would, yes.

23           Q       And does that also have an impact on  
24      the price at the auctions for capacity?

25           A       Yes.



1 Q And what -- what is that impact?

2 A Obviously, if there is more desire  
3 to move natural gas from one location to another  
4 on X space, that's going to drive the price up.  
5 Then if there's no desire, it drives the price  
6 down.

7 Q And is that one of the -- in  
8 addition to the fact that there has been perhaps  
9 more gas located or determined to be available in  
10 the Rocky Mountain areas, is the demand increase  
11 also a factor in building new pipelines?

12 A Yes.

13 Q Is there anything available -- any  
14 studies available that you have done to -- to  
15 factor in both the increasing demand that we have  
16 seen and may continue to see with the addition of  
17 new capacity and supply from the pipelines that  
18 you've mentioned?

19 A I have not, no.

20 Q So we don't have any information  
21 available to us in this proceeding that would  
22 indicate how those two factors fit together going  
23 into the future?

24 A No, I do not, no.

25 COMMISSIONER GAW: That's all I

1 have.

2 JUDGE WOODRUFF: Commissioner  
3 Clayton, do you have any questions? Commissioner  
4 Appling?

5 COMMISSIONER APPLING: No questions.

6 JUDGE WOODRUFF: You may step down.  
7 I'm sorry. I'm trying to get things moving here.

8 MR. DUFFY: I'll do the best I can.

9 JUDGE WOODRUFF: We have a chance  
10 for recross first, too.

11 MR. CONRAD: I do have one.

12 JUDGE WOODRUFF: Yes, you would come  
13 first before other counsel.

14 CROSS EXAMINATION BY MR. CONRAD:

15 Q Mr. Hayes, Chairman Gaw asked you  
16 about the effect of demand on the price of release  
17 capacity.

18 A Mm-hmm.

19 Q Do you recall that? Is there a cap  
20 on that price?

21 A Yes, there is.

22 Q What is that cap?

23 A The cap on my capacity release is  
24 governed by the Kinder Morgan tariff, or whichever  
25 pipeline I'm releasing on, it's governed by their

1 tariff. My cap is 51 and 3/10 cents.

2 Q Is that expressed as a 100 percent  
3 load factor?

4 A Yes, that would be a 100 percent  
5 load factor.

6 Q And that is a FERC limitation?

7 A Yes.

8 MR. CONRAD: Thank you.

9 JUDGE WOODRUFF: Thank you. For  
10 Public Counsel?

11 MR. MICHEEL: No questions. I'm  
12 hungry.

13 JUDGE WOODRUFF: For Staff?

14 MS. SHEMWELL: No questions, thank  
15 you, Judge.

16 JUDGE WOODRUFF: Redirect.

17 REDIRECT EXAMINATION BY MR. DUFFY:

18 Q Mr. Hayes, you were asked some  
19 questions about the public information available  
20 on Cheyenne Plains pipeline; is that correct?

21 A Yes.

22 Q To your knowledge, does Cheyenne  
23 Plains have a website of its own?

24 A Yes, they do.

25 Q So if somebody wanted to, they could

1 Google in Cheyenne Plains Pipeline Company and  
2 they could get what Cheyenne Plains has put on  
3 their website as public information?

4 A Yes.

5 Q I heard a question from Ms. Shemwell  
6 asserting that when Cheyenne Plains comes on, it  
7 will not have compression, and I heard you say, I  
8 thought, that you weren't aware of that one way or  
9 the other.

10 So is -- is it a, to your knowledge,  
11 is it a fact at this point whether it will have  
12 compression or not, or you're just not aware of  
13 that situation?

14 A Well, that doesn't really make sense  
15 to me because the pipeline has to have compression  
16 in order to move natural gas. So if there's no  
17 compression, then the pipeline is not online, it's  
18 not available. And I'm not aware of -- of their  
19 not having compression. I mean, that's just part  
20 of the pipeline, you know, compression.

21 Q Are you -- are you aware of anything  
22 that is different than the public available  
23 information that says it will begin operation in  
24 approximately January Of 2005? Are you aware of  
25 anything --

1           A       I am not aware of anything contrary  
2       to what is posted on their bulletin board.  On  
3       their website.

4           Q       Miss Shemwell asked you some  
5       questions to the effect that you have not  
6       personally contacted the shippers that you deal  
7       with and apparently asked them the question, are  
8       you going to abandon Kinder Morgan and go to  
9       Cheyenne Plains.  Do you remember that  
10      questioning?

11          A       Yes, I remember that question.

12          Q       And that's true, you have not  
13      personally asked them that question?

14          A       No, I have not.

15          Q       How long have you been, in terms of  
16      years, in the field of dealing with shippers on  
17      interstate pipelines and observing their  
18      activities?

19          A       Oh, for my career, ten years.

20          Q       Do you think based upon that  
21      experience and observation and your training that  
22      you can usually predict whether those shippers are  
23      going to perform in an economically logical  
24      fashion or not?

25          A       In order to stay in business, they

1 will perform to their maximum economical  
2 advantage.

3 Q And based upon that same experience  
4 and observations in this business, are you capable  
5 of forming an opinion as to whether you think  
6 those shippers will move to Cheyenne Plains  
7 because it's cheaper or not?

8 MR. MICHEEL: I'm going to object.  
9 That -- that calls for speculation. He's asking  
10 what other companies are going to do, and he --  
11 he's an MGE person. He's not one of these other  
12 shippers.

13 JUDGE WOODRUFF: Overruled. You can  
14 answer the question.

15 THE WITNESS: Can you repeat the  
16 question?

17 MR. DUFFY: I can't, but the court  
18 reporter might be able to.

19 THE REPORTER: "And based upon that  
20 same experience and observations in this business,  
21 are you capable of forming an opinion as to  
22 whether you think those shippers will move to  
23 Cheyenne Plains because it's cheaper or not?"

24 THE WITNESS: Yes, they will.

25 Q (By Mr. Duffy) Can you briefly

1 explain why they will do that?

2           A       According to the Cheyenne Plains  
3 website, they are indicating that their pipeline  
4 variable charge -- as part of that variable charge  
5 is a fuel component. And they claim that their  
6 fuel is going to be anywhere between 1.1 to 1.8  
7 percent --

8                   MR. MICHEEL: Your Honor, I'm going  
9 to object to the hearsay nature of that statement,  
10 according to the Cheyenne Plains website.

11                  MR. DUFFY: Your Honor, in this  
12 situation, this is an expert witness, he is  
13 relying upon public data of the type that experts  
14 can rely upon in making evaluations like this. So  
15 he's perfectly capable of taking public  
16 information and rendering an opinion on that.

17                  MR. MICHEEL: But he's rendering an  
18 opinion based on hearsay about what these rates  
19 are going to be. And, you know, we don't have any  
20 filed FERC rates. This pipeline isn't even up and  
21 running yet.

22                  JUDGE WOODRUFF: I'll overrule the  
23 objection. You can continue with your answer.

24                  THE WITNESS: Anyways, the website  
25 claims that fuel is going to be from 1.1 to 1.8

1     percent. The Kinder Morgan fuel is 3.3 percent.

2                     So in order for somebody to move gas  
3     on Kinder Morgan, it is going to require a higher  
4     variable charge than it will be to move gas on  
5     Cheyenne Plains.

6                     So logically if you had a choice,  
7     okay, I'm moving gas to the mid continent, I want  
8     to use the pipeline that has the lower variable  
9     charge to me first before I go and use the more  
10    expensive pipe second.

11            Q        (By Mr. Duffy) And you were asked a  
12    question by Mr. Conrad about whether there's a cap  
13    in the FERC tariff on release capacity. Can you  
14    explain what, if any, impact that has on this  
15    issue?

16            A        Well, a cap just means, you know, if  
17    the price value between the two different regions,  
18    if it was to go greater than the cap, I cannot  
19    capture that value.

20            Q        Does -- does that fact have any --  
21    any -- does that fact cause -- did you take that  
22    fact into consideration when you were preparing  
23    your testimony?

24            A        Well, it's not very often that I am  
25    able to sell, in fact, I have never been able to,



1     you know -- it's not been that wide where, you  
2     know, the cap comes into a play where I can't get  
3     above the cap. I'm usually selling below the cap.  
4     It's not that much revenue coming in.

5                     MR. DUFFY: Okay. I think that's  
6     all I have, Your Honor.

7                     JUDGE WOODRUFF: I thank you, sir.  
8     Now you may step down, Mr. Hayes.

9                     THE WITNESS: Oh. Thank you.

10                    JUDGE WOODRUFF: And you are  
11     excused. And it's time for lunch. We'll break  
12     until 1:15.

13                    (Off the record.)

14                    JUDGE WOODRUFF: Okay. We're back  
15     from lunch. Are there any preliminary matters we  
16     need to take care of?

17                    MS. SHEMWELL: Yes, please. I said  
18     that Mike Noack had transferred; in fact, Mr.  
19     Noack is here and going to be on the stand right  
20     now. So I should have said Mike Langston,  
21     L-a-n-g-s-t-o-n. Thank you.

22                    JUDGE WOODRUFF: All right. Mr.  
23     Noack is on the stand. And you were sworn earlier  
24     in this proceeding, I believe? So you are still  
25     under oath and you may proceed.

1 (Witness previously sworn.)

2 MICHAEL NOACK, testified as follows:

3 DIRECT EXAMINATION BY MR. DUFFY:

4 Q You want to state your name for the  
5 record?

6 A Michael Noack, N-o-a-c-k.

7 Q My understand being, and I wish  
8 someone would correct me if I'm wrong, is that  
9 your rebuttal testimony has probably already been  
10 marked, at least; I don't know whether it's been  
11 received. It has not been received?

12 A I don't think so.

13 MR. MICHEEL: It has not been  
14 received. It is marked as Exhibit 10 corrected.

15 MR. DUFFY: Has MGE moved that it be  
16 received?

17 JUDGE WOODRUFF: It's been offered  
18 and it's been my practice to only admit it at the  
19 time when he's going to be on the stand for the  
20 last time. So it's been offered, but no one has  
21 objected.

22 MR. DUFFY: My understanding is this  
23 is not the last time you're going to be on the  
24 stand, so there's no point in me offering it again  
25 at this point; is that right?

1                   THE WITNESS: I'll be on the stand  
2     again.

3                   MR. DUFFY: Then I would tender the  
4     witness, Mr. Noack, for cross examination on the  
5     capacity release and liability reporting issue.

6                   JUDGE WOODRUFF: All right. Kansas  
7     City and Joplin are not here. Federal Agencies,  
8     looks like he's not back yet. Jackson County is  
9     not here. Midwest Gas? I believe you do have  
10    something?

11                  MR. CONRAD: Judge, we had a brief  
12    discussion, I guess I could try to shorten this up  
13    a little bit with some clarification on the  
14    record, because I realize we're trying to get done  
15    by 5.

16                  I do have, in addition to these data  
17    requests, just a couple of questions to ask of Mr.  
18    Noack. However, those questions pertain not so  
19    much to this issue directly as they do to how this  
20    issue is treated for cost allocation purposes.  
21    And I could do those now, but it would probably be  
22    better if it were done in the context of that  
23    whole issue.

24                  But I am not sure, I was just  
25    talking to Mr. Noack in the hall, he is under the

1 impression he's going to be back possibly Friday.  
2 And if that's the case and if we can handle that  
3 then, that'll save our time today. And I'll just  
4 deal with this one data request so MGE can have it  
5 to review, and the other parties, too.

6 JUDGE WOODRUFF: Is that acceptable  
7 to everyone? To everyone's understanding?

8 MR. DUFFY: I think so. I was under  
9 the impression that Mr. Noack was going to  
10 identify for purposes of the record some data  
11 request responses we provided and put that in.  
12 That was all I was told.

13 JUDGE WOODRUFF: Let's go ahead and  
14 do that, then.

15 MR. CONRAD: Okay. Judge, I had not  
16 physically marked these, but I had marked another  
17 exhibit as another number, and I would request,  
18 following our premarking thing, that this would be  
19 602 if that would not cause you problems. We do  
20 not have a 601 yet, but there will be.

21 JUDGE WOODRUFF: I'll leave a blank  
22 on the page.

23 CROSS EXAMINATION BY MR. CONRAD:

24 Q Mr. Noack, in the effort to save a  
25 little time, let me show you what has been marked

1 Exhibit 602, and just follow along with me and see  
2 if you can confirm what I'm about to say for the  
3 record.

4                   You had, in response to a request  
5 from our consultant, provided a listing of a  
6 number of data requests and responses to those  
7 data requests to you; is that correct?

8           A       That is correct.

9           Q       And am I correct that what we've  
10 marked as 602 perhaps is not all of it, but that's  
11 a major portion of what you had supplied to him?  
12 You had supplied it to him, I believe, in an  
13 electronic file, and then he has printed it out  
14 and this is what it looks like.

15           A       That's correct. He's printed out --  
16 or I've got a printout of approximately eight  
17 pages out of 110 reflect -- data requests and  
18 responses.

19           Q       And you have previously reviewed  
20 what we've now marked as 602?

21           A       That's correct.

22           Q       And are you able to authenticate  
23 those as coming from you and containing Company's  
24 responses to that respective list of data  
25 requests?

1           A       They look familiar, yes.  Yes.

2                   MR. CONRAD:  Well, unless there is  
3       objection, then, Your Honor, in which case we can  
4       deal with it, I would move admission of 602.

5                   But in so doing, let me tell you  
6       that our hope is that we would be able to select  
7       out of this list particular data requests and  
8       that, you know, with the Company's cooperation,  
9       that we would have those either on individual  
10      sheets or just pull them out of this and have them  
11      be as individual sheets.

12                  But since Mr. Noack was the provider  
13      of this as a -- as a group of things, I thought  
14      I'd better get them in at this point in time while  
15      he was here.

16                  JUDGE WOODRUFF:  And you're  
17      indicating when you actually cross examine him  
18      later on on other issues, it will be individual  
19      sheets?

20                  MR. CONRAD:  Or other people.  
21      That's my expectation.

22                  Have I correctly summed things up  
23      here, Mr. Noack?

24                  THE WITNESS:  Do I need to point out  
25      the one DR, while -- while the question and answer

1 on this page, it's on page 78 of 110, and I  
2 believe it's Office of Public Counsel DR 1004,  
3 while the information on this piece of paper is  
4 not highly confidential, the attachments that  
5 would go with this particular data response are.

6 I think that's the only -- only  
7 thing in this whole group that would be considered  
8 highly confidential.

9 JUDGE WOODRUFF: There's nothing on  
10 this document that's highly confidential?

11 THE WITNESS: No.

12 JUDGE WOODRUFF: 602 has been  
13 offered into evidence. Are there any objections  
14 to its receipt? Hearing none, it will be received  
15 into evidence.

16 MR. CONRAD: And then upon the  
17 understanding, Judge, that we'll have Mr. Noack  
18 available to us briefly at, you know, sometime on  
19 Thursday or Friday of this coming week, then I  
20 would have no further questions of him at this  
21 time.

22 JUDGE WOODRUFF: All right. Thank  
23 you, Mr. Conrad. Public Counsel?

24 MR. MICHEEL: Yes, Your Honor. I  
25 have just a couple questions. Maybe less than a

1 couple. Which would be one.

2 CROSS EXAMINATION BY MR. MICHEEL:

3 Q Mr. Noack, on page 29 of your  
4 rebuttal testimony, you set out the sharing grid  
5 proposal; is that correct?

6 A That's correct.

7 Q And just -- I want to make sure I  
8 understand that. On the -- let's just take an  
9 example. If MGE does one dollar of capacity  
10 release, MGE would receive 15 cents and the rate  
11 payers would receive 85 percent? Or 85 cents?

12 A That's correct.

13 MR. MICHEEL: Thank you very much.

14 JUDGE WOODRUFF: Thank you. For  
15 Staff?

16 MS. SHEMWELL: Thank you.

17 CROSS EXAMINATION BY MS. SHEMWELL:

18 Q Good afternoon, Mr. Noack.

19 A Good afternoon.

20 Q Do I have your name right?

21 A Of course.

22 Q We are here, we're going to discuss  
23 both the reliability reporting issue and capacity  
24 release with you; is that right?

25 A Yes, we are.



1           Q       In terms of capacity release, let's  
2       start with that area.  You're recommending that  
3       capacity release be moved in the PGA, right?

4           A       Through a sharing grid, that's  
5       correct.

6           Q       It's currently in base rates.  
7       Right?

8           A       We have an amount in -- from the  
9       last case that's in base rates, yes.

10          Q       Case No. GR-2001-292, right?

11          A       That's correct.

12          Q       Maybe you've just covered this with  
13       Mr. Micheel, but under your proposal, MGE and  
14       then, I guess, eventually shareholders would  
15       benefit beginning with the first dollar of  
16       capacity release revenues that MGE can generate;  
17       is that correct?

18          A       Under this sharing grid, yes.

19          Q       In the last case which we just  
20       mentioned, 2001-292, MEG agreed to recognize  
21       \$1,200,000 in capacity release revenues.  Is that  
22       your recollection?

23          A       As part of the overall settlement in  
24       that case, we agreed to that level, that's  
25       correct.

1           Q       And would you agree with my  
2       characterization that that offsets revenue  
3       requirement?

4           A       It would -- it would lower the  
5       revenue requirement, yes.

6           Q       Can you explain to us what a reserve  
7       margin is?

8           A       As it relates -- no. If it relates  
9       to -- I don't know how you're using it.

10          Q       I'm using reserve margin in terms of  
11       capacity. Because we're talking about capacity  
12       release.

13          A       No. I don't -- I don't know the  
14       technical terms related to capacity release.

15          Q       Are you aware of the last  
16       stipulation and agreement, was there anything that  
17       prevented Staff from reviewing MGE's reserve  
18       margin in ACA cases?

19          A       I -- I don't recall.

20          Q       Do you have an opinion regarding  
21       whether MGE has a responsibility to its customers  
22       to release as much -- or make those sales as much  
23       as possible to reduce the gas cost to customers?

24          A       It's part -- it's part of our  
25       practice, our ongoing practices when we have

1 excess capacity, we attempt to market it.

2 Q Do you have excess capacity every  
3 day of the year?

4 A I do not know that.

5 Q Do you need an incentive to do  
6 capacity release?

7 A Not -- not necessarily an incentive  
8 to just, by itself, do capacity release. But  
9 where the incentive comes into play is how we  
10 market the capacity release to aggressively go out  
11 and solicit customers to buy this capacity.

12 Q So you're saying you might be more  
13 highly motivated to be more aggressive; is that --

14 A I would say that, yes.

15 Q Is that your point? If we put this  
16 capacity release over in the PGA as you have  
17 requested, and let's leave aside the incentive  
18 mechanism, that acts to reduce the cost that  
19 customers pay for gas. Is that right? It goes  
20 through the PGA mechanism and acts to reduce the  
21 overall cost?

22 A It would be a reduction, correct.

23 Q Assuming, of course, that you make  
24 capacity release, which I think is a reasonable  
25 assumption, right?

1           A       Correct.

2           Q       You have suggested on page 29, I  
3 believe, 9 through 11, that the Commission offset  
4 capacity release -- I'm sorry, let me make sure I  
5 have that right. I'm sorry. I'm going to strike  
6 that.

7                   Can you tell us what peak day demand  
8 is in terms of a definition?

9           A       I -- I mean I'm -- I'm not in -- no.  
10 I'm not going to try and give you my layman's term  
11 for peak day demand. I mean, I have an idea of  
12 what it is, but not a -- I'm not a --

13          Q       Can we agree that the capacity  
14 release process is not your area of expertise?

15          A       That's what we have John Hayes for.

16          Q       Okay. So we can agree that he is  
17 the expert in that area?

18          A       Absolutely.

19                   MS. SHEMWELL: Judge, since Mr.  
20 Noack's not an expert in this area, I'm going to  
21 suggest that any testimony relating to capacity  
22 release itself be stricken.

23                   JUDGE WOODRUFF: Do you have a  
24 specific?

25                   MS. SHEMWELL: I do. He says on

1 page 33, I believe, of his rebuttal, he makes some  
2 comments about --

3 JUDGE WOODRUFF: Just a minute. Let  
4 me find it here. Corrected rebuttal?

5 MS. SHEMWELL: I'm sorry, I just  
6 have rebuttal in my hands, but I'm looking at the  
7 entire section starting on page 27.

8 JUDGE WOODRUFF: Okay. Capacity  
9 release off system sale section?

10 MS. SHEMWELL: Yes.

11 JUDGE WOODRUFF: And what is your  
12 objection to this?

13 MS. SHEMWELL: He's just admitted  
14 he's not an expert in capacity release.

15 JUDGE WOODRUFF: I believe he said  
16 he's not an expert on the details of the mechanics  
17 of capacity release. Is -- did you understand  
18 that differently, or did I misunderstand it?

19 MS. SHEMWELL: I think -- no, I  
20 think he's saying he's not an expert on how  
21 capacity release works.

22 JUDGE WOODRUFF: Let me ask the  
23 witness, what are you an expert in with relation  
24 to capacity release?

25 THE WITNESS: My proposal, Your

1 Honor, is, in this case, is that the gas supply  
2 department at MGE handles the marketing of excess  
3 capacity, and they report to accounting in  
4 ultimate -- and then for a rate case, to me, the  
5 amount of revenues that are being generated  
6 through releasing this capacity.

7 And what I am doing in my testimony  
8 here is proposing to the Commission a method of  
9 sharing these dollars that Mr. Hayes is -- is  
10 obtaining.

11 JUDGE WOODRUFF: Okay. You're  
12 coming at this from an accounting perspective?

13 THE WITNESS: Correct. And  
14 recommending a sharing grid between customers and  
15 shareholders of the money that's being generated.

16 JUDGE WOODRUFF: Okay. I'm going to  
17 overrule the objection, or the motion, or whatever  
18 it was. Thank you.

19 Q (By Ms. Shemwell) How about  
20 reliability plan reporting? Let's turn to that  
21 topic, if we may. MGE's regulated by this  
22 Commission, right?

23 A That is correct.

24 Q And its main business is supplying a  
25 half million, or approximately, customers with

1 natural gas. Right?

