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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 November 29, 2000, at 9:15 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 VII

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

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P R O C E E D I N G S

(November 29, 2000; 9:15 a.m.)

HEARING OFFICER KNITTLE: Good morning. We are on the record. Today is November 29th, 2000. We are here continuing the hearing in the People of the State of Illinois versus Panhandle Eastern Pipe Line Company, PCB Docket Number 99-191.

We are starting today with the petitioner's rebuttal case. Anything, Mr. Layman, before we get started with that?

MR. LAYMAN: I don't believe.

HEARING OFFICER KNITTLE: Mr. Boyd, any preliminary issues?

MR. BOYD: No, sir.

HEARING OFFICER KNITTLE: All right. Mr. Layman, you may call your first rebuttal witness.

MR. LAYMAN: The State will recall Mr. Gary Styzens.

HEARING OFFICER KNITTLE: Mr. Styzens, why don't you come up like you did before and have a seat and we will swear you in.

I do want to note for the record that there are no members of the public present here today. Everyone is affiliated with one of the parties.

Would you go ahead and swear him in.

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

HEARING OFFICER KNITTLE: Mr. Layman, your witness.

MR. LAYMAN: Thank you.

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1                                   G A R Y   S T Y Z E N S ,  
2   having been first duly sworn by the Notary Public, saith as  
3   follows:

4                                   D I R E C T   E X A M I N A T I O N

5                                   B Y   M R .   L A Y M A N :

6           Q.   Mr. Styzens, do you recall listening to Mr. Jasbinder  
7   Singh's testimony presented in this case on September 22nd of  
8   2000?

9           A.   Yes, I do.

10          Q.   Were you present in the hearing room during the entire  
11   testimony?

12          A.   Yes.

13          Q.   Were you able to hear his responses to the questions  
14   that were posed to him during his testimony?

15          A.   Yes.

16          Q.   Do you recall whether Mr. Singh, during his testimony,  
17   identified any errors in your calculation of economic benefit  
18   relating to the use of partial year estimates?

19          A.   Yes, Mr. Singh did point out some errors.

20          Q.   Can you tell us what he was referring to?

21          A.   Yes.   There were two partial year periods that we were  
22   analyzing, a partial year of approximately one month, in other  
23   words, an 11 month period.   So we had to make an adjustment for a

24 partial year at the beginning of our analysis. Then at the end

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1 of our analysis there was a four month quarter that we had to  
2 make an adjustment for. And we had the correct formulas in some  
3 of the cells on those calculations and on some we did not have  
4 the correct formula in there. So I recently just worked with Ron  
5 Mayor who has been helping me with these spreadsheets and  
6 identified that there was an error in the partial years.

7 Q. I will call your attention, Mr. Styzens, to People's  
8 Exhibit Number 18. I trust it is up there somewhere in the pile  
9 of documents.

10 MR. LAYMAN: For the record, I am going to call the  
11 witness' attention, so that he can illustrate exactly where on  
12 the document we are referring to on this issue, 18, 19, and 20  
13 all probably go together.

14 MR. BOYD: I am sorry? Which exhibit again?

15 MR. LAYMAN: Exhibits 18, 19, and 20.

16 MR. BOYD: Okay.

17 MR. LAYMAN: Okay?

18 MR. BOYD: Yes. Thank you.

19 Q. (By Mr. Layman) Mr. Styzens, could you illustrate for us  
20 or show us in more detail where it is you are referring to in  
21 terms of partial year estimates on this example of one of your  
22 economic benefit estimates?

23 A. Yes. The primary area that we want to focus on is on

24 People's Exhibit Number 18, line 13, where the time period ends

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1 August 31, 1999. The calculation there should have included an  
2 adjustment because that was a partial year that did not include  
3 one quarter of the year, September, October, November and  
4 December. And the intent was to make a .66 adjustment to that  
5 cell, but the wrong formula was put into that cell and it did not  
6 make that adjustment.

7 So consequently, the end of line 13, where the net benefit  
8 is calculated at 27,402, that is not an accurate figure. If you  
9 go -- this is for the initial investment calculation. Then if  
10 you go to the annual recurring cost calculation in Exhibit Number  
11 19, again, that is line 13, there should have been an adjustment  
12 because it did not include that last quarter of the year. That  
13 adjustment was not properly made. Consequently, for example, in  
14 this particular exhibit, the total economic benefit was  
15 calculated approximately \$9,000.00 too high.

16 Q. For this particular exhibit, did that take into account,  
17 then, the partial year estimates only for line 13?

18 A. I believe there was an error in the first partial year  
19 as well but that is only one month and it really does not have a  
20 significant impact. It is just a few hundred dollars.

21 Q. Okay.

22 A. So the primary culprit is that last partial year because



23 it is a whole quarter of a year. And 80 percent, 80 to 90  
24 percent of the over statement of the economic benefit is

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1 contained in that year.

2 Q. Okay.

3 A. The over statement averages about \$12,000.00. And,  
4 again, 80 to 90 percent of it is contained in that last partial  
5 year. So that is where the adjustment should have been made.

6 Q. When you say that it averages roughly \$12,000.00, you  
7 are referring to what?

8 A. To the -- we had two different periods that we analyzed.  
9 We did analysis up through the August of 2000 in another exhibit  
10 and, you know, different -- we looked at the prime rate, a rate  
11 approaching the prime rate. So there was -- basically the same  
12 error occurred over and over in each of the different analyses,  
13 and it averaged to around an over statement of around \$12,000.00.  
14 Again, that last year was the main culprit, since it is a four  
15 month period.

16 Q. Okay. If you don't mind, we will walk through a couple  
17 more of the State's economic benefit calculations and illustrate  
18 in a little more detail the affect --

19 A. Okay.

20 Q. -- of taking into account the correction that you have  
21 indicated that were made?

22 A. All right.

23 Q. People's Exhibits 12, 13 and 14, I believe at the very  
24 bottom of Exhibit 12 it is referred to as the original economic

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1 benefit estimate?

2 A. Right.

3 Q. Do you recall what changes or corrections were made  
4 after you considered Mr. Singh's testimony relating to the use of  
5 partial year estimates?

6 A. Yes. We were basically given some additional requests  
7 for analysis by our attorneys for different time periods. And  
8 when we went back to perform that additional analysis, we noticed  
9 on our original document that there was a slight error in one of  
10 the plant cost index and then we didn't handle the partial years  
11 correctly. So we made an attempt to correct those.

12 In some cases we did perform the calculation correctly but  
13 in some of the other cases there was an error. And when I went  
14 back to examine that error again it averaged an over statement of  
15 about \$12,000.00 for each type -- in total economic benefit. In  
16 other words, the total economic benefit ranges around six to  
17 \$700,000.00. If you correct the error in the partial years that  
18 will go down about \$12,000.00. Most of the error, again, is  
19 contained in that last partial year period because there is a  
20 four month period that should have been adjusted down.

21 Q. Okay. So just for clarification, you considered the

22 impact of that change to People's Exhibit 12 through 14 with  
23 respect to the original benefit estimate?

24 A. Yes, right.

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1 Q. I would refer you to People's Exhibits 15, 16 and 17,  
2 identified on the very bottom portion of the document as the  
3 original revised using the WACC, weighted average cost of  
4 capital.

5 A. Yes.

6 Q. Did you consider those changes for this document as  
7 well?

8 A. Yes.

9 Q. Okay. One last one.

10 A. Okay.

11 MR. LAYMAN: If I may have just a moment.

12 HEARING OFFICER KNITTLE: Yes.

13 Q. (By Mr. Layman) Mr. Styzens --

14 A. Yes.

15 Q. -- I would last call your attention to People's Exhibit  
16 Numbers 21 through 23. Identified on the very bottom portion of  
17 the document is 02-10-88 to 08-31-99, prime?

18 A. Right.

19 Q. You considered those changes suggested by Mr. Singh with  
20 respect to this set of documents as well?

21 A. Yes.

22 Q. Exhibits 21 through 23?

23 A. Yes.

24 Q. Okay. I would like to direct your attention, if I may,

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1 Mr. Styzens, to another subject matter area. During your work in  
2 this case calculating the economic benefit, did you have occasion  
3 to review any documents or information pertaining to the federal  
4 energy regulatory commission?

5 A. Yes. As part of an internal audit, part of the process  
6 is to perform what we call a preliminary survey. The purpose of  
7 a preliminary survey is to gather information and knowledge about  
8 the topic you are going to be auditing basically to try to become  
9 an expert at the topic you are auditing so that you can make  
10 accurate and reasonable conclusions and analysis.

11 As part of that preliminary survey, for example, some of  
12 the documents that you would begin to review would be I entered  
13 the SEC, the Security and Exchange Commission's web site. They  
14 have what they call Edgar files that have SEC filings for Pan  
15 Energy. For example, I looked at those. I gathered information  
16 about the industry, about the company, about FERC.

17 I also worked with John Nosari to obtain as many of the  
18 annual reports on Pan Energy as we could from the University of  
19 Illinois library. Again, we -- I examined those to gather basic  
20 information about what was happening with this company, what was

21 happening with the industry, you know, in its relationship to  
22 market conditions, in relationship to FERC activities, things of  
23 that nature.

24 Q. What did your review of those documents reveal to you

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1 about FERC and its relationship with Panhandle Eastern?

2 MR. BOYD: I am just going to object to form and  
3 foundation, lack of foundation. The question is too broad in  
4 terms of what it revealed about Panhandle Eastern.

5 HEARING OFFICER KNITTLE: Mr. Layman?

6 MR. LAYMAN: I really don't know how to respond to that, I  
7 guess. I am just asking the witness to identify, indeed, that  
8 Panhandle Eastern is regulated by the Federal Energy Regulatory  
9 Commission.

10 MR. BOYD: Well, if he asks are they regulated by FERC,  
11 that's another question entirely.

12 HEARING OFFICER KNITTLE: Why don't you restate it, Mr.  
13 Layman.

14 MR. LAYMAN: Restate? Okay.

15 HEARING OFFICER KNITTLE: I am sorry. I am not easy to  
16 understand right now because I have a cold. If you don't, please  
17 let me know and I will restate myself.

18 MR. LAYMAN: Okay. That's fine.

19 Q. (By Mr. Layman) What did those documents reveal to you,  
20 Mr. Styzens, about FERC or the Federal Energy Regulatory

21 Commission?

22 MR. BOYD: Well, actually, I am going to object again.

23 HEARING OFFICER KNITTLE: How so?

24 MR. BOYD: Again, he has not laid adequate foundation that

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1 this witness can adequately and competently answer that question.

2 If the question is did his review reveal that Panhandle Eastern

3 Pipe Line Company is regulated by FERC, then that's one thing.

4 HEARING OFFICER KNITTLE: I am going to overrule that one.

5 I think we have had adequate foundation with Mr. Styzens during

6 his direct examination in the Petitioner's case-in-chief.

