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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

No. PCB 99-191

PANHANDLE EASTERN PIPE LINE COMPANY,

Respondent.

Proceedings held on September 19, 2000, at 9:35 a.m., at
the offices of the Illinois Pollution Control Board, 600 South
Second Street, Suite 403, Springfield, Illinois, before John C.
Knittle, Chief Hearing Officer.

VOLUME II

Reported by: Darlene M. Niemeyer, CSR, RPR
CSR License No.: 084-003677

KEEFE REPORTING COMPANY
11 North 44th Street
Belleville, IL 62226
(618) 277-0190

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A P P E A R A N C E S

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: Robb H. Layman
Dennis E. Brown
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
On behalf of the Illinois EPA.

STATE OF ILLINOIS, OFFICE OF THE ATTORNEY GENERAL

BY: Sally A. Carter
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

SEYFARTH SHAW

BY: Eric E. Boyd
Attorney at Law
55 East Monroe, Suite 4200
Chicago, Illinois 60603
On behalf of Panhandle Eastern Pipe Line
Company, Inc.

SEYFARTH SHAW

BY: Susannah A. Smetana
Attorney at Law
1270 Avenue of the Americas, Suite 2500
New York, New York 10020
On behalf of Panhandle Eastern Pipe Line
Company, Inc.

DUKE ENERGY

BY: Phillip S. Deisch
Assistant General Counsel
Environmental, Health and Safety
5400 Westheimer Ct.
Houston, Texas 77251
On behalf of Panhandle Eastern Pipe Line
Company, Inc.

Also present:

Board Member Marili McFawn
Bobb Beauchamp, Attorney Assistant to
Board Member McFawn

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1 P R O C E E D I N G S

2 (September 19, 2000; 9:35 a.m.)

3 HEARING OFFICER KNITTLE: On the record. Today's date is
4 September 19th of the year 2000. We are continuing the hearing
5 in PCB Docket Number 99-191, People of the State of Illinois
6 versus Panhandle Eastern Pipe Line Company. We are continuing
7 with the case-in-chief of the complainant's. I do want, as a
8 preliminary matter -- well, first of all, is there any
9 preliminary matter on behalf of the complainant before we get
10 started?

11 MS. CARTER: No.

12 HEARING OFFICER KNITTLE: Mr. Boyd?

13 MR. BOYD: None.

14 HEARING OFFICER KNITTLE: I have one. In response to the
15 urging of Mr. Layman and Ms. Carter, I have looked into the
16 business records issue concerning People's Exhibit Number 5. I
17 do think it is true that a business record is any writing or
18 record made as a memorandum or record of any act, transaction,
19 occurrence or event, and would be admissible if it were made in
20 the regular course of business and if it were in the regular
21 course of business to make such a memorandum or record at the
22 time of such event. This, in fact, is the only requirement that
23 needs to be met for admissibility. As Mr. Layman pointed out,
24 anything else, any other issues go to the weight to be given the

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1 evidence.

2 I am standing by my ruling, though, because I find that
3 this document before us, People's Exhibit Number 5, is not a
4 record in that it was not made as a memorandum or record of an
5 act, transaction, occurrence or event. In fact, looking at the
6 document it says this letter is in response to the Illinois
7 Environmental Protection Agency's request for guidance. If, in
8 fact, it were a summary of a telephone conversation or some such
9 event that was documented by this letter I would, in fact, find
10 it admissable and any problems that I had that the maker of this
11 letter were not here would go to the weight of the evidence.

12 But that is what I discovered in my off hours research.
13 That's what I am going to stand by. So, Mr. Layman, I just
14 wanted you to know that I did not disregard your urging.

15 MR. LAYMAN: That's fine. Thank you.

16 HEARING OFFICER KNITTLE: Now we can get started with the
17 complainant's witness, which we have Mr. Styzens still, I take
18 it?

19 MS. CARTER: Yes.

20 HEARING OFFICER KNITTLE: Do you want to continue his
21 direct examination?

22 MS. CARTER: Yes, I would like to.

23 HEARING OFFICER KNITTLE: Could we swear him in again,

24 please.

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1 (Whereupon the witness was sworn by the Notary Public.)

2 HEARING OFFICER KNITTLE: All right. Ms. Carter, your
3 witness.

4 MS. CARTER: Thank you.

5 DIRECT EXAMINATION (continued)

6 BY MS. CARTER:

7 Q. Upon completion of People's Exhibits 8, 9 and 10, did
8 you discuss these documents with anybody?

9 A. I am sorry? Could you repeat the question?

10 Q. Upon your completion of Exhibits 8, 9 and 10 -- do you
11 have those before you?

12 A. Yes.

13 Q. Did you discuss those documents with anybody?

14 A. Well, just as I had said earlier, Dr. Nosari and I were
15 working kind of as a team approach. So Dr. Nosari had reviewed
16 this economic benefit calculation sheets to review for
17 reasonableness as far as the approach used and double-check
18 things for accuracy and things of that nature.

19 Q. Did he provide you with any additional comments in your
20 discussions of these documents?

21 A. Just that he felt that it was a reasonable approach.

22 Q. Okay. If I could direct your attention to Exhibit 9 and
23 9A. If you wanted to change the time period of noncompliance so

24 that it was no longer running through 1999, but a prior date, to

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1 determine a different economic benefit, could this be done?

2 A. Yes, yes. You can make adjustments in the beginning
3 starting point of the time frame or the ending point of the time
4 frame and make the necessary adjustments.

5 Q. Could you describe for me how you could make adjustments
6 to the ending point of the time frame?

7 A. I believe from the way we went about it here I think you
8 could just -- let's say you were going to cut your time frame off
9 in 1996, on line 11, I believe you could just add up column H,
10 11H, all the way up through column H1 and get a reasonable
11 estimate of the economic benefit for that different time period.

12 Q. Okay. Thank you. Mr. Styzens, do you have an opinion
13 pertaining to the accuracy of the initial figures that you
14 utilized in your economic benefit calculation that we just went
15 through yesterday? I can break it down for you.

16 A. Yes, I don't totally understand.

17 MR. BOYD: I am just going to object to the lack of
18 foundation for any opinion regarding those numbers.

19 HEARING OFFICER KNITTLE: Ms. Carter?

20 MS. CARTER: We went through yesterday his entire analysis
21 utilizing those initial figures. Since he relied upon those
22 figures from the beginning of his analysis, it is reasonable for

23 him to have an opinion relative to the accuracy of those numbers.

24 HEARING OFFICER KNITTLE: The objection is overruled. I

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1 think sufficient foundation was laid yesterday.

2 MR. BOYD: Well, Mr. Knittle, if I may --

3 HEARING OFFICER KNITTLE: You may.

4 MR. BOYD: I think there was a lot of testimony yesterday,
5 approximately 45 minutes about how Mr. Styzens took numbers that
6 were provided to him and came up with the economic benefit
7 numbers. What I am objecting to is any foundation regarding the
8 accuracy of those initial numbers that he began to rely on.
9 There was no testimony regarding the accuracy of those numbers.

10 HEARING OFFICER KNITTLE: Ms. Carter, anything further?

11 MS. CARTER: Just let me think for a moment. The initial
12 numbers -- like I said before, it is only inevitable that he is
13 going to have an opinion regarding those numbers due to his
14 extensive utilization of them in his analysis.

15 HEARING OFFICER KNITTLE: Mr. Boyd, correct me if I am
16 wrong, but didn't we go over the three factors that this witness
17 looked at in terms of reasonableness of those numbers or is that
18 a different set of numbers?

19 MR. BOYD: That was a different set of numbers. Those
20 three factors that he looked at had to do with using the weighted
21 average cost of capital to determine an economic benefit. What I
22 am talking about are the numbers that he began with for the

23 initial amount of the alleged amount for capital components and
24 the initial -- and the amount that was allegedly delayed for

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1 annual operating costs. He did not provide any testimony
2 regarding those numbers in his analysis. He used those numbers
3 and that's it. There was no testimony at all regarding those
4 numbers.

5 HEARING OFFICER KNITTLE: Ms. Carter, any response?

6 MS. CARTER: I can lay more foundation.

7 HEARING OFFICER KNITTLE: Please do. I am going to revise
8 my ruling. I was looking at the wrong set of numbers. So the
9 objection is sustained.

10 MS. CARTER: Okay.

11 MR. BOYD: Thank you.

12 Q. (By Ms. Carter) If I could direct your attention,
13 please, Mr. Styzens, to People's Exhibit Number 3, specifically
14 page 115 contained therein.

15 A. Page what?

16 Q. Page 115.

17 A. Okay.

18 Q. Can you again explain to me the process that you
19 undertake when conducting an internal audit?

20 MR. BOYD: Objection. Asked and answered.

21 MS. CARTER: I am trying to lay the foundation that Mr.

22 Boyd --

23 HEARING OFFICER KNITTLE: I am going to overrule this
24 objection and give her a little bit of leeway to lay the

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1 appropriate foundation.

2 MS. CARTER: Thank you.

3 Q. (By Ms. Carter) Do you need me to --

4 A. Yes, repeat the question, please.

5 Q. Okay. In terms of -- can you just explain to me again
6 the analysis that you typically conduct when you are performing
7 an internal audit?

8 A. Okay. When you are performing an internal audit you
9 have to continuously make an assessment of the information that
10 you are using for the audit to determine if it is reasonable and
11 accurate. For example, during my first deposition I had stated
12 that I had a concern about the numbers that we were using from
13 the BACT analysis on this page because --

14 MR. BOYD: I am sorry. Excuse me. I am just going to
15 object to this as nonresponsive to the question.

16 HEARING OFFICER KNITTLE: Ms. Carter?

17 MR. BOYD: And move that it be stricken.

18 MS. CARTER: Could you please read back -- could you please
19 have the court reporter read back the question and answer,
20 please.

21 HEARING OFFICER KNITTLE: Could you please read it back.

22 (Whereupon the requested portion of the record was read
23 back by the Reporter.)
24 MS. CARTER: The response that he was providing was a

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1 generalized response.

2 MR. BOYD: I will withdraw my objection.

3 HEARING OFFICER KNITTLE: Do you need to -- can you start
4 again, Mr. Styzens? Do you know where you are at?

5 THE WITNESS: Yes.

6 HEARING OFFICER KNITTLE: Okay. Please do.

7 THE WITNESS: In my first deposition I had stated that I
8 had a concern about the accuracy of the initial capital outlay
9 figure and the recurring cost figures because in an internal
10 audit you have to go through a process to examine the information
11 that you are using to ensure that it is accurate and reasonable.
12 And I did not -- I had stated in my first deposition that I did
13 not perform that test on those two numbers.

14 I had requested that if Panhandle was aware of any better
15 information pertaining to the initial capital outlays for the
16 clean burn equipment and the recurring operating and maintenance
17 costs for the clean burn equipment, I would sure appreciate, you
18 know, getting some better numbers if they exist. I had said that
19 in order for me to examine these numbers on this page I would
20 have to actually do a another whole internal audit project where

21 I would have to meet with Panhandle to discuss how these numbers
22 were derived, meet with the Agency, the Illinois EPA, to discuss
23 how these numbers were derived, so that I could reach a
24 conclusion on their accuracy. I did not do that. That's the

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1 reason I requested from Panhandle, you know, better numbers if
2 they existed.

3 Q. (By Ms. Carter) Okay. Thank you. Did you ultimately
4 receive different numbers from Panhandle?

5 A. Yes. At the end of my first deposition Panhandle
6 indicated that the next step that they were going to take or one
7 of the next steps was to try to obtain some better numbers. Yes,
8 I did receive some better numbers at a later date.

9 (Whereupon said document was duly marked for purposes of
10 identification as People's Exhibit 11 as of this date.)

11 Q. (By Ms. Carter) I am handing you what has been
12 previously marked as People's Exhibit Number 11. If I could
13 direct your attention to pages six, seven, eight, nine, ten,
14 eleven, twelve -- it is six through thirteen, I believe.

15 A. Okay.

16 Q. Are you on page six, Mr. Styzens?

17 A. What is shown on page six? Is it table two or table
18 three?

19 Q. Can I direct your attention to table one. Do you see
20 table one?

21 A. Table one. Yes.

22 Q. When have you -- have you seen this before?

23 A. Yes. I believe after I had requested some better
24 numbers in my first deposition that I believe at an April meeting

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1 with Panhandle that they presented this information, which
2 represented their analysis of some better initial investment,
3 capital investment numbers, and some recurring cost numbers
4 associated with the noncompliance issue.

5 Q. Okay. If I could have you turn the page to table two.
6 Have you seen this sheet before?

7 A. Yes. Again, this was part of the April meeting where
8 Panhandle was presenting what they felt were some more accurate
9 numbers than the BACT numbers that we initially had used.

10 Q. Okay. Can I have you turn the page to table three.
11 Have you seen this page before?

12 A. Yes.

13 Q. Again, what is this page?

14 A. This, again, is resulting from the April meeting with
15 Panhandle where they are attempting to provide me with some
16 better numbers on capital outlays.

17 Q. Again, table four, have you seen this page before?

18 A. Yes. Again, this was as a result of the April meeting
19 with Panhandle where they are attempting to give me capital

20 outlay information.

21 Q. Is it fair to say that tables 4A through 4D were
22 included as well?

23 A. Yes.

24 Q. Did you review this information once you had received

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1 it?

2 A. Yes.

3 Q. Can you please tell me a little bit about your review of
4 this information?

5 A. Basically Dr. Nosari and I both received this
6 information at that April meeting, so Dr. Nosari and I had some
7 discussion about how we had both reviewed the documentation and I
8 had felt that there -- in this document there did contain a
9 reasonable incremental cost analysis estimating what the initial
10 capital outlay would have been in 1988 for the clean burn
11 equipment and also a reasonable estimate of the recurring costs
12 and operating costs, maintenance costs, for the same clean burn
13 equipment.

14 Q. Okay. Just one moment, please. If I could direct your
15 attention to table three contained within People's Exhibit Number
16 11.

17 A. Yes.

18 Q. Okay. Do you see the number contained therein of
19 368,815?

20 A. Yes, that's the total in the top section of this table.

21 Q. What is this the total of, sir?

22 A. It is a -- resulting from the incremental cost analysis
23 associated with the costs that Panhandle would have incurred if
24 the clean burn equipment had been installed in 1988, which is

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1 around the beginning of the noncompliance period.

2 Q. Okay. Did you employ this number after you received it
3 from Panhandle?

4 A. Yes. I determined that I could use that number in place
5 of the BACT figure that -- for the initial capital investment to
6 do an economic benefit analysis starting with the 368,815.

7 (Whereupon said document was duly marked for purposes of
8 identification as People's Exhibit 12 as of this date.)

9 Q. (By Ms. Carter) I am handing you what has previously
10 been marked as People's Exhibit Number 12. Have you seen this
11 document before?

12 A. Yes. I prepared that document.

13 Q. Can you identify it for me, please?

14 A. That is my economic benefit analysis on the initial
15 capital investments that were avoided at the beginning of the
16 noncompliance period, but using the starting point of the initial
17 capital investment at the bottom of column D, the 368,815, which
18 is footnoted that it was a figure taken from Panhandle document

19 dated April 5th, 2000, table three.

20 Q. Okay. Just one moment, please.

21 (Whereupon documents were duly marked for purposes of
22 identification as People's Exhibits 13 and 14 as of this
23 date.)

24 Q. (By Ms. Carter) I am handing you what has previously

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1 been marked as People's Exhibit Number 13. Have you seen that
2 document before?

3 A. Yes, I have.

4 Q. Can you identify that document for me?

5 A. Yes. That is my economic benefit analysis for the
6 recurring operating or maintenance costs that would have occurred
7 during the noncompliance period, the total benefit of which is at
8 the bottom of column H. But it is using the recurring cost
9 figure that I attained from the April 5th, 2000 meeting with
10 Panhandle, taken from their document, table four, totaling
11 29,806.

12 Q. I also handed you what has previously been marked as
13 People's Exhibit Number 14. Have you seen that before?

14 A. Yes.

15 Q. What is that document?

16 A. That is just an attachment to People's Exhibit Number 13
17 to further analyze the economic benefit of the recurring costs
18 over time.

19 Q. Okay. If I could just direct your attention back to
20 People's Exhibit Number 12.

21 A. Yes.

22 Q. Once you took the capital costs from People's Exhibit
23 Number 11 and employed it in People's Exhibit Number 12, did you
24 perform the same calculation that you previously described

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1 yesterday afternoon?

2 A. I used the same methodology for the economic benefit
3 analysis that I described before on this particular document,
4 Exhibit Number 12.

5 Q. Are there any differences between the methodology that
6 you employed in People's Exhibit Number 12 and People's Exhibit
7 Number 8?

8 A. No differences in the methodology.

9 Q. Okay. Did you arrive at a determination of economic
10 benefit for the initial investment based off of the number
11 contained within People's Exhibit Number 11?

12 A. Yes, I did.

13 Q. And what was that number?

14 A. I determined that the economic -- the reasonable
15 economic benefit for the avoided initial capital investment
16 during the noncompliance period examined was at the bottom of
17 column L on Exhibit 12, which is 259,325.

18 (Mr. Layman exited the hearing room.)

19 Q. Okay. Thank you. If I could direct your attention to
20 table four in People's Exhibit Number 11. Are you on that page,
21 sir?

22 A. Yes.

23 Q. Okay. Do you see the number contained therein of
24 \$29,806.00?

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1 A. Yes, I do.

2 Q. Where is it?

3 A. It is the bottom of the column marked total on that
4 page.

5 Q. Okay. And does that -- what does that number represent
6 to you?

7 A. That represents an incremental cost analysis of the
8 operating costs that would have occurred throughout the
9 noncompliance period if the clean burn equipment had been
10 installed back in 1988.

11 Q. Okay. Did you employ this number in your economic
12 benefit calculations?

13 A. Yes, I did.

14 Q. Is that number employed in one of the exhibits that I
15 provided to you just a few moments ago?

16 A. Yes, Exhibit Number 13.

17 Q. Okay. Where is that number set forth within Exhibit

18 Number 13?

19 A. The bottom of column D has 29,806, which is footnoted as
20 a figure taken from Panhandle document dated April 5th, 2000,
21 table four.

22 Q. Okay. Was the methodology that you employed in People's
23 Exhibit Number 13 the same as the methodology that you previously
24 employed in calculating the annual recurring costs as you

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1 discussed yesterday in People's Exhibit Number 9?

2 A. Yes, the methodology is the same.

3 Q. Are there any differences in the methodology that you
4 employed in People's Exhibit Number 9 and People's Exhibit 13?

5 A. No.

6 Q. Okay. Did you arrive at a determination of economic
7 benefit for the annual recurring costs employing the number that
8 was previously indicated in People's Exhibit Number 11?

9 A. Yes, I did.

10 Q. And what was that number?

11 A. An examination of the avoided annual recurring operating
12 costs for the noncompliance period reviewed shows that column H,
13 on the bottom of column H, an economic benefit amount of 361,612.

14 Q. Okay. Perhaps I need to back up for just a moment. In
15 terms of People's Exhibit Number 14 --

16 A. Yes.

17 Q. -- is the methodology that you employed to determine the
18 annual recurring costs compounded as the weighted average cost of
19 capital as set forth in People's 14 the same as People's Exhibit
20 Number 10 that you discussed yesterday?

21 A. Yes, it is.

22 Q. Okay. Once you made a determination of the economic
23 benefit for the annual recurring costs in the initial investment
24 based upon those figures set forth within People's Exhibit Number

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1 11, what was the next step that you employed? Do you need me
2 to --

3 A. Yes, could you repeat the question, please?

4 Q. Yes. I am talking a little fast. I apologize. Once
5 you made a determination of the annual recurring costs, as set
6 forth within People's Exhibit Number 13, and a determination of
7 the initial investment, as set forth within People's Exhibit
8 Number 12, what was the next step that you employed?

9 A. Yes. What I did was just examine what the total
10 economic benefit is for the noncompliance period taking the
11 recurring costs into account and the initial capital investment.
12 You would do that by adding, on People's Exhibit Number 13, the
13 bottom of column H, the 361,612, and you would add that to, on
14 People's Exhibit 12, the bottom of column L, the 259,325, you
15 would add those together to get a total economic benefit.

16 Q. Would you please add those together for me, Mr. Styzens?

17 A. Yes. I get 620,937.
18 Q. Okay.
19 A. And I would like to correct -- I think I had an addition
20 error yesterday. I think I said for the BACT numbers that it was
21 7,052,453. I believe it is 7,062,453. I had a --
22 Q. You had an addition error from yesterday's testimony?
23 A. Yes, I did.
24 Q. Okay. And you are performing these additions longhand

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1 up there?
2 A. Yes.
3 Q. Just one moment, please.
4 (Whereupon said documents were duly marked for purposes of
5 identification as People's Exhibits 15, 16, and 17 as of
6 this date.)
7 Q. (By Ms. Carter) I am handing you what has previously
8 been marked as People's Exhibit Number 15, 16, and 17.
9 A. Okay.
10 Q. Have you seen those documents before?
11 A. Yes, I prepared those documents.
12 Q. Can you tell me what People's Exhibit Number 15 is?
13 A. Yes, the division of legal counsel had --
14 Q. Excuse me. If you could hold on just a moment.
15 A. Sure.

16 Q. Thank you. Again, could you just tell me what Exhibit
17 Number 15 is, please?

18 A. We were requested by the division of legal counsel to do
19 some additional analysis on the economic benefit for some
20 different time periods. And so as part of that process, I went
21 through our initial calculations, and I had found a couple of
22 errors or omissions that I wanted to correct. They were
23 insignificant, a typo, and we also wanted to deal with the
24 partial years more accurately.

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1 Q. Okay. When you were referring to the partial years, can
2 you point to exactly what you are referring to on People's
3 Exhibit Number 15, please?

4 A. Yes. What we did was, you know, as I went through this
5 to compare it to People's Exhibit Number 12, which is the
6 original figures, I had noticed that there was a typo in plant
7 cost index for 1996. It was typed originally as -- that's in
8 column 11A on Exhibit 15A. I noticed there was a typo there. We
9 had originally typed it as 384.7 instead of 381.7. And we also,
10 on exhibit -- on People's Exhibit Number 12, during the course of
11 the review we were more concerned with the full year calculations
12 because we knew there was going to be some adjustment in the time
13 periods. I wanted it to be more accurate before I did anymore
14 analysis. So I -- what we did is we just recalculated the
15 partial years that contained a few months, January, February,

16 March, April and I think it was October, November, December. And
17 we included the net benefit for partial years of 9,079.

18 Q. What column are you referring to?

19 A. I am sorry. It is column 2L.

20 Q. Okay.

21 A. We brought in that number. That number was not brought
22 in to our initial investment figure on People's 12. And then we
23 brought in the 14L, the 6,889, just so that we could not just
24 cover the full years but make it a little bit more accurate as

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1 far as dealing with the partial years.

2 Q. Okay. Were these the only modifications that you made?

3 A. Yes, these were the only significant changes that I
4 recall.

5 Q. Okay. Was the methodology that you employed in
6 calculating People's Exhibit Number 15 and 15A the same as the
7 methodology that you employed in calculating People's Exhibit
8 Number 8?

9 A. Yes. I am sorry. I believe it would be People's
10 Exhibit Number 15 and People's Exhibit -- well, I have 12. And I
11 guess 8 would --

12 Q. Okay. Exhibit 12 would be -- let me just make sure I
13 have this correct.

14 A. That is the original initial investment.

15 Q. Okay. Mr. Styzens, can you tell me what was the result
16 of the revisions that you just went through pertaining to
17 People's Exhibit Number 15A and 15?

18 A. The number we are concerned with is at the bottom of
19 column L, the net benefit change from 259,325 to 276,572, which
20 is at the bottom of column L on Exhibit 12 versus the bottom of
21 column L on Exhibit 15. So there was a minor adjustment on the
22 net benefit.

23 Q. Okay. Let me just back up for just a moment, Mr.
24 Styzens. Based on those modifications that you made to exhibits

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1 15 and 15A, did the figures -- did it result in a change in the
2 numbers in the other columns?

3 A. Yes, it would, because as you are dealing with PCI, the
4 plant cost index, it will change your inflation figures in the
5 years surrounding the 1996 PCI, the 1995 year and the 1997 year
6 and all of those changes get factored in as you go across the
7 table. And, again, really the main change was how we dealt with
8 the partial years, where we didn't have in column L2, L2 we
9 didn't have the 9,000 figure and in L14 we didn't have the 6,000
10 figure.

11 Q. Okay.

12 A. So it will change numbers because the PCIs used to
13 adjust the initial capital investment figures in column D, and as
14 those change it has minor very insignificant changes throughout

15 the table.

16 Q. Okay. Thank you. If I could direct your attention to
17 People's Exhibit Number 16. Did you make those modifications
18 that you just described relevant to People's Exhibit Number 15 in
19 People's Exhibit Number 16?

20 A. Yes. Again, all we basically did was just rework the
21 partial year figures in columns two and in column 14 and then
22 changed the PCI for 1996, which is 11A, from 384.7 to 381.7.

23 Q. Did the modifications that you just described change the
24 numbers that were set forth in the columns in People's Exhibit

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1 Number 16A?

2 A. Yes. Again, adjusting the PCI will have a reflection
3 throughout the table of the --

4 Q. Okay.

5 A. -- changes in numbers.

6 Q. Okay. Did it -- did the modifications that you just
7 described change the economic benefit calculation for the annual
8 recurring costs?

9 A. Slightly. It changed from, in schedule A, People's
10 Exhibit Number 16, the bottom of column H, it says 378,328, which
11 would be compared to People's Exhibit Number 13, column H, which
12 is 361,612. So I think there was a \$15,000.00 or \$16,000.00
13 difference.

14 Q. Okay. If I could direct your attention, possibly
15 backing up here for a moment, to People's Exhibit Number 17 and
16 17A.

17 A. Okay.

18 Q. Did you employ those -- did you make those changes that
19 you previously discussed in People's Exhibit Number 17A, 17, as
20 well?

21 A. Yes. Again, we were dealing with the PCI change, which
22 would change slightly the after-tax cash flows that we brought
23 into this exhibit, and we recalculated the partial years in line
24 one and line 13.

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1 Q. Okay. Once you made the calculations that are set forth
2 within People's Exhibit Number 15 and People's Exhibit Number 16,
3 Mr. Styzens, what was the next step that you employed in
4 determining the economic benefit?

5 A. I am sorry. You are going to have to repeat the
6 question.

7 Q. I can repeat the question. Once you completed the
8 calculations that were set forth in People's Exhibit Numbers 15
9 through 17, what was the next step that you did to calculate
10 economic benefit in this case?

11 A. Similar to the past where you would just take for the
12 initial investment on Exhibit Number 15, the bottom of column L,
13 you would take that 276,572, which is the economic benefit

14 resulting from the initial investment, capital investment
15 avoidance during the noncompliance period examined, and you would
16 add it to the bottom of column H on exhibit -- People's Exhibit
17 Number 16, which is 378,328, which is the economic benefit
18 associated with the recurring cost avoidance.

19 Q. Okay. Can you perform that calculation here for me
20 today, Mr. Styzens?

21 A. Yes.

22 Q. Thank you.

23 A. I get 654,900.

24 Q. Is that 900 even?

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1 A. Yes.

2 Q. I just wanted to make sure. Is that correct?

3 A. Yes.

4 Q. Okay. How does that number differ from the previous
5 number that is set forth within -- that you previously determined
6 for me based on Exhibits 12, 13, 14, and 15?

7 A. It is approximately \$30,000.00 in difference.

8 Q. Okay. Thank you.

9 MS. CARTER: If I could have just one moment, Mr. Hearing
10 Officer.

11 HEARING OFFICER KNITTLE: Yes. Let's go off the record.

12 (Discussion off the record.)

13 HEARING OFFICER KNITTLE: Okay. We are back on.
14 (Whereupon said documents were duly marked for purposes of
15 identification as People's Exhibits 18, 19, and 20 as of
16 this date.)

17 Q. (By Ms. Carter) Mr. Styzens, I have just handed to you
18 what has previously been marked as People's Exhibit Numbers 18,
19 19, and 20. Have you seen these documents before?

20 A. Yes.

21 Q. Can you tell me what People's Exhibit Number 18 is,
22 please?

23 A. As I had mentioned earlier, we received a request from
24 the division of legal counsel to do some additional economic

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1 benefit analysis but to change to a slightly different time
2 period. So what this is, is using a slightly different
3 noncompliance period in the first column there of February of
4 1988 through August of 1999, we are calculating the economic
5 benefit associated with the initial capital investment.

6 Q. Have you seen People's Exhibit Number 19 before?

7 A. Yes.

8 Q. Can you identify this document for me?

9 A. Yes. Again, this is the result of a request from the
10 division of legal counsel to do some additional economic benefit
11 analysis on the recurring annual operating and maintenance costs
12 but to slightly change the noncompliance period from February of

13 1988 through August of 1999.

14 Q. And have you seen People's Exhibit Number 20 before?

15 A. Yes. That is the attachment associated with Exhibit 19
16 that, again, recalculates the cost of capital across time for the
17 recurring costs but using the new noncompliance period.

18 Q. Do People's Exhibit Number 18 through 20 all utilize the
19 same time period?

20 A. Yes.

21 Q. Are there any other changes in People's Exhibits 18, 19,
22 and 20 from -- just a moment, please.

23 HEARING OFFICER KNITTLE: Ms. Carter, I have a question for
24 clarification as well.

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1 MS. CARTER: Yes, sir.