2 A Or natural gas service, yes.

3 Correct.

4 Q In your testimony on page 33, which  
5 I believe is surrebuttal, and I don't think that's  
6 corrected --

7 A Surrebuttal?

8 Q I'm sorry. Rebuttal.

9 A Okay.

10 Q About lines 15 through 18, you say  
11 the Commission deems requirements that MGE be  
12 required to provide the Commission Staff with gas  
13 supply plans and reliability reports, that should  
14 be done through rule making. Is that a fair  
15 assessment of your --

16 MR. DUFFY: I'm going to object to  
17 the form of the question because I don't think it  
18 accurately states -- whatever he said there is  
19 what he said there.

20 JUDGE WOODRUFF: Would you like to  
21 rephrase your question?

22 MS. SHEMWELL: Well, the question  
23 that was posed in this is that Staff had  
24 recommended that MGE be ordered to submit periodic  
25 reliability reports and gas supply plans. And his

1 response at line 15, if the Commission deems any  
2 such requirements reasonable or appropriate, they  
3 should be enacted by following the process used to  
4 set state regulations and impose uniformly on all  
5 similarly situated companies.

6 And I think he -- his -- what he's  
7 saying is that they should write rules. And I'm  
8 asking if that's a fair assessment of his  
9 recommendation or his comment.

10 THE WITNESS: Yes. I believe that  
11 it should be handled through a rule making  
12 process.

13 Q (By Ms. Shemwell) That sounds to me  
14 like a legal opinion. Are you a lawyer?

15 A No. I'm not a lawyer.

16 Q Do you have any testimony in there  
17 to support that opinion?

18 A Any testimony that -- what -- that I  
19 recommend that we don't be picked out, that we be  
20 required to do the same thing as everybody else  
21 would -- would have to do? No. This is -- this  
22 is my testimony and proposed reporting  
23 requirements.

24 Q Is that it be done through rule  
25 making. Do you have evidence that MGE -- have you



1 put in evidence that MGE is different or being  
2 treated differently from other companies? Have  
3 you put in any evidence in your testimony?

4 A No. I think we're saying -- or I'm  
5 saying right here that, you know, what -- what we  
6 do is not unique to just MGE, but some of the  
7 suggestions that are being asked of us are unique  
8 to MGE.

9 Q Do you think that you could do the  
10 same gas supply planning that Laclede does? And  
11 have it be effective? Could you take over  
12 Laclede's plan and use that?

13 A No. But Laclede should have to file  
14 a plan as MGE would.

15 JUDGE WOODRUFF: You need to stop  
16 when she asks you to.

17 Q (By Ms. Shemwell) Mr. Noack, what's  
18 your role in selection of gas supply contracts and  
19 procurement of natural gas? For either supply or  
20 storage?

21 A I have no role whatsoever.

22 Q So you don't know what goes into a  
23 gas supply plan or the types of analyses?

24 A Well, generally I -- I -- I'm aware  
25 of some of what goes in just through the data

1 request process of all our ACA cases, because all  
2 the data requests have come from Staff, basically  
3 go through me, and I accumulate the data.

4 It doesn't make me an expert in that  
5 area, but I see a lot of the material that goes  
6 through. In fact, probably all of the material.

7 Q Okay. In terms of data requests  
8 from Staff is what you're saying.

9 A Correct.

10 MS. SHEMWELL: I need just a minute.

11 JUDGE WOODRUFF: All right.

12 Q (By Ms. Shemwell) Mr. Noack, do you  
13 know how MGE makes plans to supply gas to its  
14 customers?

15 A It's done in the gas supply  
16 department.

17 Q Do you have any further knowledge of  
18 how they do that? Do you have any more knowledge  
19 about how they do that?

20 A No.

21 Q Do you have any knowledge of what  
22 they would do if they did not have enough gas on a  
23 peak day?

24 A No.

25 MS. SHEMWELL: I think that's all I

1 have of this witness.

2 JUDGE WOODRUFF: All right, thank  
3 you, then. We'll come up to the bench for  
4 questions. Commissioner Murray, do you have any  
5 questions of this witness?

6 COMMISSIONER MURRAY: A couple,  
7 thank you, Judge.

8 BY COMMISSIONER MURRAY:

9 Q Good afternoon.

10 A Good afternoon.

11 Q I wanted to ask you about your  
12 suggestive treatment of capacity release through  
13 the PGA process, and ask you if -- wouldn't it be  
14 logical that if we treated it through the PGA  
15 process, that we would eliminate the incentive?

16 A I don't believe so at all,  
17 Commissioner. MGE would have the same incentive  
18 to maximize their capacity release revenues, be it  
19 through the sharing grid or through base rates.

20 But the difference is, is that the  
21 uncertainty would be taken out of the equation in  
22 that if the market conditions changed and we  
23 didn't earn the amount of revenue that's included  
24 in base rates, we wouldn't be harmed.

25 But on the flip side, if we earned

1 much more, the customers would do -- would do even  
2 better than if the money was in base rates.

3 Q But the PGA is designed to recover  
4 actual costs, is it not?

5 A It is. Yes.

6 Q And if -- if we included the  
7 incentive as you're suggesting, and some of the  
8 actual costs were reduced through the capacity  
9 release, then wouldn't the rate payers actually be  
10 paying more than actual costs through the PGA in  
11 those instances where the incentive kicked in for  
12 the Company?

13 A No, I don't believe so. The actual  
14 costs that we would be paying for the capacity  
15 would remain the same. It would not change. Be  
16 it whether the -- this incentive was in the PGA or  
17 whether this incentive was in the base rates.

18 Q But it wouldn't actually cost you  
19 the same because you'd be recovering some of that  
20 through capacity release; is that right?

21 A We -- well, right now through our  
22 PGA, if -- let's say we have ten dollars of  
23 capacity costs. We collect all ten dollars of  
24 those capacity costs through our PGA. If we have  
25 two dollars of capacity release revenues, that

1 doesn't go through the PGA, the customers are  
2 paying the same ten dollars through that PGA.

3 Q Currently because we're not treating  
4 it through the PGA.

5 A Correct. So they're still paying  
6 ten dollars, and where they're getting credit for  
7 their -- for this revenue is through base rates.

8 If this goes through the PGA, the  
9 customer still pays ten dollars for the capacity,  
10 and then at the time when we were able -- if we  
11 were able to market any excess and get revenue for  
12 it, we would show that credit instead of in base  
13 rates, as going -- being refunded to the customers  
14 through the PGA.

15 Q But under your incentive analysis,  
16 you wouldn't show at all, depending on how --

17 A We wouldn't -- no. The first  
18 dollar, as Mr. Micheel pointed out, would be split  
19 15 cents to MGE and 85 cents to the customers.  
20 That's correct.

21 But to look at it through another  
22 example with using the Staff's method of a million  
23 three forty? If MGE was able, because maybe the  
24 pipeline gets delayed or they run into some  
25 problems, and MGE is able to generate \$2 million

1 in the first year, through my sharing grid, the  
2 rate payer would realize a revenue credit -- or a  
3 PGA credit, excuse me, of \$1,490,000. Or \$150,000  
4 more than if that was in base rates.

5 So if we maximize our release  
6 revenue, capacity release revenue, the rate payers  
7 actually do better after you reach a certain  
8 point.

9 Q Let me ask you this just  
10 hypothetically. If -- if you were -- if you had a  
11 choice -- and if you don't feel like you want to  
12 answer this question, that's all right, you don't  
13 have to answer it.

14 But if the Commission were inclined  
15 to either adopt Staff's methodology and keep it in  
16 base rate with the baseline that Staff is  
17 suggesting, or the incentive, either do that or do  
18 OPC's alternative, which would be -- it's not what  
19 OPC's recommending, but they said if we decide to  
20 treat capacity release through the PGA, that there  
21 would be no incentive attached to it, if you had a  
22 choice between those two things, do you know which  
23 you prefer?

24 A Well, first of all, I believe that's  
25 -- both of those are Staff's. If -- I mean,

1     Witness Allee says either it's a million three  
2     forty through base rates; or if you put it in PGA,  
3     you get nothing.

4             Q       And I believe OPC had kind of used  
5     that as their alternative also.

6             A       I think OPC's was if you use the  
7     sharing grid, we still want a baseline where the  
8     first dollar goes to the customer and then after  
9     you reach a point, then we'll share with you.

10            Q       But in terms of including it in the  
11     PGA, they don't want any incentive attached to  
12     that?

13            A       I believe -- I believe after a  
14     baseline, they'll allow some sharing. Even in the  
15     PGA.

16            Q       That's not what I heard. I may -- I  
17     was listening and I -- that's not what I heard.

18            A       That's been my understanding in  
19     reading the testimony. That's -- of Mr. Busch.

20            Q       And that can be clarified.

21            A       Sure. Sure. But -- well, I would  
22     much rather have the ability to earn something.  
23     And if it's got to be through the base rates, so  
24     be it. But what I'd like to see, then -- I think  
25     using the past is not the way necessarily to do

1 it. We have to look to the future.

2 As Mr. Hayes testified earlier, we  
3 don't know what the market conditions are going to  
4 be relatively soon in the future, and so, you  
5 know, it's really putting a big question mark on  
6 MGE's ability to generate what Staff or OPC is  
7 recommending be put in the base rates.

8 So I guess in answer to that, if I  
9 had my druthers, and I had either none in the PGA,  
10 some in base rates, or at least a chance in base  
11 rates, I would say, you know, give us a lower  
12 baseline possibly in base rates and we'll try  
13 that.

14 Q But with the same baseline that has  
15 been suggested, what would you prefer?

16 A I -- I mean -- I just don't know  
17 what the future's going to hold for -- for -- for  
18 capacity release revenues, Commissioner. I'd  
19 rather see us not go, you know, in the hole, or  
20 not be able to generate something that we've --  
21 we've given back. So I guess right through the  
22 PGA.

23 Q I was going to say the risk  
24 associated with keeping the baseline that's been  
25 suggested here, is that what you're saying? You



1 would not want to just assume that risk?

2 A Well, we would need to -- you know,  
3 I -- I'd have to talk to Mr. Hayes in that  
4 department. I mean, I don't know how much more  
5 aggressively he can market his capacity release,  
6 and I -- you know, so.

7 I'd like to be able to generate  
8 something out of it and not -- not just be giving  
9 back to the rate payer if we can't get it. I  
10 mean, if we have no ability to -- to generate that  
11 revenue.

12 COMMISSIONER MURRAY: Thank you.

13 THE WITNESS: You're welcome.

14 JUDGE WOODRUFF: I'd like to ask a  
15 question just to make sure I understand how this  
16 whole process works, too.

17 BY JUDGE WOODRUFF:

18 Q Under the current system which Staff  
19 proposes continues, I think you said those figures  
20 are 1.3 million?

21 A Currently it's 1.2 million. What  
22 Staff is recommending in this case is 1,340,000.

23 Q We'll call it one million three.

24 A All right.

25 Q To make is easier here. Under that

1 system, if the Company is able to resell a million  
2 dollars of capacity release, the rate payers still  
3 get credit for 1.3 million. Is that right?

4 A That's correct.

5 Q And if the Company does really well  
6 and gets \$2 million of sales, the customers still  
7 get the 1.3 million and the Company gets the .7  
8 million?

9 A That's correct.

10 Q Okay.

11 A And that goes every year until our  
12 next rate case.

13 JUDGE WOODRUFF: Okay. That's all  
14 the questions I have, then. All right then.

15 Recross? Kansas City and Joplin are  
16 not here. Federal Agencies have any recross?

17 MR. PAULSON: No, sir.

18 JUDGE WOODRUFF: All right. Jackson  
19 County is not here. Midwest Gas, anything  
20 further?

21 MR. CONRAD: No, sir.

22 JUDGE WOODRUFF: Public Counsel?

23 MR. MICHEEL: No, Your Honor.

24 JUDGE WOODRUFF: Staff?

25 MS. SHEMWELL: No, Your Honor.

1 Thank you.

2 JUDGE WOODRUFF: All right. Any  
3 redirect?

4 MR. DUFFY: Briefly. Just a couple  
5 things.

6 REDIRECT EXAMINATION BY MR. DUFFY:

7 Q I think Ms. Shemwell asked you a  
8 question, assuming there are capacity releases.  
9 Were you assuming that for purposes of her  
10 question, or can you testify that there will  
11 always be capacity releases and capacity release  
12 revenues?

13 A No, I can't assume that, not at all.

14 Q Are there situations that MGE  
15 experiences now where there are no capacity  
16 release revenues from the pipeline?

17 A I think in the -- in the case of  
18 Enbridge, the old Kansas pipeline, there are no  
19 capacity release revenues that I'm aware of. It's  
20 not an automatic. If we have excess capacity --  
21 or unused capacity, excuse me, unused capacity,  
22 then we can sell it.

23 Q Okay. If you had to choose between  
24 death by strangulation or electrocution, which  
25 would you prefer? Strike that.

1 MR. DUFFY: Nothing further.

2 JUDGE WOODRUFF: All right. Thank  
3 you, Mr. Noack. You can step down. The next name  
4 on the list then is --

5 MR. MICHEEL: Your Honor, we would  
6 call James Busch.

7 (Witness sworn.)

8 JUDGE WOODRUFF: Mr. Micheel, you  
9 can inquire when you're ready.

10 MR. MICHEEL: Thank you, Your Honor.

11 JAMES A. BUSCH, testified as follows:

12 DIRECT EXAMINATION BY MR. MICHEEL:

13 Q Mr. Busch, would you state your name  
14 for the record, sir?

15 A My name is James A. Busch,  
16 B-u-s-c-h.

17 Q And how are you employed, sir?

18 A I am a public utility economist with  
19 the Office of the Public Counsel.

20 Q And did you cause to be filed your  
21 revenue requirement direct testimony both NP and  
22 HC that has been marked as Exhibits 211 NP and 211  
23 HC in this proceeding?

24 A I did.

25 Q And did you cause to be filed your

1 surrebuttal testimony which has been marked as  
2 Exhibit 214 NP and 214 HC in this proceeding?

3 A I did.

4 Q Do you have any corrections that you  
5 need to make to either of those two pieces of  
6 testimony?

7 A No, I do not.

8 Q If I asked you the questions  
9 contained in Exhibits 211 and 214 today, would  
10 your answers be the same or substantially similar?

11 A Yes, they would.

12 MR. MICHEEL: With that, Your Honor,  
13 I would move the admission of 211 NP, 211 HC, 214  
14 NP, and 214 HC, and tender Mr. Busch for cross  
15 examination on the issue of capacity release off  
16 system sales revenue.

17 JUDGE WOODRUFF: All right. And  
18 you're not offering 212 or 213 at this time?

19 MR. MICHEEL: Those are rate design  
20 pieces, Your Honor, and I would offer 211 because  
21 that is only dealing with capacity release off  
22 system sales revenues. But the 214 has some rate  
23 design and, adhering to your rule, I would just  
24 offer 211.

25 JUDGE WOODRUFF: Okay. Let me --

1     since you've talked about my rule, let me ask the  
2     parties, is there any reason to do it that way, or  
3     should I just go ahead and offer these all at the  
4     same time?

5                     MR. DUFFY: Your Honor, I'm not  
6     competent to answer on behalf of MGE since I'm  
7     only in here on this one issue. I would prefer  
8     that you consult with Mr. Hack before you change  
9     anything.

10                    MR. MICHEEL: You've already had an  
11     exception to that rule, Your Honor, because you  
12     admitted Ms. Bolin's testimony, so --

13                    JUDGE WOODRUFF: Yes, I did. I  
14     forgot at the time.

15                    MR. MICHEEL: So --

16                    JUDGE WOODRUFF: We'll go ahead and  
17     do it --

18                    MR. CONRAD: It's easier to seek  
19     forgiveness than permission.

20                    JUDGE WOODRUFF: That's right.

21                    MR. CONRAD: Judge, to respond to  
22     your question, we certainly have no problem with  
23     you doing it that way, and I guess from my  
24     perspective it seems to make a lot of sense where  
25     we have people that are appearing on multiple

1 issues.

2 Other than that, you're almost  
3 forced to say, well, starting at page 4, line 14,  
4 I offer, you know. And that doesn't -- that's not  
5 going to work well, I don't think.

6 JUDGE WOODRUFF: All right. So  
7 you're asking that 211 actually be admitted at  
8 this time?

9 MR. MICHEEL: Yes. Because 211 only  
10 deals with these revenue requirement issues, Your  
11 Honor, and what Mr. Busch is up here for. 214 has  
12 some rate design issues in it, and that's for next  
13 week.

14 JUDGE WOODRUFF: All right. Very  
15 good. 211 NP and HC have been offered into  
16 evidence. Are there any objections to their  
17 receipt? Hearing none, they will be received into  
18 evidence.

19 For cross examination, we will begin  
20 with Staff.

21 MS. SHEMWELL: No questions, thank  
22 you.

23 JUDGE WOODRUFF: Kansas City and  
24 Joplin are not here. Federal Agency not here.  
25 Jackson County not here. Midwest Gas?

1                   MR. CONRAD: Judge, we don't have  
2 questions for Mr. Busch on this particular revenue  
3 issue. We will have questions for him later, but  
4 my understanding is that will be for Thursday or  
5 Friday, as the case may be. So with that, we  
6 would have nothing on this issue at this time.

7                   JUDGE WOODRUFF: All right. Thank  
8 you. For MGE?

9 CROSS EXAMINATION BY MR. DUFFY:

10               Q       Good afternoon, Mr. Busch.

11               A       Good afternoon, sir.

12               Q       Do you agree that MGE ought to be  
13 given a reasonable opportunity to achieve a level  
14 of return authorized by the Commission?

15               A       That they should be given a  
16 reasonable opportunity?

17               Q       Yes.

18               A       Yes, I agree with that.

19               Q       Do you agree that the Commission  
20 ought to use reasonable assumptions in setting  
21 rates when they don't have exact numbers?

22               A       Yes, I do.

23               Q       Is contracting for natural gas that  
24 it later sells to its customers a normal part of  
25 MGE's business activities?



1           A       I believe it is.

2           Q       Is arranging for transportation on  
3 interstate pipelines for the gas that it buys for  
4 its customers a normal part of MGE's business  
5 activities?

6           A       I believe it is.

7           Q       Is the cost of the gas that MGE  
8 sells to its customers charged to them through the  
9 PGA provisions in MGE's tariff?

10          A       Yes, it is.

11          Q       Is the cost of the transportation  
12 for the gas that MGE sells to its customers  
13 charged to them through the PGA provisions in  
14 MGE's tariffs?

15          A       Yes, it is.

16          Q       In your direct testimony, which I  
17 think is Exhibit 211, on page 4 at lines 13  
18 through 15, you give a definition of off system  
19 sales. My question is, did you get that  
20 definition from some industry publication?

21                   MS. SHEMWELL: Where are you?

22                   MR. DUFFY: Page 4, lines 13 through  
23 15. Direct. 211.

24                   MS. SHEMWELL: Thank you.

25                   THE WITNESS: For purposes of this

1 testimony, I do not believe I looked -- got on an  
2 industry site for that definition. I believe that  
3 that is a definition that I have -- am generally  
4 familiar with through working with OPC and the  
5 Public Service Commission.

6 Q (By Mr. Duffy) So basically you're  
7 stating what your general understanding of off  
8 system sales is at that point?

9 A My understanding from talking to  
10 various LDC gas supply personnel in the State of  
11 Missouri.

12 Q Okay. Did you necessarily intend it  
13 to apply to MGE?

14 A I was just there making a generic  
15 statement about what -- generally what off system  
16 sales are.

17 Q Okay. Am I correct that the off  
18 system sales of MGE as you have identified in this  
19 case are shown on your Schedule JAB-2 which is  
20 attached to that document?

21 A Yes, they are.

22 Q And as I previously discussed with  
23 you, I believe, MGE's position is that the  
24 material on Schedule JAB-2 is not necessary to be  
25 considered highly confidential at this point, so

1 I'm going to ask you some questions in the open  
2 record about what's on there.

3 I want to focus on the material in  
4 the middle of that page where it says off system  
5 sales and then there is an October '01 date and a  
6 number and a December '01 date and a number. Is  
7 that the off system sales that you're talking  
8 about in this case?

9 A Yes. Through the data requests that  
10 I asked MGE, those were the only two months where  
11 they indicated that they had off system sales.

12 Q Now, does the '01 in those instances  
13 refer to the year 2001?

14 A Yes, they do.

15 Q What's the test period for this  
16 case?

17 A I believe it's through June 30th of  
18 '03, trued up through December 31 of '03.

19 Q Are those two sales in this test  
20 period?

21 A No, they are not.

22 Q So there were no off system sales in  
23 the test period for this case?

24 A I do not believe there were.

25 Q And the only ones that you have been

1     able to identify were back in 2001, totalling  
2     something less than \$300,000 in revenue, if my  
3     numbers are correct?

4             A       That is correct.

5             Q       And as far as you know, the last off  
6     system sale that MGE made was in December of 2001?

7             A       As far as I know and from what the  
8     Company has told me.

9             Q       Do you still believe, then, that as  
10    far as MGE is concerned, that off system sales are  
11    usually bundled with the sale of excess pipeline  
12    capacity?

13            A       I don't believe that MGE does off  
14    system sales, or has done off system sales  
15    necessarily like that in the past few years, but  
16    generally that statement, I think, is still true.  
17    You can have an off system sale where you bundle  
18    it with capacity release.

19            Q       Okay. So you would change your  
20    testimony to say that in MGE's case, they can be  
21    bundled, but as we've seen from the evidence here,  
22    they are apparently not bundled?

23            A       Well, I don't know that they're not  
24    necessarily bundled per se, that just gives out  
25    dollar numbers. For those two -- two months back

1 in 2001.

2 Q Well, isn't your testimony that in  
3 recent months shown on Schedule JAB-2 that  
4 capacity release revenues have been increasing,  
5 but there have been no corresponding off system  
6 sales to go with those increased capacity release  
7 revenues, have there?

8 A That is correct. The capacity  
9 release numbers have gone up and there have not  
10 been any off system sales.

11 Q Regarding your testimony that there  
12 have been recent increases in the level of  
13 capacity release revenues, I would like to know if  
14 it's your testimony today that they increased  
15 because of the presence of the Kern River pipeline  
16 expansion.

17 A I don't think I've made any  
18 statement that's -- that the capacity release  
19 revenues have increased because of the Kern River  
20 pipeline.

21 Q Did they increase because of  
22 increased off system sales?

23 A Did you say have they increased  
24 because of increased off system sales?

25 Q That's what I said.

1           A       Since off system sales have not  
2     increased, I do not believe that is the case.

3           Q       You really don't know why they've  
4     increased in those last months, do you?

5           A       They've either released more  
6     capacity or they've gotten a higher value for it  
7     per unit basis. That would be the two reasons  
8     why.