7 MR. BOYD: Well, if I may, sir, during the case-in-chief

8 Mr. Styzens did not mention FERC at all. The only --

9 HEARING OFFICER KNITTLE: Is that correct, Mr. Layman?

10 MR. BOYD: The only information about his review of FERC is

11 what he just said a minute ago.

12 MR. LAYMAN: That's correct. He did not testify about --

13 HEARING OFFICER KNITTLE: I guess I am thinking of a

14 different witness.

15 MR. LAYMAN: I am sorry?

16 HEARING OFFICER KNITTLE: I am thinking of a different

17 witness.

18 MR. LAYMAN: You may very well be thinking of a different

19 witness.

20 HEARING OFFICER KNITTLE: Why don't you lay some --

21 MR. LAYMAN: I don't believe we had reason to have Mr.  
22 Styzens testify about FERC because the FERC issue was essentially  
23 presented as a line of defense by Panhandle Eastern.

24 MR. BOYD: If I may, Mr. Knittle, there is nothing in the

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1 responses to interrogatories to suggest that Mr. Styzens would be  
2 a FERC expert. In fact --

3 MR. LAYMAN: Well, we are not --

4 MR. BOYD: I am sorry. Please. In fact, during his  
5 deposition he said explicitly that he was not a FERC expert.

6 HEARING OFFICER KNITTLE: Mr. Layman?

7 MR. LAYMAN: We are not going to contend that Mr. Styzens  
8 is, indeed, a FERC expert, as much as simply that he is familiar  
9 with the Federal Energy Regulatory Commission, that -- I am  
10 sorry.

11 HEARING OFFICER KNITTLE: Oh, no. I was going to tell you  
12 that if you could lay some foundation about that last aspect of  
13 what you are stating, then we can proceed with the questioning.

14 MR. LAYMAN: Right. That's why we started off this line of  
15 testimony with him identifying the documents that he has reviewed  
16 as part of his efforts to conduct an economic benefit analysis in  
17 this case. Those documents -- well, I mean, I can go through  
18 this slowly, but I think the witness is entitled to testify about  
19 facts and/or inferences that he perceived during the course of

20 his work and preparation on the economic benefit analysis that he  
21 has testified about thus far. That would, in this case, include  
22 matters pertaining to FERC.

23 HEARING OFFICER KNITTLE: I would agree with you in theory.  
24 However, if you could lay some foundation as to how he is

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1 familiar or whether he is familiar with FERC, that would be  
2 helpful.

3 MR. LAYMAN: Okay.

4 HEARING OFFICER KNITTLE: Then I think we could handle Mr.  
5 Boyd's objections that way.

6 MR. LAYMAN: Okay.

7 Q. (By Mr. Layman) Mr. Styzens, you previously indicated  
8 that you had occasion to review documents or information that  
9 pertained to or mentioned the Federal Energy Regulatory  
10 Commission; isn't that correct?

11 A. Yes.

12 Q. What did that information reveal to you about the  
13 Federal Energy Regulatory Commission?

14 A. Basically when you review the SEC 10-K filings for Pan  
15 Energy and as you review the annual reports for Pan Energy, you  
16 begin to see general discussions about the Federal Energy  
17 Regulatory Commission and how they are involved with the pipeline  
18 industry in general and how they are involved with Pan Energy



19 specifically.

20 In both documents there is discussion about how FERC is  
21 involved in rate setting, how FERC has -- sets opinions about  
22 various financial related issues within the pipeline industry.  
23 There is discussions about how FERC is trying to make the  
24 industry more competitive. There is discussions about FERC

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1 orders dealing with spot markets. Just an overall picture of how  
2 FERC is involved with this type of industry. There is  
3 discussions by management of Pan Energy about the implications of  
4 FERC decisions and just a general overview of how FERC is  
5 involved.

6 Q. With respect to the latter, those discussions by  
7 management --

8 A. Right.

9 Q. -- where are those references found?

10 A. They are found in both, of course, the annual reports,  
11 which is basically management's discussion of what has been  
12 happening with the company over the last year or two and, again,  
13 in the SEC filings you see extensive discussion from management  
14 about issues that are impacted by FERC regarding, you know, the  
15 change from just transmitting gas through their pipelines to  
16 more -- or I am sorry -- the topic of selling gas through their  
17 pipelines versus transmission of gas through their pipeline.

18 There was a change going on in the industry where there was

19 an increase in competition as they moved from being more of a  
20 transmission company. It talks about competition. The  
21 management talks about competition from pipelines like in Texas  
22 and how is management going to approach making this an even more  
23 profitable company in regard or in relationship to FERC opinions  
24 and FERC related issues.

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1 Q. Mr. Styzens, I would ask you to call your attention to  
2 People's Exhibit Number 32. That is the first in the line of  
3 exhibits that were admitted in the State's case. I think it  
4 carries through with Exhibits 33, 34 and 35, that are all  
5 Security Exchange Commission 10-K forms. Could you just with  
6 respect to one of those documents, 32 being the first in line,  
7 could you kind of call our attention to some of the information  
8 that you are referring to?

9 A. Am I supposed to have that in front of me? Did you say  
10 Exhibit 32?

11 Q. Yes, People's Exhibits 32, 33, 34 and 35.

12 MR. BOYD: If I may, at this time, Mr. Knittle, just  
13 express an objection to the use of these documents. I believe at  
14 the end of the last proceedings that these were admitted for a  
15 limited purpose. I may be wrong on that, Rob. Was it the other  
16 ones that were --

17 MR. LAYMAN: I cannot recall with respect to the SEC

18 filings. I know that we had that issue presented on the annual  
19 reports.

20 HEARING OFFICER KNITTLE: I don't have any limited purpose  
21 written down in my notes.

22 MR. LAYMAN: If I recall the discussion that we previously  
23 had with regard to the annual reports was some concern about the  
24 appearance or the nature of the document, whether it was truly

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1 authentic.

2 MR. BOYD: Yes.

3 MR. LAYMAN: Or an original reproduction of an annual  
4 report. I don't think we had that presented on this particular  
5 line of -- or types of document in large part because we obtained  
6 these documents from Panhandle in discovery.

7 MR. BOYD: You are correct and I will withdraw my  
8 objection.

9 HEARING OFFICER KNITTLE: Okay. Thank you, Mr. Boyd.

10 All right. Mr. Layman, you can continue.

11 Q. (By Mr. Layman) Mr. Styzens, as I think I had asked you  
12 earlier, can you direct our attention to those portions of this  
13 particular SEC 10-K filing in which you drew information from in  
14 your analysis?

15 A. Yes. For example, in People's Exhibit Number 32 you can  
16 see from the table of contents on the second page, you could see  
17 in the section called item one, where there is topics of

18 discussion about regulatory proceedings which FERC is involved  
19 in. There is discussions of competition and, you know, what is  
20 happening in the industry.

21 Then basically as you page throughout this document you  
22 will see references to FERC and FERC opinions and FERC  
23 involvement in the industry, and how that involvement is  
24 affecting increasing competition, more pressures on pricing.

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1 Again, it talks about all -- you know, if you go to the section,  
2 for example, on -- that is titled competition, on Exhibit 33,  
3 page five.

4 MR. BOYD: Is it Exhibit 33, sir, or Exhibit 32 that you  
5 are looking at?

6 THE WITNESS: Let me look real quick here. Let's just look  
7 at 32. It talks about in the competition in recent years how  
8 FERC has adopted regulations designed to produce more competition  
9 to the natural gas industry requiring pipelines to provide open  
10 access to transportation. I mean, that's an example of, again,  
11 how this entire document has a great deal of information about  
12 FERC and how it is impacting the natural pipeline gas industry,  
13 including Pan Energy, of course.

14 Q. (By Mr. Layman) Did you find similar references to  
15 competition in the other 10-K copies?

16 A. Yes. Virtually every SEC filing that we looked at for

17 Pan Energy had a great deal of discussion about FERC, its impact  
18 on this particular company and its impact on the industry in  
19 general.

20 MR. LAYMAN: If I may have just a moment.

21 HEARING OFFICER KNITTLE: Yes.

22 Q. (By Mr. Layman) Mr. Styzens, you had indicated that you  
23 had also drawn information for you to resource the annual  
24 reports --

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1 A. Correct.

2 Q. -- that you had reviewed? Where did you obtain access  
3 to Panhandle's annual reports?

4 A. Basically two sources. You know, I worked closely with  
5 Dr. Nosari, and he had indicated that the University of Illinois  
6 Library is a good resource for obtaining information on  
7 companies. So I had Dr. Nosari gather some annual reports from  
8 the University of Illinois Springfield and we reviewed those  
9 documents for a variety of reasons.

10 (Whereupon documents were duly marked for purposes of  
11 identification as People's Exhibits 25A, 28A, 29A, 30A and  
12 31A as of this date.)

13 Q. (By Ms. Carter) Okay. I will ask you to call your  
14 attention to People's Exhibit 25A.

15 MS. CARTER: I beg your pardon. For the record, I am  
16 handing the witness what is marked as People's Exhibit Numbers

17 25A, 28A, 29A, 30A, and 31A.

18 Q. (By Ms. Carter) Would you identify those documents, Mr.  
19 Styzens?

20 A. Yes. These are the annual reports that I had Dr. Nosari  
21 obtain from the U of I Springfield Library.

22 Q. And these are the documents that you reviewed -- I am  
23 sorry. Strike that.

24 These are the documents that you previously testified about

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1 reviewing in conjunction with your work with Dr. Nosari?

2 A. Yes.

3 Q. I would refer you to People's Exhibit Number 25A. Could  
4 you call our attention in the 1987 annual report where there are  
5 references that you relied upon or reviewed regarding the  
6 competitiveness of the industry?

7 A. Yes.

8 Q. Take your time, if you wish.

9 A. Just paging through it, the type of information that I  
10 would gather during the preliminary survey would be such things  
11 as where it talked about, let's say on page 20, it talks about  
12 lower pipeline rates, to reduce rates for each pipeline. It  
13 talked about marketing and prices on page 19. You know, how they  
14 are trying to get competitively priced -- competitive prices. On  
15 page 18 it talks about the market and talks about the expanding

16 reliance on the spot market, things of that nature.

17           It has sporadic discussion of FERC related decisions and  
18 what the impact is on gas transmission. It talks about, on page  
19 six, market development. It is basically just an overview of how  
20 FERC is impacting this particular business in its continued  
21 attempt to try to become more competitive and more rate  
22 competitive to ensure that they remain profitable.

23           Q. Do you recall identifying similar references in your  
24 review of the other annual reports?

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1           A. Yes. Every SEC filing and every annual report has  
2 discussions from management in detail about what is going on with  
3 their particular market, the competitiveness and how they are  
4 reacting to the ever increasing competitive pressures in the  
5 market. They talk about discounting their prices, you know, off  
6 season discount programs. They talk about how they have to  
7 compete with other pipelines and other types of energy, whether  
8 it be coal or electric, just things along those lines.