2 HEARING OFFICER KNITTLE: People's 18, on the bottom, says
3 02-10-88 through 08-31-99.

4 MS. CARTER: Yes, sir.

5 HEARING OFFICER KNITTLE: Exhibits 19 and 20 say February
6 to August of 1999, it looks like. I just want to get the time
7 frames straightened out.

8 MS. CARTER: They both say -- let me just back up for a
9 second, if I can, Mr. Hearing Officer.

10 HEARING OFFICER KNITTLE: Sure.

11 MS. CARTER: Does the bottom of People's Exhibit Number 18

12 say February 10th of 1988 through August 31st of 1999, WACC?

13 HEARING OFFICER KNITTLE: Correct, but it is all numbers.

14 MS. CARTER: Okay. Then on Exhibit 19 it says February to
15 August 1999, WACC, right?

16 HEARING OFFICER KNITTLE: In letters it says Feb dash Aug,
17 1999, WACC, which looks like February through August of 1999.

18 MS. CARTER: I can make that clarification with the
19 witness.

20 HEARING OFFICER KNITTLE: Okay.

21 MS. CARTER: Thank you very much.

22 HEARING OFFICER KNITTLE: Okay.

23 Q. (By Ms. Carter) Mr. Styzens?

24 A. Yes.

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1 Q. Can I direct your attention to People's Exhibits 19 and
2 20?

3 A. Yes.

4 Q. Do you see -- what does the bottom line on those
5 exhibits state?

6 A. The title?

7 Q. Excuse me. On People's Exhibit Number 19?

8 A. The title at the bottom?

9 Q. Yes, sir.

10 A. It has February through August, 1999. But what that is
11 supposed to reflect -- it is just a bad title. It should say

12 February of 1988. It was just an omission on clarification of
13 the title. It has the same time period as People's Exhibit
14 Number 18. The first column reflects February of 1988 through
15 August of 1999.

16 Q. Okay. And what about on -- can you tell me what the
17 title is contained on the bottom of People's Exhibit Number 20?

18 A. Yes. Again, it stays February, dash, August of 1999,
19 but the form -- the title would be clearer if it would have said
20 February 1988 through August of 1999, which is reflected in the
21 first column of that table.

22 Q. Okay. Thank you. Mr. Styzens, were there any other
23 changes in People's Exhibit Number 18 -- let me scratch that,
24 please.

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1 Mr. Styzens, can you tell me if there were any other
2 changes between People's Exhibit Number 15 and People's Exhibit
3 Number 18?

4 A. No, the only change between those two tables was the
5 time period which is contained in the first column.

6 Q. Okay.

7 A. Of course, the net benefit calculation at the very end
8 of column L changes as a result of the time frame change.

9 Q. What is the net benefit that was determined based upon
10 this time period for the initial investment?

11 A. That would be contained at the bottom of column L on
12 People's Exhibit 18, which is 285,328.

13 Q. Okay. And in terms of People's Exhibit 19 and 16, can
14 you compare those two for me? Were there any other changes made
15 between these two documents?

16 A. The only difference is that a different time period is
17 used in the first column resulting in a change in the economic
18 benefit calculation at the end of column H.

19 Q. What is that economic benefit calculation set forth
20 within People's Exhibit Number 19 in column H?

21 A. Exhibit 19, at the bottom of column H is 355,431.

22 Q. Can you please tell me if there were any other changes
23 made between People's Exhibit Number 17 and People's Exhibit 20
24 besides for the change in the time period that you previously

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1 referenced?

2 A. No. The only change was the time period contained in
3 the first column.

4 Q. Okay. Based on the calculations that you employed in
5 People's Exhibit Number 18 through People's Exhibits 20, did you
6 make a determination as to the total economic benefit for this
7 time period of February of 1988 through August 31st of 1999?

8 A. Yes. You would do that by taking the bottom figure on
9 Exhibit Number 18, column L, which is 285,328, which is the
10 economic benefit for the initial investment during this

11 noncompliance period, and you would add it to People's Exhibit
12 Number 19, the bottom of column H which is 355,431, which is the
13 economic benefit for the avoided recurring costs and you would
14 add those together to get a figure, which I will do now.

15 Q. Okay. Thank you.

16 A. Those two figures combined then would give you a total
17 economic benefit of 640,759.

18 Q. Thank you.

19 MS. CARTER: Mr. Hearing Officer, if I could just have one
20 more moment, please. Thank you.

21 HEARING OFFICER KNITTLE: Let's go off.

22 (Discussion off the record.)

23 HEARING OFFICER KNITTLE: Back on the record.

24 (Whereupon said documents were duly marked for purposes of

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1 identification as People's Exhibits 21 and 22 as of this
2 date.)

3 Q. (By Ms. Carter) Mr. Styzens, I have just handed you
4 People's Exhibits 21 through 22. If I could direct your
5 attention to People's Exhibit Number 21, have you seen this
6 document before?

7 A. Yes, I prepared that document.

8 Q. Can you tell me what this document is?

9 A. This is an analysis of the economic benefit. On

10 People's Exhibit Number 21, it is an examination of the economic
11 benefit associated with the avoided initial investment capital
12 outlays that occurred during the noncompliance period we examined
13 in the first column. But instead of using the weighted average
14 cost of capital as the cost of money over time, we used the bank
15 prime loan rate, which is -- it is a rate that is used by banks
16 to charge for loans to their best customers. It changes
17 periodically over the year and we obtained the information from
18 the Federal Reserve Board of governor's information on the bank
19 prime loan rate, and that is contained in column E on Exhibit
20 Number 21.

21 Q. Does the bank prime loan rate change over time?

22 A. Yes. There is periodically adjustments in that prime
23 rate, and it is basically a nationwide type of rate that banks
24 charge their best customers, and there are changes over time

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1 depending on economic data that is occurring at that time, and it
2 is usually related to the Federal Reserve Board of governors.

3 Q. Okay. So in terms of People's Exhibit Number 21, there
4 is no longer the weighted average cost of capital contained in
5 this document?

6 A. Correct. The column E in an older exhibit would have
7 contained the weighted average cost of capital, but we had
8 substituted in column E the bank prime loan rate.

9 Q. Besides the substitution of the weighted average cost of

10 capital with the bank prime loan rate, were there any other
11 changes employed in the production of People's Exhibit Number
12 21 -- between People's Exhibit Number 21 and People's Exhibit
13 Number 18?

14 A. No, that is the change that was made.

15 Q. And based upon this change in the bank prime loan rate,
16 was a different number derived for economic benefit for
17 noncompliance of initial investment derived in this case?

18 A. Yes, that figure would be contained at the bottom of
19 column L, labeled net benefit, which would indicate that using
20 the prime loan rate as a reasonable rate to charge for the value
21 of money over time, that the economic benefit associated with the
22 avoided initial investment would be 246,027.

23 Q. Okay. How does that number compare with the number that
24 is set forth within People's Exhibit Number 18?

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1 A. The numbers you would compare would be, again, at the
2 bottom of column L on both Exhibit 18 and 21. You would compare
3 on 18 the 285,328, which was the economic benefit using the
4 weighted average cost of capital through time versus 246,027,
5 which is the net benefit on Exhibit Number 21 using the prime
6 rate. So it looks like there is approximately a \$40,000.00
7 difference during the noncompliance period using the prime rate
8 versus the weighted average cost of capital.

9 (Whereupon a document was duly marked for purposes of
10 identification as People's Exhibit 23 as of this date.)

11 Q. (By Ms. Carter) If I could direct your attention to
12 People's Exhibit Number 22 and People's Exhibit Number 23. First
13 of all, People's Exhibit Number 22, have you seen that document
14 before?

15 A. Yes, I created that document.

16 Q. Okay. And can you please describe this document for me?

17 A. Again, it is an economic benefit analysis associated
18 with the annual recurring costs that were avoided during the
19 noncompliance period. But instead of using the weighted average
20 cost of capital, it is using the prime rate.

21 Q. Okay. Is there any other changes that were employed in
22 generating People's Exhibit Number 22 compared to People's
23 Exhibit Number 19?

24 A. No, no other changes.

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1 Q. Okay. Is the time period the same?

2 A. Yes.

3 Q. Again, in People's Exhibit Number 23, have you seen that
4 document before?

5 A. Yes.

6 Q. What is that document?

7 A. That's basically an attachment to People's Exhibit
8 Number 22, and that's where you will see the prime rate listed in

9 column B, which would be formerly the weighted average cost of
10 capital which would be contained on one of the previous exhibits,
11 I believe People's Exhibit Number 20. And that is where you are
12 taking the annual recurring costs over time and instead of
13 charging the time value of money during that period, instead of
14 using the weighted average cost of capital, you are using what a
15 typical bank would charge a company if they were to borrow money
16 to borrow debt using the prime rate.

17 Q. Okay. Are there any other changes between People's
18 Exhibit Number 23 and People's Exhibit Number 20?

19 A. No.

20 Q. Okay.

21 A. The difference is only the WACC versus the prime rate.

22 Q. Okay. Based upon the prime loan rate for the time
23 period of February of 1988 through August of 1999, did you make a
24 determination for economic benefit for the annual recurring

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1 costs?

2 A. Yes.

3 Q. Okay. What figure or what economic benefit did you
4 calculate?

5 A. You would have to take, on People's Exhibit Number 21,
6 the net benefit in column L, which is dealing with the prime rate
7 of \$246,027.00, and you would have to add that to People's

8 Exhibit Number 22, which is, again, dealing with the prime rate
9 for the recurring costs.

10 Q. Mr. Styzens, if I could just back up for just a moment.

11 A. Yes.

12 Q. My question was, did you make a calculation for economic
13 benefit for the annual recurring costs?

14 A. Oh, I am sorry. Yes. It would be contained on Exhibit
15 22, the bottom of column H, 336,534.

16 Q. And how does the economic benefit calculated for the
17 annual recurring cost of the prime loan rate differ from the
18 annual recurring costs utilizing the weighted average cost of
19 capital for that same time period?

20 A. Exhibit Number 19, which would be the equivalent number
21 for using the weighted average cost of capital, is 355,431, and
22 using the prime rate on People's Exhibit Number 22, column H, it
23 dropped from that figure down to 336,534, which is about a
24 \$20,000.00 difference.

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1 Q. Now, did you calculate a total economic benefit
2 utilizing the prime rate for the time period of February of 1988
3 through August of 1999?

4 A. Yes.

5 Q. How did you perform that calculation?

6 A. In order to get a total economic benefit using the prime
7 rate for that noncompliance period, you would have to take

8 People's Exhibit Number 22, the bottom of column H, 336,534, and
9 add it to People's Exhibit Number 21, for the initial investment,
10 the bottom of column L, \$246,027.00.

11 Q. Can you please add those for me?

12 A. Yes. I get 582,561.

13 Q. Mr. Styzens, were there any other factors that you
14 considered in your economic benefit analysis?

15 A. No.

16 Q. Are you familiar with the term retrofit?

17 A. Yes. Retrofit is just a word that you can see in any
18 dictionary. It just deals with changes or modifications that are
19 made to, let's say, a building or a piece of equipment that is
20 already operating or already in place where you try to enhance
21 its performance. That's considered retrofit.

22 Q. Okay. Are you familiar with the term retrofit in the
23 context of an economic benefit calculation?

24 A. I have heard just basically pertaining to this case

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1 here, the Panhandle case, there have been some discussions about
2 retrofit costs and how they relate to economic benefit. There
3 has been some calculations and discussions related to this case.
4 That was my first exposure to economic benefit and retrofit.

5 Q. And what context has the term retrofit arisen pertaining
6 to this case?

7 A. I believe it pertains to People's Exhibit Number 11.

8 Q. Can you just tell me in general how it has arisen in
9 this case?

10 A. In general? It appears that Panhandle Eastern believes
11 that they have had some avoidable costs or retrofit costs that
12 would have occurred today versus what would have occurred in
13 1988.

14 Q. Okay. Does Panhandle seek to utilize these retrofit
15 costs in any sort of calculations?

16 A. Yes. It appears, from my review of the information in
17 this Panhandle penalty case in my audit, that it appears that
18 Panhandle is seeking some kind of reduction or rebate to the
19 economic benefit based on some retrofit costs that they have
20 calculated.

21 Q. Okay. Did you employ retrofit costs in any of your
22 calculations?

23 A. No, I did not.

24 Q. Why didn't you employ any type of retrofit costs in the

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1 calculations that you performed?

2 A. Well, as part of the internal audit, when I was
3 examining that issue I reached some conclusions regarding the
4 relationship between economic benefit and retrofit costs.

5 Q. And what were the conclusions that you reached
6 pertaining to economic benefit and retrofit costs?

7 MR. BOYD: I am going to object to the lack of foundation
8 for any conclusion. This witness has testified that this is his
9 first exposure to this issue and has not laid any kind of
10 groundwork as to what he has done in this particular case to have
11 any conclusions at all in regard to retrofit costs.

12 HEARING OFFICER KNITTLE: Ms. Carter?

13 MS. CARTER: Mr. Hearing Officer, in this case he has
14 indicated that he has considered retrofit costs in terms of it
15 being raised by respondent in this matter. Simply because he did
16 not employ retrofit costs does not mean that he did not consider
17 retrofit costs and their appropriateness for determining economic
18 benefit calculations. I think the appropriate foundation has
19 been raised based on the previous testimony that he provided.

20 HEARING OFFICER KNITTLE: I am going to sustain the
21 objection, but that does not prohibit you from laying foundation
22 as to how he reached his conclusions.

23 MS. CARTER: Okay. Just a moment, please.

24 HEARING OFFICER KNITTLE: Let's go off the record for a

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1 second.

2 (Discussion off the record.)

3 HEARING OFFICER KNITTLE: Okay. Let's take a five minute
4 break.

5 (Whereupon a short recess was taken.)

6 HEARING OFFICER KNITTLE: All right. We are back on the
7 record after a brief recess.

8 Mr. Styzens, let me remind you that you are still under
9 oath.

10 THE WITNESS: Yes.

11 HEARING OFFICER KNITTLE: Ms. Carter, you may continue with
12 your direct examination of this witness.

13 MS. CARTER: Thank you.

14 Q. (By Ms. Carter) Mr. Styzens, have you explored the issue
15 of retrofit?

16 A. Yes.

17 MR. BOYD: Objection. Asked and answered. We have gone
18 over this before the break.

19 MS. CARTER: Mr. Hearing Officer, I am simply trying to lay
20 the foundation that the Board requested that I do. If I could
21 have a little leeway in this --

22 HEARING OFFICER KNITTLE: Yes, I will give you a little
23 leeway on this. I will overrule the objection and let you ask a
24 couple of background questions.

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1 Q. (By Ms. Carter) I am sorry. What was your answer?

2 MS. CARTER: What was his answer, Mr. Hearing Officer?

3 HEARING OFFICER KNITTLE: It was yes.

4 (Laughter.)

5 MS. CARTER: I am glad I am providing comedy here for

6 everybody at least. I will just continue on. Could she read
7 back the question as well, please.

8 HEARING OFFICER KNITTLE: Please, Darlene.

9 (Whereupon the requested portion of the record was read
10 back by the Reporter.)

11 Q. (By Ms. Carter) In what context have you explored the
12 issue of retrofit?

13 A. Well, the concept of retrofit costing is common among a
14 variety of industries in relation to environmental type of
15 controls, for example, the gasoline station industry in Chicago,
16 they had to go through a series of upgrades of their pumping
17 equipment to come into compliance with air emissions, so they had
18 retrofitting involving those pieces of equipment. The dry
19 cleaning industry had to do a lot of changes to their processes
20 and they had retrofitting associated with coming into compliance
21 with environmental regulations. It happens in industries across
22 the board. Like, there was recently an indication that the
23 Boeing 737 has to be retrofitted to change its rudder system,
24 things of that nature. So, I mean, it is a common event in

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1 business, retrofitting equipment.

2 I have read some articles by Mr. Singh that discuss
3 retrofit costs and their impact on economic benefit. I think
4 there was two or three articles that were presented as a part of

5 this discussion of economic benefit for Panhandle Eastern.
6 Again, it is part of -- my function as an internal auditor is to
7 become aware and more knowledgeable, as knowledgeable as
8 possible, about the topics that I am examining in the internal
9 audit so that I can make accurate and reasonable analysis and
10 conclusions based on that information. And so I went through a
11 series of, you know, looking at Mr. Singh's articles. Of course,
12 again, I was aware of these events occurring in other industry
13 and things of that nature.

14 Q. Okay. You mentioned articles that you have read
15 pertaining to retrofit. Can you just tell me a little bit about
16 your understanding of what was contained in those articles?

17 A. Yes. Mr. Singh was doing some examples of economic
18 benefit analysis where a company can have an economic benefit but
19 then there is discussions about a variety of retrofit activities
20 that would go on with that company for let's say modifying the
21 building in some way to install pollution control equipment or,
22 you know, making any type of changes to structures or taking
23 apart equipment, things of that nature. And Mr. Singh then
24 related some examples of how you can go through a traditional

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1 economic benefit analysis. But then in Mr. Singh's article he
2 gives the opinion that there should be some discussion about how
3 retrofit costs should affect that economic benefit.

4 Q. Are the principles in these articles that you have read

5 attempting to be employed in this case?

6 MR. BOYD: Objection to the form of the question.

7 HEARING OFFICER KNITTLE: How so, Mr. Boyd?

8 MR. BOYD: Well, it is ambiguous, for one thing.

9 HEARING OFFICER KNITTLE: Any other thing?

10 MR. BOYD: I didn't understand it at all, so I think it is
11 too ambiguous to understand.

12 HEARING OFFICER KNITTLE: Ms. Carter, a response?

13 MS. CARTER: I disagree that the question is ambiguous. I
14 can rephrase for Counsel for respondent's clarification.

15 HEARING OFFICER KNITTLE: Please do.

16 Q. (By Ms. Carter) Are the principles pertaining to
17 retrofit that are set forth within the articles that you
18 previously referred to, seeking to be employed by respondent in
19 this matter?

20 A. Yes.

21 Q. Can you explain specifically how those principles
22 respondent is seeking -- can you explain specifically how the
23 respondent is seeking to employ those principles in terms of an
24 economic benefit calculation?

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1 A. It appeared to me that what they are trying to do in
2 this particular case, when comparing to Mr. Singh's articles that
3 I have read, is a similar approach where you develop an economic

4 benefit for the avoided initial capital outlays and the recurring
5 costs over time. So you have a benefit period. But then, as Mr.
6 Singh discusses in his articles, he deals with what he calls a
7 disbenefit period or a retrofit period where you then, according
8 to Mr. Singh, are to make some kind of adjustments to your
9 economic benefit calculations based on retrofit costs that may
10 occur in a different time period, a later date, to make changes
11 to equipment, let's say, in order to incorporate or retrofit an
12 environmental equipment on to a -- let's say a piece of
13 equipment, like an engine or whatever.

14 Q. What role do you believe that retrofit should or should
15 not play in this case?

16 A. Well, as I examined Mr. Singh's concepts in his articles
17 and what was being attempted to be done or discussed in this
18 Panhandle case, as an internal auditor, when you are evaluating
19 or performing an internal audit, you have to always examine not
20 only the particular financial calculations and financial concepts
21 that you are working with, but you have to examine the internal
22 control systems or the systems of internal control that are
23 involved in your audit project. Because one of our main
24 functions as an internal auditor is to continuously, for the

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1 organization that we are working for, to examine the
2 effectiveness of the internal control system.

3 What I mean by that is, for example, in this case when you

4 talk about economic benefit, it is a financial concept where you
5 go through financial analysis to reach economic benefit. But
6 when I examined it in a broader context of this internal audit,
7 it is also a key control system that the Illinois EPA uses in
8 their Agency to ensure that their enforcement program is
9 effective in ensuring that environmental laws are followed, that
10 capital expenditures are made timely, and it is a key control
11 point. If there is any effort to weaken that control point, that
12 is where I have to make some kind of determination that is the
13 control system effective or not.

14 My conclusion, from examination of Mr. Singh's articles and
15 what is going on in this particular case is, that any attempt to
16 lessen the economic benefit by, let's say retrofit, would
17 significantly reduce the effectiveness of the control. For
18 example, if you have a manager of a company, in this day and age
19 there is a lot of pressure on management to ensure that the
20 company performs well financially. And when you examine internal
21 controls, unfortunately, from an auditor's standpoint, you cannot
22 assume that everybody is a good citizen. You can't assume that
23 everybody is going to make the hard decisions and spend the money
24 to come into compliance with environmental laws.

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1 That is the internal auditor's role, is to play the devil's
2 advocate, to assume that maybe there is a manager out there

3 working for some company that is going to try to maybe delay
4 capital expenditures temporarily or permanently in order to have
5 that money to use on other projects in the company and to maybe
6 not take -- make the right decision to spend the money on
7 environmental equipment.

8 Again, the goal -- you have to remember the goal of the
9 control system, the goal of economic benefit is to make that
10 manager indifferent between making the decision to spend the
11 money on pollution control equipment or spend it on some other
12 investment. You are trying to take away any benefit that the
13 manager would have for spending that money improperly. And if
14 you have a manager out there that knows that there is retrofit
15 costs that are going to occur in the future, and that he is going
16 to get a rebate off the economic benefit calculation, then that
17 does change the effectiveness of the control.

18 That manager is no longer indifferent. There is actually a
19 reasonable decision based on that approach that, well, maybe I
20 will delay that cost, because if I can get a recovery from my
21 economic benefit by subtracting off the retrofit costs, then I
22 may tend to lean towards delaying the capital investment rather
23 than making the capital investment.

24 Q. Okay. Is there any other conclusion that you made

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1 pertaining to retrofit costs in this case?

2 A. Well, another concept that I examined was in my economic

3 benefit analysis, what I am trying to do is go back to the
4 beginning of the noncompliance period in 1988. And to
5 reconstruct what should have happened, what should have Panhandle
6 done like their competitors had done in 1988. And as I began to
7 examine this retrofit issue, I analyzed what would be -- if the
8 competitor of Panhandle that made the investment in 1988, what
9 would be the retrofit costs today. Well, the answer in my mind
10 was zero because if you had made the capital investment in 1988
11 you would avoid the retrofit costs. That is an avoidable cost
12 and I don't believe it should be included in your incremental
13 cost analysis.

14 Q. Did you make any other conclusions pertaining to
15 retrofit in this case?

16 A. Yes. Besides the significant negative impact it would
17 have on the control system, I also determined that we are dealing
18 with two time periods here. We are dealing with a noncompliance
19 time period where you are examining the capital avoidance, the
20 economic benefit in this noncompliance period. The period of
21 noncompliance goes from the noncompliance date to when the
22 decision is made to comply. And that is the period that we
23 examine.

24 The concepts of retrofit costs that are going on in this

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1 case, are occurring in an entire different time period and an

2 entire different decision. I could give an example where -- so
3 we just focus the economic benefit on the first decision in the
4 first time period, which is what should have happened back in
5 1988 when they should have complied. We did not move our
6 analysis into the second time period or the second decision
7 period which is what are we going to do now to comply.

8 And if you try to do analysis covering two different
9 periods and two different decisions, it just cannot be done.
10 Just a quick example is if you are going to try to, let's say,
11 retrofit clean burn equipment on these engines and Panhandle
12 indicates that there is going to be certain costs that are going
13 to occur today and into the future to do this retrofitting, and
14 you take the engine apart to retrofit it, and you open the engine
15 and you take the heads off and you find there is some significant
16 problems, mechanical problems, with the engine.

17 Well, then you get into the whole thing is, well, what part
18 of the retrofit costs should we assign to the environmental side
19 of it, because now you turn it into just from a retrofit activity
20 for environmental equipment, now you are going to have to make
21 some modifications to the engine and make some maintenance
22 changes and there is going to be costs associated with that. So
23 this whole retrofit thing in this different time period, you can
24 get into so many different circumstances and so many different

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1 decisions that it would be nearly impossible to come up with a

2 reasonable economic benefit calculation across both those periods
3 since they are so different.

4 Q. Just for a clarification, can you please define for me
5 what you mean by a business decision?

6 MR. BOYD: Objection to the form of the question and for
7 foundation.

8 HEARING OFFICER KNITTLE: Overruled.

9 MS. CARTER: Okay.

10 THE WITNESS: What I mean by a business decision?

11 MR. CARTER: Yes.

12 THE WITNESS: Well, when you are -- managers of a company,
13 they continuously have to make business decisions. And for every
14 business decision there is a risk. So if you make a business
15 decision to delay capital expenditures, let's say, especially
16 related to environmental issues, there is risks associated with
17 that business decision. There is an upside risk. It may result
18 in something good happening. There is downside risks. There may
19 be something bad that may happen. That is the whole concept of
20 risk in business. Business is usually a risky type of activity.

21 And, for example, if a decision is made to delay capital
22 outlays, let's say to come into compliance with environmental
23 regulations, I mean, there is really two large components of that
24 risk decision, that business decision. One is the risk that you

1 are going to get -- that the EPA is going to do an inspection and
2 they are going to identify a noncompliance period and they are
3 going to fine you or penalize you with an economic benefit. But
4 the second risk, which is always there, is that costs may go up
5 in the future. That is just part of delaying decisions, that it
6 could cost you more in the future.

7 So when you get into these concepts of increasing costs in
8 the future, to me that is just business, the risk of making a
9 particular business decision. Getting back to my first -- one of
10 my points that a company that decided to comply in 1988, what was
11 their extra costs? What was their retrofit costs? Well, they
12 happened to luckily or purposely make a good business decision in
13 1988 and they have no extra costs, they have no retrofit costs.
14 And another company may not happen to make the right decision.
15 It does not have to be purposeful. It could be accidental or
16 just because they didn't have a knowledge base to make the right
17 decision. But the point is there is always a risk of a business
18 decision no matter what that decision is.

19 Q. Okay.

20 A. Could I add one thing to that?

21 Q. Is it in response to my last question?

22 A. Yes.

23 Q. Yes.

24 A. The point I am trying to make with this retrofit idea of

1 the deducting it off of the economic benefit, is you are removing
2 too much of the business risk from the decision. You are making
3 it too easy for the manager to make the wrong decision. They are
4 no longer indifferent. That's the goal of economic benefit.
5 That's the goal of the control system. It is to remove any
6 incentive to make the wrong decision. That's what we are trying
7 to do at the Environmental Protection Agency's enforcement
8 program.

9 MS. CARTER: Mr. Hearing Officer, I have no further
10 questions for this witness at this time on direct. However, I
11 would like to reserve the right to recall this witness at a later
12 time.

13 HEARING OFFICER KNITTLE: In your direct or in rebuttal?

14 MS. CARTER: In direct and in rebuttal.

15 HEARING OFFICER KNITTLE: Mr. Boyd?

16 MR. BOYD: If she is done with the witness on direct, then
17 she is done with him on direct.

18 MS. CARTER: I may or may not need to recall the witness on
19 direct, Mr. Hearing Officer. It is -- just one moment. Let me
20 get my thoughts straight here.

21 HEARING OFFICER KNITTLE: Yes, explain to me why.

22 MS. CARTER: I know. I am just trying to get my thoughts
23 straight here for just a moment.

24 HEARING OFFICER KNITTLE: Okay.

1 MS. CARTER: Mr. Hearing Officer, the only reason that the
2 State would need to recall Mr. Styzens on direct is perhaps for
3 establishing the admissibility of some of the records that have
4 been provided here today. That would be the only reason.

5 HEARING OFFICER KNITTLE: You mean if you offer an exhibit
6 into evidence and it is denied and you want to provide further
7 foundation?

8 MS. CARTER: That's correct. That's correct.

9 HEARING OFFICER KNITTLE: You could offer them now if you
10 want.

11 MS. CARTER: Before we offer these exhibits into evidence,
12 they do rely upon the weighted average cost of capital
13 calculations that have not been gone into in-depth yet. That
14 will be directed by Dr. Nosari in his testimony. So because of
15 that, at this time the State is not seeking to admit them into
16 evidence at this time.

17 HEARING OFFICER KNITTLE: Mr. Boyd, anything further?

18 MR. BOYD: Well, with the exception of Exhibits 8, 9 and 10
19 and I think it is Exhibit 7, we don't have any objection to the
20 admissability of the other exhibits at this point in time. So I
21 don't see that there is any reason to call Mr. Styzens again on
22 direct.

23 HEARING OFFICER KNITTLE: I am going to overrule the
24 objection and leave her leave for the limited purpose of

1 addressing any objections to the exhibits. I don't know if he is
2 involved with 8, 9, 10 and what was the other one?

3 MS. CARTER: He is involved in 8, 9 and 10. And Number 7
4 is the weighted average cost of capital sheet that --

5 HEARING OFFICER KNITTLE: I don't think that is
6 inappropriate. I think it is reasonable. So I will allow you
7 for that --

8 MS. CARTER: Thank you.

9 HEARING OFFICER KNITTLE: -- limited purpose only. We want
10 no other direct testimony.

11 MS. CARTER: No other direct testimony from Mr. Styzens.

12 HEARING OFFICER KNITTLE: Okay. You can reserve --

13 MS. CARTER: But reserving, obviously, the right to recall
14 Mr. Styzens for rebuttal.

15 HEARING OFFICER KNITTLE: Correct.

16 MS. CARTER: Okay. Thank you.

17 HEARING OFFICER KNITTLE: Thank you, sir. You may step
18 down.

19 MR. BOYD: No.

20 HEARING OFFICER KNITTLE: No. What am I doing.

21 THE WITNESS: I wish.

22 HEARING OFFICER KNITTLE: For some reason I thought we had
23 gone through cross and redirect and recross and re-redirect.