9           Q       Do you know -- do you have any  
10    knowledge as to whether either one of those two  
11    things is -- is a reason? Or are you just coming  
12    up with something that explains it?

13          A       I've got data requests that show the  
14    volumes that they've released and the per unit  
15    charge that they collected. Right now today, I  
16    cannot remember exactly, but I do have the data  
17    requests that the Company has given me. I just  
18    can't remember right now today.

19          Q       Do you remember asking them  
20    specifically why they were increasing during the  
21    last couple of months as shown on this schedule?

22          A       I don't believe I asked that  
23    question in the data request.

24          Q       You agree, do you not, that the  
25    Cheyenne Plains pipeline will run in a

1       southeasterly direction from Cheyenne, Wyoming,  
2       generally, to the middle of southern Kansas?

3               A       I believe that is the route that is  
4       proposed that it's going to be constructed on.

5               Q       And that it's supposed to be a  
6       36-inch diameter pipeline?

7               A       I believe currently that is the  
8       case.

9               Q       And that it will be capable of  
10      carrying 560,000 decatherms per day?

11              A       That is my understanding.

12              Q       Which would make it roughly five and  
13      a half times larger than the Pony Express  
14      pipeline? Which is around a hundred thousand?

15              A       I believe so.

16              Q       Cheyenne Plains will interconnect  
17      with more pipelines than the Pony Express pipeline  
18      connection with, will it not?

19              A       I don't know that for sure.

20              Q       Do you know whether the Pony Express  
21      pipeline connects with A and R or not?

22              A       No, I do not.

23              Q       Do you know whether Cheyenne will  
24      connect with A and R or not?

25              A       I believe that -- I think Mr. Hayes

1 said that earlier today.

2 Q Because it will interconnect with  
3 some of these pipelines, it will provide an  
4 alternative source to third parties seeking  
5 transportation of gas out of the Rocky Mountain  
6 region, will it not?

7 A I believe that -- if it comes in  
8 service, when it comes in service, that it will be  
9 an alternative, yes, that's true.

10 Q And because Cheyenne Plains is not  
11 scheduled to start moving gas until January of  
12 2005, some, what, six months from now, none of the  
13 historical revenue figures that you've shown on  
14 your Schedule JAB-2 reflect Cheyenne Plains being  
15 in operation; is that right?

16 A No, I did not take into account the  
17 Cheyenne Plains. The potential future which may  
18 or may not happen in January 2005. I relied on  
19 the -- the historic facts that I had.

20 Q Um, you referred in your surrebuttal  
21 testimony, I believe, somewhere around page 21, to  
22 your proposal on a -- to have a baseline of  
23 assumed revenues and rates as the ultimate  
24 incentive. Didn't you call it that, the ultimate  
25 incentive?



1           A       Could you point me to a specific  
2 line, please?

3           Q       Let's see. I'm looking at page 21,  
4 line 19.

5           A       Yes, I see it there.

6           Q       Do you agree that your incentive  
7 baseline level ought to be reasonable?

8           A       I believe it is reasonable.

9           Q       Do you agree that it ought to be  
10 reasonably attainable by MGE?

11          A       I believe it is.

12          Q       Okay. So you kind of answered two  
13 questions there, that -- my question was, do you  
14 think it ought to be reasonably attainable by MGE,  
15 and you said it is. Does that mean you think this  
16 one is reasonably attainable by MGE and you think  
17 a baseline ought to be reasonably attainable by  
18 MGE both?

19          A       I think so.

20          Q       Okay. I don't want to confuse you.

21          A       I think it should be attainable and  
22 I believe that what I have proposed is attainable.  
23 I think that's what you're asking me.

24          Q       Okay. Now, there can be -- an  
25 objective can become, or a -- yeah, an objective

1 can become unattainable, can it not? In general  
2 terms?

3 A I think that could be true.

4 Q And if it were unattainable,  
5 wouldn't it be unreasonable?

6 A At the time it was set, it would not  
7 be unreasonable per se.

8 Q If you -- well, if I offered you a  
9 million dollars to jump up from that witness chair  
10 right now and run a mile in under one minute,  
11 would that be an unreasonable incentive to you?  
12 Or an unattainable incentive for you?

13 A It would be unattainable, that's for  
14 sure. You could even go up a few minutes and that  
15 would be unattainable for me.

16 Q And if it were unattainable,  
17 wouldn't it be unreasonable?

18 MR. CONRAD: Probably not from Mr.  
19 Duffy's perspective.

20 THE WITNESS: I don't know if I can  
21 agree with that.

22 Q (By Mr. Duffy) So it would be your  
23 testimony that an unattainable objective can be  
24 reasonable?

25 A I think like if you pointed out to

1 me and said I'll give you a million dollars if you  
2 can jump up and run a mile in five minutes, that  
3 might be unattainable for me, but there might be  
4 somebody else who that -- that could attain. So  
5 it might be a reasonable offer to make. Just  
6 because I don't have the capability of doing it I  
7 don't think makes it unreasonable.

8 Q If the PSC were to accept your  
9 recommendation and set a baseline at \$1.5 million,  
10 which is higher than what the Staff is  
11 recommending, but that level were not achieved by  
12 MGE, do you agree that MGE would lose revenues,  
13 would not -- would be -- MGE would suffer a loss  
14 in that hypothetical situation?

15 A Not necessarily.

16 Q Well, if you assume that we're going  
17 to make a million five in revenue, and let's  
18 assume for purposes of my question that that's all  
19 there is to this case, or for this example, and we  
20 don't make a million five and we've set rates on  
21 the assumption that we're going to make a million  
22 five, then haven't we lost money?

23 A So you're giving me the hypothetical  
24 that the only revenue source was capacity release  
25 and off system sales of 1.5 million?

1           Q       If that makes it easier for you to  
2     answer the question.

3           A       In that scenario if that was the  
4     revenue source and they did not attain the 1.5  
5     million, then the revenues would be -- they would  
6     not attain the revenues.

7           Q       Then let's assume the Commission  
8     sets it at 1.5, the rates, and MGE doesn't attain  
9     the 1.5 level. What's MGE's remedy? Do they just  
10    have to file another rate case?

11          A       There could be other factors that  
12    other revenues have gone up, costs could have gone  
13    down, that they would not have to file a rate  
14    case, if that was the only thing that happened was  
15    their capacity to sell off system sales, it was  
16    not built into the rates.

17          Q       But MGE's only method of changing  
18    the rates is a rate case; is that right?

19          A       Best of my knowledge, the only way  
20    they can change their rates is through a general  
21    rate case.

22                   MR. DUFFY: Okay. That's all I  
23    have.

24                   JUDGE WOODRUFF: Thank you. Come up  
25    to questions from the bench. Commissioner Murray?

1 BY COMMISSIONER MURRAY:

2 Q Good afternoon, Mr. Busch.

3 A Good afternoon, ma'am.

4 Q I just want to clarify one thing.

5 What is Public Counsel's position, if we were to  
6 treat capacity release through the PGA process? I  
7 understand that's not your choice, but if we did,  
8 what is your position concerning any incentive?

9 MR. DUFFY: I'm sorry, can you turn  
10 on the Commissioner's microphone? I'm having  
11 trouble hearing her.

12 COMMISSIONER MURRAY: I apologize, I  
13 will repeat that.

14 Q (By Commissioner Murray) I  
15 understand that it's not Office of Public  
16 Counsel's position that we should treat capacity  
17 release through the PGA mechanism. But if we  
18 chose to do that, what is your position concerning  
19 an incentive mechanism?

20 A If the Commission decides that it  
21 should be moved back into the PGA/ACA, from what I  
22 wrote on my testimony was that you should still  
23 establish a \$1.5 million baseline that they have  
24 to achieve. Basically that would be money that  
25 would go to the consumers, regardless of whether

1 or not they hit that level or not. Then,  
2 according to my testimony, then they can start the  
3 sharing grid that they started.

4 Q So you would include a sharing grid  
5 even in the PGA treatment?

6 A Yeah. Once they obtained \$1.5  
7 million, and they would have to attain that, there  
8 would still be that amount they would have to  
9 reach, then they could start sharing.

10 Q And you don't think that creates a  
11 possibility of there being -- of the PGA passing  
12 through something other than actual costs?

13 A I -- I do think -- when I heard that  
14 question -- when you asked Mr. Noack that  
15 question, it did strike me that if there is that  
16 incentive, it would be passing on costs. It  
17 wouldn't be the actual cost because some of that  
18 money would be going to MGE. I do agree with  
19 that.

20 COMMISSIONER MURRAY: All right.  
21 Thank you.

22 JUDGE WOODRUFF: Commissioner  
23 Applling?

24 COMMISSIONER APPLING: No questions,  
25 Your Honor.

1 JUDGE WOODRUFF: I don't have any  
2 questions so we'll go to recross. Staff?

3 MS. SHEMWELL: None, thank you.

4 JUDGE WOODRUFF: Midwest Gas?

5 MR. CONRAD: No, sir, thank you.

6 JUDGE WOODRUFF: MGE?

7 MR. DUFFY: No questions.

8 JUDGE WOODRUFF: Redirect?

9 MR. MICHEEL: Just a couple, Your  
10 Honor.

11 REDIRECT EXAMINATION BY MR. MICHEEL:

12 Q Mr. Duffy asked you some questions  
13 about reasonable assumptions. Do you recall those  
14 questions?

15 A Yes, I do.

16 Q Do you believe that your assumptions  
17 contained in your testimony regarding capacity  
18 release and off system sales are reasonable?

19 A Yes, I believe they are reasonable.

20 Q Commissioner Murray asked you some  
21 questions regarding placing capacity release and  
22 off system sales in the PGA. Do you recall those  
23 questions?

24 A Yes, I do.

25 Q Are you aware that the Staff has

1 recommended if the Commission decides to place PGA  
2 -- or off system sales and capacity release  
3 revenues in the PGA, that they just be dollar for  
4 dollar passed through and no incentive given?

5 A I think that's their testimony.

6 Q Is that something that the Office of  
7 Public Counsel would be willing to accept if the  
8 Commission decided to do that?

9 A I believe that's something the  
10 Office of Public Counsel would be in favor of.  
11 They would accept that.

12 MR. MICHEEL: That's all the  
13 questions that I have, Your Honor.

14 JUDGE WOODRUFF: Thank you. And Mr.  
15 Busch, you can step down.

16 Next witness on the list would be  
17 Anne Allee from Staff.

18 (Witness sworn.)

19 JUDGE WOODRUFF: You may be seated.  
20 And you may inquire.

21 ANNE ALLEE, testified as follows:

22 DIRECT EXAMINATION BY MS. SHEMWELL:

23 Q Would you please state your name for  
24 the record and spell your last name?

25 A Anne Allee, A-l-l-e-e.



1 Q Where do you work, Ms. Allee?

2 A I work for the Public Service  
3 Commission.

4 Q How long have you worked here?

5 A Approximately 13 years.

6 Q What do you do at the Commission?

7 A I am a regulatory auditor in the  
8 procurement analysis department.

9 Q Did you prepare testimony that has  
10 been marked in this case as --

11 JUDGE WOODRUFF: It starts with 800,  
12 801.

13 MS. SHEMWELL: Thank you.

14 Q (By Ms. Shemwell) 800 HC and 800 NP  
15 for your direct, 801 for your rebuttal?

16 A Yes.

17 Q 802 HC and NP for your surrebuttal?

18 A Yes.

19 Q If you were asked the same questions  
20 today, would your answers be the same?

21 A Yes.

22 Q Are your answers true and correct to  
23 your knowledge and belief?

24 A Yes.

25 MS. SHEMWELL: Judge, I would offer

1 Ms. Allee's testimony into evidence. She will not  
2 -- this is her only appearance.

3 JUDGE WOODRUFF: All right. Thank  
4 you.

5 MS. SHEMWELL: And offer her for  
6 cross.

7 JUDGE WOODRUFF: Exhibits 800 NP and  
8 HC, 801 and 802 HC and NP have been offered into  
9 evidence. Any objections to their receipt?  
10 Hearing none, they will be received into evidence.

11 And for cross examination we will  
12 begin with Public Counsel.

13 MR. MICHEEL: I have no questions  
14 for Miss Allee.

15 JUDGE WOODRUFF: Thank you. KC and  
16 Joplin are not here. Federal Agencies?

17 MR. PAULSON: No questions, sir.

18 JUDGE WOODRUFF: Jackson County is  
19 not here. Midwest Gas?

20 CROSS EXAMINATION BY MR. CONRAD:

21 Q Good afternoon, Miss Allee.

22 A Good afternoon.

23 Q I understand from the preparatory  
24 examination of your counsel that this is your  
25 first and only appearance?

1 A Yes.

2 Q In this case, you hope.

3 A Yes.

4 Q Okay. I don't have very many  
5 questions for you, I just have a few things I need  
6 to get straight about your testimony. And maybe  
7 you can help me first get my terminology straight.  
8 Look, if you would, please, on page 3 of Exhibit  
9 800, that's your direct.

10 A Okay.

11 Q And I wanted you to look, please, at  
12 lines 8 through 10, there is a sentence there that  
13 I want to ask you a question about. Are you  
14 there?

15 A Yes.

16 Q Says something about natural gas is  
17 purchased and injected into storage facilities, do  
18 you see that?

19 A Yes.

20 Q Would you agree with me that it is  
21 purchased for what I will call the system supply  
22 customers?

23 A It's purchased for MGE's  
24 distribution system, which would include system  
25 supply customers.

1           Q       Are they purchasing gas for the  
2       transportation customers?

3           A       Does MGE purchase gas for  
4       transportation customers?

5           Q       That's correct.

6           A       Not to my knowledge, no.

7           Q       So the only customers left would be  
8       the sales customers, am I right?

9           A       Yes. MGE purchases gas for its  
10       sales customers.

11          Q       Okay. And just so my terminology is  
12       straight, when I say system supply customers,  
13       that's the ones I'm talking about, because they  
14       are receiving their gas from system supply,  
15       distribution system supply. Okay?

16          A       Yes. Okay.

17          Q       Now, that sentence that we directed  
18       your attention to, or I directed your attention to  
19       at lines 8 through 10, does that also describe  
20       what we might call the storage injection and  
21       withdrawal cycle?

22          A       Yes.

23          Q       And could you just briefly explain  
24       your understanding of a storage injection and, I  
25       think, slash withdrawal cycle, how that works?

1           A       Yes. Each year the injection cycle  
2       is typically April through October, so MGE would  
3       purchase gas throughout the summer months,  
4       building up their storage, and then the withdrawal  
5       back as -- in the winter months from November  
6       through March, and that happens each year. For  
7       storage.

8           Q       Okay. And the storage we're talking  
9       about, is that what we've referred to on line 8,  
10      storage facilities, right?

11          A       Yes.

12          Q       Whose storage facilities are these,  
13      Miss Allee?

14          A       In MGE's case, they are Southern  
15      Star Central and Panhandle Eastern Pipeline.

16          Q       Are you aware of any storage  
17      facilities that MGE has of its own?

18          A       No.

19          Q       Can you describe briefly for me your  
20      understanding of the process by which MGE arranges  
21      for those storage facilities that you're referring  
22      to?

23          A       They contract with or have  
24      agreements with these interstate pipelines to use  
25      their storage. Is that what you're referring to?

1           Q       That could be part of it. Is that  
2 what your understanding is?

3           A       Yes.

4           Q       Do you also understand anything that  
5 a regulatory Commission might be involved in that  
6 in some way?

7           A       As far as the rates --

8           Q       Yes, ma'am.

9           A       -- that the interstate pipeline  
10 charges MGE? Yes, they're set by FERC.

11          Q       And they would be set in the cases  
12 you mentioned, in cases at FERC for Southern Star  
13 and for Panhandle. Correct?

14          A       Correct.

15          Q       Now, I take it, then, from that  
16 earlier statement that we're looking at here and  
17 that we talked about, that it is the system supply  
18 customers for whom the gas supplies are withdrawn  
19 and sold to during the winter months; is that  
20 correct?

21          A       Yes. Generally I didn't review how,  
22 you know, the different customers of MGE use  
23 storage in my analysis.

24          Q       Sure. But the withdrawal part of  
25 that cycle is in the winter months.

1 A Yes.

2 Q Were you here when Mr. Hayes  
3 testified?

4 A Yes.

5 Q Do you recall his comment that their  
6 heavy period or their heavy draw period was in  
7 December through February?

8 A Yes.

9 Q Is that consistent with your  
10 understanding and observation also?

11 A Yes.

12 Q Would you agree with me that some  
13 customers are more heat sensitive than others?

14 A Yes.

15 Q And of the system supply customers,  
16 which group of customers would you, based on your  
17 understanding, take to be the most heat sensitive?

18 A Their firm sales customers.

19 Q And they would fall into which of  
20 several classes, do you know? If you know?

21 A I don't know.

22 Q You don't know. When we say heat  
23 sensitive, what -- what do you think that means?  
24 I mean, how do you take that term?

25 A Residential customers.

1 MR. CONRAD: Okay. Thank you.

2 JUDGE WOODRUFF: For MGE, then?

3 CROSS EXAMINATION BY MR. DUFFY:

4 Q Good afternoon, Ms. Allee.

5 A Good afternoon.

6 Q I want to follow up briefly on a  
7 question Mr. Conrad asked you about does MGE  
8 purchase gas for transportation customers. Are  
9 there any situations in which MGE -- where MGE has  
10 purchased gas ostensibly for its sales for system  
11 supply customers, but it turns out that the  
12 transportation customers used that gas?

13 A Yes, that could be possible.

14 Q Okay. Can you -- can you think of  
15 any examples, or can you give the Commission any  
16 examples of when that can occur?

17 A For example, if a transportation  
18 customer would use more gas than they ordered and  
19 are nominated, then it's my understanding they  
20 would be taking gas through MGE's system.

21 Q Do you know what an operational flow  
22 order is on a pipeline?

23 A Yes.

24 Q Can you describe what can occur in  
25 that situation?



1                   MR. CONRAD: Excuse me, I object, I  
2     don't think I asked her anything about operational  
3     flow order.

4                   MR. DUFFY: I don't think it's  
5     limited by what you asked.

6                   MR. CONRAD: Forgive me. I thought  
7     she was your witness. I withdraw my objection.

8                   MR. DUFFY: If she were my witness,  
9     she'd be behaving a lot better and agreeing with  
10    me more.

11                  MR. CONRAD: I do apologize, Mr.  
12    Duffy.

13                  Q     (By Mr. Duffy) I think I was asking  
14    you, before the hilarity, about what an  
15    operational flow order was and for you to kind of  
16    give an explanation of what can occur in a  
17    situation like that.

18                  A     Yes. When an interstate pipeline  
19    company has an operational flow order, that means  
20    the LDCs need to be in balance, and there are  
21    penalties that apply if they aren't.

22                  Q     Okay. And can -- can that give rise  
23    to a situation where transportation customers  
24    would be using gas that MGE ostensibly bought for  
25    its sales customers?

1 A Yes.

2 Q Do you agree that MGE ought to be  
3 given a reasonable opportunity to achieve the  
4 level of return authorized by the Commission?

5 A Yes.

6 Q Do you agree that the Commission  
7 ought to use reasonable assumptions in setting  
8 rates when they don't have exact numbers?

9 A Yes.

10 Q Do you agree that MGE obtains most  
11 of its capacity release revenues from the Kinder  
12 Morgan Pony Express pipeline?

13 A From what I can remember, Kinder  
14 Morgan and Southern Star Central capacity release  
15 dollars are about the same. They receive 50  
16 percent from Kinder Morgan and 50 percent from  
17 Southern Star Central, roughly.

18 Q How much do they receive from  
19 Panhandle?

20 A It would be less than 1 percent.

21 Q How much do they receive from Kansas  
22 Pipeline, which I think is now called Enbridge?

23 A Probably less than 1 percent.

24 Q Do they, in fact, get any from  
25 Kansas Pipeline?

1           A       I thought I had seen one, at least.

2           Q       Were you a witness in GR-2001-382,  
3       the ACA case that we tried here last year in which  
4       the Kansas Pipeline capacity release was a -- was  
5       an issue?

6           A       Yes.

7           Q       Do you remember testimony in that  
8       case from Mr. Langston that MGE at that point had  
9       never received any capacity release revenues from  
10      Kansas Pipeline, and there had never been a  
11      capacity release in the entire history of that  
12      pipeline?

13          A       Yes, at that time.

14          Q       So it's not a given that a company  
15      can get capacity release revenues from a pipeline?  
16      Capacity that it holds; is that right?

17          A       That's true.

18          Q       There has to be a market for it,  
19      somebody else has to want to buy it?

20          A       That's true.

21          Q       And the reason, if you recall, that  
22      Kansas Pipeline had never had a capacity release,  
23      at least of evidence indicated, that their rate  
24      structure was such that they weren't competitive?  
25      Nobody wanted to haul on them because they were

1 too expensive. Isn't that your recollection?

2 A I remember that that was Mr.  
3 Langston's testimony in that case.

4 Q Do you have any reason to doubt that  
5 as being accurate?

6 A No.

7 Q Okay. We find ourselves today, I  
8 guess, that -- that in MGE's rates as they exist  
9 today, there's a specific level of revenues or  
10 base rates that are assumed to be produced by  
11 capacity release revenues; is that right?

12 A Yes.

13 Q And that's largely the result, if I  
14 read Mr. Busch's testimony correctly, of a  
15 stipulation and agreement in at least maybe two  
16 cases, a GO case and the last rate case; is that  
17 right?

18 A Yes.

19 Q And so the GO case is GO-2000-705,  
20 and Mr. Busch said that settlement was filed in  
21 April of 2000, the year 2000. Is that correct to  
22 your understanding? I was looking at his direct  
23 testimony about page 4 if you need to confirm  
24 that.

25 A Yes, that's what it says.

1           Q       Okay.  So you understand that  
2 parties sometimes settle issues in rate cases and  
3 sometimes they settle complete rate cases before  
4 the Commission, don't they?

5           A       Yes.

6           Q       And so since that was a settlement  
7 and it reflected a specific dollar amount to be  
8 included in base rates, the parties at that time,  
9 don't you think, thought in their own minds that  
10 that would be a reasonable approximation for the  
11 actual future revenue level for capacity releases,  
12 or otherwise we wouldn't have agreed to a  
13 stipulation that had that number in it?