9           Q. Okay. During your work on the economic benefit analysis  
10 that you performed for the Illinois EPA, do you recall  
11 considering the argument that Panhandle did not enjoy any  
12 economic benefit by reason that they were regulated by FERC?

13           MR. BOYD: I am going to object again in terms of the term  
14 consider. It sounds like he is being asked an opinion regarding  
15 Mr. Singh's opinion in relation to the regulation of FERC or the

16 regulation by FERC of Panhandle. This witness has not been  
17 qualified as an expert in this area and is not competent to  
18 provide opinions in that regard.

19 MR. LAYMAN: Correct me if I am mistaken, but Mr. Singh was  
20 not qualified as an expert in the area of FERC either, and yet he  
21 provided an opinion to the affect that there was no economic  
22 benefit in this case because it was regulated by FERC. All I am  
23 asking for is for Mr. Styzens, who has been qualified as an  
24 expert in the area of economics and auditing and all of the

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1 concepts that are imbedded in economic benefit analysis, to  
2 render an opinion on the same subject matter.

3 MR. BOYD: Mr. Knittle, if I may, it is different when Mr.  
4 Singh says he has relied on information provided to him through  
5 Mr. Grygar and through the FERC opinions and other sources of  
6 information about the regulation of Panhandle by FERC. There is  
7 nothing that this witness has said to this point which suggests  
8 that he is competent to provide any opinions regarding the  
9 analysis by Mr. Singh of the affect of FERC on economic benefit  
10 analysis.

11 HEARING OFFICER KNITTLE: I am going to overrule that. I  
12 think the question was whether he considered any such information  
13 when he made his decision. I think that's a fair question and  
14 well within his realm of knowledge whether he considered



15 anything.

16 MR. LAYMAN: Do you want me to repeat the question?

17 THE WITNESS: Yes, please.

18 Q. (By Mr. Layman) During your work on economic benefit  
19 analysis for the Agency, do you recall considering the argument  
20 that Panhandle did not enjoy any economic benefit by reason that  
21 they were regulated by FERC?

22 A. Yes, because early on --

23 MR. BOYD: Again, I am going to object. That was a yes or  
24 no question, as what you were saying, something that he could

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1 testify to, Mr. Knittle. He is going to try to explain his  
2 answer and it is getting into the realm of opinion testimony,  
3 which I don't believe he is competent to testify to.

4 HEARING OFFICER KNITTLE: I understand your objection. I  
5 am going to overrule it. I think he can testify as to what he  
6 considered and if he did consider it why he did or why he didn't.  
7 He is not offering any expert opinions on the substance of FERC  
8 or anything like that. Is he going to, Mr. Layman?

9 MR. LAYMAN: No, I don't believe, no. I think we are just  
10 going to get at the argument as it relates to the economic  
11 benefit analysis and whether by reason of the regulation by FERC  
12 they should be said to not enjoy or not have enjoyed or accrued  
13 any economic benefit.

14 MR. BOYD: With all due respect, Mr. Knittle, that is the

15 subject of expert testimony that has previously provided in this  
16 case. The only reason that Mr. Layman is pursuing this line of  
17 questioning is to elicit expert type testimony from this witness.  
18 He has not laid the proper foundation to show that he is  
19 competent to make that kind of determination.

20 HEARING OFFICER KNITTLE: Mr. Layman?

21 MR. LAYMAN: Correct me if I am mistaken, but I don't know  
22 that the Board's Hearing Officer has actually established  
23 rigorous criteria that distinguishes between what you have to do  
24 with respect to an expert witness and what you have to do with

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1 respect to a witness who is possibly less than an expert. I am  
2 not arguing that Mr. Styzens is something along that latter  
3 category. Clearly, I think he is an expert in the area of  
4 economic benefit analysis, otherwise he would not be here  
5 testifying for the Agency. I think --

6 HEARING OFFICER KNITTLE: Anything further, Mr. -- oh, I am  
7 sorry, Mr. Layman. I didn't mean to cut you off.

8 MR. LAYMAN: I think he is entitled to testify to facts or  
9 inferences that he has perceived during the course of his work in  
10 developing an economic benefit analysis and that includes any  
11 expert testimony that was provided or presented by Mr. Singh.

12 HEARING OFFICER KNITTLE: Mr. Boyd?

13 MR. BOYD: Nothing further. I have a standing objection,

14     though.

15             HEARING OFFICER KNITTLE:  It can be a standing objection,  
16     but I am going to overrule that objection.

17             Mr. Layman, you can continue, please.

18             Q.     (By Mr. Layman) Again, Mr. Styzens, do you recall  
19     considering the argument that Panhandle did not enjoy an economic  
20     benefit by reason that they were regulated by FERC?

21             A.     Yes, because I am an expert at understanding business  
22     administration.  I am an expert at understanding how a company  
23     operates in a competitive environment.  I am an expert at  
24     economics.  I am an expert at the affect of competition on

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1     pricing of product.

2             From my review of the SEC filings, from my review of the  
3     annual reports for this company, and the numerous discussions of  
4     how the entire gas pipeline industry was evolving as far as  
5     moving towards a highly competitive environment, and as part of  
6     the knowledge base that I have I know that when you are operating  
7     in a competitive environment it is the market that sets the price  
8     of your product.  As a market becomes more competitive, the  
9     affects of a regulatory function like FERC, they can suggest or  
10    give limits to low and high settings of your price of your  
11    product, but in reality what sets the price of your product is  
12    the market.

13             In a competitive market there are limits to how high you

14 can raise your price. There are limits to how you can pass costs  
15 on to your customers by rate or price increases of your product.  
16 And that is where economic benefit, the whole concept comes into  
17 play, when there is market conditions and competition that limits  
18 your ability to pass on capital outlays to your customers, that  
19 is where this whole concept of economic benefit comes in.  
20 Because there are definitely restrictions on your ability to  
21 recover capital outlays, and in this type of competitive  
22 environment.

23 MR. BOYD: Mr. Knittle, I am going to move to have his  
24 answer stricken both because it is beyond his competence, because

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1 as he said, he is talking about what FERC can and cannot do. He  
2 has not laid any foundation that he has any basis to know what  
3 FERC can or cannot do. In addition to that, the response was a  
4 narrative response beyond the scope of the question.

5 HEARING OFFICER KNITTLE: Mr. Layman?

6 MR. LAYMAN: Well, I think it is a little late to pose an  
7 objection on grounds it was beyond the scope of the question,  
8 because I would ask the witness to answer in the same way with  
9 just additional questions. At this point we can do so, but we  
10 will be here for the remainder of the day, if not longer.

11 I guess I don't know how to respond to the other component  
12 of the objection, other than to say that I think Mr. Styzens has

13 answered to the best of his ability based on his understanding  
14 and his review of information that he performed or conducted  
15 during the course of his economic benefit analysis. I heard him  
16 speak to economic benefit analysis and not so much to the issue  
17 of FERC that Mr. Grygar, who was primarily the witness on behalf  
18 of Panhandle spoke to.

19 HEARING OFFICER KNITTLE: Mr. Boyd?

20 MR. BOYD: Well, the nature of his narrative response shows  
21 that he was -- he had a statement to make to the record. It was  
22 not elicited by specific questions by Mr. Layman, and Mr. Layman  
23 just admitted that, you know, he had -- he did not lay specific  
24 questions and did not elicit specific answers because of that.

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1 In addition, he specifically referred to what FERC would do. And  
2 as I said before, there has been absolutely no testimony by this  
3 witness that he has any basis of knowledge to know what FERC  
4 would do. That's why I move to restrict it.

5 MR. LAYMAN: I think he was speaking generally in regards  
6 to a regulatory type of structure and not so much to exactly what  
7 FERC and its rate making structure would do specifically. To the  
8 extent that the Board or the Hearing Officer may have concerns  
9 with respect to the area of expertise that this witness has on  
10 the particular issue of FERC, separate and distinct from his  
11 expertise on the area of economic benefit, then I would suggest  
12 that it would simply go to the weight of the -- or the

13 credibility or the weight of the evidence rather than simply  
14 excluding that evidence altogether.

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

16 MR. BOYD: Only that that is -- you know, the last point is  
17 always, you know, the comment that can be made, and then throw it  
18 to your discretion. However, having said all of that, this is  
19 the primary issue of this case. They have not presented a  
20 competent expert to rebut Mr. Singh's testimony in this area.  
21 They are trying to do that through this witness and he has not  
22 been -- there has been no proper foundation to show that he is  
23 competent to testify in the matter that he is testifying to. So  
24 I do think it is within your purview to restrict this kind of

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1 testimony until they are able to satisfy the proper foundational  
2 requirements.

3 HEARING OFFICER KNITTLE: Well, I clearly think it is  
4 within my purview to do so. It is whether or not I am going to  
5 do so. I am not going to at this point. I don't think Mr.  
6 Styzens -- am I saying that right?

7 THE WITNESS: Yes, sir.

8 HEARING OFFICER KNITTLE: Has testified to anything other  
9 than his economic benefit analysis. I think he can testify to  
10 his economic benefit analysis without becoming an expert on FERC  
11 or without testifying as to the mechanics of FERC. If this is

12 how he did his economic benefit analysis, this is what he  
13 considered, I think that is proper testimony. And whether or not  
14 he has the expertise to consider the mechanics of FERC or whether  
15 or not, is something for the Board to decide. If that's how he  
16 made his economic benefit analysis, then that's testimony that he  
17 can properly give.

18 MR. BOYD: But, sir, that is not what he is saying. He is  
19 not saying that his economic benefit testimony was based on this.  
20 What he is saying is that his rebuttal to Mr. Singh's testimony  
21 is based on this. That is a totally different situation.

22 HEARING OFFICER KNITTLE: Is that correct, Mr. Layman?

23 MR. LAYMAN: Well, I guess I can walk through and lay the  
24 foundation that the witness encountered the argument presented by

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1 Panhandle prior to hearing.

2 HEARING OFFICER KNITTLE: Let me interrupt you. It was my  
3 understanding that all of this testimony that we have just  
4 elicited, whether it be narrative or not, was based on a  
5 consideration of arguments during his economic benefit analysis.  
6 We started with the consideration of the arguments made by  
7 Panhandle during their case-in-chief, correct?

8 MR. LAYMAN: Well, I think --

9 HEARING OFFICER KNITTLE: Then we say did he consider those  
10 arguments when he made his economic benefit decision, correct?

11 MR. LAYMAN: I think the testimony he has presented so far

12 deals with the course of his work in developing the economic  
13 benefit analysis.

14 HEARING OFFICER KNITTLE: That was my understanding.  
15 That's why I am allowing it in. If he is talking specifically  
16 about the testimony presented by Panhandle's expert, then I would  
17 have a problem with that. But it seems to me that he is  
18 testifying about what he considered during his economic benefit  
19 analysis, Mr. Boyd.

20 MR. LAYMAN: Well, if --

21 MR. BOYD: Sir, if I may, if that's the case, then it is  
22 not relevant on rebuttal. We are here for the rebuttal case.