24 MR. BOYD: I will have to try to keep you awake then.

1 HEARING OFFICER KNITTLE: No. I am sure you will do a fine
2 job, Mr. Boyd. My apologies to everybody.

3 It is your witness, Mr. Boyd.

4 MR. BOYD: Just one preliminary matter. I do notice that
5 Mr. Nosari is present in the room. I would ask that he be asked
6 to leave the room at this point in time, because he will be
7 introducing evidence later on and my cross-examination of Mr.
8 Styzens may cover some of the same points as my cross-examination
9 of Mr. Nosari.

10 HEARING OFFICER KNITTLE: Ms. Carter?

11 MS. CARTER: Typically I would not have an objection to
12 that. However, it is my understanding that an agreement was made
13 between Counsel for respondent and Counsel for complaint in terms
14 of the parties being able to be present during all testimony. I
15 was not a party to that conversation, unfortunately. It was Mr.
16 Layman. But that is my understanding of what took place between
17 Mr. Layman and Mr. Boyd.

18 HEARING OFFICER KNITTLE: Mr. Boyd?

19 MR. BOYD: That was not the agreement. What I had asked
20 Mr. Layman is we had people from Panhandle coming in town from
21 out-of-state for the first few days and I asked if they were
22 going to limit their participation in the -- during the
23 complainant's case-in-chief, that I know that before I book those
24 flights and got that all arranged. I never told Mr. Layman that

1 we would not be asking Mr. Nosari to step out during the
2 cross-examination of Mr. Styzens.

3 HEARING OFFICER KNITTLE: In light of that assertion and
4 the fact that Mr. Layman is not here, Ms. Carter, do you have an
5 objection?

6 MS. CARTER: Yes, I do have an objection.

7 HEARING OFFICER KNITTLE: What is your objection?

8 MS. CARTER: Again, based on the representations of Mr.
9 Layman pertaining to his conversation with Mr. Boyd. I
10 specifically asked him after his conversation with Mr. Boyd if
11 that would exclude our opinion witnesses during the testimony of
12 another one of our opinion witnesses and he said it would not.

13 HEARING OFFICER KNITTLE: Mr. Boyd?

14 MS. CARTER: And at this point Mr. Nosari has already sat
15 through direct.

16 MR. BOYD: We are seeing an example of hearsay within
17 hearsay now. I cannot defend what Mr. Layman told her. I can
18 tell you what I told Mr. Layman and that's what I have done.

19 MS. CARTER: Perhaps --

20 HEARING OFFICER KNITTLE: Yes, Ms. Carter?

21 MS. CARTER: Is it possible for me to at least try to get
22 Mr. Layman back in here?

23 HEARING OFFICER KNITTLE: Depending on how long that would
24 take.

1 MS. CARTER: Can I just at least try him at his office?

2 HEARING OFFICER KNITTLE: Yes, you can try him on the
3 telephone.

4 MS. CARTER: Thank you.

5 HEARING OFFICER KNITTLE: Okay. Let's take a five minute
6 recess.

7 (Discussion off the record.)

8 HEARING OFFICER KNITTLE: All right. We are back on the
9 record.

10 Ms. Carter, you were unable to track down Mr. Layman, I
11 take it?

12 MS. CARTER: I was unable to track down Mr. Layman. I do
13 want to, though, renew my objection for the record and simply
14 based on the representations that I had from Mr. Layman of that
15 telephone conversation. And I do want to again indicate that Dr.
16 Nosari was allowed to sit in for Mr. Styzens' direct testimony.
17 And, you know, later on today we will be, you know, presenting
18 Dr. Nosari as a witness in this matter. And since he was allowed
19 to sit in on direct and, you know, listen to that, it doesn't
20 seem to be outside of the scope of reasonableness to allow him to
21 sit in on cross. There is really nothing else that I can say on
22 this at this point. However, I adamantly -- I adamantly disagree
23 with the representations that are being made by opposing Counsel.

24 HEARING OFFICER KNITTLE: Any further comment, Mr. Boyd?

1 MR. BOYD: The only comment I would make is, as you recall,
2 when Mr. Styzens was deposed we also made a similar motion to
3 exclude Mr. Nosari from being present. There is no surprise here
4 that we would do this. Again, if there had been a
5 misunderstanding, then I am sorry if I may have been part of the
6 source of that misunderstanding. But it should not come as a
7 surprise to the State that we are asking that their economic
8 benefit expert be excluded during the cross-examination of their
9 other economic benefit expert.

10 MS. CARTER: It does come to a surprise to the State,
11 especially since Dr. Nosari was allowed to sit in during the
12 direct testimony and based upon the representations of that
13 conversation and agreement amongst Counsel. So it does come as a
14 surprise, because it is in direct opposition to that.

15 HEARING OFFICER KNITTLE: Anything further, Mr. Boyd? I
16 will allow you to have the last word on your motion here.

17 MR. BOYD: Nothing.

18 HEARING OFFICER KNITTLE: I am going to grant your motion
19 in light of the fact that Mr. Layman is not here to discuss what
20 any potential agreement was and Mr. Boyd is asserting that that
21 agreement was not reached. So the safest course of action for me
22 is to exclude this witness.

23 So, Mr. Nosari, we are thinking we are not going to be done
24 here until about 12:30 with this witness and then we are going to

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1 take a break for lunch. So you may not have to be back here,
2 aside from what you want to work out here with your Counsel,
3 until about 1:30.

4 MS. CARTER: If I could have just one moment to speak with
5 Dr. Nosari.

6 HEARING OFFICER KNITTLE: Sure. We will go off the record
7 for a second.

8 (Discussion off the record.)

9 (Dr. Nosari exited the hearing room.)

10 HEARING OFFICER KNITTLE: All right. We are back on the
11 record.

12 Mr. Boyd, we are ready for cross-examination of this
13 witness.

14 MR. BOYD: Thank you.

15 CROSS EXAMINATION

16 BY MR. BOYD:

17 Q. Good morning, Mr. Styzens.

18 A. Good morning.

19 Q. Your work with the Agency involves internal audit
20 projects; is that right?

21 A. I am an internal auditor.

22 Q. For purposes of this case you conducted an audit to
23 determine an appropriate economic benefit amount; is that right?

24 A. No. I performed an internal audit on topics related to

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1 economic benefit, which includes a determination of the economic
2 benefit.

3 Q. All right. Now, it is true that the IEPA has no written
4 economic benefit policy; isn't that right?

5 A. I don't know. I am not aware if there is a written
6 policy. I am aware that the Illinois EPA has an internal control
7 system called economic benefit. Whether there is some written
8 procedures exactly, I am trying to think here if there is.

9 Q. Well, let me ask you this. Have you seen anything in
10 writing describing that internal control system called economic
11 benefit?

12 A. Yes.

13 Q. What was the source of that information?

14 A. I received information periodically over the last five
15 years from our division of legal counsel on various internal
16 audit projects related to economic benefit analysis that they use
17 in their settlement negotiation process, which I believe they use
18 a federal model.

19 Q. The federal model you are thinking about is the BEN
20 Model; is that right?

21 A. Right.

22 Q. Besides the BEN Model, is there any other model or
23 approach that the IEPA has adopted as their approach to
24 determining economic benefit?

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1 A. I believe they rely on the BEN Model for their control
2 system at the Agency.

3 HEARING OFFICER KNITTLE: Mr. Boyd, we have Dr. Nosari
4 running back in here.

5 MR. BOYD: Oh, okay.

6 DR. NOSARI: I apologize. I forgot my coat.

7 HEARING OFFICER KNITTLE: That is perfectly acceptable, Dr.
8 Nosari. I just didn't want Mr. Boyd to ask any questions he
9 didn't want Dr. Nosari to hear.

10 DR. NOSARI: I am sorry. Thanks for your understanding.

11 HEARING OFFICER KNITTLE: Mr. Boyd, you can continue.

12 Q. (By Mr. Boyd) For purposes of this project, though --

13 A. Right.

14 Q. -- the work that you did was based on your independent
15 and professional judgment; is that right?

16 A. Yes.

17 Q. Okay. And that work began in the fall of 1999?

18 A. Correct.

19 Q. Okay. Mr. Styzens, when you first became involved in
20 this project the scope of your audit was to determine an economic
21 benefit based on numbers provided to you regarding the cost to
22 install and to annually operate control equipment?

23 A. Well --

24 Q. That is a yes or no question, sir.

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1 A. No.

2 Q. You can answer that?

3 A. No.

4 MR. BOYD: Well, Mr. Hearing Officer, I think it is a
5 simple question. Again, we have an hour until lunch. I would
6 just ask the witness that if there is a yes or no answer to my
7 question that he be instructed to answer that, and that he be
8 instructed that if there is any clarification that he would like
9 to give that he can do that on redirect.

10 HEARING OFFICER KNITTLE: Yes, I will instruct him so, but
11 did you answer no to that question, sir?

12 THE WITNESS: Yes, I did answer no.

13 HEARING OFFICER KNITTLE: I think he was answering no to
14 the question and not no to the fact that he couldn't answer the
15 question with a yes or no answer.

16 THE WITNESS: Could you repeat the question maybe?

17 Q. (By Mr. Boyd) Sure. I said when you first got involved
18 in this audit project, to determine economic -- your scope of the
19 audit was to determine an economic benefit based on numbers on
20 the annual operating costs and the initial costs provided to you;
21 isn't that correct?

22 A. No.

23 Q. Well, sir, before you talked to us about exhibit -- the

24 State's Exhibit Number 3 and page 115 of that exhibit; isn't that

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1 right?

2 A. Yes.

3 Q. You obtained that document from the Agency attorneys;
4 isn't that right?

5 A. From the division of legal counsel.

6 Q. Okay. And that document contained information on the
7 installation costs; is that right?

8 A. The initial capital investment and the annual operating
9 costs.

10 Q. And those numbers were, therefore, provided by the
11 Agency attorneys to use; is that right?

12 A. The division of legal counsel.

13 Q. And that document, page 115, also had information on the
14 annual operating costs?

15 A. Correct.

16 Q. And that also was provided by the Agency attorneys?

17 A. The division of legal counsel.

18 Q. All right. You assumed at that time that the two
19 numbers you were provided were accurate?

20 A. No, that is not correct.

21 Q. Do you recall being deposed in this matter in December
22 of 1999, sir?

23 A. Yes.

24 Q. Do you recall being under oath when you were deposed,

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1 sir?

2 A. Yes.

3 Q. Do you recall me asking you this question? "What
4 assumptions do you need to make in order to determine economic
5 benefit in the way you are doing it?" Did you provide this
6 answer? "What assumptions? I don't think we have many
7 assumptions. Of course, the biggest assumption is these two
8 figures are accurate." Do you remember giving that response?

9 A. Yes.

10 Q. All right. Isn't it true that when you were provided
11 the numbers on page 115 from the Agency division of legal
12 counsel, that you did no independent audit of the accuracy of
13 those numbers?

14 A. Correct.

15 Q. Before you became involved the Agency attorneys had done
16 a BEN analysis; isn't that right?

17 A. Correct.

18 Q. And they used the same numbers from page 115 that you
19 did?

20 A. Correct.

21 Q. They calculated the economic benefit of approximately 8
22 million dollars; isn't that right?

23 A. Correct.

24 MS. CARTER: Objection.

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1 HEARING OFFICER KNITTLE: What is the objection?

2 MS. CARTER: He is presenting facts not in evidence, for
3 starters. It is beyond the scope of the direct.

4 HEARING OFFICER KNITTLE: Mr. Boyd, is this beyond the
5 scope of direct?

6 MR. BOYD: He testified to what he had done before.

7 MS. CARTER: The question that Mr. Boyd was questioning him
8 on pertained to calculations that were performed by
9 representatives of the division of legal counsel. Those
10 calculations Mr. Styzens has not testified to. And it was not
11 questioned upon in the scope of his direct testimony.

12 HEARING OFFICER KNITTLE: Anything further, Mr. Boyd?

13 MR. BOYD: No.

14 HEARING OFFICER KNITTLE: I am going to overrule the
15 objection. I think we had testimony that can relate to this
16 issue. I don't think it is beyond the scope of the direct
17 examination.

18 Go ahead, Mr. Boyd.

19 Q. (By Mr. Boyd) Mr. Styzens, that 8 million dollar number
20 was subsequently reported in the Agency's response to
21 interrogatories in early September, wasn't it?

22 A. I don't know.

23 Q. But using the numbers from page 115 that you were
24 provided by the Agency attorneys, you determined an economic

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1 benefit of approximately 8 million dollars yourself; isn't that
2 right?

3 A. Using our approach?

4 Q. Yes.

5 A. Dr. Nosari and myself?

6 Q. Yes.

7 A. It was closer to 7 million.

8 Q. Okay. But you said earlier today that you had -- in
9 your deposition in December that your impression was that that
10 was not a final number, that it was a number that needed more
11 work; isn't that right?

12 (Mr. Layman entered the hearing room.)

13 A. I would not phrase it in that way, that I didn't think
14 it was a final number. I, again, addressed a concern that
15 because I didn't do an internal audit on the accuracy of those
16 numbers, that if there was better numbers available that I would
17 like to have those numbers.

18 Q. (By Mr. Boyd) At some point the scope of your audit did
19 change, and you did evaluate whether the cost to install and
20 annually operate control equipment were the most accurate figures
21 you could use?

22 A. Could you repeat the question?

23 Q. Well, let me rephrase it. At some point you did obtain
24 additional information on the cost to install controls; isn't

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1 that right?

2 A. Yes.

3 Q. You obtained additional information on the cost to
4 operate the control equipment?

5 A. Yes.

6 Q. All right. Then you did an evaluation of those numbers
7 to determine whether those were the most accurate numbers you
8 could use for your economic benefit analysis?

9 A. For the initial capital investment and the annual cost,
10 correct.

11 Q. That information you used, I think you testified
12 earlier, was information provided by Mr. Singh, who is
13 Panhandle's expert; isn't that right?

14 A. Yes.

15 Q. And the information on capital costs -- strike that.
16 You have no criticism of how Mr. Singh determined the annual
17 recurring cost number, do you?

18 A. The annual recurring cost of 29,000, no, I had no
19 criticism of that.

20 Q. You think his approach was a reasonable one?

21 A. Yes, I do.

22 Q. Okay. You said -- strike that. You think Mr. Singh had
23 good documentation for his numbers?

24 A. Yes.

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1 Q. You consider the annual cost number that Mr. Singh
2 developed to be a more accurate number than the earlier number
3 that you had been provided by the Agency's attorneys?

4 A. The 356,000 figure that I used, yes, it was more
5 accurate than the BACT number.

6 Q. Okay. You also have no criticism of how Mr. Singh
7 determined the cost of the initial investment?

8 A. The 356,000 figure, yes.

9 Q. That number is, again, more accurate than the original
10 number you had testified -- I am sorry -- the original number you
11 had for the initial cost?

12 A. That's the conclusion I reached, yes.

13 Q. Okay. And you would not have used those numbers if you
14 had any criticism with them?

15 A. Correct.

16 Q. Okay.

17 A. I would have voiced my criticism before I used them,
18 yes.

19 Q. Based on the numbers that Mr. Singh provided, you
20 determined an economic benefit number; is that right?

21 A. Yes.

22 Q. Those are the sheets that we have talked about this
23 morning?

24 A. Yes, around 600,000.

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1 Q. Okay. Well, let me refer you to one of the sheets. Let
2 me refer you to People's Exhibit Number 15 for a minute.

3 A. Okay.

4 Q. Now, Mr. Styzens, this is People's Exhibit Number 15.

5 A. Yes.

6 Q. It is one of the calculations that you did to determine
7 the potential economic benefit relating to the delayed initial
8 investment; is that right?

9 A. Yes.

10 Q. Okay. And, sir, if you look at the first -- the second
11 line of that sheet, you have an indication of October/December
12 1987. Do you see that?

13 A. Right, right.

14 Q. What you did there was to determine the partial economic
15 benefit for that partial period of time; isn't that right?

16 A. Right, correct.

17 Q. Then if you look down at line 14, you did the same
18 thing, isn't that right, for the period of January through April
19 of 1999?

20 A. Correct.

21 Q. Okay. Again, the beginning and end date for the
22 compliance period, those were provided by the Agency; is that
23 right?

24 A. Correct.

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1 Q. The Agency attorneys?

2 A. The division of legal counsel, yes, the Illinois EPA.

3 Q. Okay. Let me refer you to Exhibit 18 for a second.

4 A. Yes.

5 Q. Now, you also have a noncompliance period listed here;
6 is that right?

7 A. Correct.

8 Q. And, again, those were -- the beginning and end dates
9 were numbers that you were provided by the division of legal
10 counsel?

11 A. Yes.

12 Q. Okay. And this says the beginning date was on line two
13 of Exhibit 18, February of 1988; is that right?

14 A. Correct.

15 Q. Okay. And it says end date of August of 1999?

16 A. Correct.

17 Q. Okay. That is about an 11 and a half year period of
18 noncompliance; is that right?

19 A. Yes.

20 Q. Okay. Again, on line two of this sheet -- can I ask --
21 well, the reason you listed February through -- February through
22 December of 1988 on line two is because you were trying to
23 calculate a partial year economic benefit; is that right?
24 A. Correct.

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1 Q. Okay. Sir, if you look at the number at the end of line
2 two there, 2L, isn't the number you have calculated really for
3 the entire year?

4 A. I don't think so. It is February, March, April, May,
5 June -- I mean, it is almost an entire year as it is.

6 Q. Okay. Well, look at line 13 for me. Again, your goal
7 here, was it not, to calculate a partial economic benefit for
8 part of the year, from January to August of 1999; is that right?

9 A. Correct.

10 Q. Isn't it true that the number at the very right-hand
11 column is for the full year of 1999?

12 A. No, it should not be because, again, the formula that
13 was used would -- should be for January, February, March, April,
14 May, June, July, and August. It would be eight months. And I
15 believe that that figure should just be for eight months,
16 three-quarters of a year.

17 Q. Let me refer you to Exhibit Number 21 for a second.

18 A. Yes.

19 Q. I am sorry. Let's go back for a second. Let me refer

20 you to Exhibit Number 19. Now, this is the annual recurring cost
21 sheet that you prepared relating to the noncompliance period,
22 February of 1988 through August of 1999; is that correct?

23 A. Correct.

24 Q. And, again, if you look at line two of Exhibit Number

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1 19 --

2 A. Correct.

3 Q. -- it says February through December of 1988?

4 A. Right.

5 Q. And it is your understanding that that was because you
6 were calculating a partial economic benefit for that year?

7 A. Yes, but in this case that is what I was indicating on
8 the --

9 Q. If you look at the other side, sir, on line 2H, if you
10 will, 2H, isn't it true that that number is determined using
11 information for the entire year of 1988?

12 A. No. I believe that that is using eight -- a partial
13 year.

14 Q. Okay. If you look at the line 13, then, again, your
15 intention was to use a partial year from the beginning of 1999 to
16 August of 1999, is that right, to the end of August?

17 A. Yes. You can see we have a footnote that talks about,
18 you know, B14, which I think that should be B13, perhaps. But

19 you can see there is a footnote where we talk about using eight
20 months.

21 Q. Okay. And it is your understanding, sir, that the
22 number in 13H is, therefore, the number only representing eight
23 months?

24 A. Yes.

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1 Q. Okay. Let me refer you to Exhibit 21, People's Exhibit
2 Number 21. And, again, I will refer to line two for a second.
3 It was your intention to determine an economic benefit relating
4 to avoided -- I am sorry -- delayed installation of controls for
5 a partial year; is that right?

6 A. Yes.

7 Q. Okay. And it is your understanding, then, that the
8 number at the end of that row under column L, the 17,848, that
9 that number is for the partial year, February through December of
10 1988?

11 A. Yes.

12 Q. Down at the bottom, on line 13, again, your intention
13 was to determine an economic benefit for the partial year of
14 1999?

15 A. Yes. And you can see a footnote that talks about, you
16 know -- the footnote there says B13 is A13 times .66. Again, you
17 are trying to get that partial year in there with that .66.

18 Q. Okay. So your understanding is that the number in 13L,

19 the 27,772, is for the partial year, January through August of
20 1999?

21 A. Right, right.

22 Q. Okay. Now, looking at Exhibit Number 22, I am just
23 going to ask you the same questions. Again, on line two, this is
24 the annual recurring costs using the prime loan rate. Your

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1 intention was to calculate an economic benefit on line two for
2 just the partial year of 1988?

3 A. Right. It is almost a full year, but it is missing
4 January.

5 Q. All right. So your understanding of the number in 2H is
6 that number represents only -- for only the partial year?

7 A. Correct.

8 Q. Okay. And the same with 13, your intention was to
9 calculate a number for the partial year, January through August
10 31st of 1999?

11 A. Yes. You can see there is a footnote again related to
12 that particular partial year where we are using the .66 or eight
13 months.

14 Q. And over in the right-hand column, the column H there,
15 the 13H, the 18,866 number, it is your understanding that that
16 represents the economic benefit only for that partial year
17 period?

18 A. For eight months, right.
19 Q. For eight months?
20 A. Yes.
21 Q. Okay. Mr. Styzens, isn't it true that you prepared
22 Exhibits 15 through 23 on or about September 12th, 2000?
23 A. Yes.
24 Q. Okay. I think you testified earlier -- if you look at

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1 just People's Exhibit Number 15 for a second. If one were to try
2 to determine an economic benefit for years with a noncompliance
3 period beginning differently than September -- I am sorry -- for
4 1987 to 1999, they could do that by looking at column L and
5 adding up those years; is that right?

6 A. My only caution on that is I am confident of that, that
7 that is true if you start taking years off from the 1999, 1998,
8 1997, working back, you could just deduct those off. I am still
9 not clear in my mind whether you can simply take off the -- you
10 know, if you took off 1988, if you could just deduct that off.
11 Because how we do it, if -- as an auditor, if you started
12 changing the time frame I would actually put those figures into
13 an analysis table.

14 Q. Okay.

15 A. But I am confident that if you start reducing the time
16 frame from 1999, 1998, 1997 back, that I believe you can just
17 take those dollars off of column L, off the net benefit.

18 Q. Okay. Now, you testified on direct regarding the
19 Exhibit 7, People's Exhibit Number 7?

20 A. Yes.

21 Q. It is your understanding that Mr. Nosari used a
22 Panhandle specific weighted average cost of capital number to --
23 I am sorry. Strike that.

24 In your calculations of economic benefit you use the

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1 Panhandle specific weighted average cost of capital number for
2 the economic benefit calculation; isn't that right?

3 A. In part we used Pan Energy, which is Panhandle Eastern
4 and we also -- of course, we have some examples of where we used
5 the prime rate.

6 Q. Okay. But it was important to you to determine a
7 weighted average cost of capital using company specific
8 information; isn't that right?

9 A. Well, I mean, what was important to me was --

10 Q. Again, sir, it is a simple yes or no question.

11 MR. BOYD: Mr. Knittle, I am going to ask you to ask him to
12 respond to my question. There is plenty of time for redirect,
13 and I have lots of questions to get through.

14 HEARING OFFICER KNITTLE: Mr. Styzens, if you can answer
15 with a yes or no, please do.

16 THE WITNESS: I don't believe I can answer with a yes or

17 no. Could you ask the question again, please?

18 Q. Sure. The weighted average cost of capital numbers that
19 Mr. Nosari calculated were calculated using company specific
20 information; isn't that correct?

21 A. Yes.

22 Q. And the weighted average cost of capital sheet that has
23 been marked as People's Exhibit Number 7 was initially prepared
24 by Mr. Nosari; isn't that right?

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1 A. No.

2 Q. Well, sir, my understanding from your deposition was
3 that there was an initial draft that he prepared and that you
4 made no substantive changes; isn't that correct?

5 A. Yes, I made no substantive changes, correct.

6 Q. You added footnotes maybe to explain where --

7 A. Well, again, we set up how we were going to go about
8 developing the weighted average cost of capital. The procedure
9 was jointly discussed. But the numbers were pulled by Dr.
10 Nosari off the financial statements.

11 Q. Okay. And he used the financial statements of
12 Panhandle's parent, Panhandle Eastern Corporation; isn't that
13 right?

14 A. Correct.

15 Q. You didn't determine a weighted average cost of capital
16 for Panhandle itself?

17 A. Panhandle Eastern Pipe Line Company?

18 Q. Panhandle Eastern Pipe Line Company.

19 A. No, we thought it was reasonable to use Pan Energy or
20 Panhandle Eastern.

21 Q. Okay. You said yesterday that you used a reasonableness
22 test to evaluate Mr. Nosari's weighted average cost of capital;
23 is that right?

24 A. Yes.

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1 Q. I believe you said that you compared the weighted
2 average cost of capital numbers to three different things; isn't
3 that right?

4 A. Yes, yes.

5 Q. The prime lending rate?

6 A. Yes.

7 Q. What the BEN analysis used for weighted average cost of
8 capital?

9 A. Yes.

10 Q. And comparing information from the Uniform Penalty and
11 Lending Act?

12 A. Right. And interest. The Uniform Penalty and Interest
13 Act.

14 Q. And Interest Act?

15 A. Yes.

16 Q. You considered each of these things to make sure that
17 what Mr. Nosari calculated as the weighted average cost of
18 capital for Panhandle was reasonable?

19 A. Correct.

20 Q. Okay. Isn't it true that none of those indices that you
21 had used in your evaluation of reasonableness numbers for
22 Panhandle Eastern provides numbers specific to Panhandle?

23 A. I don't know if I can answer that question with a yes or
24 a no.

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1 Q. They were not numbers derived from Panhandle's economic
2 or financial documents, were they?

3 A. No.

4 Q. Okay. Isn't it true that those three indices that you
5 used to evaluate the reasonableness of the weighted average cost
6 of capital numbers are not specific to the natural gas
7 transmission industry?

8 A. No, I don't think that is an accurate statement.

9 Q. Well, you used three different tests for reasonableness
10 and none of those three things is specific to the natural gas
11 pipeline industry, is it?

12 A. No, I don't think that is an accurate statement.

13 MS. CARTER: Objection. Asked and answered.

14 HEARING OFFICER KNITTLE: Sustained.

15 Q. (By Mr. Boyd) Sir, you would expect, wouldn't you, that

16 an entity operating in a regulated natural gas pipeline industry
17 to be subject to less risk than one operating in an unregulated
18 environment?

19 A. No.

20 Q. Okay. Now, you also in your recent economic benefit
21 calculations determined economic benefit for Panhandle using the
22 prime lending rate rather than the weighted average cost of
23 capital; isn't that correct?

24 A. Correct.

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1 Q. It is my understanding from your testimony that you
2 didn't review those numbers with Mr. Nosari; is that right?

3 A. No, that is not correct. Dr. Nosari has seen all of
4 these spreadsheets.

5 Q. Okay. You calculated I guess we can say People's -- you
6 calculated numbers using People's Exhibit Numbers 12 through 23
7 to develop a range of potential economic benefits; is that
8 correct?

9 A. No, that is not correct.

10 Q. Was the reason that you calculated the -- well, strike
11 that. The reason that you used the prime rate to determine
12 economic benefit in Exhibits 21, 22, and 23 was to provide an
13 example of an economic benefit calculation that you considered to
14 be a reasonable number; is that right?

15 A. Yes, that was part of my reasonableness testing,
16 correct.

17 Q. So if you were going to determine economic benefit using
18 the prime rate, you would do it in the manner that you did in
19 Exhibits 21 through 23; is that right?

20 A. Yes.

21 Q. Okay. Now, your calculations on Exhibits 21, 22, and
22 23, People's Exhibits 21 through 23, don't take into account the
23 tax affects of borrowing money at the prime loan rate, do they?

24 A. Yes, I believe they do. We use the net after-tax cash

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1 flow on exhibit -- on People's Exhibit Number 22.

2 Q. So it is your understanding that your analysis does take
3 into account the tax affects of borrowing at the prime rate?

4 A. It takes into account the tax affects of tax
5 implications of environmental expenditures.

6 Q. Let me switch gears and show you -- have you return to
7 People's Exhibit Number 11 for a minute.

8 A. Okay.

9 Q. In particular, I would like to direct your attention to
10 the eighth page in.

11 HEARING OFFICER KNITTLE: Mr. Boyd, can you hold on,
12 please? It looks like this, Mr. Styzens.

13 THE WITNESS: Okay. Oh, there it is. Okay. I got it.

14 Q. (By Mr. Boyd) It is one that says, "table three,

15 Analysis of Capital Costs that Panhandle Would Not Have Incurred
16 if Clean Burn Would Have Been Installed on Units 1116 and 1117 in
17 1988." Do you have that in front of you?

18 A. What page are you on?

19 Q. I think it is page eight. It is table three at the top.

20 A. Table three. Okay. Yes, I have that.

21 Q. Now, if I could direct your attention to the middle of
22 that page. The total at the middle of that says 368,815.

23 A. Correct.

24 Q. That was the number Mr. Singh provided regarding the

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1 cost to install clean burn controls on engines 1116 and 1117 in
2 1988; isn't that right?

3 A. The costs that would have incurred in 1988 in year 2000
4 dollars.

5 Q. Okay. So the 368,815 is what Mr. Singh determined as
6 the amount in today's dollars that Panhandle would have needed to
7 pay in 1988 to install engines 1116 and 1117 with clean burn
8 controls?