14                   MS. SHEMWELL:  I'm going to object,  
15 that requires Miss Allee to state what she thinks  
16 other parties were thinking.  And in addition, I'm  
17 not sure she can actually even speak for the Staff  
18 as a whole on that issue.

19                   JUDGE WOODRUFF:  I'll sustain the  
20 objection.

21           Q       (By Mr. Duffy)  Do you think people  
22 enter into stipulations at the Commission that are  
23 not in their best economic interest and that are  
24 totally illogical?

25           A       No.

1           Q       Okay.  You wouldn't do anything like  
2       that, would you?

3           A       Absolutely not.

4           Q       Since that settlement was apparently  
5       filed in April of 2000, doesn't that mean that the  
6       parties' view of the future was based on what they  
7       knew in April of 2000?

8                   MS. SHEMWELL:  Again, that's asking  
9       Miss Allee to speculate about what the other  
10      parties thought.

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

13           Q       (By Mr. Duffy)  You want me to try  
14      again?

15           A       Yes, please.

16           Q       I'm simply saying that if they filed  
17      a settlement in April of 2000, it would have  
18      reflected what they thought the world was like in  
19      April of 2000.

20           A       Yes.

21           Q       And there are a lot of things  
22      different now than the way they were then, are  
23      there not?

24           A       Generally, yes.

25           Q       Was there anything in that previous

1 stipulation that said that MGE was bound to  
2 include that amount in rates forever?

3 A Not to my knowledge.

4 Q So it was like any other settlement,  
5 it was binding on the parties for that case, and  
6 in the next case they can do what they want?

7 A Yes.

8 Q Had MGE's capacity release revenues  
9 ever been treated as a part of the PGA process in  
10 their history since February 1, 1994?

11 A Yes.

12 Q Do you remember or can you give me  
13 an approximation of how many years they were in  
14 the PGA process as opposed to being out of them?  
15 I don't need to be real exact, but I'm trying to  
16 get a general idea.

17 Let me try it this way. Isn't it  
18 true that they've only been out of the PGA for  
19 about the last three years because of this  
20 incentive mechanism that was agreed to?

21 A In the previous rate case, yes.

22 Q Right. Okay. Now, the PGA and ACA  
23 process involves an audit by the Staff to  
24 determine the exact amount of gas related revenues  
25 and expenses for a particular ACA year, does it

1 not?

2 A Yes.

3 Q And doesn't that process in general  
4 terms work to pass through to customers the actual  
5 net cost of the natural gas and related costs such  
6 as pipeline transportation?

7 A Yes.

8 Q And aren't the capacity release  
9 revenues we're talking about here produced when  
10 MGE is successful in finding someone else to  
11 temporarily use the pipeline capacity that it has  
12 previously reserved for its customers?

13 A Yes.

14 Q And through capacity release, MGE  
15 essentially gets someone else to bear part of the  
16 fixed transportation costs?

17 A Yes.

18 Q So isn't it fair to say that  
19 capacity release revenues are directly related to  
20 pipeline transportation costs?

21 A Yes, they are.

22 Q And aren't pipeline transportation  
23 costs a normal component of the PGA process?

24 A Yes, they are.

25 Q And don't transportation costs have



1 both fixed and variable components?

2 A Yes, they do.

3 Q And the Commission normally does not  
4 treat pipeline transportation costs as a part of  
5 the non-gas cost of service in setting rates, do  
6 they?

7 A Not that I'm aware of.

8 Q As a general rule, would you agree  
9 that competition tends to drive down prices?

10 A As a general rule.

11 Q That was my question.

12 A Yes.

13 Q If a new interstate pipeline begins  
14 providing transportation capacity out of an  
15 existing natural gas producing region and  
16 interconnects with existing pipelines going to  
17 other regions, doesn't that increase the  
18 competition for transportation capacity out of  
19 that original region?

20 A Yes, it may increase the  
21 competition, but we don't know what the demand is  
22 going to be.

23 Q Okay. If this new pipeline has  
24 lower costs than the existing pipelines, will that  
25 tend to drive down prices on the existing

1 pipelines?

2 A As far as capacity release revenues  
3 are concerned, is that your question?

4 Q If you want to clarify it or qualify  
5 it in that fashion, you may do so. I realize it's  
6 not going to change for tariffs.

7 A Right.

8 Q It's going to drive down the prices  
9 that can be driven down. Let's put it that way.  
10 That are allowed to vary. I'll rephrase my  
11 question with that in it.

12 A That's possible.

13 Q I noticed in your direct testimony  
14 on page 5, you mentioned that the capacity release  
15 revenues from the experimental school  
16 transportation program should be treated  
17 differently from how you propose the other  
18 capacity release revenues be treated. Isn't that  
19 right?

20 A Yes.

21 Q And you said at the bottom of page 5  
22 of your direct testimony that they should be  
23 treated differently because that transportation  
24 program was scheduled to terminate on June 30,  
25 2005. Is that correct?

1           A       Yes.

2           Q       So the termination of that school  
3       transportation program, as far as you're  
4       concerned, is a known future event?

5           A       Well, unless another bill becomes  
6       law that extends that date.

7           Q       So the answer is yes?  It's a known  
8       future event?  Unless something happens to change  
9       it even more?

10          A       Yes.  Yes.

11          Q       So you considered it to be a known  
12       event, and as having an impact on the amount of  
13       future capacity release revenues for MGE, did you  
14       not?

15          A       One of the reasons that I suggested  
16       this for the school aggregation program was  
17       because it was my understanding that the parties  
18       agreed to this treatment in -- in that case.  I  
19       believe it was GT-2003-33.  And so in my direct  
20       testimony, I just suggested language to clarify  
21       MGE's current tariffs, and that the way capacity  
22       release is currently being treated.

23          Q       I read your testimony to be that you  
24       were taking it out because you believed that it  
25       wasn't going to be there in the future because the

1 law was going to expire.

2 A That wasn't my intent. My intent  
3 was to clarify the current treatment, the current  
4 -- MGE's current treatment for capacity release.

5 Q So taking it out had nothing to do  
6 with the fact that the law was going to expire?

7 A I would say that the law expiring  
8 did have something, yes, did have something to do  
9 with the way the parties had agreed to account for  
10 capacity release.

11 Q What made you think you were bound  
12 by the way the parties agreed to treat those  
13 revenues in your recommendation? Because -- you  
14 know, why did you think you had to treat them a  
15 specific way because the parties agreed to do that  
16 before?

17 I mean, you're not bound by that --  
18 the terms of some stipulation to treat them in  
19 some fashion, are you?

20 A So you're saying that in the  
21 experimental school aggregation case, just because  
22 the Staff and MGE agreed to treat capacity release  
23 this way --

24 Q I'm trying to understand your  
25 earlier explanation where I thought you told me

1     that you treat them that way because that's the  
2     way the parties agreed that they would be treated.  
3     And I am having trouble understanding that, and so  
4     I asked you the question of well, even if they did  
5     agree to do it that way, why would that stop you  
6     in terms of your recommendation?

7                     And so I asked you were you bound by  
8     the terms of some stipulation that I don't know  
9     about? Or am not aware of? So I'm -- I'm trying  
10    to understand why you said what you said.

11            A     I guess if I didn't believe that  
12    that was correct, then I could have proposed a  
13    different treatment for those capacity release  
14    revenues.

15            Q     Okay. Well, do you think that the  
16    Cheyenne Plains interstate natural gas pipeline is  
17    a known future event?

18            A     Yes, I would say it -- it will be  
19    placed in service, yes.

20            Q     Do you have any evidence that it  
21    won't come into service in January of 2005, as it  
22    has indicated?

23            A     No, I've -- I've read early 2005.

24            Q     And it's scheduled, then, to go in  
25    operation about six months before the date you

1       gave for the expiration of the experimental school  
2       transportation tariffs, right? January 2005 is  
3       six months earlier than June 30th, 2005.

4               A       Yes.

5               Q       Do you have any evidence that it's  
6       not under construction right now?

7               A       No, I do not.

8               Q       Do you dispute that it's going to be  
9       a 36-inch diameter pipeline?

10              A       I do not.

11              Q       Do you dispute that it's designed to  
12       transport 560,000 decatherms a day from the Rocky  
13       Mountain area to the mid continent region?

14              A       No.

15              Q       Do you dispute that it will be an  
16       alternative means of transportation for parties  
17       seeking to transport gas out of the Rocky Mountain  
18       area?

19              A       No.

20              Q       Do you dispute that it will cut  
21       across and interconnect with all of the same  
22       pipelines that Kinder Morgan's Pony Express  
23       pipeline connects with, and in addition, connect  
24       with A and R?

25              A       I don't know that. I don't dispute

1 it.

2 Q You previously worked as a bank  
3 teller, I believe?

4 A Yes.

5 Q And you have a degree in accounting?

6 A Yes.

7 Q As an accountant and a former bank  
8 teller and as an auditor, wouldn't you agree that  
9 when it comes to numbers, an actual number is  
10 usually more reliable than an estimated number?

11 Let me ask you this. You didn't let  
12 people make estimated deposits to their checking  
13 account when you were a bank teller, did you?

14 A No.

15 Q Isn't it a -- isn't a process that  
16 goes back in time and does an audit of actual  
17 costs and revenues going to be more accurate at  
18 tracking those costs and revenues than simply  
19 using an estimate of what they'll be in the future  
20 without any sort of a true up mechanism?

21 A I would agree with that.

22 Q You indicate several places in your  
23 surrebuttal that the Staff's position is that  
24 capacity release and off system sales revenue  
25 should be included in the calculation of base rate

1       so it will serve as an incentive for MGE to  
2       maximize the use of its idle pipeline capacity; is  
3       that right?

4               A       Yes.

5               Q       And the theory behind your position  
6       is that if the Commission sets the amount at where  
7       you propose, and I'm going to call it a target,  
8       Mr. Busch called it a baseline, any revenues that  
9       MGE attains above that target, MGE gets to keep,  
10      so to speak, so that acts as an incentive for them  
11      to try to get revenues above that target. Is that  
12      the philosophy?

13              A       Yes.

14              Q       If the target is set too low, your  
15      concern would be that MGE would get to keep more  
16      revenue than the Staff thinks it should keep.  
17      Right?

18              A       Yes.

19              Q       And if, conversely, the target is  
20      set too high, MGE will be concerned that it won't  
21      even recover the assumed level of revenues  
22      represented by the target. Right?

23              A       Yes.

24              Q       If MGE doesn't generate the assumed  
25      level of revenues represented by the target, and



1 all other elements, assuming they are actually  
2 matched at authorized levels, the result is that  
3 MGE would not earn its authorized rate of return  
4 in my hypothetical there, right?

5 A Hypothetically, yes.

6 Q So if the baseline level is set at a  
7 million five, and there turn out to be no capacity  
8 releases in year two from now, MGE would lose a  
9 million five a year, all other things being equal,  
10 unless that baseline level were changed. Right?

11 A Yes.

12 Q The only way that baseline level  
13 could be changed in this situation would be for  
14 MGE to go through a new rate case. Right?

15 A Yes, I agree.

16 Q And rate cases are expensive, are  
17 they not?

18 A Yes.

19 Q In recent years they've only been  
20 occurring about every three years; is that right?  
21 For MGE?

22 A Yes, that's --

23 Q Do you think MGE ought to have to  
24 file a new rate case because the number you or the  
25 Public Counsel estimated for capacity release

1 revenues turns out to be unrealistic?

2 A No, I don't think MGE would file a  
3 rate case just because capacity release, as you  
4 put a term, turned out to be unrealistic.

5 Q You don't think they would. My  
6 question was, do you think they ought to have to  
7 if your number turns out to be unrealistic?

8 A No.

9 Q You testified, I believe, that there  
10 are some local gas distribution companies that  
11 have their capacity release revenues treated  
12 through the PGA process right now. Is that right?

13 A Yes, that's -- that's true.

14 Q But the distinction you made was  
15 that they did not have any type of incentive or  
16 sharing grid built into their process. Is that  
17 right?

18 A That's true.

19 MR. DUFFY: That's all I have for  
20 this witness.

21 JUDGE WOODRUFF: All right. Thank  
22 you. Questions from the bench, Commissioner  
23 Murray?

24 COMMISSIONER MURRAY: Thank you.

25 BY COMMISSIONER MURRAY:

1 Q Good afternoon.

2 A Good afternoon.

3 Q I'd like to know if you could  
4 explain why Staff would prefer to see the capacity  
5 release revenue figures in rate base rather than  
6 treated through the PGA/ACA process.

7 A Um, as I said in my testimony, I  
8 think it gives the Company an incentive to attempt  
9 to release all of the capacity that they're able  
10 to. There's also an inherent level of capacity  
11 release that LDCs can achieve, can generate. You  
12 know, all of the Missouri LDCs, except for the  
13 very small, have capacity release transactions.

14 Q You're not saying, are you, that you  
15 think that MGE would not release capacity -- not  
16 -- not generate revenue from capacity releases if  
17 it were just passed through the PGA, are you?  
18 Without any incentive mechanism?

19 A No, I'm not. I'm saying if -- if  
20 the Company would -- wishes to have an incentive,  
21 then the best place is in base rates.

22 Q But I thought it was Staff's  
23 position that that's what you preferred. Rather  
24 than the PGA process with no incentive. Am I  
25 wrong on that? Wasn't your first preference to

1 have the incentive through the base rates?

2 A Yes, that was -- that was Staff's  
3 original -- that is Staff's position, was to  
4 continue to treat capacity release the way it was  
5 currently being treated for MGE. The other  
6 Missouri LDCs don't have an incentive, and  
7 therefore, it -- it's in the PGA.

8 Q And do you think the way we're  
9 treating the other LDCs is inappropriate? Or do  
10 you think they're different?

11 A Um, no, I -- I don't -- I don't --  
12 no, I don't think so. The -- the other LDCs,  
13 there is no risk, all of the risk is on the rate  
14 payer, so therefore, all of the dollars generated  
15 from capacity release go to the rate payers. In  
16 that situation.

17 Q Just strict pass through, right?

18 A Yes.

19 Q So actual costs are being passed  
20 through the rate payers, no more, no less; is that  
21 right?

22 A Right.

23 Q And why would that not be  
24 appropriate here? Why would that not be the best  
25 choice? Do you think it's important to provide an

1 incentive? And if so, why are you only suggesting  
2 an incentive that they be able to -- to earn what  
3 we're putting in their base rate?

4 I mean, it doesn't sound like Staff  
5 is proposing a true incentive, and I'm just trying  
6 to figure out why it is you're not just proposing  
7 that we just pass through the actual costs.

8 A Because it was Staff's understanding  
9 that the Company wanted this sharing grid, or an  
10 incentive, if you will. So therefore, we  
11 recommended that it be placed in base rates.

12 Otherwise, the Staff would propose  
13 that it be treated the way the other Missouri LDCs  
14 are and that it be placed back in the PGA with 100  
15 percent pass through to the customers.

16 Q So your incentive proposal is what  
17 you consider a concession to the Company's wishes?  
18 In other words, the Company's preference that  
19 there be an incentive mechanism?

20 A Yes.

21 Q And do you consider your proposal an  
22 actual incentive? A realistic incentive?

23 A You -- the \$1.3 million; is that  
24 what you mean?

25 Q Yes.

1           A       Yes. I would think it's a realistic  
2 incentive. It's, you know, based on actual  
3 capacity release levels that they've been able to  
4 achieve for the last three years.

5           Q       Okay. Well, let me ask you this.  
6 Isn't it more of an incentive to keep from losing  
7 money? To work hard not to lose money than it is  
8 an incentive to be able to keep more? I mean, the  
9 Company truly has a risk with your proposal, does  
10 it not?

11          A       Right. So -- so yes, the incentive  
12 is -- is balanced, because if they don't achieve  
13 that level, then yes, they would lose money.

14                   COMMISSIONER MURRAY: All right.  
15 Thank you.

16                   THE WITNESS: Mm-hmm.

17                   JUDGE WOODRUFF: Mr. Appling?

18                   COMMISSIONER APPLING: No questions,  
19 Judge.

20                   JUDGE WOODRUFF: All right. Then  
21 we'll go to recross?

22                   MS. SHEMWELL: Judge, should we take  
23 a break and see where we are?

24                   JUDGE WOODRUFF: Is there going to  
25 be substantial recross or redirect? If we can

1 finish her, I'd like to finish her.

2 MS. SHEMWELL: We'd like to take a  
3 break.

4 MR. FRANSON: Before you do that,  
5 can Mr. Hack and I approach? We have something we  
6 want to bring to your attention.

7 JUDGE WOODRUFF: Yes, we will take a  
8 break and you can approach.

9 MR. FRANSON: Thank you.

10 MR. MICHEEL: How long a break are  
11 we taking?

12 JUDGE WOODRUFF: I'll decide that  
13 after we talk here.

14 MR. FRANSON: Judge, on Monday, it  
15 is the intent of Staff, and I believe the Company  
16 will be joining in that and we are consulting with  
17 the other parties, that we believe we have an  
18 agreement on the following issue -- well,  
19 actually, do you want to -- there are several  
20 things that are coming up, but I think Mr. Hack  
21 maybe wanted to make it simpler.

22 MR. HACK: I think we've reached an  
23 agreement in principle on the depreciation  
24 question which is set for hearing Monday, and I  
25 wanted, first of all, for the Commission to be

1     aware of that, and we've circulated a document  
2     among the parties that are here.

3                     But we have Mr. Sullivan, who is  
4     supposed to travel in to Jeff City on Monday, and  
5     I realize it's somewhat late, but if possible, I'd  
6     like to be able to tell Mr. Sullivan whether he  
7     needs to come Monday or not.

8                     JUDGE WOODRUFF:   Okay.  Did you say  
9     you have or have not consulted with the other  
10    parties?

11                    MR. HACK:   We have begun to consult  
12    with the parties.  We will check with the parties,  
13    we're not asking you to necessarily do that.  I  
14    was asking you more from the Commission's  
15    perspective.

16                    JUDGE WOODRUFF:   If you've reached  
17    an agreement, I don't know that there would be any  
18    reason for him to come in.  But of course, you  
19    want to make sure the parties are on board with  
20    the agreement.

21                    MR. FRANSON:   And Your Honor, I  
22    might add, without necessarily identifying the  
23    other issues, the same agreement covers some other  
24    issues.  So perhaps Monday after the testimony of  
25    Dr. Morin, we need to address a scheduling at that



1 point in time.

2 JUDGE WOODRUFF: Yes. Okay. Well,  
3 as I said, we will take a break at this point,  
4 we'll come back at 3:15, and we'll discuss at that  
5 time how we want to proceed with further witnesses  
6 for today.

7 (Off the record.)

8 JUDGE WOODRUFF: Let's come to  
9 order, please. Miss Allee is still on the stand,  
10 and Chairman Gaw has indicated to me he has some  
11 questions from the bench.

12 But before we go to that, we  
13 promised to discuss how to proceed with witnesses,  
14 and the parties have indicated taking Miss Deborah  
15 Hays up as the next witness to make sure she gets  
16 through.

17 I don't expect there will be a lot  
18 of cross examination of her. If somebody  
19 disagrees with that, let me know, and then we'll  
20 proceed after her with the next witness on this  
21 case, which will be Lesa Jenkins.

22 MS. SHEMWELL: I'm sorry, Judge,  
23 we're going to take her first and then go to Lesa?

24 JUDGE WOODRUFF: Yes. At this  
25 point, then, I'll turn it over to Chairman Gaw.

1                   COMMISSIONER GAW: Thank you, Judge,  
2 I think I just have a few questions.

3 BY COMMISSIONER GAW:

4                   Q       Just to follow up on Commissioner  
5 Murray's questions, it's my understanding, tell me  
6 if this is correct, that the only LDC that does  
7 not have or would not have the capacity release  
8 sales placed into rate base would be MGE in  
9 Missouri? Is that accurate or not?

10                  A       No. Laclede Gas Company has  
11 capacity release recognized in base rates.

12                  Q       Okay. All right. What companies do  
13 not in Missouri?

14                  A       All of the other LDCs --

15                  Q       Who are they?

16                  A       That would be Atmos, Ameren,  
17 Southern Missouri Gas, Fidelity, even -- although  
18 I don't think those small companies have capacity  
19 releases. Aquila.

20                  Q       So you don't know about two of  
21 those, and two of them you think do allow the  
22 capacity release to flow through the PGA? Or was  
23 it three?

24                  A       It would be Aquila and Atmos, they  
25 do. And the smaller LDCs, because of the FERC

1 tariffs, because they aren't charged these  
2 reservation charges, they're charged based on  
3 commodity rate, then the FERC tariffs don't allow  
4 them to release the capacity.

5 Q Okay. So did you say there were  
6 two?

7 A I'm sorry, and Ameren as well.

8 Q Okay. Atmos, Ameren, and Aquila.

9 A Yes.

10 Q Are treated with the capacity  
11 release flowing through the PGA.

12 A Yes.

13 Q Correct? Laclede is in base rates.

14 A Yes.

15 Q And MGE in the past has been where?

16 A In base rates.

17 Q In base rates. How did we develop  
18 this -- this difference in the way that this issue  
19 is handled between the LDCs? How did we get to  
20 this point?

21 A It's my understanding that the LDCs  
22 have requested an incentive, and so therefore, the  
23 Staff, in order to address their request, has said  
24 that base rates is the best place for it. These  
25 other LDCs that run through the PGA have not

1 requested incentives.

2 Q So there's no incentive -- you're  
3 saying there's no incentive built in to Atmos, no  
4 incentive built in to Aquila, and none into  
5 Ameren?

6 A Correct.

7 Q And the -- and the only reason that  
8 we have Laclede and MGE treated differently is  
9 because they want some incentive mechanism, not  
10 because of policy enunciations of the Staff, of  
11 Public Counsel, or of this Commission?

12 A I believe that's correct.

13 Q Okay. Has this issue ever been  
14 dealt with by the Commission itself in any  
15 decisions, to your knowledge, or has it always  
16 been a stipulated issue? If you don't know, it's  
17 all right, it's a question I can ask to the  
18 attorneys.

19 A I believe it has been dealt with in  
20 a Laclede Gas Company case. I do not know the  
21 case number, though.

22 Q Okay. Are you familiar with whether  
23 or not there have been increases in the capacity  
24 release sales or decreases in capacity release  
25 sales by MGE over the last few years?