23 HEARING OFFICER KNITTLE: I think it is relevant on  
24 rebuttal, and that's my decision. So let's move on.

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1 MR. LAYMAN: With the Hearing Officer's permission, I would  
2 like to follow-up with a couple more questions with respect to  
3 Mr. Styzens and his work early on earlier in this case with  
4 respect to this particular argument.

5 HEARING OFFICER KNITTLE: Okay.

6 Q. (By Mr. Layman) Mr. Styzens, when do you recall first  
7 having reason or an opportunity to consider the argument  
8 presented by Panhandle?

9 MR. BOYD: Again, I would object, sir. You had said  
10 earlier that this is while he is formulating his opinion. When



11 you ask a question about the opinion formulated by Panhandle, it  
12 is going directly to Mr. Singh's testimony.

13 HEARING OFFICER KNITTLE: Mr. Boyd, I am realizing that  
14 this is a point of contention with you, but I am going to  
15 overrule it, because he is asking the witness when he considered  
16 the argument. If the answer is during his economic benefit  
17 analysis, then I think that would -- I think Mr. Layman, correct  
18 me I am wrong, I hate to speak for Mr. Layman. In fact, it  
19 scares me.

20 (Laughter.)

21 HEARING OFFICER KNITTLE: I think Mr. Layman is trying to  
22 elicit that testimony to let the Board know when he started  
23 considering this argument and if it was, in fact, during his  
24 economic benefit analysis.

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1 Is that correct, Mr. Layman?

2 MR. LAYMAN: You are correct.

3 HEARING OFFICER KNITTLE: So depending on the witness'  
4 answer, it will solve our problem.

5 Do you need the question restated, Mr. Styzens?

6 THE WITNESS: No. When you perform economic benefit  
7 analysis, you have to look at the entire picture as a whole. You  
8 have to look at what is happening in the industry that you are  
9 looking at to see whether it is regulated, to consider whether it  
10 is competitive, because, I mean, there has been discussions in

11 the research that I have done, like, for example, in the June  
12 1999 Federal Register there was a question regarding is -- you  
13 know, is economic benefit analysis appropriate for regulated  
14 industry. There is -- you know, early on in this case we  
15 received documentation discussing whether there is an economic  
16 benefit related to a company that is regulated by FERC or any  
17 company that is regulated and so --

18 Q. Do you recall when that was?

19 MR. BOYD: I am sorry. I am sorry, Mr. Layman. I am going  
20 to object again that his answer was not responsive to the  
21 specific question posed.

22 HEARING OFFICER KNITTLE: I would sustain that one, Mr.  
23 Layman. I would like to hear an answer to your question.

24 MR. BOYD: I would ask that it be stricken, too.

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1 MR. LAYMAN: I am sorry?

2 HEARING OFFICER KNITTLE: I am going to allow it to stand.  
3 I think he was attempting in a roundabout method to answer the  
4 question, but he didn't ever quite do that.

5 MR. LAYMAN: Okay.

6 HEARING OFFICER KNITTLE: He started explaining before he  
7 answered the question.

8 MR. LAYMAN: I can --

9 HEARING OFFICER KNITTLE: As I recall, the initial thing I

10 wanted to determine was whether he was considering this argument  
11 during his economic benefit analysis.

12 MR. LAYMAN: Okay. I think he did get to the answer, but  
13 let me --

14 HEARING OFFICER KNITTLE: Mr. Boyd and I might have missed  
15 it, then, because I didn't hear it.

16 MR. LAYMAN: Let me rephrase it, if I may.

17 HEARING OFFICER KNITTLE: Yes.

18 Q. (By Mr. Layman) Before your work associated with this  
19 case, had you ever been presented with the argument that a  
20 company could not have enjoyed any economic benefit due to  
21 noncompliance as a result of the type of regulatory framework it  
22 was operating within?

23 A. Yes. Mainly it was involved in my cases on low solvent  
24 technology, where you do an economic benefit analysis for low

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1 solvent technology cases where companies claim that they had no  
2 economic benefit.

3 Q. Okay.

4 A. So the concept of having no economic benefit, you have  
5 to address that. Whenever you do an economic benefit analysis,  
6 you have to examine whether there was a possibility of a company  
7 not having an economic benefit.

8 Q. When was the first instance in which you recall having  
9 been presented with the argument that there was no economic

10 benefit because of some regulatory framework, in other words,  
11 being regulated by a government agency?

12 A. Oh, I think early on in my preliminary survey. I am  
13 trying to remember whether it is in some of Jasbinder Singh's  
14 articles.

15 Q. Well, prior to your involvement in this case, do you  
16 ever recall hearing about or being presented with such an  
17 argument?

18 A. I can't recall.

19 Q. When you became involved in this case, when do you  
20 recall being presented with that argument?

21 A. That there is no -- I am sorry. Could you rephrase the  
22 question? The argument that --

23 Q. When do you recall being presented with the argument  
24 that Panhandle did not enjoy an economic benefit by reason that

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1 they were regulated by FERC?

2 HEARING OFFICER KNITTLE: Do you have something, Mr. Boyd?

3 THE WITNESS: I guess --

4 MR. BOYD: I will object on two grounds. One is it is  
5 assuming facts not in evidence. And, two, it is not a fair  
6 characterization of the position. And, three, if the question is  
7 as I think I heard it, he is asking about what happened after  
8 Panhandle presented their opinion witness.

9 MR. LAYMAN: That is simply not true.

10 MR. BOYD: I would like to have it read back then and  
11 analyzed by you, Mr. Knittle.

12 HEARING OFFICER KNITTLE: Okay. Mr. Layman, any response  
13 before -- I can read back the question and see what you said if  
14 you want.

15 MR. LAYMAN: I will rephrase the question.

16 HEARING OFFICER KNITTLE: Okay.

17 Q. (By Mr. Layman) Mr. Styzens, prior to hearing, and at  
18 the time that you were developing the Agency's economic benefit  
19 analysis in this matter, when do you recall first being presented  
20 with the argument by Panhandle that they did not enjoy an  
21 economic benefit by reason that they were regulated by FERC?

22 MR. BOYD: The same objection.

23 HEARING OFFICER KNITTLE: I will overrule that one.

24 THE WITNESS: The only thing that is coming to my mind is

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1 just the series of depositions that I had looked over regarding  
2 this case. Early on that there was, you know, documents received  
3 from Panhandle Pipe Line that discussed that they did not believe  
4 that there was an economic benefit because this company could  
5 simply pass on any capital expenditures on in their rates.

6 Q. (By Mr. Layman) All right. Thank you. Just a moment.

7 HEARING OFFICER KNITTLE: We will go off the record.

8 (Discussion off the record.)

9 HEARING OFFICER KNITTLE: Back on the record.

10 Q. (By Mr. Layman) I call the witness' attention to  
11 Panhandle Exhibit Number 26. I don't believe we can find a copy  
12 at this time, at the State's table. Can you identify that  
13 document, Mr. Styzens?

14 A. Yes. This was one of the documents that I was just  
15 referring to that early on in this case we had received some type  
16 of opinion or conclusions by Mr. Singh that had basically put  
17 down the arguments for -- that Panhandle Eastern was suggesting  
18 regarding economic benefit. And one of the arguments was in this  
19 document, you know, it was related early on in the case because  
20 they were talking I know about an \$8 million penalty. Which when  
21 I first came into this case, that was the initial discussion, the  
22 \$8 million penalty.

23 So I knew the topic that there was no economic benefit  
24 because they were operating in a regulatory industry or regulated

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1 industry, that they came on very early on in the case because I  
2 remembered, you know, that as an auditor it is -- when you have  
3 to perform an audit and there is a suggestion of an \$8 million  
4 economic benefit, and then on the other side there is the  
5 suggestion of a zero benefit, I mean, that puts the auditor into  
6 the situation where you really have to look at both sides.

7 Q. It is fair to say then that -- well, strike that. Is

8 that document dated in any way?

9 A. I am not seeing a specific date, but I know, again, it  
10 was early on in this case because of this \$8 million figure that  
11 was thrown out.

12 Q. So it was well before the hearing?

13 A. Oh, yes, well before the hearing.

14 Q. Do you recall forming an opinion at that time regarding  
15 the merits of the argument?

16 MR. BOYD: Again, I am going to object. It is calling for  
17 certainly opinion testimony by the nature of the question. And  
18 as I said before, there has been no testimony to lay the  
19 foundation to suggest that he is competent to give expert  
20 testimony on the subject.

21 HEARING OFFICER KNITTLE: Mr. Layman?

22 MR. LAYMAN: Mr. Styzens has indicated that he reviewed  
23 that document as part of his development of the economic benefit  
24 analysis that he made on behalf of the Agency well before the

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1 time of Mr. Singh's testimony at the hearing. I think he is  
2 entitled to render an opinion as to what he thinks the merits of  
3 that argument are with respect to the economic benefit analysis.

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

5 MR. BOYD: He is no more entitled than anybody else sitting  
6 in this room to render an opinion about this document unless he  
7 has been qualified and the proper foundation has been laid to

8 show that he is competent to give the opinion. So to the extent  
9 either I could testify, or Mr. Layman could testify, or Darlene,  
10 our court reporter, could testify, then he could provide  
11 information at this point. But, again, there is no foundation  
12 and no level of competence established by this witness that he  
13 could establish or present opinions on that subject.

14 MR. LAYMAN: I couldn't disagree more here. In fact, I  
15 find it insulting to the witness for Panhandle's Counsel to even  
16 suggest that. We have gone over this time and time again as to  
17 what his area of expertise is. Clearly, his area of expertise  
18 encompasses being able to render an opinion as to whether or not  
19 the particular argument Panhandle made in this case about the  
20 absence of an economic benefit in this case is relevant, or more  
21 to the point, whether it has any merit. I think that's all we  
22 are asking.

23 Again, to the extent that the Board, who likewise, probably  
24 is not going to have any more area of expertise on the issue of

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1 FERC or economic benefit than what Mr. Boyd or myself do, I would  
2 suggest that the weight of the credibility, again, of Mr.  
3 Styzens' testimony be considered rather than have it simply  
4 excluded altogether.

5 HEARING OFFICER KNITTLE: The reason I am going to allow  
6 him to answer this question, Mr. Boyd, as opposed to Darlene,



7 yourself, or Ms. Carter, or anybody, is he is the one who  
8 performed the economic benefit analysis for the EPA and he can  
9 testify as to what he considered while he was performing that  
10 economic benefit analysis.

11 If this letter came to him during the economic benefit  
12 analysis, then I think that is something that he considered and I  
13 think he can at least testify as to why he did or did not accept  
14 that, that Panhandle's -- what the arguments are in that letter  
15 that Panhandle sent to him while he was making his economic  
16 benefit analysis. So for that reason, I am going to overrule the  
17 objection.