9 A. Yes.

10 Q. Okay. That is in addition to any amounts that Panhandle
11 already spent in 1988 to move and install the engines in Glenarm?

12 A. I don't know.

13 Q. You considered the 368,815 number as an avoided capital

14 cost when you determined the economic benefit of noncompliance,
15 didn't you?

16 A. That is not how I would phrase it, avoided capital
17 costs. That was the capital costs that should have occurred back
18 in 1988 that did not occur.

19 Q. In other words, since Panhandle did not spend the money
20 in 1988 to install clean burn on engines 1116 and 1117, Panhandle
21 would have had that money available for other purposes?

22 A. Correct.

23 Q. Okay. And you added that number to the number you
24 calculated as the avoided annual expenses, which Mr. Singh

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1 provided information?

2 A. I am sorry. I don't understand that question.

3 MR. BOYD: Read it back.

4 HEARING OFFICER KNITTLE: Mr. Boyd, the same rule has to
5 apply to everyone, unfortunately or fortunately, as the case may
6 be.

7 MR. BOYD: I am sorry.

8 HEARING OFFICER KNITTLE: Darlene, could you please read it
9 back.

10 (Whereupon the requested portion of the record was read
11 back by the Reporter.)

12 THE WITNESS: I don't understand the question.

13 Q. (By Mr. Boyd) I will go back. If I could refer you to

14 the next page, table four. At the bottom there is the number
15 29,806. Do you see that?

16 A. Yes.

17 Q. That's the number of the annual recurring costs that you
18 considered in your economic benefit calculation?

19 A. Correct.

20 Q. Okay. So you determined an economic benefit related to
21 the annual recurring costs of 29,806, and the delayed capital
22 costs of 368,815 for your economic benefit analysis?

23 A. Those are the two numbers we used, correct.

24 Q. Okay. Let me turn you back to table three for a second.

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1 A. Yes.

2 Q. The 368,815 dollar number is not what Mr. Singh
3 concluded it will cost Panhandle to install clean burn on engines
4 1116 and 1117 today, is it?

5 A. Yes, I believe that is an accurate statement.

6 Q. It will cost Panhandle much more than that to install
7 clean burn on engines 1116 and 1117 today, won't it?

8 A. I can't answer that with a yes or a no.

9 Q. Well, did Mr. Singh calculate that it will cost
10 Panhandle approximately \$943,948.00 to install clean burn
11 controls on engines 1116 and 1117 today?

12 A. I can't answer that with a yes or a no.

13 Q. Sir, if you look at the chart, there is a number under
14 current cost of conversion to clean burn. Do you see that?

15 A. Yes.

16 Q. Okay. Then there is a total under that of 943,948?

17 A. Correct.

18 Q. Is it your understanding that that is the cost that it
19 is going to take to install clean burn control on engines 1116
20 and 1117 today?

21 A. All I know about that number is that it is Panhandle's
22 number where they are saying there is some avoidable retrofit
23 costs or retrofit costs that they believe should be incorporated
24 somehow into some kind of economic benefit analysis. I really

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1 did not use that information in my economic benefit analysis
2 because I didn't believe it was applicable.

3 MR. BOYD: Would you go back and read my question and then
4 his answer, please.

5 HEARING OFFICER KNITTLE: The most recent one?

6 MR. BOYD: My question and his answer.

7 HEARING OFFICER KNITTLE: Yes. Go ahead, Darlene.

8 (Whereupon the requested portion of the record was read
9 back by the Reporter.)

10 Q. (By Mr. Boyd) Sir, again, do you recall being deposed in
11 May of this year?

12 A. Yes.

13 Q. Again, you were under oath when you were deposed?

14 A. Yes, yes.

15 Q. Do you remember me asking you this question at that
16 deposition?

17 "Question: Mr. Styzens, isn't the 943,948 the cost of
18 installing the equipment today?

19 Answer: Yes, I believe that is right."

20 A. I believe I was saying that in the context of that is
21 what Panhandle believed was the retrofit costs involved in the
22 calculations on that page.

23 HEARING OFFICER KNITTLE: Mr. Boyd, do we need to go off
24 the record for a while?

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1 MR. BOYD: Just one second.

2 HEARING OFFICER KNITTLE: Okay. Let's go off the record,
3 please.

4 (Discussion off the record.)

5 HEARING OFFICER KNITTLE: Okay. Let's go back on the
6 record.

7 Q. (By Mr. Boyd) Mr. Styzens, isn't it true that the reason
8 it is going to cost more today to install clean burn on engines
9 1116 and 1117 than it did or it would have cost in 1988 is
10 because the engines will need to be completely taken apart and
11 retrofitted today?

12 A. You are dealing with a time period that is starting
13 let's say today and moving forward.

14 Q. Sir, you --

15 A. You can made all kinds of assumptions.

16 Q. -- are going to have -- excuse me, sir. You are going
17 to have enough time -- you had a lot of time on your direct
18 already to talk about your theory. You are going to have time on
19 redirect. I asked you a simple question.

20 My question was, isn't it true that the reason it is going
21 to cost much more today to install controls on those engines is
22 the fact that they will have to be taken apart and retrofitted
23 today?

24 A. I don't know if they will have to be taken apart to be

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1 retrofitted. Maybe there is a new product on the line where you
2 don't have to take it apart. There are all kinds of things that
3 can happen between now and two years from now. I don't know if
4 you have to take the engine apart.

5 Q. Well, sir, do you know what Panhandle has proposed to do
6 with those engines?

7 A. Yes. I believe you are on the record of saying that you
8 believe that you are going to take them apart. But I don't know
9 if you are going to take them apart just to install the clean
10 burn equipment. Are you going to take them apart because they
11 need maintenance and you are going to install the equipment. I

12 don't know.

13 Q. So you have no information then to suggest that there is
14 any other reason that they are going to take them apart other
15 than to put clean burn on, do you?

16 A. The point is I don't have the information. So I am not
17 going to make a comment on it.

18 Q. Well, isn't it true that the clean burn controls are
19 part of the design of the engines and not separate add-on
20 controls?

21 A. To some extent I think there is -- you know, there is
22 some addition -- you know, some work that has to be done to
23 install the equipment.

24 Q. Isn't it your understanding that engines 1116 and 1117

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1 have already been taken apart once before they were installed in
2 Glenarm; isn't that right?

3 A. It is my understanding that there was some indication
4 that back at the beginning of the noncompliance period, somewhere
5 back there, that they were in pieces.

6 Q. Now, to install clean burn on the engines today they
7 will have to be taken apart again; isn't that right?

8 A. If you are going to do exactly the same thing that you
9 would have done back in 1988, then I would imagine that would
10 possibly be true.

11 Q. Sir, I am not asking about that. I am asking about
12 installing the clean burn today on the engines. You have an
13 understanding of what Panhandle has proposed. Is it your
14 understanding that they will have to take the engines apart today
15 to put those changes on?

16 MS. CARTER: Objection. Mr. Hearing Officer, this is
17 beyond the scope of the direct testimony that was provided by Mr.
18 Styzens. He did not provide any testimony pertaining to the
19 specifics of how the retrofit technology would be employed, and
20 it is really a technical matter. And in addition to my objection
21 for this question, on the same grounds I move to strike the
22 preceding questions that pertained to a technical discussion of
23 what is involved with, you know, the implementation of control
24 technology.

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1 HEARING OFFICER KNITTLE: Mr. Boyd?

2 MR. BOYD: Well --

3 HEARING OFFICER KNITTLE: How is this not beyond the scope,
4 because I don't recall --

5 MR. BOYD: Well, sir, I objected originally to have Mr.
6 Styzens provide any testimony about retrofit costs. But he
7 talked about it, he and talked about his basis of his opinion
8 here and talked about retrofit costs. I am going into the
9 specific facts of this particular case.

10 MS. CARTER: Mr. Styzens, on direct testimony, provided a

11 discussion of the costs relevant to retrofit. He did not, nor
12 was he asked any questions pertaining to the specific
13 implementations of, you know, the control technology on the
14 specific engines. And in addition, you know, if this is
15 something that Counsel for respondent seeks to elicit, perhaps it
16 should be -- perhaps it is better addressed, you know, by his
17 witness on this matter.

18 HEARING OFFICER KNITTLE: Okay. Anything further, Mr.
19 Boyd?

20 MR. BOYD: Well, again, the issue of retrofit, he has
21 admitted on his direct, is a prime issue in this case. He is
22 offering testimony about economic benefit. He has admitted that
23 this is the first case he has ever considered economic benefit
24 and retrofit issues. I think it is appropriate for him to

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1 explore his knowledge of the facts of this particular case on
2 which he has based an opinion or on which he has ignored to make
3 his opinion.

4 HEARING OFFICER KNITTLE: I am going to overrule the
5 objection. I think he did state that he didn't think retro costs
6 were appropriate. I think it is an appropriate matter of
7 cross-examination to find out why.

8 MS. CARTER: Okay. Mr. Hearing Officer --

9 HEARING OFFICER KNITTLE: Yes.

10 MS. CARTER: -- I just would, again, like to renew my
11 objection on the preceding grounds for simply --

12 HEARING OFFICER KNITTLE: Sure. You can have a standing
13 objection if you would like.

14 MS. CARTER: Okay.

15 HEARING OFFICER KNITTLE: If you want to restate it
16 succinctly now I would be more than -- you would be more than
17 welcome to do that.

18 MS. CARTER: I think I have stated my objection. But I
19 just wanted to have it as a standing objection.

20 HEARING OFFICER KNITTLE: Duly noted.

21 Q. (By Mr. Boyd) Mr. Styzens, the discussion of what
22 Panhandle thinks it is going to cost today to install the clean
23 burn, the 943,948, you have no criticism of how Mr. Singh
24 developed that number, do you?

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1 A. Could you ask me the question one more time, please? I
2 have no criticism? Or maybe just read it back to me, I guess.

3 HEARING OFFICER KNITTLE: Do you want it read back, Mr.
4 Boyd? Mr. Styzens, do you need it read back?

5 THE WITNESS: Yes.

6 HEARING OFFICER KNITTLE: Go ahead, Darlene.

7 (Whereupon the requested portion of the record was read
8 back by the Reporter.)

9 THE WITNESS: The problem -- I don't have the -- I didn't

10 receive the documentation to support those calculations, or if I
11 did, I was not aware of -- I don't believe I had -- as an
12 internal auditor, I don't believe I had enough documentation and
13 discussion about how those numbers were derived regarding the
14 retrofit costs.

15 Q. (By Mr. Boyd) Well, sir, again, you keep talking about
16 the retrofit costs.

17 A. Because, I mean, my audit was dealing with the economic
18 benefit associated with avoiding capital expenditures. I didn't
19 have a detailed evaluation of all of the documentation supporting
20 Panhandle's calculation of retrofit.

21 Q. Sir, again, do you recall being deposed in this matter
22 in May?

23 A. Yes.

24 Q. Okay. I asked you a series of questions about these

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1 pages. Do you recall that?

2 A. Right.

3 Q. One of the series of questions I asked you about was the
4 numbers on page -- on table two, the table right before this. Do
5 you remember that?

6 A. Right.

7 Q. Do you remember me asking you the following --

8 MS. CARTER: Mr. Boyd, can you -- excuse me. Mr. Hearing

9 Officer, can you direct him to indicate what page he is referring
10 to on the deposition?

11 MR. BOYD: Sure. It is page 81.

12 MS. CARTER: Thank you.

13 Q. This is page 81. Do you recall me asking you these
14 questions and you providing these answers:

15 "Question: The next page says table two, expected capital
16 costs for installing clean burn technology on 1116 and 1117. Can
17 you describe your understanding of what this page is?

18 Answer: I believe that this has to do with more recent
19 costs associated with installing the clean burn equipment on the
20 two engines in question, the cost of installing the equipment.

21 Question: Did you do an analysis of these costs?

22 Answer: I reviewed the costs in context with the whole
23 packet.

24 Question: And you found that the numbers were adequately

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1 supported by the documentation in the packet?

2 Answer: Yes, we verified the accuracy of the numbers as
3 far as making sure our per hour cost times the estimate of the
4 number of hours were accurate.

5 Question: What is your understanding of the number at the
6 bottom of table two, the 1,086,224?

7 Answer: I believe that is the total cost of installing the
8 clean burn technology in recent dollars."

9 Then we go on to further discuss and to clarify --
10 MS. CARTER: Objection.
11 MR. BOYD: I am still talking.
12 HEARING OFFICER KNITTLE: Hey, Mr. Boyd, we can have an
13 objection by Counsel.
14 Ms. Carter, your objection?
15 MS. CARTER: Thank you. I do not understand if Counsel for
16 respondent is just simply reading this into the record, if he is
17 going to eventually have a question. It seems to me that he is
18 just taking portions of the deposition and is just ad hoc reading
19 it into the record. It seems like if he is going to attempt to
20 impeach the witness he should refer to a specific portion of the
21 deposition instead of reading pages and pages of it into the
22 record.
23 HEARING OFFICER KNITTLE: Mr. Boyd, how does this impeach
24 his discussion of the number on table three --

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1 MR. BOYD: Well, again, it is --
2 HEARING OFFICER KNITTLE: -- which is the --
3 MR. BOYD: -- to clarify --
4 HEARING OFFICER KNITTLE: Which is the 943,948?
5 MR. BOYD: The clarification is that the 943,948 number is
6 in 2000 dollars on table three. And on table two, the 1,086,224
7 is in 1987 dollars. That is the only difference.

8 HEARING OFFICER KNITTLE: We are not asking him questions
9 on your cross-examination about table two numbers, are we? We
10 have --

11 MR. BOYD: No, sir, but they are the same number. They are
12 just different dollar numbers. He was testifying that -- I had
13 asked him about the 943 number.

14 Q. (By Mr. Boyd) Mr. Styzens, isn't it your understanding
15 that the number in the --

16 HEARING OFFICER KNITTLE: Are you proceeding? We have not
17 ruled on the --

18 MR. BOYD: I will --

19 HEARING OFFICER KNITTLE: -- objection yet, Mr. Boyd.

20 MR. BOYD: Well --

21 HEARING OFFICER KNITTLE: I think you have got to wait for
22 that, at least. Okay.

23 MR. BOYD: I am sorry.

24 HEARING OFFICER KNITTLE: Ms. Carter, do you have any

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1 response before I rule?

2 MS. CARTER: Mr. Hearing Officer, if I could ask you to
3 just have read back what Mr. Boyd indicated here just for
4 clarification on my part. I was having some difficulties
5 following in terms of which specific numbers he was trying to
6 utilize this deposition to impeach the witness on. So that's the
7 only reason why, I just wanted to make sure that I am clear on

8 exactly what --

9 HEARING OFFICER KNITTLE: Well, as of now he was referring
10 in the deposition to table two. But the numbers that we are
11 looking to impeach this witness on, and I think Mr. Boyd would
12 agree, are table three, the number is total 943,948, which is the
13 current cost of conversion to clean burn. Is that correct, Mr.
14 Boyd?

15 MR. BOYD: Correct.

16 HEARING OFFICER KNITTLE: I will allow him some leeway if,
17 in fact, he can tie these two numbers together without reading
18 much more of the deposition transcript.

19 MR. BOYD: Okay.

20 MS. CARTER: May I just make one more objection for the
21 record, Mr. Hearing Officer?

22 HEARING OFFICER KNITTLE: Yes, you may.

23 MS. CARTER: Again, because he is referring to two separate
24 tables and attempting to use one portion of the deposition

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1 transcript to impeach for a separate table, I do think it is
2 inappropriate. Secondly, I do want to note that it is not -- he
3 is seeking to impeach the witness on a matter that is not
4 directly applicable to his direct testimony. I just wanted to
5 note that for the record.

6 HEARING OFFICER KNITTLE: Well, we have already ruled on

7 whether this is beyond the scope of the direct testimony. I
8 found that it was not. But I will note it again for the record.
9 And the Board is cognizant of -- will be cognizant of what is
10 going on. If Mr. Boyd cannot tie these two numbers together in
11 his impeachment, the Board will take note. And if he does not
12 tie them together pretty quickly, I am going to stop him.

13 MR. BOYD: Okay.

14 Q. (By Mr. Boyd) Mr. Styzens, look at the bottom of page --
15 of table two for a second?

16 A. Okay.

17 Q. Look at that 1,086,224. That number represents the
18 expended capital costs for installing clean burn technology on
19 engines 1116 and 1117 in 1997 dollars; is that correct?

20 A. It appears so, correct.

21 Q. Now, I will refer you to table three for just a second.
22 That number 943,948 at the bottom, that represents the cost of
23 installing clean burn on engines 1116 and 1117 in 2000 dollars,
24 does it not?

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1 A. Again, my response to that I believe in my deposition
2 was that that was -- the reason I was given this packet was to
3 get new numbers for my economic benefit analysis. So I evaluated
4 the quality of this document on the 368,815 on table three. I
5 believe my response regarding that area was these were
6 Panhandle's discussion of what they believe are some retrofit

7 costs that they believe in the future they may have to incur to
8 complete installation of some kind of equipment on their engines.

9 Q. What is your understanding of the cost on this table --
10 on these tables that Panhandle has represented as the cost to
11 install clean burn on engines 1116 and 1117 in 2000 dollars?

12 A. That Panhandle believes? Is that --

13 Q. That's what I said.

14 A. My understanding is that Panhandle believes that the
15 initial additional costs that would have incurred in 1988 were
16 368,815 and then that Panhandle believes that some time in the
17 future, depending on what happens, that perhaps there is going to
18 be some retrofit costs totaling 575,133. I mean, that's all I
19 believe about this table.

20 Q. Let's go back to table two for a second.

21 A. Okay.

22 Q. The number at the bottom of table two, the 1,086,224
23 number, isn't it true that you verified the accuracy of those
24 numbers as far as making sure that the per hour cost times the

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1 estimate of the number of hours were accurate?

2 A. My intent of that table two was to verify that the
3 additional costs, the 368,815, that there was documentation to
4 support those. That was the intent of my review of that, because
5 this whole document came about because of my request to get two

6 numbers. That's it. So that's all I was looking at, was two
7 numbers. Now, if you choose to put additional numbers in there,
8 that go beyond the scope of my review, then that's Panhandle's
9 option.

10 Q. I am sorry. Just sitting here today, do you have an
11 understanding at all of what Panhandle has represented at all to
12 the State regarding the cost it will incur today to install clean
13 burn on engines 1116 and 1117?

14 A. Yes, and I have said it over and over again. It
15 represents two things, in my opinion. The additional costs in
16 1988 of 368,815, and then some costs in the future that may or
17 may not occur that Panhandle is supposing that they exist or will
18 exist of some retrofit type cost of 575,133. Whether that
19 happens or not, you know, I am not clear.

20 Q. Well, sir, the 368,815, it is not your understanding
21 that Panhandle will just spend that amount today and there will
22 be clean burn on engines 1116 and 1117, is it?

23 A. Again, in my testimony I said there is all types of
24 things that can happen from now, two years, and hence. I am not

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1 a good predictor of what you guys are going to do to your
2 engines. I don't know what you are going to do. You may hire
3 another manufacturer. You may decide to take it apart because it
4 needs maintenance again in a year or so and then you are going to
5 put it on. I don't know what you are going to do. Auditors

6 don't, like, predict the future. We just examine the present and
7 make calculations based on it.

8 Q. Okay. Thank you. Isn't it true that your economic
9 benefit analysis does not take into account the amount that
10 Panhandle will need to spend today to install clean burn on
11 engines 1116 and 1117?

12 A. No, that is not true. Could you ask me the question
13 again? I am sorry.

14 MR. BOYD: Read it back, please.

15 HEARING OFFICER KNITTLE: Go ahead, Darlene.

16 (Whereupon the requested portion of the record was read
17 back by the Reporter.)

18 THE WITNESS: Okay. I am sorry. I misunderstood. Yes,
19 that's true. It does not take that into account.

20 Q. (By Mr. Boyd) You look at the issue as if Panhandle made
21 two separate decisions, the decision in 1988 not to install clean
22 burn and the decision sometime in the future to install clean
23 burn; isn't that right?

24 A. There is two different decisions, two time periods, two

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1 sets of costs, two different decisions, right.

2 Q. It does not matter to you whether Panhandle
3 intentionally or unintentionally violated the requirements?

4 A. Correct. The economic benefit analysis is blind as far

5 as purpose or no purpose, those kinds of things.

6 Q. You feel that your approach to looking at this as two
7 separate events discourages companies from not making the proper
8 decisions to make sure they are complying with environmental
9 regulations; isn't that right?

10 A. I am sorry. What is the question?

11 MR. BOYD: Read it back, please. Could you have her read
12 it back?

13 HEARING OFFICER KNITTLE: Yes.

14 (Whereupon the requested portion of the record was read
15 back by the Reporter.)

16 MR. BOYD: If I could go back and let me rephrase it
17 because you missed the one key word.

18 Q. (By Mr. Boyd) Do you feel that this approach to economic
19 benefit discourages companies from not making proper decisions to
20 make sure that they are complying with the environmental
21 regulations?

22 A. Okay. Your question is unclear when you say this
23 approach. Can you tell me what approach are you talking about.

24 Q. When looking at the economic benefit as two separate

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1 decisions, the decision in 1988 and the decision later on to
2 install controls?

3 A. I mean, I think my testimony was clear on that, that I
4 reached the conclusion that if you allow economic benefits to be

5 reduced by retrofit costs that it significantly damages the
6 control system and no longer makes management indifferent towards
7 making the wrong decision.

8 Q. So your approach puts the burden on the company to do
9 everything it needs to do to make sure that the operations are in
10 compliance?

11 A. Yes, I would say the burden is on the company.

12 Q. So something the Agency did or did not do to cause the
13 company to be out of compliance, that does not matter to your
14 analysis either?

15 MS. CARTER: I am going to object at this point in time,
16 Mr. Hearing Officer, simply because he is asking the witness
17 questions pertaining to any culpability or lack thereof of the
18 Illinois EPA. Again, this is something that was not addressed on
19 direct testimony with Mr. Styzens.

20 HEARING OFFICER KNITTLE: Mr. Boyd?

21 MR. BOYD: I don't have a response. He has an economic
22 benefit opinion, and I am probing the basis of his opinion.

23 HEARING OFFICER KNITTLE: The objection is overruled. Sir,
24 do you recall the question?

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1 THE WITNESS: No, I am sorry.

2 Q. (By Mr. Boyd) So if something the Agency did or did not
3 do caused the company to be out of compliance, that does not

4 matter to your analysis either?

5 A. No. I would say that is -- as an internal auditor -- I
6 mean, as an internal auditor I am supposed to give unbiased,
7 independent, objective decision. I am not supposed to give what
8 EPA management wants to hear. So if I was aware -- during my
9 internal audit, if I was aware of some actions taken by the
10 Agency that would affect the economic benefit in some manner then
11 I would take that into consideration. But at the point of my
12 audit, I was not aware of anything. But auditors are going to --
13 are going to hear the information supplied by the corporation and
14 the information supplied by management of the Agency, and we are
15 going to make an independent assessment. So if there is
16 something, again, that I should have been aware of that would
17 affect economic benefit that the Agency did, then, yes, I would
18 take that into consideration if I knew it at the time.

19 Q. The fact that Panhandle is going to install controls
20 today that are much more expensive than it would have cost them
21 to comply when the engines were first installed, that does not
22 matter to your analysis either?

23 A. Yes, that's correct.

24 Q. Even if Panhandle's competitors had no -- strike that.

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1 Even if Panhandle's competitors had not incurred similar retrofit
2 costs when they installed engines with clean burn controls?

3 A. Correct.

4 Q. Your position on this point is inconsistent with the
5 manner in which the U.S. EPA addresses economic benefit; isn't
6 that correct?

7 MS. CARTER: Again, objection, Mr. Hearing Officer. During
8 direct testimony we did not ask Mr. Styzens' opinions relevant to
9 how the U.S. EPA calculates economic benefit. Again, I do not
10 recall Mr. Styzens indicating in his direct testimony either that
11 he relied upon any information that the U.S. EPA has produced
12 pertaining to how they would or would not calculate economic
13 benefit.

14 HEARING OFFICER KNITTLE: Anything, Mr. Boyd?

15 MR. BOYD: Well, he mentioned the fact that the State
16 Agency relies to some extent on the BEN Model. The fact that he
17 has disregarded it in this particular case is a -- in fact, he
18 also said that he looked at it for determining the reasonableness
19 of the weighted average cost of capital number. So for all those
20 reasons, to the extent that the BEN Model is inconsistent with
21 this witness' testimony on this point, I think it is relevant and
22 I should question him on it.

23 HEARING OFFICER KNITTLE: Anything further?

24 MS. CARTER: Yes, I do have something further. Again, I do

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1 want to indicate that Mr. Styzens did indicate in his testimony
2 that the economic benefit analysis that he employed was based

3 upon fundamental principles of financial concepts, economic and
4 accounting concepts. In any reliance that he used on the BEN
5 Users Manual was simply for a determination of whether or not the
6 weighted average cost of capital was reasonable in terms of the
7 rates that were set forth therein. So it was simply to look at
8 the rates that were set forth within the BEN Users Manual and the
9 rates that they determined were appropriate for the weighted
10 average cost of capital. That has nothing to do with the
11 methodology that he employed in determining economic benefit.

12 HEARING OFFICER KNITTLE: Mr. Boyd?

13 MR. BOYD: I have no further response.

14 HEARING OFFICER KNITTLE: I am going to overrule the
15 objection. I think this is not beyond the scope.

16 Do you need the question read back, Mr. Styzens or Mr.
17 Boyd?

18 THE WITNESS: Yes.

19 MR. BOYD: I can restate it.

20 Q. (By Mr. Boyd) Isn't it true that your position on this
21 point is inconsistent with the manner in which the U.S. EPA
22 addresses the situation in the BEN Users Manual?

23 A. That's too vague. I would like -- I would have to have
24 more specific information on what you are talking about.

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1 Q. Sure. You are familiar with the BEN Users Manual from
2 April of 1999, aren't you?

3 A. Yes.

4 Q. Isn't it true that that manual demonstrates how to use
5 the BEN Model to calculate economic benefit when the costs of
6 compliance is different at the noncompliance date versus the
7 compliance date?

8 A. Well, from my reading that manual I see no information
9 about retrofit costs and how they are supposed to be employed
10 into the BEN Model.

11 Q. So for your purposes the BEN Manual provides no guidance
12 to you in this case; is that right?

13 A. No guidance on what?

14 Q. On the issue of retrofit costs?

15 A. I didn't see any reference in there to retrofit costs.

16 Q. Okay. And it does not provide you any guidance on the
17 situation where the cost to comply at the compliance date is
18 different than the cost to comply on the noncompliance date?

19 A. There was information in there about, you know, how
20 to -- during the noncompliance period I think there was a
21 discussion in the manual about dealing with maybe changes -- I am
22 not an expert on the BEN Manual. I believe they were -- had some
23 discussion about if there was some technological change that
24 occurred sometime during the noncompliance period that there

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1 would be some sort of adjustments made.

2 Q. But it is true, isn't it, that you have never used the
3 BEN Manual to calculate an economic benefit when the cost of
4 compliance is different at the noncompliance date versus the
5 compliance date?

6 A. Correct. That's true.

7 Q. Okay. Sir, you have talked a number of times about the
8 control system that you have looked at?

9 A. Correct.

10 Q. Isn't the discussion that you are presenting more
11 appropriate discussion for a gravity component of a penalty
12 versus an economic component of a penalty?

13 MS. CARTER: Objection, Mr. Hearing Officer. When Counsel
14 for respondent is referring to gravity, that is something that
15 calls for a legal conclusion. Anything in terms of a gravity, as
16 the Hearing Officer is aware, is set forth within the
17 Environmental Protection Act, and does call for an analysis, you
18 know, of the applicable law and things of that sort. So, again,
19 I would object based on any discussions relevant to gravity.
20 And, again, as well, it was not covered in the scope of his
21 direct testimony.

22 HEARING OFFICER KNITTLE: Mr. Boyd, anything?

23 MR. BOYD: No.

24 HEARING OFFICER KNITTLE: The objection is sustained.

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1 Q. (By Mr. Boyd) Sir, when we met in December for your

2 deposition and when we met in May for your deposition, isn't it
3 true that you told us that you don't consider yourself an expert
4 on gravity; isn't that right?

5 MS. CARTER: Again, objection, Mr. Hearing Officer. I
6 think any testimony pertaining to gravity should not be addressed
7 by this witness. It calls for a legal analysis, a legal
8 conclusion, and it is not appropriately addressed by Mr. Styzens.

9 HEARING OFFICER KNITTLE: Mr. Boyd?

10 MR. BOYD: The fact is that their entire approach to
11 economic benefit is really more appropriate to be considered as a
12 gravity component, and I am --

13 MS. CARTER: And any --

14 MR. BOYD: I am sorry. Let me finish my statement.

15 MS. CARTER: I apologize.

16 MR. BOYD: I am trying to elicit from this witness his
17 feelings on that issue.

18 HEARING OFFICER KNITTLE: Ms. Carter?

19 MS. CARTER: Mr. Hearing Officer, any arguments that
20 Counsel seeks to raise pertaining to gravity and the
21 applicability or inapplicability and relativeness to economic
22 benefit is more appropriately addressed by Counsel in the
23 respondent's brief at the conclusion of this matter. As I
24 indicated before, it does call for a legal analysis and it simply

1 is inappropriate regardless of how respondent feels about the
2 State's economic benefit approach.