1           A       Yes. I looked at that. They seem  
2 to -- to fluctuate.

3           Q       All right.

4           A       By the year.

5                   COMMISSIONER GAW: Correct me if I'm  
6 wrong, Judge, is this HC material? I heard  
7 somebody suggest earlier if it was an annual  
8 report, it might be HC.

9                   JUDGE WOODRUFF: I don't believe  
10 this was HC. Mr. Duffy? There's a question about  
11 whether this information about specifics on the  
12 sales of capacity release was considered highly  
13 confidential.

14                  MR. DUFFY: Can you give me a -- are  
15 you looking at a specific schedule?

16                  COMMISSIONER GAW: We haven't got  
17 that far yet.

18                  MR. DUFFY: The total dollars per  
19 month or per year are not considered highly  
20 confidential.

21                  COMMISSIONER GAW: That's what I  
22 thought you were saying earlier.

23                  MR. DUFFY: And there can be other  
24 instances, if you can tell me what you're talking  
25 about --

1 JUDGE WOODRUFF: You're concerned  
2 about specific sales probably?

3 MR. DUFFY: Yeah.

4 COMMISSIONER GAW: I'm not intending  
5 to go there.

6 Q (By Commissioner Gaw) But on an  
7 annual basis, what -- what pattern do you -- have  
8 you seen?

9 A As I said, it -- the last three  
10 years that I looked at, it fluctuated. I can give  
11 you rough amounts.

12 Q Do you have the amounts?

13 A Yes. They are attached as Schedule  
14 3 to my direct testimony.

15 MR. DUFFY: We would not consider  
16 those numbers to be highly confidential.

17 COMMISSIONER GAW: Okay. Thank you.  
18 Go ahead.

19 THE WITNESS: In 2001, they were  
20 roughly a million dollars; in 2002, roughly \$1.5  
21 million; and in 2003, roughly \$1.4 million.

22 Q (By Commissioner Gaw) Okay. Did  
23 you go -- did you go before '01?

24 A No, I did not.

25 Q Is that information somewhere? Does

1       that show up in the record here?

2               A       Not that I'm aware of.

3               Q       So -- okay. Help me out here. Did  
4       you -- when you were looking at coming up with the  
5       -- with the average of your capacity release  
6       sales, how many years did you use?

7               A       I used three years.

8               Q       So you just used a three year  
9       window? You didn't go look over a longer period  
10      of time?

11              A       No.

12              Q       Why did you use three years as  
13      opposed to some other period?

14              A       Well, the last -- I -- I felt like  
15      that three years would be a sufficient period of  
16      time to catch any fluctuations or variations in  
17      capacity releases. Also I used the period of time  
18      since MGE's last rate case was in 2001.

19              Q       Well, that -- in the last rate case  
20      there was -- the -- the final outcome there was to  
21      put this into rate base also. Right? Capacity  
22      release?

23              A       Yes.

24              Q       Held it in the rate base?

25                      MR. DUFFY: Your Honor, we need to

1 clarify the term. You're saying rate base and  
2 we're calling it base rate. Rate base is  
3 different than base rate.

4 COMMISSIONER GAW: I'm aware of  
5 that, Counsel.

6 Q (By Commissioner Gaw) I'm trying to  
7 understand how you're building it into rate base.  
8 Or how it is impacting what the rate base is. Or  
9 how it is figured into rates. Let me ask you  
10 that.

11 MR. DUFFY: You want me to talk?

12 COMMISSIONER GAW: No, I'm asking  
13 her. I'll ask her.

14 THE WITNESS: The capacity release  
15 level is imputed as a revenue item, so therefore,  
16 it decreases MGE's revenue requirement in  
17 calculating base rates.

18 Q (By Commissioner Gaw) And it's  
19 based upon your average, right?

20 A Yes.

21 Q So your average is three years.

22 A Yes.

23 Q What was the -- how does that  
24 compare with what the average was for the last  
25 rate case? Or was it determined?



1           A       I don't -- in the last rate case,  
2       the level was \$1.2 million. I don't know how that  
3       number was agreed to.

4           Q       Okay. Are you familiar with the  
5       rate case before that one?

6           A       Yes. As far as capacity release is  
7       concerned?

8           Q       Yes.

9           A       I don't believe it was an issue in  
10      that case.

11          Q       What does it -- when you say it  
12      wasn't an issue, what does that mean?

13          A       It wasn't put in base rates for that  
14      case. At that time, um, it was probably handled  
15      through the PGA mechanism.

16          Q       And the case before this one was  
17      settled, correct?

18          A       Yes. That's correct.

19          Q       So all the parties agree to move it  
20      from the PGA over to -- I hope I get this right,  
21      Mr. Duffy -- base rates?

22                   MS. SHEMWELL: You did.

23                   THE WITNESS: Yes.

24          Q       (By Commissioner Gaw) Okay. And  
25      that's where it's been. So your average -- your

1 average in this case is how much? What's your  
2 average? That you built into base rates under  
3 Staff's proposal?

4 A One million three hundred forty  
5 dollars.

6 Q So it's somewhat of an increase over  
7 the last case?

8 A Yes.

9 Q Why do you think or do you have any  
10 understanding about why that would have increased?

11 A Um, there are a lot of things that  
12 can affect the capacity. For example, if a -- if  
13 the summer is hotter than normal and the electric  
14 generating companies need that capacity, that may  
15 be a reason it would increase. I -- I think it  
16 would fluctuate from year to year.

17 Q Does demand and supply over a -- the  
18 -- when you're dealing with a particular supply  
19 line pipeline, does that impact the value of  
20 capacity releases?

21 A Yes, it would.

22 Q And in what way?

23 A If there's a great demand, then the  
24 price should be more.

25 Q What about supply? In other words,

1     when you're dealing with capacity release here,  
2     and I say supply, I'm talking about the amount of  
3     available capacity.

4             A       If there would be, um, just a great  
5     amount that was available and there wasn't the  
6     demand, then the -- the price would decrease.

7             Q       Okay. So do you have any opinion  
8     about whether or not those two issues have had any  
9     impact in one direction or another on the revenues  
10    on capacity release to MGE that you've seen over  
11    the last few years that you've looked?

12            A       I haven't done a specific analysis  
13    to see what that impact would be, no.

14            Q       Do you understand MGE's argument to  
15    be in part that going forward with additional  
16    capacity available over other lines, that there  
17    could be -- that could translate into lower prices  
18    over the -- for capacity release over the lines  
19    that they're utilizing to supply the Company and  
20    its customers?

21            A       Yes, I understand that.

22            Q       And do you agree with it?

23            A       I don't know how that new pipeline  
24    expansion is going to affect MGE's capacity  
25    releases. And, you know, I don't know how -- how

1 -- I don't -- I think they said they don't know  
2 specifically how it's going to affect it either.

3 Q So are you saying you don't have an  
4 opinion as to the impact this new pipeline -- or  
5 the potential impact of the new pipeline on --  
6 that that may be -- may impact -- how that may  
7 impact the revenue stream of -- of the Company  
8 with capacity release sales?

9 A Yes, I'm saying I don't have an  
10 opinion. I don't know how that is going to -- to  
11 impact it, because I don't know what the demand is  
12 going to be.

13 Q Well, what do you know about demand  
14 in regard to -- in regard to the gas demand and  
15 the delivery of gas demand in the MGE region? Or  
16 in regions that that pipeline -- the pipelines  
17 that they are utilizing supply?

18 A It's -- it's my understanding in  
19 general that -- that there is -- has been an  
20 increase in demand for natural gas.

21 Q Based upon what?

22 A Just general industry publications,  
23 trade journals that I've read.

24 Q What's -- as far as gas itself is  
25 concerned, the price of gas in the -- in the last

1 three years, has it increased, decreased, remained  
2 about the same?

3 A It's increased.

4 Q And how much has it increased? If  
5 you know.

6 A It's probably approximately -- in  
7 the last three years, it's probably roughly  
8 doubled.

9 Q And does the increase in gas price  
10 have any -- is there any relationship between the  
11 increase in gas price and the price of capacity on  
12 pipelines? Is there any relationship?

13 A I do not know if there is a  
14 relationship between gas prices and capacity  
15 value.

16 Q Don't have any idea, right?

17 A No.

18 Commissioner GAW: Okay. No further  
19 questions, Judge. Thanks.

20 JUDGE WOODRUFF: Commissioner  
21 Clayton, do you have any questions?

22 COMMISSIONER CLAYTON: No.

23 JUDGE WOODRUFF: All right. Then  
24 we'll move to recross. Public Counsel?

25 MR. MICHEEL: Yes, Your Honor, I

1 have just a few.

2 RECROSS EXAMINATION BY MR. MICHEEL:

3 Q Ms. Allee, Chairman Gaw was asking  
4 you some questions about your three year  
5 calculation of the capacity release levels, and --  
6 and I just want to make sure I understand.

7 Your three year calculation of  
8 capacity release levels is based upon MGE's ACA  
9 year; is that correct?

10 A Yes, it is.

11 Q And MGE's ACA year goes through what  
12 months?

13 A June -- or it's from July 1 through  
14 June 30th.

15 Q And you're aware that Mr. Busch, in  
16 his direct testimony, also utilized three years,  
17 are you not?

18 A Yes.

19 Q But Mr. Busch utilized calendar  
20 years as opposed to ACA years. Is that your  
21 understanding?

22 A Yes.

23 Q And so when you look at the calendar  
24 years that Mr. Busch did on JAB-2 of his direct  
25 testimony, Exhibit 211, do you have a copy of

1       that?

2               A       Yes, I do.

3               Q       If you could turn to JAB-2?  When  
4       you use the -- the calendar years as opposed to  
5       the ACA years, does that indicate a clear  
6       increasing trend of capacity release revenues?

7               A       Yes, it has increased each year.

8               Q       And so that's the difference between  
9       your recommendation and Mr. Busch's  
10      recommendation?  Your recommendation uses ACA  
11      years and Mr. Busch's recommendation utilizes  
12      actual calendar years?

13              A       Yes.

14                      MR. MICHEEL:  That's all I have.  
15      Thank you, Ms. Allee.

16                      JUDGE WOODRUFF:  Kansas City and  
17      Joplin not here.  Federal Agencies, any questions?

18                      MR. PAULSON:  No, sir.

19                      JUDGE WOODRUFF:  Midwest Gas, any  
20      questions?

21                      MR. CONRAD:  Nothing further.  Thank  
22      you.

23                      JUDGE WOODRUFF:  MGE?

24      RE CROSS EXAMINATION BY MR. DUFFY:

25               Q       Well, I feel compelled to try to

1 clean some things up, or at least try to clarify  
2 some things. Let's try first with a kind of a  
3 history of where this issue has been, and let me  
4 state what my recollection of it is, and then you  
5 can tell me if that's wrong, if that's okay with  
6 you, clarify.

7 My recollection is we started out  
8 with capacity release revenues in the PGA with no  
9 incentive back about February 1, '94, when MGE  
10 came into existence. And then as a result of  
11 GO-94-318, although it didn't happen in '94, it  
12 probably was -- Phase II, it took a couple of  
13 years of litigation, but we ended up with a --  
14 with an incentive mechanism.

15 And they were treated in that  
16 incentive mechanism for a while, and then you had  
17 these stipulations that we testified about and it  
18 ended up in the -- in, I guess, the most recent  
19 rate case before this one as a amount in base  
20 rates that is non-gas rate -- or -- yeah, non-gas  
21 rates. Not the PGA portion, but the other portion  
22 of rates. And now we are where we are.  
23 Is that right?

24 A That sounds accurate.

25 Q So it's -- it's been different



1 places, and MGE has had an incentive mechanism in  
2 the past for this because there was an incentive  
3 built in to that GO-94-318 Phase II; isn't that  
4 right? I mean, it was an incentive mechanism,  
5 the capacity release was in there?

6 A It was a portion, yes.

7 Q All right. And just so there's no  
8 confusion, base rates is not the same thing as  
9 rate base. Right?

10 A Correct.

11 Q Rate base is an investment, you get  
12 to earn a return on it. Base rates, the way we  
13 use that term around here, is the non-PGA portion  
14 of the customer's bill.

15 A Yes.

16 Q And there's no earning any return on  
17 something that's in base rates. Right?

18 A Correct.

19 Q You explained, I think, for  
20 Commissioner Gaw about who has incentives on  
21 capacity release and who doesn't.

22 And I'm going to suggest to you, and  
23 you tell me if I'm wrong, that the reason Laclede  
24 and MGE had it is because they're the ones that  
25 generate the most capacity release revenues; that

1 the other companies, because of the pipelines they  
2 have, don't generate that much in comparison. Is  
3 that fair to say?

4 A I would -- yes, that's fair to say.

5 Q So there's a logical reason why MGE  
6 and Laclede are being treated differently from  
7 these other companies that we're -- we've talked  
8 about?

9 A Yes.

10 Q Now, you also answered some  
11 questions about the fact that your calculations on  
12 an average are different than Mr. Busch's, and it  
13 was brought out again, as it was earlier, that  
14 there is a -- there are increasing amounts in --  
15 in recent months; is that right? That's what they  
16 show? That's what's being reported?

17 A Yes. Yes.

18 Q But your testimony, as I understand  
19 it, you don't know and you cannot articulate a  
20 reason, particular reason why they are increasing  
21 at this point in time; is that right?

22 A That's correct.

23 Q And I believe you were asked some  
24 questions about the Cheyenne Plains pipeline, and  
25 I believe, if I understand your answers correctly,

1     you're saying -- your testimony today is you don't  
2     know what the impact is going to be, and you are  
3     characterizing MGE's position as they really don't  
4     know what the impacts are going to be; is that  
5     right?

6             A       Yes.

7             Q       Hypothetically, if you owned a mom  
8     and pop grocery store in a little town somewhere  
9     midway between Moberly and Hannibal, like Mexico,  
10    my hometown, and Wal-Mart came to town, what would  
11    be the impact on your revenues and your sales in  
12    that situation?

13            A       In that situation, I -- that  
14    hypothetical situation, I would say they would  
15    decrease.

16            Q       Yeah. Well, and haven't we shown  
17    that Cheyenne Plains is five and a half times  
18    bigger than Pony Express, and doesn't the evidence  
19    in this case so far indicate that its variable  
20    costs are going to be cheaper than Pony Express?

21            A       Yes, I don't dispute that.

22            Q       So isn't Cheyenne Plains coming to  
23    town a little bit like Wal-Mart coming to town? In  
24    the big scheme of things?

25            A       In your example, I -- yes.

1 MR. DUFFY: Okay.

2 JUDGE WOODRUFF: Thank you, Mr.

3 Duffy. Then we're back to redirect.

4 REDIRECT EXAMINATION BY MS. SHEMWELL:

5 Q Ms. Allee, Mr. Conrad was asking you  
6 some questions. Ms. Allee, did you perform a  
7 study of whether or not it's possible that the  
8 actions of end use transportation customers affect  
9 the balance of MGE's contracted storage?

10 A Yes.

11 Q You performed a study on that?

12 A Oh, I'm sorry, no. I did not.

13 Q You remember that question?

14 A Yes.

15 Q Are you the Staff witness supporting  
16 the allocation of MGE storage costs?

17 A No, I am not.

18 Q Do you know who is?

19 A Dan Beck.

20 MS. SHEMWELL: I'm going to need an  
21 exhibit marked.

22 JUDGE WOODRUFF: All right.

23 MS. SHEMWELL: And I don't know the  
24 number.

25 JUDGE WOODRUFF: Staff's next number

1 will be 852.

2 (Exhibit 852 marked for  
3 identification.)

4 Q (By Ms. Shemwell) Ms. Allee, can  
5 you identify this, please?

6 A This is MGE's response to DRR-174.1  
7 in this case.

8 Q Have you reviewed this document?

9 A Yes, I have.

10 Q Do you remember Mr. Duffy's  
11 questions about sales on Kansas Pipeline Company,  
12 KPC, that's now Enbridge?

13 A Yes.

14 Q And does this data response give you  
15 any further insight as to whether or not there  
16 have been sales?

17 A Yes. There have been release of  
18 some Kansas pipeline.

19 Q Can you show us where in the  
20 document you're reading that?

21 A Under the column titled pipeline  
22 where it says KPL.

23 Q Do you go across to the right? I'm  
24 sorry.

25 A Yes. Those are the -- when you go

1 across to the right, those are the capacity  
2 release dollars and volumes.

3 Q So in some places it says zero, but  
4 down in October and November there are some  
5 numbers in that column. Is that -- what does that  
6 indicate?

7 A That there have been releases on  
8 that pipeline.

9 Q Mr. Duffy asked you a question about  
10 does additional competition drive down costs.  
11 What does the effect of additional demand do for  
12 the price of capacity release?

13 A It can drive the price up.

14 Q In response to a question -- or some  
15 questions from Commissioner Murray, would Staff  
16 find it reasonable to have capacity release  
17 through the PGA? Is that an option that Staff  
18 could support?

19 A Yes.

20 Q We talked about the incentive with  
21 having the capacity release in base rates, and  
22 that there was a downside if MGE did not achieve  
23 that level. Do you remember that questioning from  
24 Commissioner Murray?

25 A Yes.

1 Q Is -- is there also an upside?

2 A Yes. MGE gets to keep anything  
3 above that level.

4 Q And in the past, have they achieved  
5 an amount above that level?

6 A Yes, they have in the past.

7 MS. SHEMWELL: That's all I have.  
8 Thank you.

9 JUDGE WOODRUFF: All right. Thank  
10 you. Oh, one more thing, Ms. Shemwell. Did you  
11 wish to offer 852?

12 MS. SHEMWELL: I do wish to offer  
13 852. Thank you. Is that the number of the --

14 JUDGE WOODRUFF: That is the  
15 capacity release year to date chart.

16 MR. DUFFY: Your Honor, I have a  
17 problem with the -- 852 is the one she just asked  
18 Miss Allee about?

19 JUDGE WOODRUFF: Yes.

20 MR. DUFFY: My understanding is this  
21 shows -- and it shows on some of the lines that  
22 these are releases under that experimental school  
23 transportation program that we talked about, and  
24 that those are excluded from this issue.

25 So even though there may have been

1     some -- I mean, we -- we made that happen. Under  
2     the law, we are -- we can make them take releases.  
3     And so that is not -- I mean, this is not relevant  
4     to this issue because of the nature of the  
5     particular transaction she's talking about.

6                     JUDGE WOODRUFF: Would you like to  
7     voir dire the witness about this document? I'll  
8     give you an opportunity to do that.

9                     MR. DUFFY: Well, if I thought she  
10    knew the answers, I might do that.

11                    MS. SHEMWELL: Judge, we can  
12    stipulate that some of those sales were made under  
13    the school program.

14                    MR. DUFFY: I mean, if the only  
15    point that we're trying to show here is, yes,  
16    there have been some recent releases on Kansas  
17    Pipeline, she testified to that earlier. No one's  
18    disputing that.

19                    And no one's disputing that for all  
20    of the previous years, there were no releases.  
21    And if they'll stipulate that, yes, we can force  
22    some capacity releases under that school program  
23    in certain situations and that they're reflected  
24    on here, then that's fine with me, we can go ahead  
25    and let it in with that understanding.



1 JUDGE WOODRUFF: Is that what's  
2 happened with this KPL, that they are being forced  
3 through the school release?

4 MR. DUFFY: That's my understanding,  
5 Your Honor.

6 MR. CONRAD: I'm then confused about  
7 852 myself, because what I'm seeing here is on  
8 each of these monthly groups, there is -- appears  
9 to be an adjustment less school release. Are we  
10 talking about something different, or --

11 MR. DUFFY: That's what we're  
12 talking about.

13 MR. CONRAD: Well, okay, is that --  
14 isn't that taking care of Counsel's concern?

15 MR. DUFFY: Well, the -- my client  
16 tells me that the tariff -- the school  
17 transportation tariff that we operate under says  
18 that the first some level of releases come off of  
19 specifically Southern Star. The next come off of  
20 Kansas Pipeline. So the tariff allows us to force  
21 the releases on the Kansas pipeline in these  
22 situations.

23 It doesn't have anything to do with  
24 the voluntary releases that we're talking about  
25 because the Staff has excluded all these forced

1 releases from this issue.

2 We either need to clarify the record  
3 so everybody understands that and we can let this  
4 in, or we need to keep this out because it's going  
5 to be confusing.

6 JUDGE WOODRUFF: Staff, do you agree  
7 with what Mr. Duffy has just said?

8 MS. SHEMWELL: I don't think this  
9 Commission request forces Kansas Pipeline to do  
10 anything because we don't regulate Kansas  
11 Pipeline.

12 But I would also indicate that I  
13 thought that the implication from the earlier  
14 testimony was that there was no capacity release  
15 whatsoever on Kansas Pipeline, and we're  
16 clarifying that there is some capacity release on  
17 Kansas Pipeline, and I think it makes the record  
18 clearer.

19 JUDGE WOODRUFF: And Mr. Duffy,  
20 you're indicating that capacity release from KPL  
21 is only because of the school?

22 MR. DUFFY: Our tariff allows us to  
23 force Missouri School Boards Association to accept  
24 capacity releases on Kansas Pipeline. Not forcing  
25 Kansas Pipeline to do something. Because there's

1 no one out there in the real world in the open  
2 market who wants releases from Kansas Pipeline,  
3 Enbridge.

4 The tariff forces the school  
5 association to take them, and that's how these  
6 revenues were created. And if we can have that  
7 understanding in the record, then let's go ahead  
8 and move on and leave this document in there.

9 JUDGE WOODRUFF: All right. Staff  
10 agrees with that?

11 MS. SHEMWELL: Staff is not  
12 particularly happy with the word forced, but  
13 otherwise, we will agree to that.

14 COMMISSIONER GAW: I got a question,  
15 I'm sorry, I want to make sure I'm understanding.  
16 And it is basically your question. I understand  
17 that the concern, Mr. Duffy, I want -- I'm trying  
18 to make sure of these numbers in regard to the KPL  
19 lines. It's not clear here how much of the total  
20 came out of that, when I look at this alone, of  
21 the total school release came out of those  
22 particular things.

23 And what I'm asking is, are you  
24 saying that there have been no capacity releases  
25 on KPL other than the school releases?

1                   MR. DUFFY: My understanding is  
2     there was only one that was not what I'm calling  
3     forced, and it was for approximately \$2,000. So  
4     there has been, in the history, one volume un --  
5     somebody voluntarily bought \$2,000 worth of  
6     capacity release off of Kansas Pipeline.