18 MR. LAYMAN: Thank you. Would the witness like me to  
19 rephrase the question?

20 THE WITNESS: Yes.

21 Q. (By Mr. Layman) Did you form an opinion at that time  
22 regarding the merits of the argument presented by Panhandle that  
23 they did not enjoy an economic benefit by reason that they were  
24 regulated by FERC?

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1 A. Yes.

2 Q. What was that opinion?

3 A. Again, during the course of the internal audit on  
4 development of the economic benefit, you know, my analysis, you  
5 know, I gathered information that discussed that economic benefit  
6 can be calculated for a company that is operating in a regulated

7 industry and that competition, you know, is a factor that you  
8 need to examine when you are analyzing economic benefit.

9 Q. Okay. Thank you.

10 A. Can I -- okay.

11 Q. Just a moment.

12 HEARING OFFICER KNITTLE: You can't prompt your Counsel.

13 THE WITNESS: No, I was going to add one more thing.

14 MR. LAYMAN: That's okay.

15 Q. (By Mr. Layman) Mr. Styzens, in your assessment of  
16 economic benefit in this case, what weight or consideration was  
17 given to the competitiveness of the industry?

18 A. Well, I gave substantial weight to that because early on  
19 in this audit there was a suggestion that there was no economic  
20 benefit in this case because this particular company was  
21 operating in a regulated basically noncompetitive industry, and  
22 so since that was suggested, I had to analyze what was the  
23 competitive situation with this company and what was the  
24 competitive situation in this market. What I concluded was this

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1 is a highly competitive market, a highly competitive industry and  
2 that there is an economic benefit, a substantial economic  
3 benefit, because there is an inability for the company that is  
4 operating in this competitive market to pass on costs to their  
5 customers by just raising their rates, which was the inference at

6 the very beginning of this case, that there is no economic  
7 benefit because any capital outlays that this company has for  
8 environmental capital improvements can just be recovered simply  
9 by raising their rates and passing it on to the customers.

10 So that was a critical part of my analysis in economic  
11 benefit, was what was the competitive condition of this company,  
12 what was the competitive condition in this industry.

13 Q. Okay. Thank you. Moving on, Mr. Styzens, I would like  
14 to direct your attention, if I may, to another subject matter  
15 area. Do you recall when you sat in and listened to Mr. Singh's  
16 testimony presented earlier in this case, do you recall whether  
17 he offered an opinion regarding any estimate of economic benefit  
18 of yours that was based on a reference to a prime loan rate?

19 A. Yes, I do.

20 Q. Did you understand Mr. Singh to have identified an error  
21 in your use of the prime loan rate?

22 A. Yes, there was some suggestion that there was some tax  
23 issues because there was some suggestion that I was assuming that  
24 there was -- that a company was raising capital at the prime rate

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1 and that there was a \$100,000.00 to a \$150,000.00 error in my  
2 calculations.

3 Q. I would call your attention to People's Exhibits 21  
4 through 23. I think we looked at them a little bit ago as well.

5 A. Yes.

6 Q. Is this the document that you believe Mr. Singh was  
7 referring to --

8 A. Yes, it is.

9 Q. -- in your discussion? Okay. Can you -- do you have an  
10 opinion as to whether there was merit to his argument that he --

11 A. Yes, I do have an opinion.

12 Q. What is that opinion?

13 A. It is of my opinion that he misunderstood what I was  
14 trying to do in this particular exhibit.

15 Q. What were you trying to do in this particular exhibit?

16 A. The purpose of presenting -- in this audit, the purpose  
17 of presenting what affect the weighted average cost of capital  
18 would have on the economic benefit, if that weighted average cost  
19 of capital would approach the level of the bank prime loan rate,  
20 what the purpose of this is, I was doing basically a  
21 reasonableness test on Dr. Nosari's weighted average cost of  
22 capital. I was trying to examine that the calculations that Dr.  
23 Nosari performed on the weighted average cost of capital for Pan  
24 Energy, were those reasonable. One the methodologies I used to

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1 determine reasonableness was to simply make the assumption, let's  
2 say that Dr. Nosari's weighted average cost of capital was that  
3 his calculations were near a level of the prime rate during that  
4 same time period. It is just for comparison reasons.

5 I think where Mr. Singh had made an inappropriate  
6 conclusion was that I was making some assumption that capital was  
7 being raised with 100 percent debt at the prime rate. That was  
8 not the purpose of this information. If you look at the prime  
9 rate during this period, which averages, in column E there, on  
10 Exhibit 21, about 8.3, 8.4 percent, then what I did was look at  
11 Dr. Nosari's calculations of weighted average cost of capital. I  
12 knew if Dr. Nosari was within one or two percent of this level of  
13 cost of capital, which is the prime loan rate, that he was  
14 reasonable. And I knew that if Dr. Nosari's figures were  
15 anywhere underneath or lower than the bank prime loan rate, I  
16 would have questioned the reasonableness of his calculations.  
17 So, again, it was just for comparison reasons and a  
18 reasonableness test on my part.

19 Q. Okay. Thank you. I direct your attention to one last  
20 subject matter area for your testimony today. Mr. Styzens, do  
21 you recall Mr. Singh testifying earlier in this proceeding about  
22 retrofit costs?

23 A. Yes.

24 Q. Can you tell us what you understood Mr. Singh's view to

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1 be with respect to the consideration of retrofit costs in respect  
2 to this economic benefit analysis?

3 A. Well, again, as part of the internal audit, you know, I  
4 examined -- since retrofit came up as a topic in this internal

5 audit, I examined the available literature and information on  
6 retrofit. Mr. Singh had written some articles on retrofit.  
7 Basically his conclusion is that there should be some kind of  
8 rebate program where you deduct some of what he considers  
9 retrofit costs from economic benefit calculations.

10 Q. You understood that to be his testimony that was  
11 presented in this hearing?

12 A. Yes.

13 Q. Are you familiar with the U.S. EPA's BEN Model?

14 A. Yes, I am.

15 Q. Do you recall when you first became familiar with the  
16 BEN Model?

17 A. Basically over the last five years I have been involved  
18 with the BEN Manual, the BEN Model.

19 Q. How have you been involved?

20 A. Because I have been performing for the last five years  
21 internal audits related to economic benefit analysis at the  
22 Illinois Environmental Protection Agency.

23 Q. During your work in this case, in calculating an  
24 economic benefit, did you have an occasion to review any

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1 documents pertaining to the BEN Model?

2 A. Yes.

3 Q. What documents did you review?

4           A.    Primarily the April and September of 1999 BEN User's  
5 Manual.  Primarily, there is a 1999 Federal Register that  
6 discusses the BEN Model in great detail, a June of 1999, I  
7 believe, Federal Register.

8           Q.    During Mr. Singh's testimony about retrofit costs, do  
9 you recall him discussing selective portions of the BEN Manual?

10          A.    Yes.

11          Q.    I would like to call the witness' attention to what has  
12 been marked as Panhandle Exhibit Number 25, and I would ask the  
13 witness to identify it.  And then in conjunction with that I will  
14 have him reference -- call his attention to Panhandle Exhibit 25A  
15 as well.  Mr. Styzens, with respect to Exhibit 25, can you  
16 identify that document?

17          A.    Yes, that's the April of 1999 BEN User's Manual that I  
18 had reviewed in the past.

19          Q.    Contained within that document, are the selected  
20 portions that Mr. Singh discussed in his testimony identified in  
21 that document?

22          A.    Yes.

23          Q.    Could you tell us what you make of those selected  
24 portions?

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1           MR. BOYD:  Again, I am just going to object in terms of  
2 what he makes of them.  I am not sure what that is asking for.  
3 It is vague and, again, it is asking for --

4 MR. LAYMAN: I will rephrase.

5 Q. (By Mr. Layman) Mr. Styzens, can you tell us what is  
6 referred to in the selected portions identified in Exhibit Number  
7 25?

8 HEARING OFFICER KNITTLE: Do you want my copy, Mr. Layman?

9 MS. CARTER: There should be another one up here.

10 Q. (By Mr. Layman) I don't recall the question that is  
11 pending on the table. If I recall, I think what I was asking Mr.  
12 Styzens to do was identify the selected portions that had been  
13 referred to in the exhibit before him by Mr. Singh during his  
14 testimony. Can you do that, Mr. Styzens?

15 A. Yes.

16 Q. Okay. What is that comprised of?

17 A. This is a discussion in the April 1999 BEN User's  
18 Manual about -- during the period between the on time and the  
19 delayed scenario, which means, in other words, at the beginning  
20 of the period if you would have took action, you know, on time to  
21 take the necessary capital outlays, between that period and the  
22 end of the period, which is known as the delay scenario, it  
23 discusses that if there is some sort of environmental regulations  
24 that have changed or laws or changes in technology that occur

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1 between the on time and the delay scenarios, this discusses that  
2 when a technological or a regulatory change occurs during that



3 time period that affects the industry or companies in general in  
4 that industry, that there could be some adjustments made to how  
5 you handle costs during that period.

6 Q. Are you familiar with the type of adjustments that the  
7 U.S. EPA is referring to in the manual?

8 MR. BOYD: Object to the form in terms of the lack of  
9 foundation by this witness.

10 MR. LAYMAN: I don't know exactly how to respond to that.  
11 I guess that --

12 MR. BOYD: He is referring to a document, Mr. Knittle, and  
13 that's all. He has no testimony about any other information from  
14 the U.S. EPA regarding this information.

15 HEARING OFFICER KNITTLE: I am going to overrule because I  
16 think he is asking him if he is familiar and this is the initial  
17 steps of laying the foundation if there is foundation to lay.

18 THE WITNESS: Yes, again, in this section of the BEN  
19 Manual, they discuss the type of events that occur during the on  
20 time and delay scenarios. The events that they describe in here  
21 deal with regulatory changes and technology changes that occur  
22 during that period.

23 Q. (By Mr. Layman) Okay. Based upon your understanding of  
24 the facts presented in this case, would those types of scenarios

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1 identified by the U.S. EPA in the manual apply to this case?

2 MR. BOYD: Again, I am going to object to the extent that

3 it calls for opinion testimony and, again, he has not been  
4 determined to be an expert in this particular area.

5 HEARING OFFICER KNITTLE: I am going to sustain that.  
6 Maybe you could rephrase that question, Mr. Layman.

7 MR. LAYMAN: Okay. Give me a second, if I may.

8 HEARING OFFICER KNITTLE: Okay.

9 Q. (By Mr. Layman) Can you identify for us, Mr. Styzens,  
10 where the U.S. EPA present or outlines their scenarios that are  
11 discussed in this document?

12 A. Yes. On Exhibit Panhandle Number 25, on the top of  
13 3-22, dated April of 1999, it talks about several scenarios. The  
14 violator obtained a cost estimate at the noncompliance date.  
15 Technological change between the noncompliance and compliance  
16 date or a regulatory change over time, mandated regulatory  
17 changes.