3 HEARING OFFICER KNITTLE: Yes, Mr. Boyd, I am going to
4 sustain the objection. I think that it both calls for a legal
5 conclusion and is beyond the scope.

6 MR. BOYD: Well, the question I asked him was whether he
7 considered himself an expert on gravity.

8 HEARING OFFICER KNITTLE: And I am finding that to be
9 beyond the scope.

10 MR. BOYD: All right.

11 Q. (By Mr. Boyd) Mr. Styzens, this is the first time you
12 have offered testimony on economic benefit before a Pollution
13 Control Board hearing; isn't that correct?

14 A. Correct.

15 Q. In fact, you have never before testified in any
16 proceeding as an economic benefit expert, have you?

17 A. Correct.

18 Q. You never even testified in any proceeding regarding
19 penalties?

20 A. Correct.

21 Q. You never published any papers on the economic benefit
22 theory, have you?

23 A. Just internal audit reports.

24 Q. You have never published any papers on the calculation

1 or how to calculate economic benefit?

2 A. Just internal audit reports.

3 Q. You never published any papers regarding the role of
4 retrofit issues in economic benefit determinations, have you?

5 A. No.

6 Q. In fact, before becoming involved in this case, you
7 worked on only one other matter where you assisted the Agency's
8 attorneys to develop an economic benefit of noncompliance in an
9 enforcement case?

10 A. No, that is not correct.

11 Q. Sir, again, I will call your attention to the deposition
12 in May.

13 MR. BOYD: For your reference, Sally, it is pages 97 and
14 98.

15 MS. CARTER: Thank you.

16 Q. (By Mr. Boyd) And it was after a few questions where you
17 had talked about touching on economic benefit. I asked you the
18 following series of questions, at page 97:

19 "Question: Were they situations where you were assisting
20 the lawyers to determine the ability to pay?

21 Answer: No. I was --

22 Question: Or were they situations where you were to
23 determine --

24 Answer: I was --

1 Question: -- (continuing) No. Let me finish my question,
2 please. Situations where you were assisting the lawyers to
3 determine an economic benefit of noncompliance?"

4 There is an objection by Ms. Carter, "asked and answered."

5 "THE DEPONENT: Yes, I was assisting the lawyers in
6 developing an economic benefit for noncompliance.

7 Question: Okay. Tell me a specific situation where you
8 were doing that. What was the name of the case?"

9 Do you recall that line of questioning, sir?

10 A. Yes.

11 Q. Okay. Do you recall that you talked to me about the
12 Harris Marcus case?

13 A. Right.

14 Q. Okay. The Harris Marcus case -- Harris Marcus is a lamp
15 manufacturer; isn't that right?

16 A. Yes.

17 Q. And Harris Marcus was alleged to have manufactured lamps
18 using noncompliant coating; isn't that right?

19 A. Correct.

20 Q. Okay. In that case you examined Harris Marcus' sales of
21 noncompliant items and determined the profits made on the
22 noncompliant items; isn't that right?

23 A. That was part of the internal audit.

24 Q. Sir, after we discussed Harris Marcus, again, going to

1 page 99, I asked you the following series of questions:

2 "Question: Besides the Harris Marcus matter, are there any
3 other matters you can specifically refer to us today where you
4 assisted with the economic benefit analysis?

5 Answer: There is two I am working on right now currently.
6 I am so -- I can't remember the names.

7 Question: When did you get involved in those cases?

8 Answer: Within the last month and a half or so."

9 Sir, do you recall giving that series of answers?

10 A. Yes.

11 Q. Okay. In the Harris Marcus case, you did not analyze
12 the economic benefit allegedly resulting from delaying installing
13 control equipment, did you?

14 A. I would have to explain how low solvent technology
15 penalties are developed.

16 Q. Sir, again, did you look at the costs to install control
17 equipment for Harris Marcus?

18 A. I can't recall. I know how I do it when I perform LST
19 audits, low solvent technology audits. You do look at economic
20 benefit. That's part of the process.

21 Q. Okay.

22 A. Maybe not in that particular case, but in other cases.

23 Q. Sir, on testimony today, in direct testimony today, you
24 said this was the first case that you worked on involving a

1 retrofit issue in the context of economic benefit; isn't that
2 correct?

3 A. Correct.

4 Q. Okay. In fact, before this case, you had never done the
5 kind of calculation of economic benefit that you did in this
6 case; isn't that right?

7 A. Well, again, I keep on referring back that you use basic
8 financial concepts in economic benefit analysis. So, I mean, in
9 one form or fashion, I am using the same financial concepts, time
10 value of money, those sorts of things. So it is hard for me to
11 say, no, I have never touched on these things, because I have
12 throughout my education and career.

13 Q. Sir, I appreciate that you touched on the components of
14 this. But the question was did you ever do the kind of
15 calculations of economic benefit that you have done in this case
16 before?

17 A. I have done calculations of time value of money and
18 issues related to economic benefit. But have I done it exactly
19 like this before? No.

20 Q. Again, sir, referring you to your deposition in May.

21 MR. BOYD: This is on page 70, Ms. Carter.

22 MS. CARTER: Thank you.

23 Q. (By Mr. Boyd) I asked you this question:

24 "Question: Have you ever done this kind of calculation

1 yourself before since you have been with the IEPA.

2 Answer: Since I have been with the IEPA?

3 Question: Yes.

4 Answer: No."

5 Do you recall giving -- that series of questions and giving
6 those answers?

7 A. Yes.

8 MR. BOYD: All right. I think that's all I have.

9 HEARING OFFICER KNITTLE: All right. Let's go off the
10 record.

11 (Discussion off the record.)

12 HEARING OFFICER KNITTLE: We are going to take a lunch
13 recess now.

14 (Whereupon a lunch recess was taken from approximately
15 12:45 p.m. to 2:05 p.m.)

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1 A F T E R N O O N S E S S I O N

2 (September 19, 2000; 2:05 p.m.)

3 (Ms. Smetana and Board Member McFawn not present after the
4 lunch recess.)

5 HEARING OFFICER KNITTLE: We are back on the record. We
6 are commencing with the redirect examination of Mr. Styzens.

7 Mr. Styzens, you know you are still under oath.

8 THE WITNESS: Yes.

9 HEARING OFFICER KNITTLE: Ms. Carter, you may begin.

10 MS. CARTER: Thank you.

11 R E D I R E C T E X A M I N A T I O N

12 B Y M S . C A R T E R :

13 Q. Mr. Styzens, were calculations pertaining to economic
14 benefit conducted by the division of legal counsel?

15 A. The only thing that I am aware of is that I had
16 identified a BEN Model run of some sort at the beginning based, I
17 think, on BACT numbers.

18 Q. Did those calculations in any way affect the
19 calculations that you previously described for me that you
20 employed? I can rephrase that.

21 A. No. The only similarity is that I used similar BACT
22 numbers for the initial investment and the recurring costs.
23 Otherwise, I used my own approach.

24 Q. Okay. If I could direct your attention to People's

1 Exhibit Number 12.

2 A. Yes.

3 Q. Do you have that before you?

4 A. Yes.

5 Q. Do you see a number in the bottom left-hand corner of
6 this exhibit? It is in the very bottom left-hand corner, a date.

7 A. A date? Yes, I do.

8 Q. What is the date?

9 A. September 12th of 2000.

10 Q. And does this date -- what does this date indicate to
11 you?

12 A. It just is a date that this particular piece of paper
13 was printed, is all that is.

14 Q. Does it indicate the date that this document was
15 prepared?

16 A. No.

17 Q. Okay. Then for People's Exhibits 12 through 23, do you
18 see a similar date in the bottom left-hand corner of all of these
19 exhibits?

20 A. Yes.

21 Q. And, again, what does that date represent to you?

22 A. The only relevance is the date that a particular piece
23 of paper was printed.

24 Q. Okay. Do you have sufficient information from Mr.

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1 Singh's presentation of retrofit costs to form an opinion as to
2 whether or not these costs were reasonable?

3 MR. BOYD: Objection to the form and in terms of what she
4 means by these costs being ambiguous.

5 HEARING OFFICER KNITTLE: I would sustain the objection as
6 to which costs we are referring to.

7 MS. CARTER: My next question was going to be -- what the
8 question was pertaining to form. I understand. Just one moment
9 and I will find those.

10 Q. (By Ms. Carter) If I could direct the witness' attention
11 to People's Exhibit Number 11, specifically table three contained
12 therein. Are you on that page Mr. Styzens?

13 A. Yes.

14 Q. Now, do you have sufficient information from Mr. Singh's
15 presentation of retrofit costs to form an opinion as to whether
16 the total of 943,948 is reasonable?

17 A. No.

18 Q. How does the intention of a company with respect to the
19 decision not to comply matter in an economic benefit analysis?

20 MR. BOYD: Object to the form. It is ambiguous and
21 compound.

22 HEARING OFFICER KNITTLE: Do you understand the question,
23 sir?

24 THE WITNESS: No. I probably need it repeated.

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1 HEARING OFFICER KNITTLE: The objection is sustained then.

2 Q. (By Ms. Carter) How does the intention of a company with
3 respect to the decision not to comply bear upon an economic
4 benefit analysis?

5 A. Okay.

6 MR. BOYD: I am going to object at this time to "an
7 economic benefit analysis." If he is going to be asked about his
8 economic benefit analysis, then he has laid a foundation that he
9 has knowledge as to that. I am not sure if there is adequate
10 foundation about any economic benefit analysis.

11 HEARING OFFICER KNITTLE: Ms. Carter, are you willing to
12 restrict it to his economic benefit analysis?

13 MS. CARTER: Yes, I can.

14 HEARING OFFICER KNITTLE: Sufficient, Mr. Boyd?

15 MR. BOYD: That's fine. Thank you.

16 HEARING OFFICER KNITTLE: Okay. Can you answer the
17 question, sir?

18 MS. CARTER: Do you need me to repeat it?

19 THE WITNESS: One last time I guess, yes.

20 Q. (By Ms. Carter) Okay. How does the intention of a
21 company with respect to the decision not to comply bear upon your
22 economic benefit analysis?

23 MR. BOYD: I am sorry. Again, in this case, is my
24 objection.

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1 HEARING OFFICER KNITTLE: I don't -- do you have a response
2 to --

3 MS. CARTER: What is his objection? I didn't hear him.

4 HEARING OFFICER KNITTLE: He wants you to limit it to the
5 economic benefit analysis done in this case that he did.

6 MS. CARTER: That's fine. I thought I did that. If I did
7 not, I --

8 HEARING OFFICER KNITTLE: Well, you just said -- I thought
9 it was sufficient, but you said your economic benefit analysis.

10 MS. CARTER: I can put the clause at the end.

11 HEARING OFFICER KNITTLE: We will just note that it is in
12 this case, as long as everybody agrees.

13 MR. BOYD: That's fine.

14 MS. CARTER: That's fine with me.

15 HEARING OFFICER KNITTLE: Okay.

16 MS. CARTER: I am just trying to move forward.

17 HEARING OFFICER KNITTLE: Mr. Styzens, do you understand
18 that question?

19 THE WITNESS: Yes.

20 HEARING OFFICER KNITTLE: Are you prepared to answer it?

21 THE WITNESS: Yes.

22 HEARING OFFICER KNITTLE: Okay. Please do.

23 THE WITNESS: The financial analysis that I performed to
24 develop the economic benefit for this case did not have any --

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1 the fact that a company intentionally or not intentionally did
2 anything to not comply had nothing to do with those figures. It
3 was simply a financial analysis using numbers supplied by
4 Panhandle to develop an economic benefit. Whether they --
5 whether the facts around the case have to do with intention or
6 nonintention does not enter into my analysis.

7 Q. (By Ms. Carter) Okay. If a company unknowingly violates
8 the law and avoids compliance costs, does that matter in the
9 economic benefit analysis conducted in this case?

10 A. No.

11 Q. If the Illinois EPA was also unaware of the violation
12 that resulted in the delayed compliance costs, would that affect
13 your economic benefit analysis?

14 A. No.

15 Q. Can you describe the audit that you conducted in a case
16 called Harris Marcus?

17 A. Yes. These type of internal audit projects that I have
18 been working with over the last couple of years deal with an
19 economic benefit calculation associated with companies that are
20 coming into compliance using low solvent technology, which means
21 usually that they are reformulating chemicals like glues or
22 solvents to come into compliance, rather than making large
23 expenditures for capital improvements.

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1 complex, because the model that you use to develop economic
2 benefit, the organization does have to also supply information on
3 what type of capital improvements they may have made to come into
4 compliance. You still have to do an economic benefit analysis
5 on -- using capital outlays for pollution control equipment.
6 What the model uses that for is really to set a ceiling for
7 settlement negotiations.

8 They don't -- the federal government, the U.S. EPA,
9 indicates that they don't believe that the penalty that is
10 negotiated should go above the economic benefit associated with
11 coming into compliance using equipment, technology. So that
12 forms a ceiling. But you still have to go through the process of
13 determining the costs involved in switching from the noncompliant
14 chemicals to the compliant chemicals. Frequently it is not a
15 high dollar amount, but you still determine those costs from
16 switching from a noncompliant chemical to a compliant, and you do
17 run a traditional BEN Model on those costs.

18 Then your third component is to examine the profits that
19 were made on the sales of noncompliant items. So to get the big
20 picture of the economic benefit associated with coming into
21 compliance with low solvent technology, those are your main
22 steps. Economic benefit associated with using equipment to come
23 into compliance, the cost involved in switching from one chemical

24 to another, the economic benefit associated with that, and then

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1 you examine the production component that they talk about with
2 the profit margins and the sales of noncompliant products.

3 Q. How, if at all, did the analysis that you performed in
4 the Harris Marcus matter differ from the analysis that you
5 performed in this matter?

6 A. In the low solvent technology cases like Harris Marcus,
7 you are using the same financial principles as you would in the
8 method I used here, as far as time value of money, avoiding
9 capital outlays. The major difference, though, is that the
10 economic benefit analysis contains an additional component that
11 relates to profit margins on the sale of noncompliant product.
12 That is really the only large difference, because you are
13 still -- of course, the Agency uses the BEN Model in the low
14 solvent technology cases during the settlement negotiations
15 process to determine the economic benefit for the initial capital
16 outlay that would have taken place and the costs involved from
17 switching to a noncompliant to a compliant chemical.

18 Again, there is just one additional area that you examine,
19 and that is the benefit that the company had over its
20 competitors. It dealt with this company was making products
21 using noncompliant glues or solvents, and quite frequently they
22 have a competitive advantage over the competitors that are using

23 compliant coatings. Quite frequently noncompliant coatings
24 perform better than compliant coatings and things of that nature

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1 that bring in an examination of the economic benefit for
2 competitive type of advantages over other companies in the
3 industry.

4 MS. CARTER: Mr. Hearing Officer, I have no further
5 questions on redirect.

6 HEARING OFFICER KNITTLE: Okay. Recross, Mr. Boyd?

7 MR. BOYD: Just a couple of quick ones.

8 RECCROSS EXAMINATION

9 BY MR. BOYD:

10 Q. Mr. Styzens, I wanted to refer you to exhibits --
11 People's Exhibits 15 through 23. And on redirect you talked
12 about the number in the left-hand corner at the bottom?

13 A. Yes.

14 Q. You indicated that the September 12th of 2000 date is
15 the date that these documents were printed; is that right?

16 A. Right.

17 Q. Isn't it true that you prepared these versions of the
18 economic benefit runs within the last month?

19 A. Within the last month? Let me see. Exhibits 15 through
20 like 23, is that what you said?

21 Q. Exactly?

22 A. Yes, okay. Within the last month. Let's see. Yes, I

23 would say that is accurate.

24 Q. So that was after your depositions in this case?

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1 A. Correct.

2 Q. Now, you also responded to Ms. Carter and suggested that
3 whether Panhandle intentionally or unintentionally violated the
4 requirements, that did not come into play in your analysis in
5 this particular case; is that right?

6 A. In the economic benefit analysis, correct.

7 Q. Okay. And you already talked about the extra costs
8 today that would be incurred in relation to those controls, and I
9 think you said that you didn't take into account those extra
10 costs today either in your analysis?

11 A. Well, I said I didn't take into account any type of
12 retrofit costs in my analysis.

13 Q. Now, if the retrofit costs in this case would have been
14 5 million dollars rather than 575,133, would you have taken that
15 number into account in your economic benefit analysis?

16 MS. CARTER: Objection. This is beyond the scope of
17 redirect. In redirect I simply asked him whether or not the
18 number that was provided, you know, in People's Exhibit Number
19 11, whether or not he conducted an analysis of the calculations
20 that he performed. I didn't go into anything in terms of, you
21 know, his utilization or lack thereof in a determination of the

22 economic benefit.

23 HEARING OFFICER KNITTLE: Mr. Boyd?

24 MR. BOYD: Well, he has talked about the fact that

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1 intention does not matter to his analysis. What I am trying to
2 probe is, is if the economic benefit number, if the gravity were
3 at a certain level, would the intention become a concern that he
4 would have in his evaluation of the control system.

5 HEARING OFFICER KNITTLE: I am going to overrule the
6 objection based on that explanation.

7 Sir, do you recall the question?

8 THE WITNESS: No.

9 HEARING OFFICER KNITTLE: Darlene, could you read it back,
10 please.

11 (Whereupon the requested portion of the record was read
12 back by the Reporter.)

13 THE WITNESS: No.

14 MR. BOYD: Okay. Thank you. That's all I have.

15 HEARING OFFICER KNITTLE: Re-redirect, Ms. Carter?

16 MS. CARTER: No.

17 HEARING OFFICER KNITTLE: All right. Thank you, sir. You
18 may step down.

19 (The witness left the stand.)

20 HEARING OFFICER KNITTLE: I am going to ask for a two
21 minute break.

22 (Whereupon a short recess was taken.)

23 HEARING OFFICER KNITTLE: All right. We are back on the
24 record after a short recess.

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1 Would the State call their next witness, please.

2 MS. CARTER: The State calls Dr. John Nosari.

3 HEARING OFFICER KNITTLE: All right. Darlene, could you
4 swear him in, please.

5 (Whereupon the witness was sworn by the Notary Public.)

6 HEARING OFFICER KNITTLE: Ms. Carter or Mr. Layman?

7 MS. CARTER: Ms. Carter.

8 HEARING OFFICER KNITTLE: All right. Your witness, Ms.
9 Carter.

10 MS. CARTER: Thank you.

11 J O H N S T A N L E Y N O S A R I ,

12 having been first duly sworn by the Notary Public, saith as
13 follows:

14 DIRECT EXAMINATION

15 BY MS. CARTER:

16 Q. Please state your name for the record.

17 A. It is John Stanley Nosari. The last name is spelled
18 N-O-S-A-R-I.

19 Q. Can you tell me a little bit about your undergraduate
20 education?

21 A. I received my undergraduate degree from Southern
22 Illinois University Edwardsville in 1967, and I received a
23 bachelor of science in business administration with a major in
24 accounting.

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1 Q. Okay. Did you subsequently attain an additional degree?

2 A. I subsequently attained two additional degrees. In 1969
3 I received a master of science degree in accounting from Wichita
4 State University, Wichita, Kansas, and I received a Ph.D. in
5 business administration with a major in accounting and a minor in
6 finance from St. Louis University in St. Louis, Missouri.

7 Q. When did you attain your Ph.D.?

8 A. In 1984.

9 Q. And can you tell me a bit about your teaching experience
10 since 1976?

11 (Ms. Smetana entered the hearing room.)

12 A. Well, in the fall of 1976 I was an assistant professor
13 at Lindenwood College, St. Charles, Missouri, where I taught in
14 the MBA program and the bachelor's of science and business
15 administration program. And I taught accounting courses,
16 including a whole gamut of accounting courses. And then I taught
17 finance at the undergraduate level and manager of finance at the
18 graduate level.

19 Q. Dr. Nosari, what type of accounting courses did you
20 teach at Lindenwood College?

21 A. Elementary accounting, governmental accounting,
22 auditing, I believe intermediate.

23 Q. Okay.

24 A. Okay.

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1 Q. Thank you.

2 A. From -- I only stayed at Lindenwood a year and a half
3 and then went to Sangamon State University.

4 Q. What year did you go to Sangamon State University?

5 A. In 1978.

6 Q. Okay. Thank you.

7 A. And Sangamon State University became the University of
8 Illinois at Springfield in 1995.

9 Q. Okay.

10 A. So I have been at Sangamon State or University of
11 Illinois at Springfield from 1978 to date.

12 Q. Okay. Can you tell me a little bit about the courses
13 that you taught when you first arrived at Sangamon State?

14 A. When I first arrived at Sangamon State I taught
15 managerial finance, cost -- I am sorry. Profit planning and
16 budgeting, advanced accounting. I taught those courses for about
17 two years, and then after that I became the lead professor in
18 auditing. So from 1981 to date I have been responsible for
19 teaching the auditing curriculum, which includes courses in

20 traditional financial statement auditing, advanced auditing,
21 which is a graduate course, and financial statement auditing.
22 And I developed courses in information systems, developed and
23 taught courses on information systems auditing, and internal and
24 operational auditing. I also developed courses in accounting

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1 information systems and was a member of the committee that
2 developed the management -- the master's degree in information
3 systems at SSU.

4 Q. Okay. If we could just back up for a moment. When you
5 referred to managerial finance courses, what type of curriculum
6 is that?

7 A. Well, managerial finance is taught in the MBA degree,
8 and it is an elective in the undergraduate accounting degree and
9 it is also a required course in the bachelor of science and
10 business administration degree. It is a course that deals with
11 the responsibilities of the financial manager, mainly which
12 including being able to tap the capital market as cheaply as
13 possible and ensuring the liquidity of a business and also trying
14 to maximize the rate of return on investment to stockholders.

15 Q. Have you held any other positions since you arrived at
16 Sangamon State University in 1978?

17 A. Yes. I was chair of accounting -- actually, I am
18 currently on my fourth stint as chair of accounting. I just
19 assumed that position in August. And I was also Dean of the

20 School of Business from 1988 -- I am sorry. I can't remember
21 now. It was either 1988 or 1989 to 1994.

22 Q. Okay. While you were Dean at the School of Business did
23 you also conduct or teach courses during that time?

24 A. Yes, I continued to teach auditing.

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1 Q. Okay.

2 A. And supervise the people that taught auditing.

3 Q. What courses do you presently teach?

4 A. Presently teach? I presently teach the undergraduate
5 course in auditing, which we just changed, which deals with
6 financial statement auditing, internal auditing, and operational
7 compliance auditing. I also teach information systems auditing
8 and an accounting course for nonaccountants that is taught to
9 students who are entering the MBA program and students who do not
10 have an accounting background prior to entry at UIS.

11 Q. Okay. During this time period that we just discussed,
12 1976 through the present, have you held any other positions which
13 any other entity?

14 A. Yes, uh-huh. I had a special assignment in the Air
15 Force Reserve as an individual mobilization augmentee or IMA.

16 Q. What is that, sir?

17 A. I was assigned to the Air Force Accounting and Finance
18 Center in Denver, Colorado, where I evaluated Air Force wide

19 systems for 12 years, and I was -- the last two years I was a war
20 time planner for the comptroller of the Air Force. In addition
21 to that, I have been a sole practitioner in public accounting and
22 a consultant since I arrived basically at Sangamon State.

23 Q. Okay. I will get to the latter part in just a moment.
24 You just mentioned -- did you just mention the certified public

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1 accountant? I couldn't hear you.

2 A. I said that I was a sole practitioner in accounting, but
3 I did not mention CPA.

4 Q. Okay. Do you have your CPA?

5 A. I am a licensed CPA in the State of Illinois.

6 Q. When did you attain your license?

7 A. In 1978.

8 Q. Thank you. Do you have any other professional
9 designations?

10 A. I am a Certified Internal Auditor.

11 Q. When did you attain that designation?

12 A. In 1998.

13 Q. Okay. And does this license and professional
14 designation that you just mentioned, do either of these require
15 continuing educational course work?

16 A. Yes, they both require 40 hours of continuing
17 professional education every year. That's 40 contact hours.

18 Q. What type of course work does that include?

19 A. Well, it includes anything that is related to the field
20 of auditing and the practice of public accounting. Usually I
21 take those courses on auditing and taxation.

22 Q. Okay. You previously mentioned that you independently
23 consult on the side?

24 A. Yes.

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1 Q. Can you tell me a little bit about your independent
2 consulting work that you have done lately?

3 A. Well, exclusive of the public accounting practice?

4 Q. You are making a separation there?

5 A. I am asking you.

6 Q. Oh, yes. Yes.

7 A. Okay. My consulting lately has consisted of assisting
8 the EPA, the Illinois EPA, and I have provided some consultations
9 with them in terms of providing them with a seminar on financial
10 statement analysis. And then, of course, helping Gary Styzens
11 with this case at hand.

12 Q. Okay. If we could just back up for a moment. Have you
13 done any independent work with any other departments --

14 A. Yes.

15 Q. -- within the State?

16 A. Yes, uh-huh.

17 Q. Okay. And what departments would those include?

18 A. Well, they would include the Department of Revenue, and
19 the Illinois Department of Public Aid. For the department of
20 Public Aid I developed a number of audit packages or audit
21 programs for the audits of Medicaid providers. I also testified
22 as an expert witness in regard to results of audits and the
23 appropriateness of audit procedures and statistical
24 extrapolation.

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1 Q. Okay. Can you tell me a little bit about the work that
2 you have done for the Department of Revenue?

3 A. The Department of Revenue I basically provided some
4 seminars dealing with auditing information systems.

5 Q. Okay. Dr. Styzens, how else do you spend your
6 professional time? Is there any other activities that you are
7 involved in?

8 MR. BOYD: Ms. Carter, you just said Dr. Styzens.

9 MS. CARTER: Oh, I apologize. I have a tendency to do
10 misnomers, I guess is what I am doing.

11 Q. (By Ms. Carter) Dr. Nosari, is there any other things
12 that you do during your professional time?

13 A. Well, I am on the Board of Directors of the Springfield
14 Chapter of the Institute of Internal Auditors. I am under
15 contract with the Institute of Internal Auditors to write a
16 textbook on information systems auditing.

17 Q. What is information systems auditing?

18 A. Well, it is basically -- the approach is on how to audit
19 mechanized systems to ensure that they are accurate, reliable and
20 have -- I am trying to think of the term. Secure, that they are
21 secure.

22 Q. I think that you previously mentioned that you have
23 testified in some sort of proceedings in the past. How many
24 times have you testified in the past?

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1 A. For the Department of Public Aid, a number of times. I
2 would be hard put to give you the exact number. Probably 40 to
3 60, something like that.

4 Q. And, again, what did that testimony pertain to?

5 A. It pertained mostly to auditing and the appropriateness
6 of audit procedures, the results of the audits, and the use of
7 the statistics in those audits.

8 Q. And do you know about what time period this testimony
9 had been provided?

10 A. I am guessing from probably about 1988 to current.

11 Q. Okay. And in those proceedings were you permitted to
12 provide expert testimony?

13 A. Yes.

14 Q. Okay. Dr. Nosari, have you prepared a resume that
15 documents the background information that we have just discussed?

16 A. Yes.

17 (Whereupon a document was duly marked for purposes of
18 identification as People's Exhibit 24 as of this date.)

19 Q. (By Ms. Carter) Okay. Dr. Nosari, I am handing you what
20 has previously been marked as People's Exhibit Number 24. Do you
21 recognize that document?

22 A. Yes.

23 Q. What is that document?

24 A. Well, it is a copy of my resume.

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1 MS. CARTER: At this time the People move for the admission
2 of People's Exhibit Number 24 into evidence.

3 HEARING OFFICER KNITTLE: Mr. Boyd or Ms. Smetana?

4 MR. BOYD: I have no objections except I am not sure why it
5 is relevant to be introduced into evidence.

6 HEARING OFFICER KNITTLE: No objections, though?

7 MR. BOYD: No objection.

8 HEARING OFFICER KNITTLE: All right. This is admitted.

9 (Whereupon said document was duly admitted into evidence as
10 People's Exhibit 24 as of this date.)

11 Q. (By Ms. Carter) Have you been exposed to the concept of
12 the time value of money?

13 A. Certainly.

14 Q. Can you indicate to me where in your background you have
15 been exposed to that concept?

16 A. Well, time value of money is used in accounting. It is

17 used in finance. The whole idea is that money has a cost and
18 that, you know, money is not free and that cost, of course, is
19 interest in terms of -- that is how we normally think of money
20 having a cost, is interest. But also in the area of common
21 stock, there is a -- you know, the concept is that if somebody
22 makes an investment into a company they are expecting a rate of
23 return, and that rate of return has a cost to it. And the
24 concept of time value of money relates to this concept that

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1 people make investments for a return and that return is referred
2 to as the cost of money. And then you asked discount, didn't
3 you?