7                   COMMISSIONER GAW: Has that been  
8     testified to by someone?

9                   MR. DUFFY: No.

10                  JUDGE WOODRUFF: I think Miss Allee  
11     testified to that.

12                  MR. DUFFY: That's the one we're  
13     talking about.

14                  MR. MICHEEL: I thought earlier Mr.  
15     Hayes said there hadn't been any.

16                  MR. DUFFY: She testified that there  
17     hadn't been any when we were talking about it in  
18     the ACA case last year. Or in November of 2003.  
19     At that time there had been none.

20                  JUDGE WOODRUFF: All right. Are we  
21     all clear on that now?

22                  MR. DUFFY: I hope so.

23                  JUDGE WOODRUFF: All right. With  
24     that understanding, 852 will be admitted into the  
25     record.

1 COMMISSIONER GAW: Thank you, Judge.

2 JUDGE WOODRUFF: I didn't know what  
3 I was bringing up when I asked if you were  
4 offering it.

5 All right. Then you can step down.  
6 And at this point, then, we will --

7 MR. FRANSON: Your Honor, if I may,  
8 I'm sorry to interrupt, I wanted to offer  
9 something. When -- and I believe Mr. Swearengen's  
10 in the room and I think most of the other parties  
11 are here.

12 When Mr. Oligschlaeger was  
13 testifying, there were substantial questions from  
14 Commissioner Clayton and Chairman Gaw for him, and  
15 there was a specific reference that Ms. Bernsen  
16 might be the better witness. It was also  
17 mentioned by you and I believe by Commissioner  
18 Clayton that Ms. Bernsen was in the room. At that  
19 time there was no follow-up.

20 I wanted to remind the Commission  
21 that Ms. Bernsen is available at any time for  
22 questions. And if it would even be more  
23 appropriate to set a specific time if the  
24 Commission had any questions of any of the policy  
25 witnesses or any other witnesses that you wanted

1 to bring back. I want to offer that opportunity.

2 JUDGE WOODRUFF: Thank you, sir, and  
3 if -- if the Commissioners inform me that they  
4 wish to do that, we'll let you know.

5 COMMISSIONER CLAYTON: Is that offer  
6 just for today or for next week as well? Do we  
7 have a time limit? 65 minutes and counting?

8 MR. FRANSON: You have whatever you  
9 want. Miss Bernsen is at your disposal. As far  
10 as the other witnesses, I can't speak for them.

11 JUDGE WOODRUFF: At this time,  
12 compensation expense and time reporting to take  
13 care of Deborah Hays.

14 MR. SWEARENGEN: Thank you, Judge.  
15 Again, I appreciate you taking one of our  
16 witnesses out of order. I would call to the  
17 witness stand at this time Deborah Hays.

18 JUDGE WOODRUFF: And since we are  
19 moving into a new area, we should make a mini  
20 opening on this.

21 MR. SWEARENGEN: I'm not going to do  
22 that. I did that this morning on the other issue.  
23 I'm specializing in taking witnesses out of order.  
24 I think I'll do that next week when we take the  
25 rest of the witnesses, if that's okay. It will

1 have better context that way.

2 JUDGE WOODRUFF: That's fine.

3 (Witness sworn.)

4 JUDGE WOODRUFF: You may be seated.

5 MR. SWEARENGEN: Thank you, Your  
6 Honor. I want to make sure I've got the right  
7 exhibit number on her testimony. She has one  
8 piece of rebuttal testimony, Deborah Hays, and  
9 according to my records, it's Exhibit No. 19. If  
10 that's correct, I'll hand the reporter a copy.

11 JUDGE WOODRUFF: That is correct.

12 DEBORAH HAYS, testified as follows:

13 DIRECT EXAMINATION BY MR. SWEARENGEN:

14 Q Would you state your name for the  
15 record, please?

16 A Deborah Hays, H-a-y-s.

17 Q And by whom are you employed and in  
18 what capacity?

19 A I am employed by Missouri Gas and  
20 Energy, and my title is Vice President, human  
21 resources.

22 Q Did you prepare for purposes of this  
23 proceeding a piece of rebuttal testimony on the  
24 issue of incentive compensation?

25 A Yes, I did.

1           Q       Do you have a copy of that testimony  
2 with you this afternoon?

3           A       Yes, I do.

4           Q       And if I asked you the questions in  
5 that testimony, would your answers be the same as  
6 contained therein?

7           A       Yes.

8           Q       It's not necessary to make any  
9 changes to any of your responses to that  
10 testimony?

11          A       No, it's still fine.

12                   MR. SWEARENGEN: Thank you. And  
13 with that, Your Honor, I would offer into evidence  
14 the witness' rebuttal testimony, Exhibit No. 19,  
15 and tender her for cross examination.

16                   JUDGE WOODRUFF: Exhibit 19 has been  
17 offered into evidence. Any objections to its  
18 receipt? Hearing none, it will be received into  
19 evidence.

20                   All right, then. For cross  
21 examination, Kansas City and Joplin not here.  
22 Federal Agencies?

23                   MR. PAULSON: No questions.

24                   JUDGE WOODRUFF: Jackson County is  
25 not here. Midwest Gas?



1 MR. CONRAD: No questions, Your  
2 Honor.

3 JUDGE WOODRUFF: Public Counsel?

4 MR. MICHEEL: Yes, Your Honor.

5 CROSS EXAMINATION BY MR. MICHEEL:

6 Q Ms. Hays, is it correct that MGE's  
7 incentive plan is at least driven partially by the  
8 goal of shareholder wealth maximization; is that  
9 correct?

10 A I would not -- I would say that it's  
11 driven by financial incentives, so that would not  
12 be the way I would state it.

13 Q Okay. And those financial  
14 incentives have to do with increasing the stock  
15 price; isn't that correct?

16 A It has to do with -- it affects the  
17 stock price, but it has to do with the income for  
18 the Company.

19 Q Increasing the income for the  
20 company; is that correct?

21 A Yes.

22 Q And that benefits shareholders, does  
23 it not?

24 A Among other things, yes.

25 Q Okay. And it has a divisional goal;

1 is that correct?

2 A Yes.

3 Q And that's increasing income; is  
4 that correct?

5 A It has a company-wide goal and a  
6 division goal, yes, that's correct for both.

7 Q And that increases returns for  
8 shareholders; isn't that correct?

9 A Yes.

10 MR. MICHEEL: That's all I have,  
11 Your Honor.

12 JUDGE WOODRUFF: All right. Thank  
13 you. For Staff?

14 CROSS EXAMINATION BY MR. BERLIN:

15 Q Good afternoon, Miss Hayes, I'm Bob  
16 Berlin, I'm attorney for Staff.

17 A Hello.

18 Q Miss Hays, how long have you been  
19 employed by MGE?

20 A I've been with MGE three years. Two  
21 years as a consultant and one year as an employee.

22 Q Was any incentive compensation paid  
23 at the corporate level for 2003?

24 A I do not have direct knowledge of  
25 what's paid at the corporate level.

1           Q     Miss Hays, do you have your  
2     testimony in front of you?

3           A     Yes, I do.

4           Q     I'd like to refer you to page 3 of  
5     your testimony. On page 3 of your testimony, you  
6     make reference to a Watson Wyatt survey.

7           A     Right.

8           Q     Have you reviewed the complete  
9     Watson Wyatt survey that you refer to in this  
10    testimony?

11          A     No.

12          Q     Do you or MGE have a complete copy  
13    of the survey?

14          A     No.

15          Q     Do you recall whether Staff asked  
16    you for a copy of the Watson Wyatt survey?

17          A     They did.

18          Q     Do you recall MGE's response to  
19    Staff's data request asking for the copy of the  
20    survey?

21          A     We said we didn't have it.

22          Q     Did MGE participate in the survey?

23          A     No.

24          Q     In going over to Schedule DH-1 of  
25    your rebuttal testimony, I see a page that at the

1       very bottom says Watson Wyatt Data Services. Do  
2       you see that?

3               A       Yes, I know what you mean.

4               Q       Where did this page come from?

5               A       From the Watson Wyatt executive --  
6       well, compensation study. It's a large study and  
7       this is -- this is one page from it.

8               Q       So you never got a copy of the  
9       Watson Wyatt survey.

10              A       Right.

11              Q       But you got one page of it.

12              A       Right.

13              Q       How did you happen to come by one  
14       page of the Watson Wyatt survey?

15              A       I asked for it. I asked for the  
16       page that was relevant to what I would be  
17       discussing here today.

18              Q       And you talk about the page that's  
19       relevant. In going down to the industry sector,  
20       do you see the part that says -- or the category  
21       that says utilities and energy?

22              A       Yes.

23              Q       Is that a broad category?

24              A       Yes. Within the utility and, you  
25       know, energy industry, yes.

1           Q       Would that include multi national  
2 oil companies?

3           A       I don't know for sure what the  
4 definition is in terms of how that -- what was put  
5 into that category. I don't know that for sure.

6           Q       So you don't know if a multi  
7 national oil company would be part of the energy  
8 industry sector?

9           A       I would think that it probably would  
10 be, but I just want to be very clear that I don't  
11 know for sure.

12          Q       Do you know if the U.S. subsidiaries  
13 of foreign owned multi national oil companies are  
14 included in the energy category?

15          A       I don't know for sure what is  
16 included in this category.

17          Q       You wouldn't know if independent oil  
18 refineries were included in this category?

19                 MR. SWEARENGEN: I'm going to  
20 object, Your Honor, she's said several times she  
21 doesn't know what's in the category.

22                 JUDGE WOODRUFF: Overruled. You can  
23 keep asking if you want to.

24          Q       (By Mr. Berlin) It says category of  
25 utilities and energy.

1           A       Right.

2           Q       It is an industry sector.

3           A       Right.

4           Q       That sector might include  
5 independent oil and gas producers possibly.  
6 Right?

7           A       I don't know for sure what's in  
8 there, but it might well include everything that  
9 you've stated.

10          Q       Looking further in that data set,  
11 the way I read it on this one page of the Watson  
12 Wyatt survey that you cite to, I see a total of 52  
13 responses. Is that correct?

14          A       For utilities, yes.

15          Q       Well, it's the utility and energy  
16 industry sector. Is that correct?

17          A       Yes. Yes. Uh-huh.

18          Q       And 39 of those organizations  
19 responded, according to this one page that you  
20 have of the Watson Wyatt survey. Is that correct?

21          A       Of -- right. Thirty-nine have  
22 formally established bonuses and -- let me follow  
23 that across. Fifty-two responded, yes.

24          Q       And that 39 responses fit somewhere  
25 in the utilities and energy industry sector

1 category, correct?

2 A I believe so.

3 Q Do you know how many of the  
4 companies responding to this particular one page  
5 of the survey were utility companies?

6 A No, I do not.

7 Q Do you know if any other Missouri  
8 utility companies are included in this survey?

9 A I do not.

10 Q Would you know how many of the  
11 utilities that responded to this survey have  
12 financial goals that are included in incentive  
13 compensation plans?

14 A Do not know that.

15 Q Do you know how many of the  
16 utilities that responded to this survey that have  
17 financial goals included in their incentive  
18 compensation plans have regulated utility rates?

19 A I do not know that.

20 Q Do you know how many of the  
21 regulated utilities responding to this survey with  
22 financial goals included in the incentive  
23 compensation plans recover those costs through the  
24 rates?

25 A I do not know that.

1           Q       Do you know how many of the  
2       utilities responding to the survey have customer  
3       service or safety goals included in incentive  
4       compensation plans?

5           A       I do not know that.

6           Q       Do you know how many of the  
7       utilities responding to the survey with customer  
8       service or safety goals included in their  
9       incentive compensation plans have regulated  
10      utility rates?

11          A       I do not know that.

12          Q       Do you know how many of the  
13      regulated utilities that responded to this survey  
14      with customer service and safety goals included in  
15      their incentive compensation plans actually  
16      recover these costs through their rates?

17          A       I do not know that.

18          Q       Do you have any specific information  
19      about the incentive plans of the regulated  
20      utilities that responded to the Watson Wyatt  
21      survey?

22          A       No, I do not.

23          Q       Would you know if shareholders have  
24      paid part of or all of the incentive compensation  
25      costs that are referenced by the regulated



1 utilities that responded to this survey?

2 A No, I would not know that.

3 Q Do you know if MGE or Southern  
4 Union's financial goals related to earnings per  
5 share and pretax earnings make a distinction  
6 between whether the goal is met by increasing  
7 revenues or decreasing expenses?

8 A I -- it can be either.

9 Q Do you know if MGE or Southern Union  
10 makes an adjustment to increased revenues  
11 resulting from the fluctuations in weather when  
12 determining if incentive compensation financial  
13 goals have been met?

14 A I am not aware of any adjustment --  
15 adjustment due to weather.

16 Q Did you develop the incentive plan  
17 that is currently used by MGE and Southern Union?

18 A No.

19 Q Do you know if the Southern Union  
20 incentive plan is used consistently throughout all  
21 the states it does business in?

22 A I believe it does, but I am not  
23 positive.

24 Q Has any attempt been made by  
25 Southern Union to mold its incentive compensation

1 plan to conform with the Commission's report and  
2 orders related to incentive compensation?

3 A I don't know what was taken into  
4 consideration when it was developed.

5 Q Did you have any part in developing  
6 the incentive plan that was used by MGE and  
7 Southern Union at any time prior to the current  
8 incentive plan?

9 A No. Me personally are you asking?

10 Q Yes.

11 A No.

12 Q Are you familiar with the incentive  
13 plans that have been used by MGE and Southern  
14 Union since the Missouri properties were acquired?

15 A Not dating back that far, no.

16 Q Are you aware if MGE's incentive  
17 plan has changed since the GR-96-285 case?

18 A I don't know for sure.

19 Q Would it be reasonable to assume  
20 that after the Commission's report and order in  
21 the GR-96-285 case excluded recovery of incentive  
22 compensation costs related to financial goals,  
23 that MGE has had the opportunity to modify its  
24 incentive compensation plan?

25 A The plan is like that each year in

1 terms of -- the plan is like that each year in  
2 terms of design. So there would be an opportunity  
3 on an annual basis to have a different design. Is  
4 that what you're asking?

5 Q Well, let me try to restate this.

6 A Okay.

7 Q Would it be reasonable that since  
8 the last rate case report and order for MGE, that  
9 MGE has had a chance to modify its incentive  
10 compensation plan?

11 A It has a chance to modify it each  
12 year, yes.

13 Q Currently what is the incentive  
14 compensation plan composed of?

15 A Can you be more specific with your  
16 question?

17 Q Is there a safety and a customer  
18 service goal?

19 A There is a financial and a customer  
20 service and a safety goal, yes.

21 Q What percentage of the overall  
22 incentive plan does the safety goal amount to?

23 A I believe it's 5 percent.

24 Q What percentage does the customer  
25 service goal amount to?

1           A       I believe it's also 5 percent.

2           Q       If you know that an incentive  
3       compensation plan that relies heavily on financial  
4       goals is likely to be rejected by the Staff and  
5       the Commission from inclusion in cost of service  
6       and the rates, in your opinion, would it be  
7       reasonable to expect that the incentive plan be  
8       modified to move away from financial goals in  
9       order to gain recovery of these costs?

10          A       Repeat that for me, please.

11          Q       Sure. If you know that the  
12       incentive compensation plan that relies heavily on  
13       financial goals would likely be rejected by the  
14       Staff and the Commission for inclusion in the cost  
15       of service and rate recovery, would it be  
16       reasonable to expect that the incentive plan be  
17       modified to move away from those financial goals  
18       in order to gain recovery of those costs?

19          A       If the goal is to gain -- if that is  
20       the only goal, is to recover those costs, then the  
21       answer would be yes. If you put in incentives for  
22       other reasons because you think incentive plans  
23       should be designed a certain way to achieve a  
24       certain outcome, then the answer would be  
25       probably, you know, look at all the priorities and

1 evaluate what is the best possible design for all  
2 the variety of factors.

3 Q Is it possible that the Company  
4 would accept that incentive compensation financial  
5 goal costs be recovered from shareholders?

6 A Sorry, say that again?

7 Q Sure. In your opinion, is it  
8 possible that the Company would accept that an  
9 incentive compensation plan based on financial  
10 goals, that those costs be recovered from  
11 shareholders?

12 A You know, I think I understand your  
13 question, but I'm not the person who really  
14 designs them nor could speak for the Company on  
15 that. That's a little bit above my level.

16 Q What level is that?

17 A What?

18 Q At what level do the -- does the  
19 design of these plans take place?

20 A In our corporate office.

21 Q Okay. So you -- you just stated  
22 earlier that the safety goal and the customer  
23 service goal are each 5 percent of the overall  
24 incentive plan costs. Is that correct?

25 A Mm-hmm.

1           Q       And would you agree that the amount  
2       of the incentive compensation plan or awards that  
3       are tied to financial goals amount to the other 90  
4       percent?

5           A       Right. Yes.

6           Q       Approximately how many employees at  
7       MGE receive incentive compensation awards that are  
8       related to financial goals?

9           A       I don't know the exact number.  
10       There is a management incentive for the managers  
11       and above, and that's in the neighborhood of 35  
12       people. And then all employees on the non-union  
13       side receive an incentive of a lesser amount for  
14       those three goals as well.

15          Q       So if I understand your answer, all  
16       employees to some extent that are non-union are  
17       covered by incentive plans tied to financial  
18       goals?

19          A       Mm-hmm. They are different -- not  
20       all employees have the same design, but yes, what  
21       you said is correct.

22          Q       Approximately how many employees at  
23       MGE received incentive compensation awards that  
24       are related to customer service goals?

25          A       In 2003? In 2003?

1 Q Yes.

2 A I don't know.

3 Q Approximately how many employees at  
4 MGE received incentive compensation awards that  
5 are related to safety goals?

6 A I don't know that number. I'm  
7 sorry. I don't know that number.

8 Q You make a statement on page 4 of  
9 your rebuttal testimony, line 16-17, that states  
10 in recent years, more companies have implemented  
11 incentives for employees in all levels of the  
12 organization. What support do you have that  
13 confirms that?

14 A I read a lot. I keep up on  
15 professional journals. I attend the American  
16 Compensation Association luncheons. I maintain my  
17 credential, which is an SPHR. So it's a general  
18 statement that is from my readings and my opinion.

19 Q So does MGE have incentive  
20 compensation plans for employees in all levels of  
21 the organization?

22 A Of one type or another. Not union.  
23 Not our union employees.

24 Q Approximately how many employees are  
25 employed by MGE?

1           A       There are about 630? Six hundred  
2       and thirty employees. And 400 and some are union,  
3       approximately.

4           Q       And so if I understand, the  
5       employees -- the 400 or so employees that are  
6       union covered are the only employees that do not  
7       receive some form of an incentive compensation  
8       award?

9           A       They are the ones who are not  
10      eligible, or not necessarily receive, but  
11      eligibility-wise, yes.

12          Q       On page 4 of your testimony, you  
13      make a statement that companies are more  
14      frequently linking incentive payouts to financial  
15      results. Again, what is your source for that  
16      statement?

17          A       The same as I said before. It's my  
18      general understanding that companies want  
19      employees to feel a part of the business, to feel  
20      like they have some ownership and help them with  
21      the financial results.

22          Q       Would you know if that statement is  
23      true for regulated Missouri utilities?

24          A       I would not know that specifically.

25          Q       Do you know if MGE has experienced



1 an increase in employee turnover in recent years?

2 A To my knowledge, it's been pretty  
3 steady.

4 Q What, the turnover, or the turnover  
5 rate is steady, or --

6 A The turnover -- we don't have a  
7 great deal of turnover and it's been fairly steady  
8 at not turning over.

9 Q Of the individuals that currently  
10 are eligible at MGE for Southern Union's incentive  
11 compensation, how many have been hired within the  
12 last two years?

13 A Is that question how many managers  
14 have been hired in the last two years meaning  
15 those eligible for the incentive? Is that what  
16 that question is?

17 Q Yes. Of --

18 A Of the manager and above, how many  
19 people have been hired in the last two years?  
20 Would that be your question?

21 Q The individuals that are -- that  
22 currently are eligible.

23 A Okay.

24 Q At MGE for Southern Union's  
25 incentive compensation, would you know how many

1 have been hired within the past two years?

2 A Um, not off the top of my head, but  
3 it would be a small number. Would be ten? Maybe  
4 more. Maybe more. Let me think about this a  
5 moment. Um, the IT department became a part of  
6 Missouri Gas and Energy and those individuals, so  
7 it might be more than that because we added the IT  
8 department. So in the neighborhood of 30 because  
9 of one department being added.

10 Q How many vacancies are currently at  
11 MGE within this group of employees that are  
12 eligible for Southern Union's incentive  
13 compensation?

14 A One.

15 Q One?

16 A One.

17 Q Do you know if the Staff has made an  
18 adjustment to MGE's incentive compensation related  
19 to customer service and safety?

20 A The Staff?

21 Q Yeah. The Commission Staff. If the  
22 Staff has made an adjustment to MGE's incentive  
23 compensation that is tied to customer service and  
24 safety?

25 A I'm not aware of anything like that.

1 MR. BERLIN: Your Honor, I have no  
2 further questions.

3 JUDGE WOODRUFF: Thank you.

4 MR. BERLIN: Thank you.

5 JUDGE WOODRUFF: Then we'll move up  
6 to questions from the bench. Commissioner Gaw, do  
7 you have any questions?

8 COMMISSIONER GAW: No.

9 JUDGE WOODRUFF: Commissioner  
10 Appling?

11 COMMISSIONER APPLING: No.

12 JUDGE WOODRUFF: I have no  
13 questions, so there will be no need for recross.  
14 Any redirect?

15 MR. SWEARENGEN: Yes, Your Honor.

16 REDIRECT EXAMINATION BY MR. SWEARENGEN:

17 Q Ms. Hays, Mr. Berlin asked you about  
18 the Wyatt survey, the attachment Schedule 1 to  
19 your testimony. Do you have that in front of you?

20 A The one page schedule from the  
21 survey, yes.

22 Q That's correct.

23 A Mm-hmm.

24 Q Do you recall you indicated that you  
25 called someone at Watson and Wyatt to get this

1 document?

2 A Actually, I didn't call Watson  
3 Wyatt.

4 Q How did you get the document?

5 A Um, I -- I obtained this from a  
6 company called CBIZ Business Solutions. They  
7 assist us with our compensation and they purchase  
8 a number of surveys, and this is one of them that  
9 is very well known, well respected, and I asked  
10 for this page.