18 Q. Okay. Based upon your knowledge of the facts in this  
19 case, are you aware of whether Panhandle obtained a cost estimate  
20 at the noncompliance date even though it did not comply until  
21 later?

22 A. No, I am not aware of a --

23 MR. BOYD: I am going to object to the form of the  
24 question, to the extent that it implies that Mr. Layman is

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1 interpreting something other than what is written here on this

2 page.

3 HEARING OFFICER KNITTLE: You mean Mr. Styzens, right?

4 MR. BOYD: Mr. Styzens. Excuse me.

5 MR. LAYMAN: I guess I am having this witness do nothing  
6 more or less than what Mr. Singh did with respect to reviewing  
7 the BEN Manual and applying what is written in the plain language  
8 of the BEN Manual to the facts of this case.

9 MR. BOYD: And, again, there are --

10 MR. LAYMAN: Mr. Styzens is familiar with the facts of this  
11 case, and I think that --

12 MR. BOYD: To the extent that he is familiar, sir, then you  
13 can lay a foundation to show he is familiar.

14 HEARING OFFICER KNITTLE: I think we are at cross purposes  
15 here. He is -- Mr. Layman was stating that he is familiar with  
16 the facts of this case. I don't think you have an objection to  
17 the extent that Mr. Styzens is familiar with the facts of the  
18 case. You are talking about the user manual, correct?

19 MR. BOYD: Well, to both. I mean, I think --

20 HEARING OFFICER KNITTLE: I am not going to make him  
21 qualify Mr. Styzens as to being familiar with the facts of this  
22 case at this point.

23 MR. BOYD: Well, sir --

24 MR. LAYMAN: Well, we --

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1 MR. BOYD: -- to the extent that this requires --

2 MR. LAYMAN: Well, we already did that in our direct  
3 case-in-chief.

4 HEARING OFFICER KNITTLE: Well, yes. I think that Mr.  
5 Styzens has been well qualified to have examined and participated  
6 in the facts of this case, especially those leading up to the  
7 economic benefit analysis decision. So to that extent, I am  
8 overruling the objection. Mr. Layman, you may continue.

9 Q. (By Mr. Layman) Mr. Styzens, do you recall the question?

10 A. Yes.

11 Q. Okay. Will you answer it, please?

12 A. No, I am not aware that there was a cost estimate at the  
13 beginning of the noncompliance period in 1988.

14 Q. Okay. Thank you. Are you aware of any technological  
15 change between the noncompliance and compliance dates?

16 A. No. I believe they are using the same clean burn  
17 equipment.

18 Q. Was there any type of regulatory change over time that  
19 mandated a different compliance measure?

20 A. I am not aware of any regulatory changes.

21 Q. Can you tell us, Mr. Styzens, based on your reading of  
22 this portion of the BEN Manual, whether the U.S. EPA refers to  
23 retrofit costs?

24 A. I see no mention of retrofit costs.

1 Q. Does the U.S. EPA refer to any kind of -- in your view,  
2 any kind of concept referring to retrofit costs?

3 A. No.

4 MR. LAYMAN: Excuse me. If I may have a moment, I think we  
5 can finish up.

6 HEARING OFFICER KNITTLE: Okay. Off the record.

7 (Discussion off the record.)

8 HEARING OFFICER KNITTLE: Back on the record.

9 MR. LAYMAN: I have just a few more questions.

10 Q. (By Mr. Layman) Mr. Styzens, you had indicated in your  
11 earlier testimony that you had also reviewed a Federal Register  
12 notice, I believe, that was published by the U.S. EPA?

13 A. Yes, it was a June 1999 Federal Register that went into  
14 detailed discussions regarding the BEN Model.

15 Q. Did that particular discussion highlight or involve the  
16 portions of the BEN Manual that you just testified about?

17 A. It is supplemented. There was a discussion about the on  
18 time and delay scenarios.

19 Q. Did your reading of that discussion reveal anything new  
20 to you compared to your reading of the BEN Manual itself?

21 A. No. Again, it confirmed that the same type of examples  
22 were given in the Register regarding that if there was a law or a  
23 regulatory change during the noncompliance period or there was a  
24 technological change during that period that that may affect the

1 economic benefit analysis.

2 Q. Does the U.S. EPA refer to the term retrofit costs in  
3 that document?

4 A. No.

5 Q. Do they refer, based on your reading of the document, to  
6 any concepts relating to retrofit costs?

7 A. No.

8 Q. Do you recall reading any other documents or sources of  
9 information that detailed -- strike that.

10 Do you recall reviewing or reading any other documents or  
11 sources of information pertaining to retrofit costs?

12 A. There was a -- I did not read any professional -- other  
13 professional discussions or articles on the retrofit rebate  
14 programs except Mr. Singh had some articles and that was it. It  
15 was my understanding, from Mr. Singh's testimony, that he was the  
16 only one who has written any articles on a retrofit rebate  
17 program.

18 MR. BOYD: Well, I am just going to object to the  
19 characterization of Mr. Singh's articles talking about rebate  
20 programs. There is nothing in there about a rebate program.

21 HEARING OFFICER KNITTLE: Okay. That objection is noted.  
22 But I am not going to strike his testimony.

23 Q. (By Mr. Layman) One last item. Mr. Styzens, you had  
24 testified earlier that you had reviewed and relied upon, to some

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1 extent, information contained within the Panhandle Eastern annual  
2 reports?

3 A. Correct.

4 Q. Do you recall in your earlier work involved in this case  
5 the time period in which you were reviewing annual reports?

6 A. Well, early on. It was back like from 1987 to 1992,  
7 1993, somewhere around there, that were the only ones available  
8 from the U of I library, I believe.

9 Q. Did you have an occasion more recently to review more  
10 recent annual reports?

11 A. Yes, recently a 1995 and 1996, I believe annual, reports  
12 on Pan Energy.

13 (Whereupon documents were duly marked for purposes  
14 of identification as People's Exhibits 37 and 38  
15 as of this date.)

16 Q. (By Mr. Layman) I would call the witness' attention to  
17 People's Exhibit Number 37 and 38. Can you identify Exhibit 37  
18 for us, Mr. Styzens?

19 A. Yes, that's the Pan Energy 1995 annual report.

20 Q. Where did you secure this information, this document?

21 A. Early on, during the preliminary survey of this audit,  
22 you know, we were looking for sources of information. And we had  
23 requested from the local Dean Witter Reynolds brokerage if they  
24 had -- if they would be able to obtain any older annual reports

1 for a company named Pan Energy. And weeks, weeks, weeks went by  
2 and finally these two -- they had sent these two to me at the  
3 EPA. They had found, I guess, in their library a 1995 and 1996  
4 Pan Energy annual report.

5 Q. And how did you acquire access to that?

6 A. We had asked early on if the local Dean Witter Reynolds  
7 brokerage in town here, if they had access to any Pan Energy  
8 annual reports. So they mailed us these.

9 Q. Do you recall when that was?

10 A. Oh, it was -- it had to be six months ago, something  
11 like that, five or six months ago. I had even forgotten about it  
12 until they showed up in the mail recently.

13 Q. In reference to your six month statement, could you  
14 clarify that for me? Did you request the information six months  
15 ago?

16 A. Yes, like five or six months ago, a long time --

17 Q. When did you receive them from --

18 A. Probably within the last three weeks.

19 Q. Okay. Can you identify People's Exhibit Number 38?

20 A. That's the 1996 annual report for Pan Energy.

21 Q. Okay. Did you review these documents?

22 A. Yes, similar to how I reviewed the previous annual  
23 reports, just to look for an overview of what FERC was doing  
24 with -- involved with this company, how this company was



1 performing in the industry, the competitiveness of the company,  
2 things of that nature.

3 Q. Did you share the documents with anyone else?

4 A. Our attorneys at EPA and then Dr. Nosari reviewed them  
5 as well.

6 MR. LAYMAN: Okay. I believe that is all we have for this  
7 witness.

8 HEARING OFFICER KNITTLE: Are you moving for the entrance  
9 of these exhibits?

10 MR. LAYMAN: Not at this time.

11 HEARING OFFICER KNITTLE: All right. Then why don't we  
12 take a short recess before we start with Mr. Boyd's  
13 cross-examination.

14 MR. BOYD: Yes.

15 HEARING OFFICER KNITTLE: Unless you -- do you have  
16 cross-examination, Mr. Boyd?

17 MR. BOYD: Yes, I do.

18 HEARING OFFICER KNITTLE: Okay. We will take a short  
19 recess.

20 (Whereupon a short recess was taken.)

21 HEARING OFFICER KNITTLE: Okay. We are back on the record  
22 after a short recess.

23 We are beginning with Mr. Boyd's cross-examination.

24 MR. BOYD: Thank you.

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CROSS EXAMINATION

BY MR. BOYD:

Q. Mr. Styzens, you recall this morning that there were a number of times that I objected to your testimony based on my feeling that you were providing opinions. Isn't it true that you told us last December in your deposition that you would not be offering any opinions in this matter?

MR. LAYMAN: Objection as to what Mr. Boyd is referring to as this matter. I don't know what he is talking about and could ostensibly include all the testimony that --

HEARING OFFICER KNITTLE: I would sustain that. Could you clarify that, Mr. Boyd?

MR. BOYD: Well, I would say in this enforcement proceeding before the Pollution Control Board.

MR. LAYMAN: Well, let me see if I have this straight. Mr. Styzens indicated in his deposition that he would not be offering any expert witness testimony in this case on anything?

HEARING OFFICER KNITTLE: Is that the objection, Mr. Boyd?

MR. BOYD: That's the question.

HEARING OFFICER KNITTLE: You are asking that of this witness?

MR. BOYD: I am.

HEARING OFFICER KNITTLE: Do you have an objection to that question, Mr. Layman?

1           MR. LAYMAN: I guess I object to the general or the vague  
2 nature of the question.

3           HEARING OFFICER KNITTLE: I think with your clarification  
4 it is pretty clear.

5           You can answer the question.

6           THE WITNESS: What is the question?

7           MR. BOYD: I am sorry. Darlene, would you read it back.

8           HEARING OFFICER KNITTLE: Hold on. Before we do that,  
9 there were a bunch of -- there was one question and then a bunch  
10 of clarifications as to the question. Maybe you could just  
11 rephrase it, Mr. Boyd.

12          MR. BOYD: I will do that.

13          Q. (By Mr. Boyd) Isn't it true that in your December of  
14 1999 deposition you told us that in this enforcement proceeding  
15 you were not offering any opinions?

16          THE WITNESS: Do I have to answer that with a yes or no  
17 or --

18          MR. BOYD: Well, Mr. Knittle, I think it is a yes or no  
19 question.

20          THE WITNESS: No, it is not a yes or no.

21          HEARING OFFICER KNITTLE: Yes, I would direct you to answer  
22 the question with yes or no and if, in fact, there is more to  
23 your answer, then your Counsel -- it is his responsibility to  
24 bring it out on your redirect.