4 Q. No, I did not.

5 A. I am sorry. What was your question?

6 Q. My question specifically was have you been exposed to
7 the concept of the time value of money?

8 A. Time value of money. Okay. Yes. And so, you know, I
9 have been exposed to that in all three of my degrees.

10 Q. Okay. Thank you. And have you been exposed to the
11 concept of economic benefit?

12 A. Well, certainly, uh-huh.

13 Q. And in what area of your background have you been
14 exposed to the concept of economic benefit?

15 A. Well, economic benefit is a basic concept that, you

16 know, is taught in business schools from the very elementary
17 level of taking, you know, beginning economics and accounting.
18 The whole area of managerial accounting relates in how a managed
19 business relates to economic benefit in terms of organizations
20 making decisions to enhance their return on investment and making
21 decisions to make a better profit. Businesses try to develop
22 decisions that enhance their profitability or enhance their cost
23 reductions. And the whole idea behind it, of course, is economic
24 benefit. You can relate that to capital budgeting, to cost value

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1 and profit analysis. Basically any type of concept that is
2 taught in a business school.

3 Q. I think that you may have answered this, but I am not
4 quite for certain. Can you just give me a definition of what
5 economic benefit means?

6 MR. BOYD: I would object. The context of economic benefit
7 in general or in relation to the particular case?

8 MS. CARTER: Well, I am laying foundation at this point. I
9 am asking in general and I will get to the more specifics of this
10 case.

11 HEARING OFFICER KNITTLE: Okay. Do you still have an
12 objection, Mr. Boyd, in light of that explanation? She wants a
13 general definition of economic benefit.

14 MR. BOYD: I will withdraw my objection then.

15 Q. (By Ms. Carter) Do you need me to --

16 A. No.

17 Q. Okay.

18 A. Okay. Go ahead and ask.

19 Q. Let me ask the question again. In general, can you
20 please define for me the concept of economic benefit?

21 A. Well, economic benefit is the result of a decision. It
22 is how much better off -- in layman's terms, it is how much
23 better off an organization is because it made this decision.

24 Q. And does the concept of economic benefit relate to the

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1 concept of time value of money?

2 A. Well, certainly, because if you are going to calculate
3 the economic benefit over a period of time, you would take into
4 consideration the time value of money.

5 Q. Okay. Have you ever had occasion to conduct an economic
6 benefit analysis in your work or educational background?

7 A. Sure. Just about -- in dealing with clients and in
8 dealing with teaching, in doing operational audits or doing
9 audits or answering questions for clients as to how to do
10 something we always take into consideration the economics
11 involved in the decision, and that would be an aspect of economic
12 benefit analysis. I mean, underlying all of these things there
13 is an economic benefit analysis of why management should do what
14 they should do in terms of maximizing their profits or making a

15 short run or a long-term decision.

16 Q. Okay. Are you familiar with the name Gary Styzens?

17 A. Yes.

18 Q. How are you familiar with his name?

19 A. Well, Gary is a member -- in a couple of ways. One, he
20 is a member of the Springfield Chapter of the Institute of
21 Internal Auditors, and I know him from that. And also from
22 working with him here at the EPA.

23 Q. Okay. And was the first time that you were contacted by
24 Mr. Styzens pertaining to a seminar that you referenced

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1 previously?

2 A. Yes. The first time I was contacted by Gary was to
3 develop a seminar on financial statement analysis for the Agency.

4 Q. In the past have you developed different seminars on
5 different topics?

6 A. Certainly, uh-huh.

7 Q. Can you tell me what some of those topics are?

8 A. Well, I developed seminars for the Springfield Chapter
9 of the IIA dealing with internal audit standards, auditing under
10 the Illinois Procurement Act, COSO auditing, the impact to the
11 Committee on Sponsoring Organizations, which is basically a
12 landmark report that goes back to 1992 regarding the valuation of
13 internal control. I have done a number of seminars on that. I
14 am working on one now that is relating to oversight

15 organizations.

16 Q. Okay.

17 A. And a number of other seminars.

18 Q. After you conducted the seminar that you previously
19 referenced, did Mr. Styzens contact you on any other matters?

20 A. Yes. Several months or a number of months later he
21 contacted me regarding the Panhandle Eastern case.

22 Q. Why did Mr. Styzens contact you?

23 A. Well, I think for a variety of reasons. One, he wanted
24 some assistance in working on the case and he particularly was

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1 interested in getting some assistance in calculating the weighted
2 average cost of capital for Panhandle Eastern.

3 Q. Okay. And when you refer to the weighted average cost
4 of capital, what does that mean?

5 A. Well, weighted average cost of capital is a concept that
6 relates to what it costs a company to fund its assets.
7 Particularly, if you relate this to the financial statements in
8 particularly the balance sheet, on one side of the balance sheet
9 you have all of the assets, which is the things the company owns,
10 accounts receivable, inventory, property, plant and equipment.
11 On the other side of the balance sheet is how those are financed,
12 with the accounts payable, current liabilities, long-term debt,
13 and common stock. The weighted average cost of capital is a

14 method that is used to try to calculate what that cost actually
15 is to the company. And the weighted average cost of capital
16 takes into consideration then the components of -- the components
17 of the right-hand side of the balance sheet and their particular
18 costs to come up with a figure that is an average for that
19 company as to what it costs them to finance the assets that they
20 have on the other side of the balance sheet.

21 Q. Okay. After having been contacted by Mr. Styzens, did
22 you conduct a weighted average cost of capital analysis for this
23 case?

24 A. Yes, I did.

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1 Q. Okay. Prior to your conducting an analysis of the
2 weighted average cost of capital, did you discuss it with Mr.
3 Styzens in general terms?

4 A. Well, I discussed the case with him in general. I
5 discussed, you know, what the requirements were, what they wanted
6 me to do.

7 Q. Did you discuss the approach to the weighted average
8 cost of capital?

9 A. I probably did, uh-huh.

10 Q. What information did you utilize to conduct the weighted
11 average cost of capital to perform that calculation?

12 A. Okay. Well, basically I relied on the Panhandle Eastern
13 Annual Reports from 1988. I think the last one I had was 1994.

14 There were a couple of years that were missing and, in fact, I
15 don't think I had any information relating to 1988, if I am not
16 mistaken. And then the 10-K filings coming off of the SEC
17 website for periods after that. In addition to that, I used the
18 standard stock records, stock prices from bigcharts.com, and I
19 may have used a couple of other sources that I don't necessarily
20 remember.

21 Q. Okay. If I could direct your attention, Dr. Nosari, I
22 think there is an exhibit before you that is People's Exhibit
23 Number 7?

24 A. Yes.

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1 Q. Have you located that document?

2 A. Yes, I have.

3 Q. Have you seen this document before?

4 A. Yes.

5 Q. Let me just back up for just a moment. I think that you
6 mentioned before that you had attained financial data for
7 Panhandle Eastern Pipe Line Company?

8 A. Yes.

9 Q. Why did you decide to attain financial information for
10 this company?

11 A. Well, first of all, I used Panhandle -- I think you used
12 the term Panhandle Eastern Pipe Line, and I used Panhandle

13 Eastern, which is the parent company of the Pipe Line Company.

14 Q. Why did you decide to use the parent company's financial
15 information?

16 A. Because Panhandle Eastern Pipe Line Company is a
17 wholly-owned subsidiary, which means that its financial situation
18 is managed by the parent.

19 Q. Okay.

20 A. Another -- well, that is okay.

21 Q. Dr. Nosari, do you have anything further that you want
22 to provide as an explanation to your last question -- as an
23 answer to the last question?

24 A. Well, when I said that it was wholly-owned, and I don't

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1 remember exactly what I said, but I used the parent company
2 because it manages Panhandle Eastern Pipe Line Company, meaning
3 that it is a related party and thus the best estimate of cost of
4 capital would come from the parent company's financial statements
5 and not from the subsidiary, because the parent would influence
6 the subsidiary.

7 Q. Okay. Thank you.

8 MS. CARTER: Just one moment. I need to find this
9 document.

10 Q. (By Ms. Carter) Where did you attain the SEC 10-K
11 filings?

12 A. Well, the 10-K filings that I used we got off of Edgar.

13 I guess Gary Styzens -- I mean, you know, Gary Styzens got them
14 off the Edgar website, which is the SEC website.

15 Q. Okay. In terms of the annual reports, where did you
16 attain the annual reports?

17 A. I got the annual reports from the Brookins Library at
18 the University of Illinois at Springfield and they were on
19 microfiche.

20 MS. CARTER: If I could have just a moment, Mr. Hearing
21 Officer. I have to get some information put together real quick.

22 HEARING OFFICER KNITTLE: A couple minutes or --

23 MS. CARTER: Just one minute.

24 HEARING OFFICER KNITTLE: We will go off the record.

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1 (Discussion off the record.)

2 HEARING OFFICER KNITTLE: All right. We are back on the
3 record.

4 (Whereupon said document was duly marked for purposes of
5 identification as People's Exhibit 25 as of this date.)

6 Q. (By Ms. Carter) Dr. Nosari, I just handed you a document
7 that is marked as People's Exhibit Number 25. Have you seen this
8 document before?

9 A. Yes.

10 Q. Can you identify this document for me?

11 A. Well, it is the 1987 Annual Report from Panhandle

12 Eastern Corporation.

13 Q. Okay. Have you used this annual report in the past?

14 A. Yes.

15 Q. Okay. How have you used this annual report?

16 A. Well, I used it to gather information relating to their
17 financial position and the results of operations for 1987.

18 Q. Okay. And --

19 A. In which -- excuse me. Which I incorporated in the
20 People's Exhibit Number 7.

21 Q. Okay. Perhaps I need to back up for just a second. I
22 can't recall if I asked you to identify People's Exhibit Number
23 7?

24 A. Well, it is my --

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1 Q. Have you seen this document before, sir?

2 A. Yes.

3 Q. Okay. What is this document?

4 A. It is my lead schedule in calculating the cost of
5 capital, the weighted average cost of capital for Panhandle
6 Eastern Corporation.

7 Q. Okay. Now, I think you just mentioned to me, Dr.
8 Nosari, that you utilized portions of the 1987 Annual Report in
9 the weighted average cost of capital document?

10 A. Yes.

11 Q. Okay. Perhaps we could take this line by line for one

12 representative year, in this case 1987. Okay. What I am asking,
13 sir, in terms of row nine, for the earnings per share, can you
14 tell me where you attained that information from in the 1987
15 Annual Report?

16 A. Probably off the income statement.

17 Q. If I could direct your attention to pages 36 and
18 possibly 37.

19 A. No, I don't think it is there. I am sorry. It is on
20 page 36.

21 Q. Where are you referring to on page 36?

22 A. Well, it is the consolidated statement of income and it
23 is the last line or lines at the bottom of the page. It says
24 earning, parenthesis, loss per share, and we have continuing

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1 operations at \$2.07 and discontinue operations at 3 cents for a
2 total of \$2.04 and you will find that -- this is hard to read.
3 You will find that up here on earnings per share continuing
4 operations and earnings per share total, \$2.07 and \$2.04.

5 Q. Which lines are you referring to, Dr. Nosari?

6 A. I am referring to lines nine and ten of this
7 spreadsheet.

8 Q. Okay. Thank you. If I could now direct your attention
9 to row 11 on People's Exhibit Number 7. What does that row
10 pertain to?

11 A. Well, row 11 is dividends per share. Okay. That's the
12 amount of dividends that were declared and issued by Panhandle
13 Eastern Corp in that year.

14 Q. Okay. Did you attain that information from the 1987
15 Annual Report?

16 A. Yes, I did.

17 Q. If I could direct your attention to page one.

18 A. Uh-huh, which is the financial highlights, and you will
19 see under financial highlights, dividends paid, \$2.00, which is
20 line 11 of the weighted average cost of capital worksheet for
21 that year, \$2.00.

22 HEARING OFFICER KNITTLE: Ms. Carter, could you identify
23 the oversized exhibit that the witness is pointing to for the
24 record or maybe Ms. Smetana can.

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1 MS. CARTER: It is 7A.

2 HEARING OFFICER KNITTLE: Exhibit 7A. Thank you.

3 Q. (By Ms. Carter) Dr. Nosari, where did you attain the
4 information that is on -- excuse me. Can you identify row 12 for
5 me on People's Exhibit Number 7?

6 A. Row 12 is a share price close at December 31st and that
7 came from bigcharts.com.

8 Q. Okay. Then in terms of row 16, what does that row
9 pertain to?

10 A. Well, 16 pertains to whether or not there is any stock

11 splits or stock dividends. And basically for the whole period
12 under review there were no evidence of any stock splits or stock
13 dividends. And I can't refer to any particular document or page
14 here. But if you just read the whole report and, you know, the
15 annual 10-Ks and the annual reports you will find that this
16 company did not issue any stock splits or stock dividends for the
17 period in question.

18 Q. Okay. Thank you. Then, Dr. Nosari, if I could direct
19 your attention, I believe, to line 27. What does that line
20 pertain to?

21 A. Well, line 27 is basically -- it is a blank line and it
22 is percentage of equity.

23 Q. Okay.

24 A. All we are doing there is calculating the percentage of

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1 equity --

2 Q. Okay.

3 A. -- based on information that I attained from the annual
4 reports.

5 Q. Okay. In terms of line 29, what does that pertain to?

6 A. Well, line 29 is the long-term debt. Okay. Line 27,
7 going back to that calculation of percentage of equity, and what
8 we have under that, then, we have the short-term debt, the
9 long-term debt, the short-term portion of long-term debt, the

10 dollar amount of preferred stock, the dollar amount of paid
11 capital. And I used this basically to get the proportion of
12 these three different elements in the financial statements to
13 calculate the weighted average cost of capital, because each one
14 of these elements has a different cost. So to get the weighted
15 average cost of capital you have to calculate their cost and then
16 multiply it times the percentage that they relate to the total.

17 Okay.

18 Q. Okay. But just backing up for just a second, Dr.
19 Nosari, if I could, in terms of the long-term debt that is set
20 forth on line 29, did you attain this information from the 1987
21 Annual Report?

22 A. Yes.

23 Q. Okay. Do you think that you could specifically show me
24 where that information came from, from the 1987 annual report?

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1 A. It is coming from the balance sheet.

2 Q. Okay.

3 A. This is on page 37 and 38 of the annual report.

4 Q. Okay.

5 A. Okay. But, you know, basically all of this information
6 relating to the proportion of the elements of equity, or debt and
7 equity, come from the balance sheet.

8 Q. Okay.

9 A. So if you would look in terms of the short-term portion

10 of the long-term debt --

11 Q. If I could just --

12 A. Okay. I am sorry.

13 Q. If I could just back up for just a moment, sir, to the
14 line above that, line 29. Do you know where on page 36 you
15 attained that number?

16 A. Certainly. I got it in long-term debt on page 37. It
17 is 1,033,345, which you will see on line 29, column E --

18 Q. Okay.

19 A. -- of the worksheet.

20 Q. Okay. Now, Dr. Nosari, I may have interrupted you. Was
21 there something that --

22 A. I was just going to show where I got the short-term
23 portion of long-term debt, which is -- let's see. It is 706 -- I
24 have to find it now. Okay. Current debt. Short-term debt is

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1 706,845, which is also listed there on page 37.

2 Q. I am sorry. Dr. Nosari, I am unclear in terms of what
3 you are referring to right now.

4 A. Okay. I am referring to short-term debt, which is line
5 28.

6 Q. Okay.

7 A. In column E, the 706,845.

8 Q. Yes.

9 A. Comes from total liabilities, total current liabilities,
10 which is 706,845.

11 Q. Where is --

12 A. That is on page 37 of the annual report.

13 Q. Okay. Thank you.

14 A. Okay. Then the short-term portion of the long-term debt
15 is -- in the current liabilities you will see it listed there as
16 the first item, 170,608. And what I am doing here is I am
17 capturing these proportions or these percentages to calculate the
18 weighted average cost of capital. Okay.

19 Q. Okay. In terms of line 32 on People's Exhibit Number 7,
20 what does that pertain to?

21 A. Well, paid in capital is the total amount -- in this
22 case, it is the total amount of common stock and then other
23 common stockholder's equity or, if you will, it is normally
24 referred to as retained earnings. But I am referring to it as

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1 paid in capital. It is the total amount of common stock, which
2 is the total of 330,000 plus the 699,827.

3 Q. Which is on -- just for clarification, is this on page
4 37?

5 A. It is on page 37.

6 Q. Okay.

7 MR. BOYD: Just for clarification, would you tell us where.

8 MS. CARTER: On page 37 of the annual report, he is

9 referring to the third and second from the bottom lines.

10 THE WITNESS: It is the 330 plus the 699,827.

11 Q. (By Ms. Carter) Okay. Dr. Nosari, directing your
12 attention to line 37 on People's Exhibit Number 7, what does that
13 line pertain to?

14 A. I am sorry?

15 Q. In terms of line 37 on People's Exhibit Number 7 --

16 A. Okay. That's the tax rate.

17 Q. Okay. Where did you attain that number for 1987?

18 A. Well, the tax rate, the effective tax rate comes from --
19 comes from a footnote.

20 Q. When you are referencing a footnote, are you referencing
21 a footnote in the 1987 Annual Report, sir?

22 A. Yes.

23 Q. Okay. Can I direct your attention to page 45?

24 A. Okay. Page 45. If you look at the top of page 45, on

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1 the right-hand column, you will see the management's calculation
2 of the effective tax rate, and they came up with 39 percent.

3 Q. Okay.

4 A. And which, if you take -- I should mention here that if
5 you take the tax amount in the income statement and divide that
6 into net income you are not going to come up with the same
7 percentage. So this is management's representations of what the

8 effective tax rate is, which is what I used.

9 Q. This 39 percent, which is on page 45 of the 1987 Annual
10 Report, is that included in line 37 of People's Exhibit Number 7?

11 A. It is included in line 37 of People's Exhibit 7, and the
12 role that that plays is in the calculation of the cost of debt.
13 We reduce the cost of debt by the tax benefit of that, because
14 interest is tax deductible.

15 Q. Okay. Once you completed gathering the information for
16 1987, Dr. Nosari, did you also gather the information for
17 subsequent years?

18 A. Yes, uh-huh.

19 Q. Did you go through the same process that you just
20 described here today?

21 A. Yes, basically, uh-huh.

22 Q. Okay.

23 A. Up until 1990 -- through 1994, which I had the annual
24 reports and then for 1995 and 1996 I had the 10-K information

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1 that we received off of Edgar.

2 Q. Okay.

3 MS. CARTER: Mr. Hearing Officer, could I have just one
4 moment, please.

5 HEARING OFFICER KNITTLE: Yes. Let's go off the record.

6 (Discussion off the record.)

7 HEARING OFFICER KNITTLE: All right. We are back on the

8 record. Ms. Carter.

9 MS. CARTER: Thank you.

10 Q. (By Ms. Carter) Directing your attention to People's
11 Exhibit Number 7 again, Dr. Nosari, for years subsequent to 1987,
12 did you pull the inputs that are set forth within this document
13 from the same place as those that you just described?

14 A. Yes. From 1987 to 1994, which were the years that I had
15 the annual reports. For 1995 and 1996, I used the 10-K filings
16 that were on Edgar. And then in the course of preparing, I
17 discovered that the 1990 -- that the 10-K reports that came off
18 of Edgar did not have the footnotes that the annual reports did.
19 It simply cited -- it simply cited exhibits that were not
20 included. So consequently to that I discovered that I had pulled
21 the dividends from Moody stock records.

22 Q. When you refer to dividends, is that on People's Exhibit
23 Number 7?

24 A. That's on People's Exhibit Number 7. That's the

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1 dividends per share here on line 11.

2 Q. Okay.

3 A. And I am talking about the years 1995 and 1996, which
4 would be 11Q and R. I am sorry. It is 11R and 11S.

5 Q. Okay.

6 A. I can't read the chart. Sorry about that.

7 Q. Okay. Thank you.

8 A. The other thing that I discovered was that the effective
9 tax rate, also I could not find that. In looking -- you know, in
10 tracing back my steps on the Edgar 10-K, and I also could not
11 find it in some additional information that I had. So I have to
12 tell you that I don't know at this point where I actually got
13 those at, and that's for 1995 and 1996. I subsequently reviewed
14 the 10-K -- the actual 10-K filing and found it, and the tax rate
15 that management cited in their footnote was lower than the tax
16 rates that I cited here in R and S. And a lot of times these
17 are -- you know, can be modified or updated.

18 Q. You are referring to R and S. What row are you
19 referring to again?

20 A. I am referring to the tax rate in row 37.

21 Q. Okay.

22 A. The tax rate in row 37. What I am saying is I got all
23 of these tax rates in the annual 10-Ks until I got to 1995 and
24 1996, and then in the course of backtracking my work, I

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1 discovered that I did not have the actual 10-K. I had the 10-K
2 off of Edgar. And looking at these rates from the actual 10-K, I
3 discovered that management indicated that their effective tax
4 rates were lower than what I have here. And the effect of that
5 would be to management's favor in terms of calculating the
6 weighted average cost of capital. The effect of this would be

7 very minor, but it would be resulting in a lower weighted average
8 cost of capital had I used the rates that management cited in
9 their 10-K.

10 Q. And why -- if you could just explain for me --

11 A. Why is that the case?

12 Q. Yes, why is that the case?

13 A. The reason that is the case is because the cost of debt
14 is the effective interest rate less the tax benefit. So the
15 higher the tax rate, the lower the cost of debt.

16 Q. Okay. What would the resulting impact be on the
17 determination of economic benefit?

18 A. Well, it would not have very much of an effect because
19 the different was like around one percent. So we are talking a
20 very minor effect on these two years only, 1995 and 1996.

21 Q. Okay. Thank you. Dr. Nosari, do you recall when --
22 about the time you prepared People's Exhibit Number 7?

23 A. Originally it was probably prepared at the end of
24 December, the first part of January.

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1 Q. Did you prepare any type of documents summarizing the
2 work that you performed pertaining to People's Exhibit Number 7?

3 A. Well, there were two supporting schedules. One is the
4 cost of debt and the other one was the calculation of growth.

5 (Whereupon a document was duly marked for purposes of

6 identification as People's Exhibit 26 as of this date.)

7 Q. (By Ms. Carter) I have just handed you, Dr. Nosari,
8 People's Exhibit Number 26. Have you seen this before?

9 A. Yes.

10 Q. Can you identify this for me, please?

11 A. This is a letter that I wrote Gary Styzens that
12 summarized the work that I did for the Illinois EPA regarding
13 this case.

14 Q. What is the date of that letter, please, sir?

15 A. February 26 of the year 2000.

16 (Whereupon a document was duly marked for purposes of
17 identification as People's Exhibit 27 as of this date.)

18 Q. (By Ms. Carter) I have also handed you what has been
19 marked as People's Exhibit Number 27. Have you seen that
20 document before?

21 A. Yes.

22 Q. And can you describe this document for me, please?

23 A. Well, it is the worksheet that I used for the
24 calculation of cost of debt that was inputted into People's

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1 Exhibit Number 7.

2 Q. Did you eventually supplement People's Exhibit Number 26
3 with People's Exhibit Number 27?

4 A. Yes. Actually, what happened was in the course of
5 preparing People's Exhibit Number 26, I had two files on my

6 computer relating to the cost of debt and the one that I printed
7 out was the first one, which is the top part, basically consists
8 of the top part of People's Exhibit Number 27. And I should have
9 printed out the file, the subsequent file that I prepared, which
10 is People's Exhibit Number 27.

11 Q. Okay.

12 A. Which, I should have, you know --

13 Q. Okay. Now, Dr. Nosari, if I could just redirect your
14 attention to People's Exhibit Number 7. Do you have that before
15 you, sir?

16 A. Yes.

17 Q. Okay. Looking at line eight in People's Exhibit Number
18 7, why did you select the time period of 1987 through 1996?

19 A. Well, the main reason was is the period of noncompliance
20 was in 1988, and so I picked -- I used 1987 because the end of
21 1987 also happens to be the beginning of 1988. You know, the
22 ending balance sheet of 1987 is the beginning balance sheet for
23 1988. That's true for, you know, always. The ending balance
24 sheet is always also the beginning balance sheet for the next

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1 fiscal year.

2 I ended 1996 because at the end of 1996 through some time
3 in 1997, I don't know the exact date, but Panhandle Eastern and
4 Energy, Pan Energy, merged with Duke Energy. So at that point I

5 put my analysis based on 1996.

6 Q. What is your understanding of the term growth?

7 A. Well, getting to the cost of capital, particularly the
8 cost of common stock, I mentioned earlier that the three
9 components in financing assets in a company were debt, preferred
10 stock, and common stock. I did not really define, you know, the
11 elements of those except that I said that the cost of debt was
12 the interest rate less, you know, the tax benefit since it is tax
13 deductible.

14 In terms of common stock, common stock has two cost
15 elements. One is the dividend yield, which is basically what the
16 return that the investor is getting from the dividends. And the
17 other one is growth, which is the increase in value of a common
18 stock over a period of time. So, in essence, the return -- the
19 main reason that a stockholder buys stock is the difference
20 between debt and common stock.

21 If you buy a bond and the bond has an eight percent
22 interest rate, the investor gets an eight percent rate of return
23 over the life of that bond. That's a guarantee. A common
24 stockholder is buying a share of stock to get an increase in

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1 their rate of return or an increase in their investment, which is
2 based upon the dividend yield, but also upon the increase in the
3 value of that stock over a period of time, which is based upon
4 the growth of that stock, or the perception in the marketplace

5 that this stock is going to grow in value.

6 Q. Okay.

7 A. What growth is, is that perception or that part of the
8 return that relates to the common -- that relates to the common
9 stock going up in value.

10 Q. Okay. Now, if I could just direct your attention to
11 line 15 on People's Exhibit Number 7.

12 A. Uh-huh.

13 Q. What does that line pertain to?

14 A. Well, that pertains to growth, which I --

15 Q. How?

16 A. -- calculated at eight percent.

17 Q. Okay. That was going to be my next question. How did
18 you calculate the growth factor set forth within line 15 of
19 People's Exhibit Number 7?

20 A. Okay. Well, it is very difficult. It is very difficult
21 to actually measure growth or to measure, if you will, the part
22 of additional return that is awarded investors because of the
23 risk factor, okay. And so what I did is basically I used an
24 auditor's approach, being primarily an auditor, in trying to

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1 measure what the growth was in this stock over a period of time.

2 Okay. You can always come up with different ways of doing this.

3 Q. Okay. Are you referring to a certain document right

4 now?

5 A. Yes, I am going to -- yes. In the course of talking
6 about how I did it, it is documented on an attachment to People's
7 Exhibit Number 26, which is Schedule D, Pan Energy growth portion
8 of the cost of equity.

9 Q. Okay. Thank you, Dr. Nosari. I didn't mean to
10 interrupt your explanation of how you determined growth.

11 A. That's okay. Anyway, in the course of doing this, I
12 looked at a number of items. And I was trying to come up with a
13 reasonable approach in measuring growth. So the first thing I
14 did is I looked at the relationship between 1987 and 1988 and I
15 found, you know, that the growth rate from 1987 to 1988 was over
16 20 percent. And then in the course of looking at Schedule C --

17 Q. When you refer to Schedule C --

18 A. Pardon me. It is People's Exhibit Number 7.

19 Q. Thank you.

20 A. My apologies. You know, as I went through the annual
21 reports, I jotted down the earnings per share. Now, actually, I
22 did not use the earnings per share in calculating the cost of
23 capital. It was just there as an item of interest. As I looked
24 at that you will see that there -- that Panhandle Energy has a

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1 very volatile earnings, especially in 1988 they lost \$3.13, and
2 then in 1990 they lost \$2.63 a share. So it has a lot of
3 fluctuation.

4 And so I decided that the best approach would be to take a
5 look, and growth is intended to be a long-term measurement of
6 growth. So I decided that again since we were dealing with the
7 period of 1988 to the period in time that it was consolidated
8 into Duke, I used the 1987 closed price and the 1996 closed price
9 to get an idea, an estimate of growth. And it turned out in
10 using those two years that the rate of growth was almost exactly
11 eight percent.

12 Q. And --

13 A. And so --

14 Q. Dr. Nosari, when you are referring to your calculations
15 of eight percent, can you specifically refer to where that is on
16 People's Exhibit Number 26?

17 A. Yes, it is in Schedule D.

18 Q. Thank you. Where?

19 A. You will see option number two.

20 Q. Okay.

21 A. Okay. And I indicated here since Panhandle has sporadic
22 earnings, select a longer period of time to estimate growth to
23 get a more stable and long-term measurement of growth. Okay.
24 And then basically I used the compound sum of the dollar table

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1 and interpolated and came up with a growth rate of -- actually,
2 it is 8.0004 percent. For practical purposes it is eight percent

3 and that is what I used.

4 Q. Okay.

5 A. And that is just by using the compound sum of a dollar
6 to get the geometric growth rate over that period of time.

7 Q. Okay. Now, Dr. Nosari, what impact to your analysis of
8 the weighted average cost of capital would result if the growth
9 factor decreased?

10 A. Well, if the growth factor decreased, it would reduce
11 the cost of common stock. And if we would look here in terms of
12 the percentage of common stock.

13 Q. Thank you. What row are you referring to?

14 A. I am getting there.

15 Q. Okay.

16 A. It is on line 36. Okay.

17 Q. Thank you.

18 A. So since common stock only makes up a certain portion of
19 how assets are financed, which in this case it happens at 1987.
20 It is 45 percent. The lowest is -- it looks like it is 29
21 percent. The highest is 54 percent, okay. So what we are saying
22 is basically, just ballparking it, if we had like a four percent
23 reduction in growth, let's say it went from eight percent to four
24 percent, just a ballpark figure, it would have like a two percent

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1 affect, you know. Maybe a little bit more than two percent. But
2 somewhere between let's say definitely between one and a half and

3 two and a half percent, just ballparking it. Okay.