11 Q And you asked for this particular  
12 page?

13 A Yes.

14 Q And did you then subsequently  
15 provide a copy of this page to the Commission  
16 Staff pursuant to their request?

17 A Yes.

18 Q If you take a look at that document  
19 and the organizations that are listed on it, does  
20 Missouri Gas Energy compete in the marketplace for  
21 employees with the types of organizations that are  
22 listed on that page?

23 A To a great extent they do, you know,  
24 in terms of the management staff, the professional  
25 staff. That is one recruitment area that we, you

1 know, we all compete for for leadership within our  
2 companies.

3 Q And that would include not only  
4 under the industry sector on that document, the  
5 utilities and energy, but perhaps the others as  
6 well?

7 A Right. Probably -- you know, I  
8 don't know every company that's listed here, but  
9 every industry sector would likely have people out  
10 there in the market that we would also compete  
11 for. So it would be everyone in the survey. Not  
12 just the utility and energy.

13 Q Do you know whether or not Missouri  
14 Gas Energy in the last few years has had  
15 difficulty in meeting its financial objectives?

16 A My understanding is that, you know,  
17 I'm not the financial person, but my understanding  
18 is that we've had a great deal of difficulty, and  
19 therefore, the focus for the incentive plan.

20 MR. SWEARENGEN: That's all I have.  
21 Thank you.

22 JUDGE WOODRUFF: I thank you. And  
23 you can step down, Miss Hays.

24 THE WITNESS: Thank you.

25 JUDGE WOODRUFF: All right. It's

1     now almost 4:30, and I'm not going to start  
2     another witness. Is there anything else that  
3     anyone wants to bring up while we're still on the  
4     record for the day? Mr. Hack?

5                     MR. HACK: Just sort of a -- we plan  
6     to start with Dr. Morin on Monday morning at 8:30.

7                     JUDGE WOODRUFF: Okay.

8                     MR. DUFFY: Your Honor, Ms. Shemwell  
9     and I would like to plead with you to go ahead and  
10    take Lesa Jenkins, the last witness on the issue  
11    that was interrupted. We would like to get her on  
12    and off.

13                    JUDGE WOODRUFF: All right. Let's  
14    put Miss Jenkins on. Hopefully we can do it  
15    quickly.

16                    (Witness sworn.)

17    LESA JENKINS, testified as follows:

18    DIRECT EXAMINATION BY MS. SHEMWELL:

19                    Q     Would you please state your name for  
20    the record?

21                    A     Lesa Jenkins.

22                    Q     In your case you may need to spell  
23    your first name, Miss Jenkins.

24                    A     L-e-s-a.

25                    Q     Where do you work?

1           A       At the Public Service Commission.

2           Q       What do you do?

3           A       I work with procurement analysis,  
4 I'm a regulatory engineer.

5           Q       What does procurement analysis mean?

6           A       We look at the actual cost  
7 adjustment cases for the -- for all of the LDCs  
8 and do those reviews each year.

9           Q       Have you prepared testimony in this  
10 case that -- surrebuttal testimony in this case?

11          A       Yes, I have.

12          Q       That has been marked 821 HC and NP;  
13 is that right?

14                   JUDGE WOODRUFF: That is correct.

15          Q       (By Ms. Shemwell) Did you prepare  
16 that testimony?

17          A       Yes, I did.

18          Q       Do you have any changes to your  
19 testimony?

20          A       Yes, I do. If you'd look at page 4,  
21 line 4, I have referred to Mr. Noack's surrebuttal  
22 testimony, and that should say rebuttal testimony.

23          Q       Do you have anything else?

24          A       That's it.

25          Q       If I were to ask you the same

1 questions today, would your answers be  
2 substantially the same?

3 A Yes.

4 Q Are they true and correct to the  
5 best of your knowledge and belief?

6 A Yes.

7 MS. SHEMWELL: Thank you. I tender  
8 the witness for cross.

9 JUDGE WOODRUFF: All right. And I  
10 assume you're offering the exhibits as well? Or  
11 will she be back again?

12 MS. SHEMWELL: I will offer the  
13 exhibits as well. She will not be back again.

14 MR. DUFFY: Your Honor, I have a  
15 motion to strike four portions of the Jenkins  
16 exhibit.

17 JUDGE WOODRUFF: All right. What is  
18 that motion?

19 MR. DUFFY: You want all four of  
20 them at once or take them one at a time?

21 JUDGE WOODRUFF: Are they similar in  
22 impact? Or --

23 MR. DUFFY: I can do all four of  
24 them --

25 JUDGE WOODRUFF: Let's do it all at



1 the same time.

2 MR. DUFFY: First one goes to page 6  
3 of her testimony at line 7 through 10. The  
4 parenthetical material. At that point she is  
5 referring to a Staff report from an investigation  
6 case which is currently pending before the  
7 Commission, and I believe the Commission even  
8 discussed it in an agenda meeting this week. She  
9 attaches a portion of the Staff's report in that  
10 investigation as her Schedule 2.

11 MGE objects to the admission of  
12 Schedule 2 and moves to strike her reference on  
13 page 6 to that for the reason that this report of  
14 the Staff constitutes impermissible hearsay. It's  
15 an out of court statement offered for the truth of  
16 the matter asserted. There is not any applicable  
17 exemption.

18 There's no indication that this  
19 Staff report was prepared by Miss Jenkins or that  
20 the contents of the report are based on Miss  
21 Jenkins's firsthand knowledge. The report is  
22 blatantly self-serving.

23 Allegations in it that Southern  
24 Union violated statutes, citations to appellate  
25 cases. It, frankly, looks to me like a legal

1     brief. Miss Jenkins is not qualified by education  
2     or training to be making legal assertions or  
3     reaching legal conclusions.

4                 In my opinion, this is essentially a  
5     means of bootstrapping Staff's allegations from a  
6     completely different case into this case when they  
7     have presumably already been fully considered by  
8     the Commission in the other case. And although it  
9     has not yet been voted on as an order, I believe  
10    has been at least discussed by the Commission.

11                Basically a legal pleading such as  
12    this cannot constitute evidence in this situation  
13    since Ms. Jenkins is not qualified to testify  
14    about it.

15                The second portion that I have is  
16    her Schedule 3-A. This is a portion of a  
17    discovery deposition that was taken in a pending  
18    actual cost adjustment case before the Commission.

19                MGE objects to the admission of this  
20    schedule as impermissible hearsay. It's an out of  
21    court statement offered for the truth of the  
22    matter asserted. There is not an applicable  
23    hearsay exemption.

24                Even though the statements in this  
25    document are by an employee of MGE, this cannot be

1     considered an admission of a party opponent  
2     because the statements he makes are not  
3     inconsistent with the position being taken by MGE  
4     in this proceeding.

5                 She is apparently just attached this  
6     to bolster her factual assertions, and at this  
7     point we are not challenging the accuracy of her  
8     factual assertions about this particular point.

9                 The next item is beginning with line  
10    11 on page 7 of her testimony --

11                MS. SHEMWELL: I'm sorry, where?

12                MR. DUFFY: Page 7 starting on line  
13    11 and continuing to page 9, line 5. In this  
14    section she is testifying regarding -- or she  
15    purports to testify regarding ACA cases that are  
16    currently pending before the Commission.

17                MGE objects to this testimony as  
18    irrelevant. The opinions of the Staff asserted in  
19    those other cases are irrelevant to this case.  
20    The statements made by Staff in those cases  
21    constitute impermissible hearsay.

22                Those cases have either been  
23    submitted for ruling by the Commission or are in  
24    other various stages of procedural schedule. This  
25    is another situation where Ms. Jenkins is

1 attempting to bootstrap Staff's allegations from  
2 other cases into evidence in this case. This is  
3 also improper surrebuttal testimony as it's not  
4 responsive to prior testimony offered by MGE.

5                   She makes the statement on lines 11  
6 and 12 that Staff has addressed its concerns in  
7 various ACA cases. We do not propose to strike  
8 that testimony if the Staff has addressed its  
9 concerns in these various cases, then that should  
10 be sufficient.

11                   So I move to strike starting with  
12 the word recommendations on page 7 at line 12  
13 through the word MGE on page 9 at line 5, because  
14 all this material does is simply bolster an  
15 allegation that they have addressed their concerns  
16 and we're not contesting that.

17                   Finally, attached as her Schedule 4  
18 is a portion of a telephone interview which was  
19 taken as part of an informal discovery action in  
20 still another proceeding. The interview was not  
21 taken under oath, and only a small portion of that  
22 interview is being offered.

23                   MGE objects to the admission of this  
24 schedule as irrelevant and incomplete. Further,  
25 this schedule constitutes impermissible hearsay.

1 It's an out of court statement offered for the  
2 truth of the matter asserted, and there is not an  
3 applicable hearsay assertion or exemption.

4 JUDGE WOODRUFF: Response from  
5 Staff?

6 MS. SHEMWELL: The first one -- and  
7 I'm sorry, we should have taken these  
8 individually. This is the type of information on  
9 which experts typically rely, I would suggest.  
10 They look at what happened in other cases all of  
11 the time in Commission cases. The fact that Staff  
12 filed a report with the Commission, it's on file  
13 with the Commission.

14 Past information filed in other  
15 cases or information filed in other cases is often  
16 referred to. There is nothing irrelevant about  
17 the fact that MGE had to rebuild its entire  
18 workforce, that's why Staff is concerned in this  
19 case.

20 And Staff is responding to the fact  
21 that MGE is saying, hey, Staff's picking on us.  
22 They're trying to set us apart. They need to do  
23 this through a rule. Ms. Jenkins is saying, no,  
24 we have a lot of concerns with MGE, we can't  
25 address those through a rule making. And our

1 concerns have been put forward in several  
2 instances. She is addressing the concerns on page  
3 6 and then attaching a report that covers those  
4 concerns.

5 Now, so I -- I object to that in  
6 that it is relevant. It's the type of information  
7 on which experts rely.

8 His next one was on page -- I'm  
9 sorry, Gary, I've lost track of the next one.

10 JUDGE WOODRUFF: Schedule 3-A.

11 MR. DUFFY: Schedule 3, yeah.

12 MS. SHEMWELL: Well, Judge, frankly,  
13 depositions can be offered for almost anything.  
14 She's offered a partial deposition of Mr. Kirkland  
15 to support her. It -- again, it's precisely the  
16 type of thing on which an expert might rely to  
17 make their point in the case. Mr. Kirkland is our  
18 gas buyer.

19 The issue is, is Staff treating MGE  
20 fairly or not. Are they like everyone else. And  
21 she's using this to support her testimony that we  
22 have concerns, and I think it's perfectly relevant  
23 to this case. And she can certainly testify about  
24 what he said in the deposition, and it was taken  
25 under oath by Mr. Kirkland.

1                   If we want the entire thing  
2     presented, we certainly can. Entire depositions,  
3     I understand, have been attached to the testimony  
4     by MGE in this case.

5                   In terms of her comment -- let's  
6     see. Was that page 9?

7                   MR. DUFFY: The next one starts page  
8     7, line 11, going through page 9, line 5.

9                   MS. SHEMWELL: Staff has addressed  
10    these in ACA cases. MGE has said that she  
11    shouldn't address these in ACA cases, they say the  
12    Commission should do this through a rule making.  
13    And we're responding to that comment that we have  
14    brought them up.

15                   They have suggested, frankly, that  
16    if we don't think they're doing the right thing,  
17    we should file a complaint. Staff is responding  
18    that we haven't filed a complaint. We are, in  
19    fact, addressing our concerns with the fact that  
20    MGE is not documenting its gas purchases in a way  
21    that Staff is comfortable, that they are buying  
22    gas to serve their customers in a reasonable way.

23                   We don't believe that they're doing  
24    the analyses necessary to assure reliability to  
25    their customers, that they're relying on old data,

1     and we have addressed that in the ACA cases. We  
2     have not filed a complaint as MGE suggested  
3     because we are trying to handle it in the ACA  
4     cases in a way that is reasonable and less  
5     litigious than filing a complaint.

6                     We think that bringing those up in  
7     this case, though, when they said oh, well, you  
8     should have filed a complaint, it's reasonable to  
9     show that we are addressing them, we're not  
10    ignoring them. We have concerns and we're  
11    attempting to bring them up.

12                    And again, relying on what Ms.  
13    Jenkins is doing in a related case is certainly  
14    the type of thing that as an expert on MGE's  
15    reliability, the analysis they should be doing,  
16    the data they should be gathering, the statistics  
17    they should be gathering, she's going to rely on  
18    what she's developed in other cases to make her  
19    recommendation in this case.

20                    So I think that we would like to  
21    offer her entire testimony into evidence.

22                    JUDGE WOODRUFF: Any other parties  
23    wish to be heard on this dispute?

24                    MR. MICHEEL: I -- I would like to  
25    just add one thing with respect to the report,



1 Your Honor. I think that there probably is an  
2 exception to the hearsay rule with respect to the  
3 report because it's almost like a business record  
4 of the Commission.

5 I mean, the Commission Staff, their  
6 job is to investigate complaints and problems with  
7 utilities if they see them, and I think that at  
8 least that report was done under the statutory  
9 authority of the Commission to do that sort of  
10 thing.

11 And, you know, I understand that MGE  
12 disagrees with the report, but I don't think that  
13 the Staff is in the habit of -- of, you know,  
14 presenting reports to the Missouri Public Service  
15 Commission that are unreliable or untruthful or  
16 untrustworthy.

17 I mean, certainly it has the Staff  
18 view, but I think there's a business record  
19 exception, governmental record exception to the  
20 hearsay rule as it relates to the hearsay claim.

21 JUDGE WOODRUFF: All right. I'm  
22 ready to make a ruling on it. I'm going to grant  
23 the motion as to Schedule 2, Schedule 3, and  
24 Exhibit 4. Clearly, it is hearsay. The fact that  
25 Staff prepared it and presented it to the

1 Commission doesn't relieve that fact from it being  
2 hearsay. Certainly something that MGE cannot  
3 cross examine this witness about.

4 So the first -- first, second, and  
5 fourth objections are granted.

6 MS. SHEMWELL: So the schedules.

7 JUDGE WOODRUFF: The schedules will  
8 be stricken and the related testimony to them.  
9 The other objection, the third one was to  
10 discussion of the various ACA cases in which  
11 recommendations have been -- Staff has made  
12 recommendations.

13 It is my understanding that MGE is  
14 not objecting to the opening statement on page 7  
15 that the Staff has addressed these issues in ACA  
16 cases, simply objecting to the relevance of the  
17 further discussions; is that correct, Mr. Duffy?

18 MR. DUFFY: Let me double check real  
19 quick. Yes. I am not objecting and do not move  
20 to strike the sentence that says although Staff  
21 has many concerns with past MGE reliability  
22 analysis, Staff has addressed these issues in ACA  
23 cases. All the rest after that I was moving to  
24 strike. It's just, you know, redundant,  
25 bolstering, it's already been litigated in all of

1       those dockets.

2                   JUDGE WOODRUFF:  I'm going to deny  
3       that portion of the motion to strike.

4                   MR. CONRAD:  Judge, could I inquire,  
5       please?

6                   JUDGE WOODRUFF:  Yes.

7                   MR. CONRAD:  My understanding, if  
8       I'm looking at Schedule 3, which is -- appears to  
9       be a deposition of David Kirkland; is that --

10                  JUDGE WOODRUFF:  Yes.

11                  MR. CONRAD:  Is that the Schedule 3  
12       that you're striking?

13                  JUDGE WOODRUFF:  That is the  
14       Schedule 3 that I'm striking.

15                  MR. CONRAD:  And that's despite the  
16       fact that it's acknowledged that that's an  
17       employee of MGE?

18                  JUDGE WOODRUFF:  That's despite  
19       that, yes.

20                  MS. SHEMWELL:  And your basis is  
21       hearsay?  Are you considering all the other  
22       depositions in this case hearsay?

23                  JUDGE WOODRUFF:  I am not.  I'm only  
24       ruling on this particular exhibit.  As well as  
25       hearsay, I believe it's -- there's not been any

1     showing of relevance.  It's not in this case, this  
2     witness is not in a position to be cross examined  
3     about it.

4                     MS. SHEMWELL:  May I just note that  
5     Mr. Kirkland is the head of their gas buying  
6     department?

7                     JUDGE WOODRUFF:  That's noted on the  
8     record.  And as I indicated --

9                     MS. SHEMWELL:  Judge?  Under 536.070  
10    sub 7, even though you sustained it, I would like  
11    to request in line with that statute that it be  
12    preserved in the record.

13                    JUDGE WOODRUFF:  Certainly.  It is  
14    part of the record as you request.

15                    MS. SHEMWELL:  Thank you.  Add  
16    indicated the motion to strike the portions of the  
17    testimony concerning the details of Staff's past  
18    recommendations in ACA cases is denied.

19                    JUDGE WOODRUFF:  All right.  With  
20    those modifications up there, then Exhibit 821 HC,  
21    NP will be admitted into evidence.

22                    All right, then.  For cross  
23    examination.  Beginning with Public Counsel?

24                    MR. MICHEEL:  No questions, Your  
25    Honor.

1 JUDGE WOODRUFF: Federal Agencies?

2 MR. PAULSON: No questions.

3 JUDGE WOODRUFF: Midwest Gas?

4 MR. CONRAD: I guess the part that I  
5 want to ask her about is gone. So I would have to  
6 say no questions.

7 JUDGE WOODRUFF: All right. Thank  
8 you. Then for MGE.

9 CROSS EXAMINATION BY MR. DUFFY:

10 Q Good afternoon, Ms. Jenkins.

11 A Hello.

12 Q Does the Commission have in place  
13 right now administrative rules that it has  
14 promulgated?

15 A Yes.

16 Q Are some of those rules applicable  
17 to gas companies?

18 A Yes.

19 Q Are some of those rules applicable  
20 only to gas companies?

21 A Yes.

22 Q Doesn't the entire chapter 40 of the  
23 Commission's rules pertain only to gas companies?

24 A I'm not familiar with the number.

25 Q But there is a whole chapter that's

1       only gas companies?

2               A       I believe that's right.

3               Q       Do any of those rules applicable to  
4       gas companies require the companies to file  
5       reports?

6               A       I'm not familiar with all those. I  
7       can't comment on that.

8               Q       Do any of the Commission's rules  
9       have a requirement that some reports be filed  
10       annually?

11              A       I can't comment on it. I don't know  
12       all of the provisions of that. They don't all  
13       relate to the work that I do.

14              Q       Do some companies file annual  
15       reports with the Commission?

16              A       Yes, some companies file annual  
17       reports.

18              Q       Do all companies file annual  
19       reports? Called the annual report?

20              A       I don't know what it's called. I  
21       don't look at that.

22              Q       Do you know whether gas companies  
23       are required by rules to file reports if there are  
24       certain incidents involving explosions and  
25       personal injury, things like that?

1           A       I would assume so, but again, that's  
2 not part of my job responsibilities.

3           Q       Would you agree that it's fair to  
4 say the Commission already has rules that require  
5 gas companies to periodically file information in  
6 their possession with the Commission?

7           A       I think that's fair to say.

8           Q       To your knowledge, does the  
9 Commission make it a practice to issue an order  
10 directing each individual gas company to file an  
11 annual report, or do they file their reports in  
12 response to the Commission's established rules?

13          A       Are you talking about that specific  
14 thing you're calling an annual report? Because a  
15 lot of companies provide stuff to me that they  
16 call an annual report on different topics.

17          Q       So you get annual reports from  
18 companies. Are they pursuant to a Commission  
19 rule?

20          A       No.

21          Q       Do you get any reports that you know  
22 of pursuant to a Commission rule?

23          A       Not that I review, no.

24          Q       Do you have any knowledge as to  
25 whether companies, even though they might not file

1       them with you, file annual reports with the  
2       Commission pursuant to a Commission rule?

3               A       I don't dispute that.

4               Q       Do all local gas companies, local  
5       distribution gas companies regulated by the  
6       Commission procure gas for their customers to use?

7               A       Yes, they do.

8               Q       Do all LDCs regulated by the  
9       Commission at least make an attempt to provide  
10      reliable service? I hope the answer is yes.

11              A       I -- there -- there's issues with  
12      different companies, but yes, I believe they make  
13      that attempt.

14              Q       Do all the local distribution  
15      companies regulated by the Commission acquire or  
16      own pipeline capacity to transport gas to their  
17      distribution system?

18              A       Yes.

19              Q       Has MGE ever failed to serve a  
20      customer because MGE didn't contract for enough  
21      gas to deliver to its customers?

22              A       I don't know how to answer that. I  
23      mean, they have curtailment provisions and -- but  
24      that's part of the provisions.

25              Q       To your knowledge, has a customer of



1 MGE, since its existence, February 1, 1994, has a  
2 customer ever lost gas service due to MGE's  
3 failure to obtain enough gas to supply that  
4 customer?

5 A I can't answer that question.

6 Q Because you don't know?

7 A I don't know.

8 Q Have you ever heard of an incident  
9 like that?

10 A No, I haven't.

11 Q Do all the gas companies at least  
12 consider normal and extreme weather conditions in  
13 their planning for reliability?

14 A All the companies consider normal  
15 and they consider what I will call a peak day. I  
16 wouldn't necessarily say that they consider all  
17 the extremes.

18 Q I guess I was using the extreme to  
19 mean a peak day. If -- so let me rephrase the  
20 question.

21 Do all of the gas companies at least  
22 consider normal and peak day weather conditions in  
23 planning for reliability?

24 A Yes.

25 Q Has there ever been any employee

1 turnover in any gas supply department of any gas  
2 company regulated by the PSC besides MGE?

3 A Yes.

4 Q To your knowledge, has the  
5 Commission ever ordered an employee of a gas  
6 company not to retire?

7 A No.

8 Q To your knowledge, has the  
9 Commission ever ordered an employee of a gas  
10 company not to take another job with another  
11 company or move to another state?

12 A No.

13 Q To your knowledge, has the  
14 Commission ever ordered a gas company not to hire  
15 a particular individual?

16 A No.

17 Q Has there ever been an ACA case for  
18 MGE since 1994 in which the Staff has not  
19 recommended a disallowance of gas costs?

20 A I am only familiar with the cases  
21 since I've been here, and I believe the first ones  
22 I worked on were the 1998/99, and I -- I can't  
23 comment from -- from the accounting standpoint,  
24 just from my standpoint. I mean that first year,  
25 I did not recommend a disallowance on the

1 reliability issues.