1 THE WITNESS: The problem that I have with it is I don't  
2 understand what your definition of opinion is. I mean, an  
3 auditor's opinion is different than maybe a layman's opinion.  
4 And auditor's opinion is based on facts, analysis. So, I mean,  
5 it is a difficult question for an internal auditor to ask in the  
6 first place -- I mean, to answer in the first place.

7 Q. (By Mr. Boyd) Mr. Styzens, do you recall in your  
8 December deposition, on December 17th, me asking you the  
9 following questions and you providing the following answers?

10 MR. BOYD: Counsel, you can refer to page 88.

11 Q. (By Mr. Boyd) I say:

12 "Question: Do you have an opinion as to whether the BEN  
13 Model depicts real world situations accurately?

14 Answer: I can't handle the use of your word "opinion." I  
15 don't understand how to answer questions like that.

16 Question: Well, it is my understanding that you have been  
17 designated as an expert witness here?

18 Answer: Right.

19 Question: Is it your understanding that you will be  
20 offering any opinions at hearing in this matter?

21 Answer: No. I am not offering opinions. What I am  
22 offering is, I am an internal auditor, and I analyze information  
23 that is available, and the particular scope of this project, it  
24 is to develop a reasonable, independent and objective analysis of

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1 the information to come up with a reasonable benefit."

2 Do you recall me asking you those questions and you  
3 providing those answers?

4 A. Yes.

5 Q. Okay. That's all I have. Now, sir, during your  
6 rebuttal testimony today you offered some opinions regarding Mr.  
7 Singh's opinion that the way in which FERC regulates natural gas  
8 pipelines shows that Panhandle had no economic benefit in this  
9 case. You have never been involved with a FERC proceeding  
10 before, have you?

11 A. No.

12 Q. Isn't it true that before this case you had no  
13 experience with any entities regulated by FERC?

14 A. That's correct.

15 Q. And isn't it true that what you have learned about FERC  
16 regulations came from the information that you just stated  
17 earlier today?

18 A. That is a vague question. The information that -- what  
19 do you mean?

20 Q. For instance, you relied on Panhandle's annual reports?

21 A. Correct.

22 Q. You relied on the SEC filings?

23 A. Yes.

24 Q. You didn't read any of the FERC opinions, did you?

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1           A.    Yes, actually, I went to the FERC site.  I have seen  
2 some FERC opinions and things of that nature.

3           Q.    Well, sir, let me refer you back to Mr. Singh's report.  
4 I think it is Exhibit Number 26.  Do you have that in front of  
5 you?

6           A.    What, Panhandle 26?

7           Q.    Panhandle 26.

8           A.    Okay.  What is the question?

9           Q.    Do you have 26 in front of you?

10          A.    Yes.

11          Q.    If you could refer to page three of Pan 1753.

12          A.    Yes.

13          Q.    There is a footnote three there.  Did you read any of  
14 the FERC opinions that Mr. Singh discusses in that footnote?

15          A.    I don't believe so.

16          Q.    Okay.  If you would look on the second page of this  
17 exhibit, marked Pan 1752, footnote two, Mr. Singh refers to a  
18 book by Stephen Breyer called Regulation and Its Reform.  Did you  
19 read that book?

20          A.    No.

21          Q.    Isn't it true that Mr. Singh relied on those FERC  
22 opinions discussed in footnote five and the Breyer book discussed  
23 in footnote two as part of the basis of his opinion?

24          A.    It is difficult for me to know what Mr. Singh relied on.

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1 Q. Well, doesn't it say so here in this exhibit?

2 A. It is footnoted, but that does not necessarily mean -- I  
3 don't know. It is a -- the only thing I could say is that he  
4 obviously had access to this information and it may or may not  
5 have influenced his decisions. To what extent, I don't know.

6 Q. Well, you had access to that information too, didn't  
7 you?

8 A. I don't know if -- I wasn't aware of sources of all of  
9 this information. I don't know if I would have had access or  
10 not.

11 Q. But the fact is that you didn't locate either the FERC  
12 opinions or the Breyer book and read them before your testimony;  
13 isn't that right?

14 A. That's correct.

15 Q. When you were deposed in December isn't it true you told  
16 us that you really didn't understand how FERC determines rates  
17 that pipelines can charge?

18 A. That may be true back in December.

19 Q. Okay. Isn't it true that the rates FERC allows  
20 pipelines to charge cover the cost of pipeline operations?

21 A. No, that wouldn't be a totally accurate statement,  
22 because I have read too many FERC opinion related information and  
23 annual reports and SEC filings where there is challenges to what  
24 costs can be recovered and things of that nature. So you can't

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1 make a general statement that FERC just allows you to recover all  
2 of your costs.

3 Q. But you have not seen anything, have you, sir, to  
4 suggest that FERC does not allow environmental expenditures?

5 A. Correct. I have not seen anything.

6 Q. You haven't seen anything that says that FERC does not  
7 allow the pipelines to recover through their rates costs of  
8 routine maintenance, repair, and replacement?

9 A. It allows. Yes, I believe it allows.

10 Q. Or the cost of pollution controls?

11 A. It would allow.

12 Q. Okay. Again, the ability to recover such costs was one  
13 factor that Mr. Singh relied on in his report that is marked as  
14 Exhibit Panhandle 26; isn't that right?

15 A. I don't know. I can't tell what Mr. Singh relied on as  
16 far as -- I know what I relied on in the ability to recover  
17 costs, but I am not sure what Singh relied on in the ability to  
18 recover costs.

19 Q. Well, you read his report, didn't you?

20 A. Yes. I don't see a detailed discussion of Singh's  
21 opinion of how costs can be recovered in this industry. I mean,  
22 it is a very complex, detailed discussion you would have to have  
23 on it. You can't cover it in a few sentences.



24 Q. I believe on your rebuttal testimony you mentioned that

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1 you gave substantial weight to the competition that you believe  
2 Panhandle was facing in the late 1980s and early 1990s in  
3 determining your opinions regarding Mr. Singh's opinion; isn't  
4 that right?

5 A. No, I said that I gave great weight to competition in my  
6 analysis of economic benefit.

7 Q. Isn't it true that your understanding of how Panhandle  
8 was facing competition during that period of time is based on  
9 your review of Panhandle's financial documents?

10 A. It is based on a variety of documents including the  
11 financial documents.

12 Q. Well, you relied on the annual statements and the SEC  
13 filings; isn't that right?

14 A. For my discussion of competition?

15 Q. Yes.

16 A. Well, there was some testimony on competition by Mr.  
17 Grygar that I reviewed. There was testimony where Singh touched  
18 on competition. There was annual reports. There is SEC filings.  
19 Again, you know, there was quite a bit of discussion on  
20 competition, and Mr. Grygar must have mentioned it 30 times.

21 Q. Sir, do you recall being deposed in this case in May of  
22 2000?

23 A. Yes.

24 Q. That was your second deposition in this case, wasn't it?

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1 A. Right. Yes, in December and then I think May.

2 Q. That was after your deposition in December; isn't that  
3 right?

4 A. Yes.

5 Q. That was December of 1999, was your first deposition?

6 A. Yes.

7 Q. At your first deposition you had already had a copy of  
8 Exhibit Number 26 to review; isn't that correct?

9 A. It was early on. It was near that time period, I would  
10 believe.

11 Q. We discussed Exhibit Number 26 at your deposition in  
12 December of 1999, didn't we?

13 A. You would have to refresh on that.

14 Q. Well, certainly, by the time you were deposed in May of  
15 2000 you had seen Mr. Singh's report; isn't that right?

16 A. Yes, I would believe.

17 Q. Do you recall during your May deposition, again, on page  
18 121, we were talking about Mr. Singh's report, and we were  
19 discussing your discussion with Mr. Nosari regarding the report.  
20 Did I give you the following questions and you provided the  
21 following answers:

22 "Question: Did he provide you any information about the

23 competitive nature of the pipeline industry from 1988 through the  
24 present.

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1 Answer: Just in context of our discussion of the annual  
2 reports and the SEC filings.

3 Question: Did he review anything other than the annual  
4 reports and the SEC filings, as far as you are aware?

5 Answer: No, that is it, I believe."

6 Do you recall me asking you those questions and you  
7 providing that response at that deposition?

8 A. Yes, at that deposition.

9 Q. Okay. So the information you are talking about happened  
10 after your deposition?

11 A. What information?

12 Q. Well, for instance Mr. Grygar's testimony. You heard  
13 that at the first portion of this hearing, didn't you?

14 A. Yes, and Singh's depositions and Singh's testimony.  
15 And, you know, Singh's depositions were, you know, around my  
16 depositions. And so, I mean, through the whole period, through  
17 depositions or testimony there was added information about  
18 competition.

19 Q. Isn't it true that you have never been involved in a  
20 study of how competitive the natural gas pipeline business is?

21 A. I have never been involved in a study, that's correct,  
22 yes.

23 Q. Isn't it true that even with the increasing competition  
24 facing pipelines in the late 1980s or early 1990s that FERC

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1 allowed the pipelines, like Panhandle, to obtain a reasonable  
2 return on investment?

3 A. Yes, I believe they allowed for that, yes.

4 Q. Well, sir, if that's the case, is it your position that  
5 Panhandle did not or was not able to recover during that period  
6 of time capital expenditures? I am sorry. The cost of capital  
7 expenditures?

8 A. That's what I am saying, yes.

9 Q. Isn't your position based on the fact that you believe  
10 that -- strike that.

11 One of the reasons for that position is your belief  
12 regarding the competition that Panhandle was facing; isn't that  
13 correct?

14 A. I would say the primary belief is that I would analyze  
15 recovery of capital expenditures by identifying substantial  
16 increases in rates for the period I was examining.

17 Q. Isn't it true that during your evaluation you did no  
18 analysis of the rates that FERC actually allowed Panhandle to  
19 charge during the period of 1988 to the present?

20 A. During what period?

21 Q. 1988 to the present?

22 A. No. What analysis are you talking about?  
23 Q. Well, at any point in time during your analysis?  
24 A. The issue of ability to raise rates during this time

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1 period came up time and time again, I believe, in the depositions  
2 and the testimony for this case.

3 Q. That was not my question. My question was did you do  
4 any analysis of the rates that FERC actually allowed Panhandle to  
5 charge during the period of 1988 to the present?

6 A. The only document I used to analyze that was there was a  
7 Texas pipeline sheet that showed various rates of return that are  
8 charged by pipeline companies in the industry and that the  
9 settlement amounts are lower and things of that nature. But  
10 there was no in-depth study of Pan Energy's rates during that  
11 time period, that's correct.

12 Q. Okay. You talked about discounting?

13 A. Right.

14 Q. Again, your understanding of the discounting that  
15 Panhandle was giving customers during the period of 1998 to the  
16 present, that was from your review of the annual statements and  
17 the SEC filings; is that correct?