4 Q. Okay. What is your understanding of the term cost of
5 preferred stock?

6 A. Well, cost of preferred -- preferred stock is a hybrid
7 between debt and equity, and since actually preferred stock is
8 just a small minor portion of the methods used to finance assets,
9 I don't want to spend too much time on it. But basically
10 preferred stock, it works just like debt except that the
11 dividends on it are not tax deductible. And preferred stock is
12 sold at par value usually like a \$100.00 par or a \$1,000.00 par,
13 and that par is very similar to the principal amount of a bond
14 except that it is not debt, which means that a company cannot --
15 a company can get by with not paying a dividend and not going in
16 default since it is not debt but it is equity. And Pan Energy
17 used preferred stock but, you know, the proportion of preferred
18 stock is very small. So, in essence, the cost of preferred stock
19 is what the dividends were that they paid for, that they paid.

20 Q. Okay.

21 A. There would not be a deduction for that because it is
22 paid out of after-tax dollars.

23 Q. Okay. If I could just direct your attention to line 25
24 on People's Exhibit Number 7.

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1 A. Uh-huh.

2 Q. What does that line pertain to?

3 A. Well, that's the cost of preferred stock. And basically
4 what I did is going to that footnote that I disclosed before, the
5 financial statements, which we had a lengthy discussion of
6 preferred stock, its make-up in dividend yield, which is
7 reflected basically on lines 18 through 22, okay.

8 Q. Okay.

9 A. And basically the cost of preferred stock I total in
10 line 23, the total par value of preferred stock that is issued
11 and outstanding, and I total the amount of dividends that were
12 paid to preferred stockholders in dividing column C into E, the
13 cost of preferred stock in this case for 1987 was 7.1 percent.
14 Now, as I mentioned to you, I do not want to spend a lot of time
15 on that because the proportion of preferred stock for the total
16 make-up is less than two percent.

17 Q. Okay.

18 A. In this case it happens to be 1. -- I think it is 1.1
19 percent or .011, and then, of course, preferred stock disappears
20 in 1992. They redeemed them.

21 Q. Oh, okay. Thank you. What is your understanding of the
22 term cost of debt?

23 A. Well, the cost of debt is what it costs the company to
24 borrow money. It is usually -- as I mentioned before, it is

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1 usually -- we usually figure that after we deduct the tax benefit

2 of interest being deductible.

3 Q. Okay.

4 A. So, for example, if the cost -- if the cost is ten
5 percent to borrow money and let's say that the effective tax rate
6 was 30 percent, then the after-tax cost of debt would be 7
7 percent.

8 Q. Okay.

9 A. Ten less three, 30, 100 percent. Okay.

10 Q. Okay. If I could direct your attention to line 26 on
11 People's Exhibit Number 7?

12 A. Uh-huh.

13 Q. Can you tell me how the cost of debt was calculated?

14 A. The cost of debt was calculated on the procedures on
15 People's Exhibit Number 27. Okay. Basically what I did is I
16 took the interest expense from the income statement for the
17 published financial report and divided that.

18 Q. What line are you referring to?

19 A. I apologize. I am referring to line 15 in People's
20 Exhibit Number 27.

21 Q. Thank you.

22 A. For example, in 1987 the total amount of interest
23 expense on the income statement was 134,358.

24 Q. Okay.

1 A. The total current and long-term debt on the balance
2 sheet, the current portion and the long-term debt on the balance
3 sheet was 1,203,953. So my cost of that was .111597 or 11.1597.
4 Q. Again, where are you referring to?
5 A. That is line 17.
6 Q. Okay.
7 A. So I took basically the interest from the income
8 statement on line 15, divided it by the total current long-term
9 portion of debt on the balance sheet, line 16, and then I got my
10 cost of debt on 17, and then I reduced it by the tax savings on
11 line -- multiplying that times one minus 39 percent. I got the
12 cost of interest being in this case, .068074 or 6.8 percent.
13 Q. And, again, what row is --
14 A. That is row 19.
15 Q. Okay.
16 A. Now, you will notice also that the first portion of this
17 spreadsheet is the cost of debt based on current and long-term
18 liabilities and long-term debt. Originally I had calculated this
19 using all of the current liabilities and all of the long-term
20 debt. And the difference between these two approaches is that
21 you will notice that the top part, the cost of interest or the
22 cost of debt, is lower. The reason for that is that there is a
23 certain portion of current liabilities that do not have any
24 interest expense attached to them, which is basically accounts

1 payable. Okay. And I decided that that was inappropriate
2 because if we fund -- if we fund planned expansion, okay, one of
3 the rules in finance is that if you make a long-term investment
4 you finance that long-term investment with long-term financing,
5 which is common stock and long-term debt, which is why I used
6 this second approach.

7 Q. Okay. What impact does your analysis of the weighted
8 average cost of capital would result if the cost of debt was to
9 change?

10 A. Well, if the cost of debt would change, we mentioned
11 earlier in your earlier question about the effect of common
12 stock, cost of common stock or the growth rate of common stock
13 going down in its effect, and I said that if we looked at this,
14 the proportion of common stock was 45 percent. I think the high
15 was 50 in, I think, 1996.

16 Q. Again, what row are you --

17 A. I am sorry. Well, let me just -- I am just going back
18 and then I will talk about it.

19 Q. Okay.

20 A. The percentage of common stock is on row 36. Okay. As
21 I mentioned, it consisted of between -- well, the low is 29
22 percent and the high is 54 percent. So, likewise, the percentage
23 of long-term debt goes from 70 percent to -- if I can follow the
24 lines -- we got 53 percent in 1987, and 67 in 1989, and 70

1 percent in 1990. And then it drops down to 45 percent in 1996.
2 So if it dropped two percent -- let's say the interest rate
3 dropped two percent after the after-tax rate, was two percent
4 then, you know, in essence, it would have an effect of being
5 somewhere between one percent, depending on the proportion of
6 debt, okay. So if we were at -- let's just take a year here.
7 Let's take the easy year, 1987. So the proportion of long-term
8 debt is 53 percent. If we had a two percent reduction in the
9 cost of debt, the weighted average cost of capital would drop one
10 percent.

11 Q. Okay. Thank you.

12 A. Do you want me to go to another year? Then if we went
13 to another year where the debt was 70 percent, okay, what year
14 is that? It is here somewhere. In 1990. So if we had a two
15 percent reduction in cost of debt and we are at 70 percent, it
16 would be .6. It is .6 percent that you would have a reduction.
17 Okay.

18 Q. Okay.

19 A. So the idea being that as each one of these elements
20 changed in the proportion or the percentage of the total, then as
21 those elements, the percent of the cost of those elements change,
22 so does the weighted average cost of capital.

23 Q. Dr. Nosari, what is your understanding of the term
24 weighted average cost of common stock?

1 A. Well, the weighted average cost of common stock would
2 be -- in this particular case it would be the cost of common
3 stock multiplied times the proportion that common stock made up
4 of the total assets.

5 Q. Directing your attention to line 39 of People's Exhibit
6 Number 7.

7 A. Right.

8 Q. Are you there, Dr. Nosari?

9 A. Uh-huh, right.

10 Q. How is the weighted average cost of common stock
11 calculated?

12 A. Okay. Well, the way -- what your at here is the
13 weighted average cost of common stock. We have two elements of
14 common stock, the cost of common stock, which is line 14, which
15 was the dividend yield. Okay.

16 Q. Okay.

17 A. And line 15, which is growth. So if you add those
18 together, you would get .176385 or basically 17.6 percent. We
19 would multiply that times the percentage of common stock, which
20 is .455814.

21 Q. Doctor, where --

22 A. In line 36. Okay. To get the weighted average cost of
23 common stock, which is line 39, which is eight percent. And if I
24 could, what I could do is just tell you that what we are doing is

1 as we calculate the cost of each one of these components and we
2 then multiply them times the percentage of long-term debt, the
3 percentage of preferred stock, and the percentage of common
4 stock, to get the weighted average cost of preferred stock in
5 line 38, the weighted average cost of common stock in 39, and the
6 weighted average cost of debt in line 40.

7 Q. Okay.

8 A. And then I totaled line 38, 39, and 40 to get the cost
9 of capital for the year, which in 1987 was .117482. And I
10 applied that methodology for each year. Okay.

11 Q. Okay. I just want to make sure that something is clear.
12 In terms of your calculation of the weighted average cost of
13 debt, in line 40, could you just explain that for me
14 step-by-step?

15 A. Oh, the weighted average cost of debt?

16 Q. Yes.

17 A. Okay. Well, sure. If we go back to line 26, which is
18 the cost of debt, the cost -- on the cost of debt worksheet. So
19 if you bear with me to go -- to answer your question thoroughly,
20 if we go back to People's Exhibit Number 27, you will see that we
21 calculated -- we took interest expense from the income statement
22 and divided it by the total current and long-term debt on the
23 balance sheet to get the cost of debt of 11 percent, which is in
24 1987 column, which is column F, line 17.

1 Q. Okay.

2 A. And then we multiplied that times one minus 39 percent
3 to get the net cost of interest of basically .068 or 6.8 percent,
4 which we brought over to the People's Exhibit 7 on -- I have to
5 find it here. It is line 26. Then I just multiplied that .06807
6 times the proportion that debt consisted of on the balance sheet,
7 which was -- I am sorry. I have to come up here. Percentage of
8 long-term debt in line 34, .532884 to get my weighted average
9 cost of debt of 3.6 percent.

10 Q. Again, that is indicated in --

11 A. That is in column -- I am sorry. It is row 40, of
12 column E.

13 Q. Okay. Thank you. Dr. Nosari, if you could just explain
14 for me how you did calculate the cost of capital for a specific
15 year, take for instance 1987?

16 A. Okay. The weighted average cost of capital?

17 Q. Yes, sir.

18 A. Okay. Again, once we have the cost of preferred
19 stock -- you remember how I did that. I took --

20 MR. BOYD: I am just going to object if he is going over
21 the testimony he has already given. If he is going to say how he
22 has added lines 38 through 40, that's another matter.

23 HEARING OFFICER KNITTLE: Ms. Carter?

24 MS. CARTER: I was going to have him attempt to summarize

1 some of his preceding testimony because it is complicated in
2 terms of all of the numbers that we are dealing with that we
3 ended up with the one weighted average cost of capital. In
4 addition to that, you know, to get down to Mr. Boyd's concern in
5 terms of the final calculation, to get down to the weighted
6 average cost of capital number.

7 HEARING OFFICER KNITTLE: Mr. Boyd?

8 MR. BOYD: Again, if it is things he has gone over before,
9 it is asked and answered and it is cumulative. And it is getting
10 late today. It is almost 4:00. I am going to respectfully
11 request that we just found out how he got to the number, which is
12 the real key here.

13 HEARING OFFICER KNITTLE: I am inclined to grant that --
14 sustain that objection. It is getting late in the day. So that
15 objection is sustained. We don't want cumulative testimony that
16 has been provided before. Do you have something in addition to
17 that, Ms. Carter, that you are trying to elicit?

18 MS. CARTER: I am not trying to provide cumulative
19 testimony. But I am trying to get to exactly how he did arrive
20 at the final calculation of the weighted average cost of capital
21 for a specific year. He was been going through 1987, and I just
22 wanted to get through the final calculations for that year.

23 MR. BOYD: Well, I don't have an objection, as I said, to
24 the final calculation. That's a different matter than

1 summarizing or going back over testimony before.

2 HEARING OFFICER KNITTLE: Yes, I don't have a problem
3 either with the remaining calculations that are needed to go
4 over. If you could proceed along those lines.

5 THE WITNESS: Okay. Well, once we calculated the cost of
6 long-term debt, the cost of preferred stock, and the dividend
7 yield and the growth rate and common stock, we basically
8 multiplied those times the percentage of long-term debt, the
9 percentage of preferred stock and the percentage of common stock.

10 Q. Again, Dr. Nosari, what --

11 A. Those are lines 34, 35, and 36. And that gave me, then,
12 the weighted average cost of the preferred stock, the weighted --
13 in line 38, the weighted average cost of common stock, in line
14 39, and the weighted average cost of debt in line 40. Then the
15 cost of capital for that year is the sum of line 38, 39 and 40,
16 or if you will, the sum of the weighted average cost of preferred
17 stock, the weighted average cost of common stock, and the
18 weighted average cost of debt added together.

19 Q. Okay.

20 A. Okay. What that does, then, is it takes into
21 consideration the cost element of each one of the three major
22 areas of financing assets, multiplying it times the percentage
23 that they make up of the whole, to get the weighted average cost
24 of capital.

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1 Q. Okay. Thank you, Dr. Nosari. This methodology that we
2 just went through for our example year of 1987, did you employ
3 the same methodology in your calculations of the weighted average
4 cost of capital for the subsequent years?

5 A. Yes.

6 Q. Okay. Why did you calculate the weighted average cost
7 of capital rather than utilizing another factor? I can clarify
8 that if you need me to.

9 A. Please.

10 Q. Okay.

11 MR. BOYD: I would just object to leading to some extent.

12 HEARING OFFICER KNITTLE: Are you going to ask another
13 question, Ms. Carter?

14 MS. CARTER: Yes.

15 HEARING OFFICER KNITTLE: Okay. Then I am not going to
16 rule on that then.

17 Q. (By Ms. Carter) Dr. Nosari, are there other factors that
18 you could have employed?

19 A. Yes.

20 Q. Okay. What are those?

21 A. Well, the big one was I could have used the marginal
22 cost of capital, which would have been more expensive because it
23 takes into consideration the cost of floating new common stock or
24 new bonds. There is a flotation cost and I did not use that --

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1 Q. Okay.

2 A. -- for two reasons. One, it would have been hard to
3 measure what the flotation costs were. And second of all, it
4 would have resulted in a higher weighted average cost of capital
5 to the respondent.

6 Q. When you refer to the term marginal cost of capital,
7 what are you referring to, Doctor?

8 A. Well, I am referring to the cost related to getting
9 additional debt for additional stock that has not been floated
10 already but would be floated.

11 Q. Okay.

12 A. Or issued.

13 Q. Okay. After completing your weighted average cost of
14 capital analysis, what did you do with this document, sir?

15 A. Well, I gave it to Gary Styzens, who then used it in
16 calculating the cost benefit analysis.

17 Q. Did Mr. Styzens provide to you any documents prepared by
18 him that utilized your weighted average cost of capital that is
19 set forth here in People's Exhibit Number 7?

20 A. Yes.

21 Q. Dr. Nosari, if I could direct your attention to -- I
22 think there is a pile of exhibits sitting before you?

23 A. There are, indeed.

24 Q. Okay. If I could direct your attention to People's

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1 Exhibit Number 8.

2 A. Okay.

3 Q. And also Exhibit 9.

4 A. Okay.

5 Q. And Exhibit 10.

6 A. Okay.

7 Q. Do you have those?

8 A. I have them.

9 Q. Okay. Have you seen -- let me take this one at a time.

10 Have you seen People's Exhibit Number 8 before?

11 A. Yes.

12 Q. Can you identify this document for me?

13 A. This is an initial calculation that was done by the

14 internal audit department of Gary Styzens regarding an initial

15 investment figure in this particular case.

16 Q. Okay. If I could direct your attention to People's

17 Exhibit Number 9. Have you seen this document before?

18 A. Yes.

19 Q. Can you identify it for me, sir?

20 A. This is, again, a schedule that was prepared by Gary

21 Styzens in the internal audit department regarding cost benefit

22 analysis for recurring costs of operating the two engines in

23 question had they been monitoring.

24 Q. Okay. Also, I would like to direct your attention to

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1 People's Exhibit Number 10.

2 A. People's Exhibit Number 10 is used in calculating
3 People's Exhibit Number 9 or basically it is used to create the
4 net present value of cash flows over a period of time.

5 Q. Okay.

6 A. Because it is too complicated to do that one -- I guess
7 you could have done it on one spreadsheet but they opted to do it
8 on two spreadsheets. But it relates to People's Exhibit Number
9 9. And it basically just calculates the present value based on
10 the foregoing operating costs from initiation from figures that
11 were originally provided by Panhandle Eastern for BACT analysis.

12 Q. Okay. Prior to the generation of these documents,
13 People's Exhibits Number 8 through 10, did you discuss the
14 methodology that would be employed in those documents?

15 A. Yes, I did, uh-huh.

16 Q. Okay.

17 A. I discussed it with Gary Styzens.

18 Q. Can you tell me a bit about your conversation pertaining
19 to the methodology to be employed in these exhibits, People's
20 Exhibits 8 through 10?

21 A. Well, yes. We discussed -- there is a couple of things
22 that are employed here that we discussed. One was the plant cost
23 index. You are looking for an index to deflate dollars and the

24 plant cost index was -- you know, I talked to doctor -- to Mr.

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1 Styzens about this, and we decided to use the plant cost index as
2 an index to try to go back and deflate dollars. We also
3 discussed depreciation. And, again, trying to be conservative --
4 or, yes, I guess conservative in terms of looking at depreciation
5 and its benefit, we thought that -- we estimated that the useful
6 life of the asset would be 15 years, and we depreciated on the
7 double declining balance method.

8 Actually, I believe that the assets in question would have
9 a longer life both in terms of how they would be depreciated on
10 the tax return but, again, we wanted to be conservative in terms
11 of calculating a cost benefit analysis. So we actually gave it a
12 15 year useful life and then we also use the double declining
13 balance method, which is an accelerated method of depreciation.
14 The affect of this would be to reduce the benefit of not
15 investing in this asset or not modifying the engines because what
16 we have done, in essence, through depreciation here we have given
17 the client or the respondent benefit of a higher depreciation
18 rate than what they probably would have had on their tax return.

19 Q. Okay. Is there anything else that you can specifically
20 recall pertaining to your conversation with Mr. Styzens?

21 A. Well, you know, basically I reviewed the whole process
22 with him and how they actually went back and made these
23 calculations. And basically they employed, you know, traditional

24 methods used to calculate the net benefit or the net present

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1 value of the benefit, today's dollars in benefit for not making
2 this investment.

3 Q. Are you referring to your subsequent review of these
4 documents then? I just want to make sure.

5 A. Well, I am talking about, you know, my review of the
6 document after Gary Styzens prepared it --

7 Q. Okay?

8 A. -- in terms of the approach.

9 Q. Okay. Sir, is the weighted average cost of capital that
10 you previously calculated employed in People's Exhibit Numbers 8
11 through 10?

12 A. Yes, it is.

13 Q. Where is it?

14 A. It is employed -- in People's Exhibit Number 8, it is
15 employed in column E, where it is labeled W-A-C-C, WACC, okay.

16 Q. Okay.

17 A. Basically what we have done here is used it to calculate
18 the economic benefit for that year. We used each specific
19 weighted average cost of capital times the economic benefit of
20 that year. Okay.

21 Q. Okay.

22 A. And, likewise, it was employed in Exhibit 10, which

23 relates to Exhibit Number 9.

24 Q. Where do you see the weighted average cost of capital

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1 that you previously generated on Exhibit 10?

2 A. Okay. It is on column B in Exhibit 10.

3 Q. Okay. I know you previously discussed some of the
4 things that you reviewed in regards to People's Exhibit Number 8.
5 Did you make any sort of determination upon reviewing this
6 document?

7 MR. BOYD: Objection again to the vagueness of the term
8 "determination."

9 HEARING OFFICER KNITTLE: Ms. Carter?

10 MS. CARTER: I would hate to be any more specific in that
11 question or else be leading the witness. I guess I can rephrase,
12 but I did not want to lead the witness in any way.

13 HEARING OFFICER KNITTLE: I will let the question stand.
14 The objection is overruled.

15 MR. BOYD: If I may, only that I want to make sure that Mr.
16 Nosari does not get into areas where there has been no foundation
17 laid for his testimony. The question was so open-ended that I
18 was afraid that might happen.

19 HEARING OFFICER KNITTLE: If it happens we will deal with
20 it. Dr. Nosari --

21 THE WITNESS: Would you repeat the question?

22 HEARING OFFICER KNITTLE: Do you need a second? The

23 witness is asking you to repeat the question.

24 MS. CARTER: I am sorry. Can I have one second?

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1 HEARING OFFICER KNITTLE: Sure. Let's go off the record
2 for a minute.

3 (Discussion off the record.)

4 HEARING OFFICER KNITTLE: All right. Let's go back on the
5 record.

6 MS. CARTER: Could you have the court reporter please read
7 back my last question.

8 HEARING OFFICER KNITTLE: Would you mind, Darlene.

9 (Whereupon the requested portion of the record was read
10 back by the Reporter.)

11 Q. (By Ms. Carter) Dr. Nosari, did you review People's
12 Exhibit 8?

13 A. Yes.

14 Q. Okay. Did you review People's Exhibit 8 in terms of its
15 employment of the weighted average cost of capital?

16 A. Yes. I reviewed it in terms of the calculations. I did
17 not examine the original economic, you know, benefit that we
18 started with, 1,949,102, that was provided by Panhandle. Okay.
19 But in terms of the methodology that was used I found it to be,
20 you know, correct, reasonable.

21 Q. Okay. Again, before you, Dr. Nosari, there is a pile of

22 exhibits. If I could direct your attention to People's Exhibit
23 Number 12, 13, and 14.

24 A. Okay. Exhibits 12, 13, and 14. I have them.

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1 Q. Have you seen these documents before? Let me take them
2 one at a time. Have you seen People's Exhibit 12 before?

3 A. Yes.

4 Q. Can you identify this document for me?

5 A. Well, it is labeled People's Exhibit 12 and it is
6 dealing with an initial investment, economic benefit before tax
7 original estimate of 364,244. I am sorry 368 -- I think that is
8 815. There is a pencil mark here, so I assume that it is 815.

9 Q. Okay. And have you seen People's Exhibit Number 13
10 before?

11 A. I am sorry. Yes. It is recurring costs, and starts
12 with recurring costs of 29,806.

13 Q. Okay. Again, have you seen People's Exhibit Number 14
14 before?

15 A. Yes. It relates to Exhibit 13.

16 Q. Okay. And in People's Exhibit Number 12, sir --

17 A. Uh-huh.

18 Q. -- does it utilize the weighted average cost of capital
19 that you calculated that is set forth in People's Exhibit Number
20 7?

21 A. Yes, it does. It is -- again, it is found in column E,

22 labeled WACC.

23 Q. Okay. And what about People's Exhibit Numbers 13 and
24 14?

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1 A. Well, it is actually not found on 13. You will find it
2 in 14, which goes back to 13 in column B.

3 Q. Did -- were you done with your answer?

4 A. Yes.

5 Q. I didn't mean to interrupt you.

6 A. Yes. Column B of Exhibit 14. I am sorry.

7 Q. Did you review Exhibits 12 through 14 in terms of its
8 employment of your weighted average cost of capital?

9 A. Yes.

10 Q. And did you make a determination based upon your review?

11 A. Well, I found that the methodology that was used
12 basically was correct in terms of how they calculated the
13 economic benefit.

14 Q. Okay. I need to back up.

15 A. But, again, based on the initial amounts that were
16 provided.

17 Q. Okay. I need to back up. I don't think I was as clear
18 as I probably could have been on my question. I apologize for
19 that. Did you conduct a review of People's Exhibits 12, 13, and
20 14 in terms of its employment of the weighted average cost of

21 capital?

22 A. Yes.

23 Q. Okay. And did you make a determination in terms of the
24 employment of the weighted average cost of capital?

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1 A. Yes.

2 Q. Okay. What was your determination?

3 A. My determination was that it was a fair estimate of the
4 cost benefit in terms of taking into consideration the beginning,
5 you know, of the economic benefit value, the total -- the initial
6 capital investment requirement, and the recurring operating
7 costs. The recurring operating costs being on Exhibit 13, and
8 the initial capital investment being on Exhibit 12.

9 Q. Okay. Dr. Nosari, if I could direct your attention to
10 People's Exhibits 15, 16, and 17, which should be sitting before
11 you.

12 A. I have them.

13 Q. Can you identify -- have you seen People's Exhibit
14 Number 15 before?

15 A. Yes.

16 Q. Can you identify that for me?

17 A. It is labeled using revised -- I am sorry. It is
18 labeled original revised using WACC.

19 Q. Okay.

20 A. On People's Exhibit Number 15, and it is also labeled

21 initial investment. Exhibit 16 is annual recurring cost at the
22 weighted average cost of capital, WACC, original revised. And,
23 of course, Exhibit 17 supports Exhibit 16 just like it did
24 previously.

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1 Q. Does People's Exhibit 15 utilize the weighted average
2 cost of capital that you calculated in People's Exhibit Number 7?

3 A. Yes.

4 Q. Does People's Exhibit Numbers 16 and 17 utilize the
5 weighted average cost of capital that you generated in People's
6 Exhibit Number 7?

7 A. Yes.

8 Q. Okay. If I could direct your attention to People's
9 Exhibits 18, 19, and 20, sir?

10 A. I have them.

11 Q. Okay. Have you seen People's Exhibit Number 18 before,
12 sir?

13 A. Yes.

14 Q. Can you identify it for me?

15 A. Well, it is initial investment, and it is using the
16 weighted average cost of capital from 02-10-88 to 08-31-99. That
17 is Exhibit 18. Exhibit 19 is the annual recurring cost at the
18 weighted average cost of capital, WACC, and it is labeled
19 February to August of 1999, WACC. That's how it is labeled.

20 Actually, it uses from February 1988 to August of 1999. That's
21 how it was labeled. And then, of course, People's Exhibit Number
22 20 supports People's Exhibit Number 19, just as the other
23 examples that we went over.

24 Q. Okay. And does People's Exhibit Number 18 employ the

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1 weighted average cost of capital?

2 A. Yes, it does.

3 Q. Does People's Exhibit Number 19 and 20 employ the
4 weighted average cost of capital that you generated in People's
5 Exhibit Number 7?

6 A. Yes.

7 Q. All right. Dr. Nosari, if I could direct your attention
8 to three more exhibits that should be sitting before you.
9 People's Exhibits Number 21, 22, and 23.

10 A. I have those.

11 Q. Okay. Have you seen People's Exhibit Number 21 before?

12 A. Yes, I have.

13 Q. Can you identify that for me?

14 A. It is initial investment. At the bottom is 02-10-88 to
15 08-31-99, based on -- it says prime, meaning basically that they
16 substituted my calculation of the weighted average cost of
17 capital with the bank prime loan rate. People's Exhibit Number
18 22, is annual recurring cost at the bank prime loan rate, labeled
19 February of 1988 to August of 1999. And if you look at People's

20 Exhibit Number 23, that supports that, you will see in column B
21 that the weighted average cost of capital is replaced with the
22 bank -- I am sorry -- the prime bank rate.

23 Q. So in People's Exhibit Numbers 21 through 23, was your
24 weighted average cost of capital that was generated in People's

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1 Exhibit Number 7 employed in these exhibits?

2 A. No, it was not. Instead, they used the bank prime loan
3 rate.

4 Q. Have you been exposed in your background to the term
5 prime loan rate?

6 A. Sure.

7 Q. What does that term mean?

8 A. Well, it is the bank -- basically it is the lowest rate
9 that the bank will lend a company that has a very strong credit
10 rating. It is usually a short-term loan, so it is usually the
11 lowest rate that a bank will give somebody.

12 Q. Okay.

13 A. That's a commercial borrower.

14 Q. Dr. Nosari, how does the prime loan rate compare to the
15 weighted average cost of capital that you generated in People's
16 Exhibit Number 7?

17 A. In general or year-by-year? Or what do you want me to
18 do?

19 Q. First in general, please?

20 A. Okay. I didn't mean to laugh. I am sorry.

21 Q. That's okay.

22 A. In general terms it is lower. There is one year,
23 actually, where my rate is lower than the prime loan rate, but
24 generally it is lower by, let's see, maybe one or two percent,

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1 maybe in some cases three. I can't -- you know, but it is -- you
2 know, generally it is lower. It is going to be lower.

3 Q. Okay. That answer -- was that based upon your review
4 right now?

5 A. Well, it is based upon my review and it is also based
6 upon my knowledge of what the bank prime loan rate is. But as I
7 mentioned, for example, in 1989, my weighted average cost of
8 capital is 9.2 percent and the bank prime rate is 10.5 percent.

9 Q. Okay.

10 A. In 1990 I am 2.9 percent higher than theirs. So, you
11 know, there is not a real consistent pattern. In 1991, the prime
12 rate is 7.2 percent. I am at 8.8. so that is about 1.6 percent
13 difference. Except for that one year generally the bank prime
14 rate is going to be lower.

15 Q. Okay. Do you have an opinion regarding the use of one
16 of these rates over another?

17 A. Certainly.

18 Q. What is your opinion, sir?

19 A. My opinion is that bank prime loan rate is
20 inappropriate.

21 Q. Why is it inappropriate?

22 A. Because this is the rate that a bank would lend a prime
23 borrower, a preferred borrower for a short period of time, which
24 is about -- I would not call it riskless rate, because it is to a

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1 commercial borrower. But it is certainly for a short period of
2 time, and in addition, the longer you borrow money there is a
3 risk premium attached to it. The longer you borrow money the
4 higher the interest rate.

5 Q. Is that what you mean when you say a risk premium?

6 A. Yes, by a risk premium we are talking about an
7 additional cost of borrowing because of the risks associated with
8 it. And Panhandle Eastern, first of all, not all of their assets
9 are financed by debt. Their assets are financed by a combination
10 of debt and common stock equity, and common stock equity has the
11 highest cost. Because, one, it is not tax deductible and, second
12 of all, it is the highest -- it has the highest cost because of
13 the growth factor. And also because we are rewarding people
14 making an investment in common stock because of their willingness
15 to assume a higher risk.