2 Q So the answer is you don't know?

3 A I don't know for all the issues.

4 Q At page 6, lines 11 through 14 of  
5 your testimony, you mention a transition agreement  
6 between One Oak and MGE regarding gas supply.  
7 Didn't that agreement expire sometime last month?

8 A It was simply a 60 day agreement  
9 that was extended to a 90 day agreement, yes.

10 Q Is there any new transition  
11 agreement like that in effect at this time?

12 A Not that I'm aware of.

13 Q Is the gas supply function for MGE,  
14 to your knowledge, being handled by people in  
15 Kansas City, Missouri, at the present time?

16 A To my knowledge, yes.

17 Q To your knowledge, are those people  
18 responsible for managing that gas supply doing it  
19 for anyone other than MGE's customers?

20 A To my knowledge, no.

21 Q Is it fair to say MGE has brought  
22 some new jobs to Missouri that were not based here  
23 before in that regard and has assigned people in  
24 those jobs to serve the Missouri customers of MGE  
25 exclusively?

1           A       I wouldn't dispute that.

2                   MR. DUFFY: That's all I have.

3       Thank you.

4                   JUDGE WOODRUFF: Thank you. And

5       we'll come up for questions from the bench.

6       Chairman Gaw, do you have any questions?

7       BY COMMISSIONER GAW:

8           Q       Would you mind giving me a very  
9       brief description of what your adjustment -- what,  
10      if any, adjustments you're sponsoring?

11          A       There's no dollar adjustment. What  
12      I am recommending is that the Company file an  
13      annual gas supply plan and that they update their  
14      capacity reliability analysis every two to three  
15      years, or more often if the contract reviews and  
16      terminations so dictate.

17          Q       And why are you making that  
18      recommendation?

19          A       I have had continued concerns  
20      regarding MGE's reports. They've only -- they  
21      haven't really even committed on any frequency on  
22      which to provide them in the 2000 -- 2001 ACA.  
23      They did provide a reliability report, but later  
24      we discovered it was based on a 1994 analysis. So  
25      the data was at least six years old. They could

1 not find the data, or any of the analysis to  
2 support that study.

3 And I believe that we need more  
4 frequent and more current information from this  
5 company in which to make analysis of their  
6 capacity and their supply plans.

7 Q All right. And what would be the  
8 purpose of you getting that information? What  
9 would you do with it?

10 A In the annual ACA reviews, I would  
11 review that information to determine whether or  
12 not the assumptions they're using are reasonable,  
13 whether the calculations support the numbers that  
14 they're using in their planning.

15 If they had excess capacity, I would  
16 evaluate what is the cost of that excess capacity  
17 and determine whether or not to recommend any  
18 adjustment. If those supply plans were deficient,  
19 I would point that out. If they had more supply  
20 than they needed, I would point that out.

21 Again, if there was cost to that and  
22 I thought that it was substantial or that it  
23 impacted the customers, I might make a  
24 recommendation to the Commission that they  
25 disallow those costs.

1           Q       Now, this is in an ACA proceeding  
2       that you're talking about?

3           A       Yes.

4           Q       If I understood you correctly.

5           A       Yes.

6           Q       That is -- you're talking about an  
7       after the fact review of -- of gas purchasing  
8       practices; is that correct? Or are you talking  
9       about going forward making recommendations as to  
10      changes that they may do in the future?

11          A       It could be both.

12          Q       All right.

13          A       If -- would you like me to give an  
14      example?

15          Q       Yes, please.

16          A       If they had excess capacity, and we  
17      have made this recommendation in the 2001/2002  
18      case, we might make a recommendation that that --  
19      those costs of that excess capacity be disallowed.  
20      So that would be on that particular ACA case.

21                 If they had not planned for, say,  
22      sufficient supply for what we thought they needed  
23      for operations, well, there may not -- there  
24      wouldn't be a dollar adjustment to that because it  
25      didn't cost the customers anything.

1                   But if there had been a really cold  
2     day or a really cold period of time, there might  
3     have been a shortfall, and in that case, it  
4     wouldn't be a dollar adjustment, but we might ask  
5     the Company to reevaluate certain things and  
6     express concerns to them.

7           Q       When would you be doing this?  When  
8     you're talking about this process, when do you --  
9     when would you be making that analysis and making  
10    those recommendations?

11          A       Um, when the ACA period has ended,  
12    the Company files information.  We send data  
13    requests.  And after we've completed that review,  
14    Staff makes a ACA recommendation to the  
15    Commission.

16          Q       And can you not get that -- the  
17    information that you're -- that you're requesting  
18    in the ACA process currently?

19          A       I have not gotten that commitment,  
20    no.

21          Q       Are there not tools to -- to ensure  
22    that you get that information to the ACA process?

23          A       I can make recommendations to the  
24    Commission, but there's no penalties that I can  
25    recommend.  All's I can do is recommend to the

1 Commission.

2 Q You're telling me that -- that you  
3 do not have the ability currently to require the  
4 Company to provide that information that you're  
5 seeking in this -- in your -- in your testimony  
6 without the Commission specifically order it in  
7 the ACA process?

8 A There's nothing that I can do. Many  
9 LDCs voluntarily agree to do this. In the Staff  
10 recommendation, I may recommend that they produce  
11 -- may recommend that they pro -- many of those  
12 cases -- most of those cases other than MGE, they  
13 have agreed to do that. I put three examples in  
14 my testimony of companies that have agreed to do  
15 that.

16 Q Well, let me make sure I'm following  
17 you. Are there any other companies that haven't  
18 agreed to provide the information other than MGE?

19 A No.

20 Q Is any of your request for  
21 information have anything to do with the shift in  
22 the gas procurement department or -- within MGE?

23 A That's a piece of it, and it -- just  
24 an example, I mean, turnover is a given. Mr.  
25 Duffy asked me questions about can we prevent



1 people from moving on or quitting or whatever.  
2 No, we can't. There's going to be a turnover, and  
3 turnover is a very good reason to have that  
4 documentation.

5 Sometimes that turnover is planned  
6 and you have many months to maybe bring someone up  
7 to speed. Other times there could be a health  
8 emergency or someone just finds another job and  
9 you've got two weeks to bring someone else on or  
10 transfer those responsibilities. And I just  
11 contend that when that is written and there's a  
12 plan, it's easier to make that transition.

13 Q As compared to what? As compared to  
14 -- contrast that with what your concerns are with  
15 this in this case.

16 A If there is no plan or if the plan  
17 is not well documented such that the person  
18 looking at it can't tell where the numbers came  
19 from or what to do if something is different than  
20 the plan, there's concerns that, especially on a  
21 really cold day, what's going to happen.

22 Q Is your concern that you have --  
23 that you don't know whether MGE -- the people  
24 responsible at MGE for making gas crises have the  
25 right information? Or that you have, in your

1 discussions with their agents, determined that  
2 they don't know?

3 A In the past they have not known. In  
4 that 2000 -- 2001 case, as I told you, that was  
5 based on the 1994 analysis that could not be  
6 found, so nobody knew what those numbers were  
7 based on.

8 Q Was that when the department was a  
9 part of -- was stationed in Texas?

10 A Yes.

11 Q So now it's stationed in Kansas  
12 City. Correct?

13 A Yes.

14 Q Do you have any -- do you believe  
15 that it's improved since it's moved to Kansas  
16 City, or do you know?

17 A Since that time they have contracted  
18 with a consultant to do an analysis for them.  
19 That analysis is still draft. It would only be  
20 for this coming winter, the 2000 -- 2005 winter.

21 I requested a lot of information. I  
22 got an e-mail yesterday with some of that  
23 information in it, and I haven't had time to look  
24 at that. So yes, they've done a recent analysis.  
25 Whether or not it's reasonable or not, I can't

1 tell you at this time.

2 Q Well, has the Company now agreed to  
3 provide some of the information that you've  
4 requested?

5 A They have only agreed -- they've  
6 only presented this one draft study, and it --  
7 what I have reviewed so far, I can't comment on  
8 what came in yesterday, there were no supply plans  
9 associated with it. It was only a capacity  
10 analysis.

11 Q Who -- who -- how many personnel, if  
12 you know, are dedicated to gas procurement now  
13 within MGE? If you know.

14 A I don't know. If I had to guess,  
15 I'd say four or five individuals.

16 Q Okay. Is that staffing -- is that  
17 staffing similar to the staffings of other  
18 companies of similar size that you work with?

19 A It's difficult to compare them  
20 because Ameren UE is more spread out on different  
21 pipelines. I guess if I compared it -- it -- I  
22 guess comparable maybe to Laclede.

23 Q And do you -- are you familiar with  
24 the experience level and training of the  
25 individuals who are now doing gas procurement in

1 MGE?

2 A I have, um, talked with Dave  
3 Kirkland, who is -- oversees the gas supply  
4 function. He's the main person that I deal with.  
5 He may communicate things from his staff --

6 Q Are you familiar with their  
7 experience and training?

8 A No, sir.

9 Q Is the information that you're  
10 asking the Commission to -- to ensure that the  
11 Company produces more than the information that  
12 you voluntarily receive from the other LDCs? In  
13 Missouri?

14 A The capacity planning, most of the  
15 LDCs do that annually. There is one LDC that does  
16 it every two to three years and has committed to  
17 do it more often, if necessary.

18 On the supply planning side, I get  
19 information from all of the companies through DR  
20 responses. There's only two of them that actually  
21 provide what they call -- it's actually labeled  
22 their plan. But I get the information from the  
23 other companies, but through various documents in  
24 their supply planning process.

25 Q I don't know if you answered my

1 question. Are you getting -- are you asking for  
2 more information from MGE than you are getting  
3 voluntarily from the other LDCs in the state?

4 A No, I'm not asking for more than I'm  
5 getting from the others.

6 COMMISSIONER GAW: Thanks, Judge.  
7 Thank you.

8 JUDGE WOODRUFF: Mr. Appling, do you  
9 have any questions?

10 COMMISSIONER APPLING: No.

11 JUDGE WOODRUFF: I have no  
12 questions. Go back to recross. Public Counsel?

13 MR. MICHEEL: No, Your Honor.

14 JUDGE WOODRUFF: Federal Agencies?

15 MR. PAULSON: No, sir.

16 JUDGE WOODRUFF: Midwest Gas?

17 MR. CONRAD: I'll be very brief,  
18 Your Honor.

19 RECROSS EXAMINATION BY MR. CONRAD:

20 Q In recognition of time, I want to  
21 focus on one or two questions that Chairman Gaw  
22 asked you. He asked about the personnel and  
23 number that were used, and you thought four to  
24 five was the magic number.

25 Does MGE have more pipelines or less

1 pipelines to deal with than the other gas  
2 companies?

3 A I can't answer that off the top of  
4 my head. I mean, for example, Ameren has distinct  
5 service areas, and each of those areas is served  
6 by different pipelines. Laclede has some main  
7 pipelines, but they also have upstream. But I  
8 haven't actually sat down and tallied the number.

9 Q Is it -- is it fair to say that  
10 that's -- and Chairman Gaw asked about the  
11 training and so on. Is purchasing gas like this  
12 fairly complicated?

13 A When the weather's normal, I would  
14 say it's not that complicated. But the problem is  
15 that the weather isn't always normal, and there's  
16 a lot of things that could be different.

17 There's really warm weather, if you  
18 have too much flooring supply, what do you do with  
19 it? There's the really cold weather that if you  
20 don't have enough flooring supply, how do you get  
21 it? The extremes are what make it more  
22 complicated.

23 Q And is it -- am I correct that it's  
24 not just purchasing of the gas, it's arranging for  
25 transportation and delivery of it also; is that --

1           A       Yes.

2           Q       I think the very last question the  
3 Chairman asked you, I -- forgive me, I didn't hear  
4 quite the same answer. I thought he was asking  
5 you if you were asking MGE to give you more data,  
6 reports, information than the other companies  
7 provided you voluntarily. And you responded that  
8 you weren't asking them for more. Let me ask his  
9 question again.

10                   Is there -- is there a voluntary  
11 issue here?

12           A       Well, I mean, MGE has not offered to  
13 provide the information routinely. And some --  
14 some companies have volunteered to provide the  
15 capacity reports annually. There's one other,  
16 Ameren has said every two to three years. And  
17 that's all we're asking of MGE, just more  
18 frequently if there's changes. And Ameren's  
19 agreed to that as well.

20           Q       But you have worked with these other  
21 companies for a couple three years?

22           A       Yes.

23           Q       Do you -- have you worked with them  
24 enough to form an opinion as to why MGE is  
25 unwilling or so resistant to providing this

1 information?

2 A I -- I don't know why.

3 MR. CONRAD: Okay. Thank you.

4 JUDGE WOODRUFF: And MGE.

5 RE CROSS EXAMINATION BY MR. DUFFY:

6 Q Has anyone taken away your right to  
7 send data requests to MGE?

8 A No, they haven't.

9 Q Has anyone taken away your right to  
10 depose an employee of MGE?

11 A No.

12 Q Has MGE ever just flatly refused to  
13 answer a data request by saying, we're not going  
14 to give you that information? I'm excluding  
15 something they might have had a legal objection  
16 to.

17 A They've not refused, but they've  
18 said they don't do that.

19 Q Okay. Now, when you say that they  
20 won't provide information, what you're really  
21 talking about is they're telling you we don't have  
22 the kind of information or the data that you're  
23 asking for; isn't that right? They haven't  
24 refused to provide it, they just say we don't have  
25 it?



1           A       Well, with the exception of that  
2     1994 analysis that they couldn't find.

3           Q       Let's talk about that. I've heard  
4     you talk about the 1994 analysis about eight  
5     times. Is MGE doing anything right now that is --  
6     is purported by relying on that 1994 regression  
7     analysis that they just told you we cannot locate  
8     those -- that data?

9                   Are they -- I mean, what relevance  
10    does that have to anything that they're doing  
11    right now?

12          A       The relevance is they said they were  
13    doing annual reviews in those reliability reports,  
14    and the fact was it was not an annual review, it  
15    was 1994 analysis.

16          Q       When is the last time they relied on  
17    a 1994 analysis in doing something? That's not a  
18    current issue with MGE, is it?

19          A       Well, not -- the issue I'm trying to  
20    say here is --

21          Q       Just please answer my question. The  
22    '94 analysis doesn't have anything to do with what  
23    MGE is doing right now in terms of determining  
24    what the reliability of serving its customers.

25                   MS. SHEMWELL: Judge, there's no

1 need for lack of civility.

2 JUDGE WOODRUFF: I haven't seen any  
3 lack of civility. Objection is overruled.

4 MS. SHEMWELL: Really.

5 THE WITNESS: The latest information  
6 I have from them does not base on that '94  
7 analysis.

8 Q (By Mr. Duffy) Thank you. Now,  
9 you've testified also that Aquila and Ameren UE  
10 agreed to provide you this information that you're  
11 seeking the Commission to order MGE to provide;  
12 isn't that right?

13 A Yes.

14 Q Isn't it true that they both agreed  
15 to do that in the context of the full settlement  
16 of rate cases?

17 A No.

18 Q That wasn't a provision in the  
19 settlement of the rate case?

20 A Not to my knowledge. I made  
21 recommendations in the ACA cases, and in their  
22 response they agreed to provide that information.

23 Q So let's just go back and make sure  
24 I understand. When you say that MGE hasn't  
25 provided information, it's situations where they

1 say we don't have what you're asking for, rather  
2 than we have that information and we're not going  
3 to give it to you; is that right?

4 A Yes.

5 MR. DUFFY: That's all I have.

6 JUDGE WOODRUFF: Thank you.

7 Redirect?

8 REDIRECT EXAMINATION BY MS. SHEMWELL:

9 Q Mr. Duffy asked you some questions  
10 about all LDCs. Are all LDCs the same size?

11 A No.

12 Q Are their systems alike?

13 A No.

14 Q Do they have the same number of  
15 customers?

16 A No.

17 Q Are their weather patterns the same?

18 A No.

19 Q In your opinion, do some LDCs do a  
20 better job of planning to serve their customers  
21 than others?

22 A Yes.

23 Q Do you have an opinion as to where  
24 MGE is on that scale?

25 MR. DUFFY: Objection. I don't

1 think there's been a foundation laid for her to do  
2 an expert opinion on that. I haven't seen the  
3 results of any analyses or anything in this case  
4 about that.

5 JUDGE WOODRUFF: Objection is  
6 sustained.

7 Q (By Ms. Shemwell) Specifically  
8 there's been a lot of questions about what you're  
9 asking MGE to produce. What are you asking MGE to  
10 analyze?

11 A I'm asking them -- well, I'm asking  
12 them to provide a capacity report every two to  
13 three years or more frequently. What they would  
14 analyze is usage data, to produce that. They  
15 would also analyze weather, they would probably  
16 review existing contracts, how they're using  
17 storage, how that needs to be changed, if at all.  
18 Basically reviewing the data that they have, and  
19 then using that information to plan for the  
20 future.

21 On the supply side, I am asking them  
22 to provide a supply plan annually. And the reason  
23 for the frequency of that is because supply plans,  
24 supply contracts, and the planning of those  
25 volumes is generally done more frequently.

1                   Even though they might say -- even  
2     have an annual contract or in some cases have a  
3     two year contract, transaction agreements that  
4     actually set the volumes are done on a monthly  
5     basis, or two or three months at a time.  
6     Some, you know, possibly longer if on a base load.  
7     But collectively, I mean, those decisions could be  
8     based on monthly volume.

9                   So at any rate, I'm asking for that  
10    information more frequently. And again, the  
11    Company would have to look at the data at hand as  
12    it's planning for its supply for the coming years.

13           Q       In your opinion, is there any way to  
14    plan for the future without looking at your past  
15    data?

16           A       I wouldn't call it planning, then.  
17    Obviously, you can always go forward without  
18    looking at past data, but I think there's a risk  
19    associated with that.

20           Q       And what's the risk?

21           A       I guess there's the two extremes.  
22    One is that you got too much capacity, and thus,  
23    customers are paying for something that they don't  
24    need. On the other extreme, there isn't enough  
25    capacity or enough supply, and then if a peak day

1 occurs, there -- it won't be there.

2                   It's not going to be easy to find  
3 capacity if you don't have a contract in place or  
4 supply plans in place and you hear that it's going  
5 to be extremely cold tomorrow. You -- I don't  
6 know where you're going to find that.

7           Q       Has MGE recently analyzed their peak  
8 day, what a peak day is?

9           A       They -- they provided me with a  
10 draft report, and as I indicated, I have some of  
11 the information. I have sent quite a few  
12 questions to the Company, and I received -- I have  
13 received various responses, but the latest  
14 response I received was yesterday.

15          Q       We've talked a lot about the Kansas  
16 City employees that replaced -- that work -- the  
17 workforce that was transferred to One Oak, and you  
18 were asked about their experience.

19                   In your opinion, do the Kansas City  
20 employees have the same institutional knowledge as  
21 their prior gas supply workforce?

22                   MR. DUFFY: Objection, calls for  
23 speculation.

24                   MS. SHEMWELL: I would think she can  
25 give an opinion.

1 JUDGE WOODRUFF: I'll overrule the  
2 objection.

3 THE WITNESS: I'm going to compare  
4 it to the bigger LDCs because, I mean -- and the  
5 Company made the point there's always turnover,  
6 but I mean you had quite a bit of turnover at MGE  
7 and there isn't anyone doing the gas supply that  
8 was doing it before that transfer.

9 Q (By Mr. Shemwell) Which was when?

10 A Hold on just a minute and I will  
11 tell you. 2002/2003. Some of the changes were  
12 made beginning that November, and then it went  
13 through that winter.

14 Q Okay. And you were going to compare  
15 to some of the other -- did you say you were going  
16 to compare to some of the other big companies?

17 A Um, I just meant that they -- I  
18 thought I made that point. They have lost some  
19 institutional knowledge when you compare it, say,  
20 to an Ameren or a Laclede.

21 I would like to also comment that I  
22 know turnover occurs. That's the reason for the  
23 documentation. I'm not saying that there  
24 shouldn't be turnover. It's just part of  
25 business.

1           Q       Mr. Gaw was asking you about  
2 turnover. Is that the only reason to have written  
3 plans?

4           A       No. Even if someone's been there  
5 for ten years, they don't just keep all this stuff  
6 in their head. Um, there might be a rare  
7 exception of a person that can remember absolutely  
8 everything, but I don't think there's many of us.  
9 And I'm not one of them. And I think they do have  
10 to refer to these plans.

11                    You don't know, even if you've done  
12 your peak day planning, you know, there are  
13 situations that come up. Storage could be pulled  
14 down more than you expected early in the season,  
15 or you might have a lot of excess storage going  
16 into January and you have to say what do I do now?  
17 And hopefully your plans give you some guidance  
18 there.

19           Q       Mr. Duffy was asking you some  
20 questions about DRs. And in your opinion, does  
21 MGE fully respond to your DR requests?

22           A       MGE responds to the data requests.  
23 Their responses sometimes give me quite a bit of  
24 information, and other times they don't. But they  
25 do respond.



1           Q       Are you asking anything from MGE  
2       that you're not asking from anybody else?

3           A       No.

4           Q       Are you asking MGE to create  
5       something that other companies are not creating?

6           A       No. In order to plan for gas  
7       supply, um, you have to know what your usage is  
8       going to be. And in order to do your contracts  
9       for capacity, I shouldn't say you have to, you  
10      should know what your usage is going to be. You  
11      should have projections. So I think what I'm  
12      asking is just a reasonable part of how they would  
13      be doing business.

14                   MS. SHEMWELL: That's all I have.  
15      Thank you.

16                   JUDGE WOODRUFF: All right. Thank  
17      you.

18                   I do want to make one announcement.  
19      Before or during the testimony of Miss Hays, I had  
20      sent an e-mail upstairs to the Commissioners, I  
21      think, who were listening up there indicating that  
22      she would be the last witness, that we would not  
23      be taking Miss Jenkins. And since we did, I don't  
24      know if they left in reliance on that.

25                   And if they come in on Monday and

1     say I have questions for Miss Jenkins, we may need  
2     to recall her. I don't know that that's going to  
3     happen, but I want you to be aware of that  
4     possibility. So, Miss Jenkins, you can step down  
5     now.

6                     And we are ready to go off the  
7     record, unless there's something else somebody  
8     wants to bring up.

9                     With that, then, we are adjourned  
10    until 8:30 on Monday morning with Dr. Morin.

11                    (Off the record.)

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