16 The higher risk being that if this company goes belly up or
17 it goes bankrupt or any company goes bankrupt, they are the

18 people who get paid last, that are residue equity of the
19 corporation in case the company does go into financial
20 difficulty. So this would be a very conservative measurement of
21 what the costs would be.

22 Q. Okay.

23 HEARING OFFICER KNITTLE: Ms. Carter, do you have another
24 question?

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1 MS. CARTER: I apologize, Mr. Hearing Officer. I will have
2 more questions for this witness. However, I am at a stopping
3 point if Dr. Nosari -- we had discussed earlier off the record
4 Dr. Nosari needs to be elsewhere, if that is possible.

5 HEARING OFFICER KNITTLE: Okay. Let's go off the record.

6 (Discussion off the record.)

7 HEARING OFFICER KNITTLE: All right. We are back on the
8 record.

9 Ms. Carter, do you have any other questions for this
10 witness.

11 MS. CARTER: No. I apologize for the confusion before. We
12 have no further questions for this witness.

13 HEARING OFFICER KNITTLE: Okay. At this point in time you
14 are closing your direct exam of this witness?

15 MS. CARTER: Oh, let me back up for just a moment. I am
16 going to need to seek to admit into evidence certain exhibits,
17 and if I could go through that at this time I would like to do

18 so.

19 HEARING OFFICER KNITTLE: Yes.

20 MS. CARTER: I have a whole long list here. I guess I will
21 just take them one at a time, Mr. Hearing Officer, if that is
22 okay.

23 HEARING OFFICER KNITTLE: For the record, I have everything
24 admitted up to People's 7 is not admitted. Everything before

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1 that is admitted.

2 MS. CARTER: Okay. So you have through Exhibit 6 as
3 admitted?

4 HEARING OFFICER KNITTLE: Except for Exhibit 5, which was
5 denied.

6 MS. CARTER: And then 24 is admitted, too, right?

7 HEARING OFFICER KNITTLE: Correct.

8 MS. CARTER: Okay. At this time I move for the admission
9 of the weighted average cost of capital sheet, Number 7. Do you
10 want me to read them out?

11 HEARING OFFICER KNITTLE: Well, actually, are you going to
12 move for the admission of them all here right now?

13 MS. CARTER: Well --

14 MR. BOYD: We can let this witness go if we are done.

15 HEARING OFFICER KNITTLE: Well, the problem is that I think
16 that she -- if you are going to object she might want him here.

17 I am going to try -- I am trying to find out what she is trying
18 to offer right now and then we can --

19 MR. BOYD: Okay.

20 MS. CARTER: Okay.

21 HEARING OFFICER KNITTLE: Are you going to offer Exhibit 8
22 through 27, except for 24, which is already admitted?

23 We can see if we have an objection, and then if not we will
24 let you go, Doctor.

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1 THE WITNESS: Okay.

2 MS. CARTER: Okay. At this time we are seeking to admit
3 Exhibits 7 through 10, Mr. Hearing Officer.

4 MR. BOYD: Well, can we stop right there for a second and
5 talk about those first, then?

6 HEARING OFFICER KNITTLE: Well, I just want to know which
7 she is --

8 MR. BOYD: Okay.

9 HEARING OFFICER KNITTLE: Yes, we will take them one at a
10 time or in a group.

11 MS. CARTER: Then I was going to seek as well Exhibits 12
12 through -- are there 27 exhibits, sir?

13 HEARING OFFICER KNITTLE: Yes.

14 MS. CARTER: Through 27, except for 24, which has already
15 been admitted.

16 HEARING OFFICER KNITTLE: Right. Okay. Why don't you move

17 those right now.

18 MS. CARTER: Okay. The People move for the admission of
19 Exhibits 7 through 10 and 12 through 27 at this time.

20 HEARING OFFICER KNITTLE: Except for 24.

21 MS. CARTER: Yes, except for 24.

22 HEARING OFFICER KNITTLE: Okay. Mr. Boyd?

23 MR. BOYD: No problem with Exhibit Number 7.

24 HEARING OFFICER KNITTLE: Okay. That is admitted.

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1 (Whereupon said document was duly admitted into evidence as
2 People's Exhibit 7 as of this date.)

3 MR. BOYD: Exhibits 8 through 10 are the initial investment
4 sheet and the annual recurring cost numbers using those earlier
5 BACT numbers that have been testified to. During Mr. Styzens
6 deposition in this matter I asked him whether these sheets were
7 part of his report, and he reported at that time, no, they are
8 not part of my report. And there was no testimony at all either
9 from Mr. Styzens or Mr. Nosari to suggest that these sheets are
10 part of their report.

11 MS. CARTER: Can I --

12 MR. BOYD: Wait a minute. Let me just finish. There has
13 also been no testimony to suggest by anyone from the State that
14 the numbers in these pages, from which an economic benefit can be
15 determined, are legitimate, reliable numbers to use for

16 determining economic benefit. For those reasons I strenuously
17 object to the admission of Exhibits 8, 9, and 10.

18 HEARING OFFICER KNITTLE: Ms. Carter?

19 MS. CARTER: If I could just ask the Hearing Officer to ask
20 Counsel for respondent specifically what pages of which
21 deposition of Gary Styzens that he is referring to.

22 HEARING OFFICER KNITTLE: Yes.

23 MR. BOYD: Sure. It is page 43 of the May 16th deposition.

24 HEARING OFFICER KNITTLE: Let's go off the record.

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1 (Discussion off the record.)

2 HEARING OFFICER KNITTLE: We are letting Dr. Nosari go. He
3 has business to attend to at 5:00 today, and it is tough to get
4 across town at this time on a Tuesday night.

5 (The witness left stand.)

6 HEARING OFFICER KNITTLE: We are leaving -- we are giving
7 complainant leave to bring him back if, in fact, she needs to lay
8 foundation for any of the exhibits which we are addressing right
9 now, but for that limited purpose only. Other than that, the
10 direct examination of this witness is closed. That's it.

11 Let's go off the record.

12 (Discussion off the record.)

13 HEARING OFFICER KNITTLE: All right. We are back on the
14 record.

15 MS. CARTER: Okay. In terms of what Counsel for respondent

16 indicated in terms of the reports or whether or not these
17 documents were included in some report, first of all, it is
18 ambiguous in terms of what is being referred to here. In
19 addition to that, the reliability of the numbers in which --
20 which were utilized in that report can be attested to simply by
21 the signature in which is attached, you know, to the numbers that
22 were submitted to the Illinois EPA.

23 In addition to that, those numbers are crucial -- not the
24 numbers themselves are crucial, but the documents themselves are

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1 crucial, Mr. Hearing Officer, because those were the documents
2 that were employed in Mr. Styzens' testimony in terms of his
3 analysis of the economic benefit in this case. The State does
4 not have a problem, you know, I guess, excluding the numbers, you
5 know, like the numbers themselves, but we need -- I don't know if
6 I am making myself clear.

7 What I am trying to say, though, is that we need the
8 documents in because it pertains to the analysis that was
9 employed by the State and they were referenced when Mr. Styzens
10 was referring to his analysis in which he implemented in this
11 sheet from the basis of his discussion in terms of his subsequent
12 analysis. So in that regards, it is crucial.

13 Also, not only that, those documents were simply
14 illustrative, I guess, is a better way to term it, for the

15 subsequent analyses that were performed by Mr. Styzens, and the
16 State does not have a problem with stipulating that the BACT
17 numbers are not representative of any economic benefit, you know,
18 being sought by the State or any economic benefit received by
19 Panhandle in this matter. However, we simply need the documents
20 in to demonstrate the analysis that Mr. Styzens performed, like I
21 said before, because those were the sheets that he relied upon,
22 you know, in providing his testimony.

23 HEARING OFFICER KNITTLE: Mr. Boyd, if she so stipulates,
24 do you still have an objection to Exhibits 8, 9, and 10?

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1 MR. BOYD: Yes, I do have an objection. The objection is
2 that when you look -- the only reason they want to get these
3 sheets in is that if you look at the numbers on the bottom you
4 can calculate an economic benefit close to 7 million dollars.
5 And I think that's prejudicial.

6 Now, as far as her point goes about using these documents
7 as the foundation for the other documents, there is plenty of
8 testimony in the record that the analysis that he used to
9 calculate the economic benefit using Exhibits 8, 9, and 10 is the
10 same methodology used in the other exhibits. I have not moved to
11 strike that testimony. There is nothing that is going to be
12 excluded regarding the methodology that he employed regarding the
13 other documents. What I want excluded are these three pages
14 only.

15 MS. CARTER: May I respond, Mr. Hearing Officer?

16 HEARING OFFICER KNITTLE: Yes, you may.

17 MS. CARTER: In terms of what Counsel for respondent
18 perceives to be the rationale for the State seeking to submit
19 these, you know, specific exhibits into evidence is not because
20 we are seeking to prejudice the respondent in any way, shape, or
21 form. However, it was simply eliciting testimony from Mr.
22 Styzens in terms of the direction in terms of the time frames of
23 his analysis. The first analysis that he conducted pertained to
24 these BACT numbers, and so we were showing simply the development

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1 of his analysis with those numbers. It was not in any way,
2 shape, or form to prejudice the respondent.

3 In addition to that, if the Board was required to rely upon
4 subsequent exhibits and then to match those up with the preceding
5 exhibits in an attempt to follow the calculations that Mr.
6 Styzens performed, I think it would be cumbersome for the Board
7 to have to do so. And the goal in this entire proceeding is,
8 obviously, to make a record that is as clear and concise as
9 possible.

10 MR. BOYD: If I could respond?

11 HEARING OFFICER KNITTLE: Yes.

12 MR. BOYD: There is no confusion. The columns are exactly
13 the same. The lines are the same. He has already testified that

14 he used the same methodology for these other documents.

15 MS. CARTER: May I --

16 HEARING OFFICER KNITTLE: No. I am done. I am sorry. I
17 am going to admit these. I think they are relevant. They were
18 testified to. There has been proper foundation laid for them.

19 MR. BOYD: Well, then, I would ask that in stipulation
20 that they are only relevant in terms of the methodology employed
21 for determining weighted average cost of capital be stipulated
22 here and that the Board, under no circumstances, consider the
23 numbers used as appropriate economic benefit to Panhandle in this
24 case, because there is no testimony to support to that.

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1 HEARING OFFICER KNITTLE: Will you stipulate to the first
2 part? I am not going to address whether the Board, under no
3 circumstances, will use these numbers. But will you stipulate
4 that that is what you are intending these exhibits for?

5 MS. CARTER: As I represented to the Board before, we are
6 not seeking to provide any prejudice to the respondent. So, yes,
7 we will stipulate to that.

8 HEARING OFFICER KNITTLE: To --

9 MS. CARTER: To the fact that those numbers are not -- I
10 don't know exactly how to phrase this. But those are not the
11 numbers that the State seeks to employ in its economic benefit
12 calculation or that those numbers are a reasonable economic
13 benefit calculation in this case.

14 HEARING OFFICER KNITTLE: Okay. These are so admitted.
15 (Whereupon said documents were duly admitted into evidence
16 as People's Exhibits 8, 9, and 10 as of this date.)
17 HEARING OFFICER KNITTLE: Let's move on to -- now, I have
18 8As and 9As occasionally written down here, but I don't have
19 anything about those. I am assuming that they are the blowups of
20 all of these exhibits, correct?
21 MS. CARTER: Yes.
22 HEARING OFFICER KNITTLE: Can we assume and, Mr. Boyd,
23 will you concur to this, that any time we admit an 8, 9 or 10 we
24 will admit the corresponding A?

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1 MR. BOYD: I have no problem with that.
2 HEARING OFFICER KNITTLE: Well, then, let's just assume now
3 that 8A, 9A, and 10A, if they exist, are admitted.
4 (Whereupon said documents were duly admitted into evidence
5 as People's Exhibits 8A, 9A, and 10A as of this date.)
6 HEARING OFFICER KNITTLE: All right. Which takes us to
7 Exhibits 11 through 23.
8 MS. CARTER: Mr. Hearing Officer, we did not seek to admit,
9 at this time, People's Exhibit 11.
10 HEARING OFFICER KNITTLE: Oh, I am sorry. My mistake.
11 Okay. Exhibits 12 through 23, correct?
12 MS. CARTER: Yes.

13 HEARING OFFICER KNITTLE: Okay. Mr. Boyd, how do you feel
14 about Exhibits 12 through 23? Do you want to take them one at a
15 time or do you want to take them as a group?

16 MR. BOYD: I think take them one at a time. Hold on for
17 one second.

18 HEARING OFFICER KNITTLE: Sure.

19 MR. BOYD: In terms of Exhibits 12 through 20, I have no
20 objections.

21 HEARING OFFICER KNITTLE: Okay. Exhibits 12 through 20 are
22 admitted.

23 (Whereupon said documents were duly admitted into evidence
24 as People's Exhibits 12 through 20 as of this date.)

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1 MR. BOYD: I do object to 21 through 23, based on Mr.
2 Nosari's very clear testimony that he does not consider using the
3 prime rate as an appropriate way of looking at things,
4 although -- well, that's all.

5 HEARING OFFICER KNITTLE: Ms. Carter? This was Exhibits 21
6 through 23?

7 MR. BOYD: Yes.

8 HEARING OFFICER KNITTLE: Okay. Ms. Carter --

9 MS. CARTER: In terms of documents 21 through 23, those
10 documents, I do believe that the foundation has been -- that is
11 necessary for those documents has been provided in this case.
12 And it simply provides an alternative approach to the weighted

13 average cost of capital. And in addition serves as, I guess, you
14 know, a test of its reasonableness of, you know, that which was
15 employed in the past, which we have heard about from Mr. Styzens.
16 So based on that, I think that the foundation has been laid for
17 Exhibits 21 through 23.

18 HEARING OFFICER KNITTLE: All right. Mr. Boyd, anything
19 further?

20 MR. BOYD: Nothing.

21 HEARING OFFICER KNITTLE: I will admit these. I think that
22 they were properly -- foundation was properly laid for Mr.
23 Styzens. If, in fact, and I don't recall at this moment, Dr.
24 Nosari testified, as Mr. Boyd indicated he testified, the Board

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1 will consider that in thinking about the weight of these
2 exhibits. So these are admitted 21, 22, and 23.

3 (Whereupon said documents were duly admitted into evidence
4 as People's Exhibits 21, 22, and 23 as of this date.)

5 HEARING OFFICER KNITTLE: We have Exhibits 25, 26, and 27.
6 Do we want to move to admit those as well?

7 MS. CARTER: Yes. I am trying to think.

8 HEARING OFFICER KNITTLE: I can tell you which ones they
9 are.

10 MS. CARTER: Yes.

11 HEARING OFFICER KNITTLE: Exhibit 25 is the annual report,

12 oversized, of Panhandle from the Edgar site. No, that is from
13 microfiche. Excuse me.

14 MS. CARTER: Yes, it is from microfiche.

15 HEARING OFFICER KNITTLE: Exhibit 26 is a letter from
16 Nosari to Styzens, dated 02-26-00. Exhibit 27 is the cost of
17 debt worksheet.

18 MS. CARTER: Mr. Hearing Officer?

19 HEARING OFFICER KNITTLE: Yes.

20 MS. CARTER: The People would seek to admit those documents
21 at this time.

22 HEARING OFFICER KNITTLE: Mr. Boyd, how do you feel about
23 25?

24 MR. BOYD: Well, Exhibit Number 25 looks to be a microfiche

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1 copy of something. There is writing on the document which does
2 not look to be part of the 1987 Annual Report. And this is
3 certainly not the original of the annual report that was prepared
4 by Panhandle. The annual reports were provided to the State in
5 response to discovery requests. I would object to the admission
6 of this document, because it is hearsay and certainly not the
7 best evidence of what the annual report says. Having said that,
8 however, if it is admitted for the limited purpose of showing
9 what Mr. Nosari relied on in terms of his Exhibit Number 7, then
10 I would not object to it.

11 HEARING OFFICER KNITTLE: Ms. Carter, how do you feel about

12 that?

13 MS. CARTER: Well, I have a response. Just a moment. In
14 terms of documents itself, in terms of what Counsel for
15 respondent has indicated, I don't think that it affects the
16 authenticity of the annual report. In addition to Counsel for
17 respondent's concerns, pertaining to hearsay, I do believe there
18 is an exception

19 (Ms. Carter and Mr. Layman briefly confer.)

20 HEARING OFFICER KNITTLE: Well, let me -- Ms. Carter, do
21 you have the actual 1987 annual report from Panhandle?

22 MS. CARTER: Those we did obtain of the microfiche.

23 HEARING OFFICER KNITTLE: I think that Mr. Boyd indicated
24 that those were provided via discovery to you.

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1 MS. CARTER: In terms of what was provided via discovery, I
2 believe we were provided the SEC 10-K filing in discovery. I
3 don't recall being provided the annual reports in discovery from
4 the respondent. And in addition to that, I think I do find it
5 very ironic that Panhandle itself is saying that a document that
6 they generated in the regular course of business, an annual
7 report, in which, you know, their investors and everybody else
8 relies upon, is hearsay.

9 HEARING OFFICER KNITTLE: Well, let me interject. I don't
10 think that that is Mr. Boyd's argument, and correct me if I am

11 wrong. I don't think it is the annual report that he objects to,
12 but it is the form of the annual report. Is that correct, Mr.
13 Boyd?

14 MR. BOYD: That's correct.

15 HEARING OFFICER KNITTLE: I do want to get this in, at
16 least in some form, because he did testify from it, and I think
17 it is important for the Board to consider and have this in front
18 of them when they are making their decision. But I am cognizant
19 of the fact that this might not be the exact actual annual
20 report. I would like to remedy that if we could by getting an
21 actual copy of the annual report to submit as well.

22 How do we feel about that, Mr. Boyd? Do we have an actual
23 1987 annual report that we would submit in coordination with
24 this?

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1 MR. BOYD: Well, I am not sure I have it with me.

2 HEARING OFFICER KNITTLE: Otherwise, I am going to admit
3 this at least for the limited purpose of testimony.

4 MR. BOYD: Well, again, as I said, I have no objection to
5 admitting it for that limited purpose.

6 HEARING OFFICER KNITTLE: Is that sufficient for the People
7 of the State of Illinois? Or the annual report itself in a form
8 other than this is clearly admissible evidence. All we need is
9 that, you know, and I would admit this as well and then I think
10 that any possible hearsay objection of this document would be

11 cured by having the actual annual report in front of the Board. I
12 am trying to make this easy. I am trying to suggest a number of
13 solutions.

14 MS. CARTER: I understand.

15 HEARING OFFICER KNITTLE: I don't think I am doing that.
16 That is my intention anyway.

17 MS. CARTER: Okay.

18 MR. BOYD: Well, I mean, I suggest that we admit it for the
19 limited purpose today, and if there is another report that we
20 want to provide, we can get that admitted as well.

21 MR. LAYMAN: As long as it is the same report in its
22 entirety in a different format.

23 HEARING OFFICER KNITTLE: Yes. Well, this, I agree with
24 Mr. Boyd, I don't --

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1 MR. LAYMAN: Because it is a microfiche document.

2 MS. CARTER: Is that the problem?

3 HEARING OFFICER KNITTLE: Well, there is writing on it. We
4 didn't get into any foundation about where he obtained this, what
5 microfiche.

6 MS. CARTER: He did indicate that he obtained it from the
7 University, but I don't think anything else.

8 HEARING OFFICER KNITTLE: I think there could be some
9 foundation laid that even would make this admissable. I mean, I

10 am sure the Sangamon State Library system and how they go about
11 obtaining microfiche -- I just don't know.

12 MR. LAYMAN: I think he attempted to do that and found it
13 expensive and cumbersome to --

14 HEARING OFFICER KNITTLE: Like I said, I am not suggesting
15 that -- I think we are all okay with admitting this for the
16 limited purpose right now, correct, Mr. Boyd?

17 MR. BOYD: Correct.

18 HEARING OFFICER KNITTLE: I am going to give you leave to
19 substitute a corrected copy if you so desire.

20 MR. LAYMAN: Okay.

21 HEARING OFFICER KNITTLE: Mr. Boyd, what is your --

22 MR. LAYMAN: Could I ask a question?

23 HEARING OFFICER KNITTLE: Yes. I was just going to have
24 Mr. Boyd summarize his opinion of what the limited purpose is and

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1 see if you agreed with it, but go ahead and ask your question.

2 MR. LAYMAN: I trust that the basis of the objection is
3 related to the hearsay rather than the authenticity or the
4 identification of the document or what.

5 HEARING OFFICER KNITTLE: Is that correct, Mr. Boyd?

6 MR. BOYD: I was quickly looking in my rules of evidence.
7 I think there is a hearsay issue, and I don't think it is the
8 best evidence of what the actual annual report is. To that
9 extent, as I said before, I would not have an objection to the

10 actual annual report.

11 HEARING OFFICER KNITTLE: You could probably get on -- I
12 don't know if Panhandle has a website, but I am sure if they do
13 they have the annual report listed.

14 MR. LAYMAN: They do.

15 HEARING OFFICER KNITTLE: And if you could have someone
16 testify that he got on Panhandle's website and pulled down the
17 annual report from Panhandle, I would suggest that would be
18 sufficient foundation to submit that copy.

19 MR. LAYMAN: Well, fortunately, I think you can download
20 their annual reports, but they only date back to 1996 or 1997. I
21 know there were the last three years.

22 HEARING OFFICER KNITTLE: That's fine. Either way, there
23 is some way we can get a copy of this.

24 MR. LAYMAN: I truly question the basis for hearsay

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1 objection given that we are using the information from a document
2 that the company prepared for its stockholders essentially. It
3 is a publicly available document and we are extracting
4 information from its content for the purposes of evidentiary
5 admission.

6 HEARING OFFICER KNITTLE: I am only granting it because I
7 am not sure this is the complete document.

8 MR. LAYMAN: Okay. That's fine.

9 HEARING OFFICER KNITTLE: That's the only reason I am
10 sustaining this objection. And I am not sure that -- I don't
11 think it has been altered in any way, but I don't think we have
12 the necessary precautions in place to make sure that it hasn't
13 been. That's the purpose of the hearsay rule, at least in part.
14 But, no, Mr. Layman, I am cognizant of your argument as well. If
15 there were no objection, I would admit it.

16 MR. BOYD: Sir, again, the limited purpose that I would
17 agree to is to show that Mr. Nosari relied on the numbers in
18 Exhibit 25 for the purposes of developing his weighted average
19 cost of capital.

20 HEARING OFFICER KNITTLE: Okay. Mr. Layman, did you hear
21 his limited purpose?

22 MR. LAYMAN: I am sorry. I was talking. I apologize.

23 MR. BOYD: I would not object to the admissibility of
24 exhibit -- of People's Exhibit Number 25 for the limited purpose

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1 to show that it is the document that Mr. Nosari relied upon in
2 developing his numbers in People's Exhibit Number 7, the weighted
3 average cost of capital numbers.

4 MR. LAYMAN: The Hearing Officer will grant that condition,
5 if you will, provided that the State will have leave to move at
6 some point during these proceedings for the admissibility of a
7 document that meets the concerns that we have expressed here
8 today?

9 HEARING OFFICER KNITTLE: Yes, we will accept it with that
10 stipulation and I hereby, as of now, give you leave to submit
11 that at a later point in time if you can get it.

12 MR. LAYMAN: I trust that leave will extend through our
13 case in rebuttal?

14 HEARING OFFICER KNITTLE: Yes.

15 MR. LAYMAN: Okay.

16 HEARING OFFICER KNITTLE: Is there an objection to that,
17 Mr. Boyd?

18 MR. BOYD: No. Again, the only thing I am struggling with
19 is the relevance of the annual report for other purposes and, you
20 know, to the extent that there is some relevance linked that is
21 established as well, then it can be brought in. But, again, the
22 relevance so far has been that it is the support for Mr. --

23 HEARING OFFICER KNITTLE: Well, I think that would be the
24 relevance in the future as well.

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1 MR. LAYMAN: That is just the point. To the extent that
2 they present a case-in-chief that raises some issues that might
3 have contents provided in the annual report then, I mean, that
4 would put us in a different position than where we are at right
5 now.

6 HEARING OFFICER KNITTLE: Okay. Under those statements, we
7 will accept this.

8 (Whereupon said document was duly admitted into evidence as
9 People's Exhibit 25 as of this date.)

10 HEARING OFFICER KNITTLE: Which takes us to People's
11 Number 26, the letter from Nosari to Styzens of 02-26-00. Mr.
12 Boyd?

13 MR. BOYD: No objections.

14 HEARING OFFICER KNITTLE: Okay. This is admitted.

15 (Whereupon said document was duly admitted into evidence as
16 People's Exhibit 26 as of this date.)

17 HEARING OFFICER KNITTLE: People's Exhibit 27 is a cost of
18 debt worksheet prepared by Mr. Nosari, I think.

19 MS. CARTER: Yes, sir.

20 MR. BOYD: No objection.

21 HEARING OFFICER KNITTLE: That is admitted as well.

22 (Whereupon said document was duly admitted into evidence as
23 People's Exhibit 27 as of this date.)

24 HEARING OFFICER KNITTLE: That is all we have for now.

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1 MR. BOYD: Mr. Knittle, if I might, I would like to ask for
2 your reconsideration regarding Exhibits 8 through 10. I know
3 that we, at the close of Mr. Styzens' testimony, you left open
4 the possibility of having him come back to testify on foundation
5 grounds if there were any exhibits that could not be included. I
6 would suggest that based on the testimony provided that it may be
7 appropriate, rather than admitting Exhibits 8 through 10, to have

8 Mr. Styzens come back for the limited purpose of laying the
9 foundation for the other documents, so that we don't have to rely
10 on 8, 9, and 10, if that's the State's --

11 HEARING OFFICER KNITTLE: Is there a response from the
12 State?

13 MS. CARTER: Yes, there is a response. It seems like up
14 until this point Counsel for respondent has been concerned about
15 keeping this case moving along. I just want to make sure I am
16 understanding what he is proposing here. Is Counsel for
17 respondent proposing that we call back Mr. Styzens to seek to lay
18 more foundation or to go through the analysis that we performed
19 relative to the BACT numbers relevant to some other calculations
20 that he performed to assure that the record is clear for the
21 Board in their, you know, review of Mr. Styzens' analysis?

22 HEARING OFFICER KNITTLE: Mr. Boyd?

23 MR. BOYD: Well, as I said earlier, my feeling is that
24 sufficient foundation has been laid for all of those documents.

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1 That's why I didn't have an objection to the admissibility of the
2 later documents. I am still very much concerned about the
3 prejudicial affect of Exhibits 8 through 10, whether or not it is
4 the intention of the State to cause that affect or not. I would
5 think that for the limited purpose of laying any additional
6 foundation that is necessary to support the other documents,

7 having Mr. Styzens come back would be appropriate.

8 MS. CARTER: Mr. Hearing Officer, I would again just
9 reiterate that, you know, you originally ruled that the
10 foundation was appropriate or had been laid for Exhibits 8, 9,
11 and 10. And in addition to that, the State willingly stipulated,
12 you know, for the limited use for these documents.

13 HEARING OFFICER KNITTLE: Right. I have admitted these
14 documents already. If, in fact, you want to bring him back
15 pursuant to Mr. Boyd's suggestion, I would allow it, but it is up
16 to you. I am not going to order that you do so.

17 MS. CARTER: Okay. Thank you.

18 HEARING OFFICER KNITTLE: So are you guys planning on
19 bringing him back or not?

20 MS. CARTER: It is not -- based on --

21 MR. LAYMAN: Recall in direct.

22 MS. CARTER: Recalling Mr. Styzens.

23 MR. LAYMAN: In direct.

24 HEARING OFFICER KNITTLE: Right.

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1 MS. CARTER: To lay foundation for the exhibits.

2 HEARING OFFICER KNITTLE: Well, I don't think that is
3 entirely what -- let's handle this off the record and then
4 tomorrow as well. Why don't the parties talk about it. I don't
5 think they know exactly what you are looking for, Mr. Boyd. I am
6 not going to order it, but they might agree to it.

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So we will see you tomorrow at 9:00.

(Hearing Exhibits retained by Hearing
Officer Knittle.)

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1 STATE OF ILLINOIS)
2) SS
3 COUNTY OF MONTGOMERY)

C E R T I F I C A T E

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5 I, DARLENE M. NIEMEYER, a Notary Public in and for the

6 County of Montgomery, State of Illinois, DO HEREBY CERTIFY that
7 the foregoing 212 pages comprise a true, complete and correct
8 transcript of the proceedings held on the 19th of September A.D.,
9 2000, at 600 South Second Street, Springfield, Illinois, in the
10 matter of People of the State of Illinois v. Panhandle Eastern
11 Pipe Line Company, in proceedings held before John C. Knittle,
12 Chief Hearing Officer, and recorded in machine shorthand by me.

13 IN WITNESS WHEREOF I have hereunto set my hand and affixed
14 my Notarial Seal this 13th day of October A.D., 2000.

15

16

17

18

19

Notary Public and
Certified Shorthand Reporter and
Registered Professional Reporter

20

CSR License No. 084-003677

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My Commission Expires: 03-02-2003

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