18 A. That and Grygar's testimony. You know, he went into  
19 depth about discount programs and things of that nature.

20 Q. You didn't analyze the rate of return on equity that  
21 FERC actually allowed Panhandle during the period of 1988 to the

22 present?

23 A. The rates of return information during that time period  
24 that I have, I mean, you have that Texas pipeline industry rate

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1 of return sheet that covered that period for there must have been  
2 20 different companies where it discussed rates that were  
3 requested and settlement rates and, of course, the annual reports  
4 discussed rates of return that the company is obtaining during  
5 that period.

6 Q. Sir, again, referring to your May deposition, on page  
7 116, do you recall me asking you these questions and you  
8 providing the following response?

9 MR. LAYMAN: Excuse me? What page are you referring to?

10 MR. BOYD: Page 116.

11 MR. LAYMAN: Thank you.

12 Q. I asked the following:

13 "Question: Did you do any analysis of the rates that FERC  
14 actually allowed or the return on equity that FERC actually  
15 allowed Panhandle during the period of 1988 to the present?

16 Answer: No."

17 Do you recall that?

18 A. Yes.

19 Q. So you didn't compare the rates FERC allowed versus the  
20 rates that were actually charged; is that correct?

21           A.    That's not totally correct because, again, I did have  
22 access to, I think, a document that Pan Energy gave us that I had  
23 seen maybe at a later date than my May deposition that discussed  
24 or that showed in detail the rates of return in the industry for

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1    several -- for 20 or 30 companies and the settlement rates and  
2 things of that nature.  So, I mean, I did have that document I  
3 think maybe at a later date, that I had reviewed that document.

4           Q.    Sir, again, referring to your May deposition on page  
5 123.  Do you recall me asking you this question and you providing  
6 the following response?

7           "Question:  Have you done any kind of analysis of the rates  
8 that Panhandle actually charged during this period of time versus  
9 the rate that Panhandle was allowed to charge by FERC?

10          Answer:  No."

11          A.    Yes.  I think this may have been subsequent to that  
12 date.

13          Q.    Isn't it true that Panhandle took steps during the  
14 period from 1988 to the present to reduce its costs of  
15 operations?

16          A.    Again, from review of the SEC filings and annual reports  
17 there was indications that that was taking place.

18          Q.    You didn't analyze the affect that the discounting of  
19 rates would have given those substantial steps that Panhandle was  
20 taking to reduce costs?

21 A. No, I didn't analyze that.

22 Q. So really without analyzing that you don't know whether  
23 the discounting had any affects on revenues; is that correct?

24 A. Well, there was wide -- I mean, there was wide

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1 fluctuations in revenues for this company during the period. So,  
2 I mean, it would be a reasonable assumption that discounting of  
3 rates would affect your revenues during the time period.

4 Q. But you have done no study of that?

5 A. Oh, yes I have. I have studied -- what do you mean? I  
6 have studied financial statements, annual reports.

7 Q. Sir, you are making conclusions about the affects of  
8 discounting here and I just asked you whether you did any studies  
9 for this particular period and you said no?

10 A. I am sorry? What did I say?

11 Q. I will let the record reflect what you have said. Let  
12 me just go on. During your analysis you have not analyzed  
13 whether costs associated with pollution controls in 1988 could  
14 have been recovered over the period from 1988 through the  
15 present; is that correct?

16 A. I guess that I would say I analyzed it in a general  
17 conceptual approach, which would be were the rates increasing  
18 during this time period. I mean, that would be knowledge that I  
19 would have gained that would be able to perform some analysis on



20 what the trends were in rates during this period. I would expect  
21 to see the rates increasing if you were recouping capital  
22 expenditures.

23 Q. Well, sir, there are other factors in that equation,  
24 too, aren't there, like, for instance, whether there were

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1 reductions in costs for this time frame?

2 A. Yes, that's true.

3 Q. Okay. Isn't it true that your evaluation of Mr. Singh's  
4 report, Exhibit Number 26, disregards entirely the fact that  
5 Panhandle was and is regulated by FERC?

6 A. No, that is not true.

7 Q. Okay. What affect of Panhandle's regulation by FERC and  
8 its ability to recover costs through the FERC procedures have you  
9 taken into account in your analysis?

10 A. As I had stated earlier in my testimony, I mean, what I  
11 had taken into account is FERC's impact on the industry and the  
12 company as a whole which was an attempt, as Mr. Grygar had  
13 indicated in his testimony, as well, that there was an attempt to  
14 make this whole industry and this company operate in a much more  
15 competitive industry. So in that regard, I mean, I did examine  
16 FERC's impact on economic benefit calculations.

17 Q. But, again, sir, doesn't Mr. Singh say that the  
18 regulatory framework of FERC, regardless of the competition or  
19 the increasing competition in the industry during the time,

20 supports his position that there was no economic benefit in this  
21 case?

22 A. No. I mean, Mr. Singh, I recall distinctly in his  
23 depositions talks that distinctly that in a competitive  
24 environment it is the market that sets the rate and it reduces

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1 the ability to pass on costs to your customers. I mean, he  
2 stated that. That does not fit with a concept that if there is  
3 competition you can just pass everything on. So, I mean, he may  
4 infer that in this document, but then later on he doesn't -- he  
5 doesn't -- he contradicts that. So he is really on both sides on  
6 that. So, you know, it is a difficult question to answer since  
7 it seems like there is both sides of that equation being given  
8 out here by Mr. Singh.

9 Q. Well, I will let his testimony stand the way it is. I  
10 think it is clear from the last hearing. I was asking you sir,  
11 my question to you is --

12 A. Okay.

13 Q. -- what impact do you consider the fact that FERC  
14 regulation allows Panhandle to recover its costs and obtain a  
15 reasonable return on investment?

16 A. I am focusing on competition. That's what I am focusing  
17 on, what is the competitive situation in this industry and how  
18 has had FERC made decisions related to the competition. That's

19 really the main focus of my analysis when it comes to economic  
20 benefit.

21 Q. Yes, but, sir, again, Mr. Singh says one thing and you  
22 say something else. I am trying to understand your focus on  
23 competition. Do you take into account -- strike that.

24 It seems like you are treating Panhandle as if it were not

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1 a regulated entity; isn't that right?

2 A. No, I am treating --

3 Q. So what impact --

4 A. I am treating Pan Energy like they are operating in a  
5 competitive industry. That's all I am doing.

6 Q. But isn't it true that you are treating them as if they  
7 were not operating in a regulated environment during that time?

8 A. No, I understand they are operating in a regulated  
9 environment. Very well I understand that.

10 Q. So what impact does your understanding that they are  
11 operating in a regulated environment during this period of time  
12 have on your opinion of economic benefit in this case?

13 A. On my analysis of economic benefit?

14 Q. Yes.

15 A. I would say it had very little impact on my analysis.

16 Q. Mr. Styzens, isn't it true that you believe there would  
17 be -- strike that -- that there would never be a circumstance  
18 where a company would have no economic benefit from delaying

19 spending money to install and operate pollution control  
20 equipment?

21 A. Yes. I am sorry? That would never have a what, an  
22 economic benefit?

23 Q. That there would never be a circumstance where a company  
24 would have no economic benefit from delaying spending money to

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1 install and operate pollution control agreement?

2 A. Yes, I would agree with that.

3 Q. Well, given that belief, it is not surprising that you  
4 disagree with Mr. Singh, isn't it?

5 A. That question is kind of -- I don't -- can you rephrase  
6 that? What are you trying to get at there?

7 Q. Well, if you believe that there is no circumstance where  
8 a company would have no economic benefit if it delayed spending  
9 that money, then you could not agree with Mr. Singh's analysis;  
10 isn't that right?

11 MR. LAYMAN: Objection. It is starting to become a little  
12 argumentative with the witness on this line of questioning.

13 HEARING OFFICER KNITTLE: Mr. Boyd, any response?

14 MR. BOYD: No.

15 HEARING OFFICER KNITTLE: I will sustain that objection. I  
16 think that is an argumentative question.

17 Q. (By Mr. Boyd) Well, isn't it true that in your December

18 deposition you repeated what you just stated here, that you  
19 believe there is no circumstance where a company would have no  
20 economic benefit from delaying spending money to install and  
21 operate pollution control equipment?

22 A. Yes, that is definitely true, yes.

23 Q. And you made that statement after you knew of Mr.  
24 Singh's opinion that no economic benefit exists in this case

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1 because of the manner in which FERC regulates Panhandle; isn't  
2 that right?

3 A. Yes, that is probably correct, yes.

4 Q. Okay. Isn't it true that if you agreed with Mr. Singh  
5 now you would have been wrong when you made that statement in  
6 your December of 1999 deposition?

7 A. Well, I don't -- those type of -- I don't understand how  
8 to answer those "what if" type questions.

9 MR. BOYD: I would direct you to have him answer the  
10 question. It goes to impeachment.

11 HEARING OFFICER KNITTLE: I am going to want to have it  
12 read back and then hear from Mr. Layman.

13 Could you please read it back, Darlene.

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

16 HEARING OFFICER KNITTLE: Mr. Layman, do you have a  
17 response to the objection?

18 MR. BOYD: There is no objection.

19 HEARING OFFICER KNITTLE: Oh, I am sorry. You asked me to  
20 direct him to answer. Is there a response to that?

21 MR. LAYMAN: Not really, no.

22 HEARING OFFICER KNITTLE: Well, then I am --

23 MR. LAYMAN: I don't understand the question.

24 HEARING OFFICER KNITTLE: Well, I am going to ask you to

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1 rephrase it, then, because I think it is a two-parter, and I  
2 don't -- I am not going to direct him to answer that question. I  
3 think it is unclear.

4 Can you rephrase it, Mr. Boyd?

5 MR. BOYD: Sure.

6 Q. (By Mr. Boyd) Isn't it true that if you agreed with Mr.  
7 Singh's position, stated in Panhandle Exhibit Number 26,  
8 today that --

9 A. Could you -- what position? I mean, can you get  
10 specific? What position of Mr. Singh's do you want me to --

11 HEARING OFFICER KNITTLE: That is what I didn't understand,  
12 too.

13 Q. (By Mr. Boyd) All right. If you were to agree today  
14 that Mr. Singh was right, that there was no economic benefit as a  
15 result of the manner in which Panhandle was regulated by FERC,  
16 that would be inconsistent with what your statement to us was in

17 your December of 1999 deposition; isn't that right?

18 A. I mean -- again, as an internal auditor, I have to take  
19 everybody's opinion into consideration. I mean, at this point  
20 with the knowledge that I have of what is going on in this  
21 particular audit, I am not aware of anything that was told to me  
22 that would -- that I would conclude that there would be no  
23 economic benefit if a company did not make capital outlays like  
24 they should have. So in that regards, on the knowledge base that

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1 I have, my conclusion would be different than Mr. Singh's. I  
2 hate to say I disagree with him, only from the fact that if Mr.  
3 Singh brought some additional information or this audit resulted  
4 in me analyzing some additional information that would sway me,  
5 that, you know, would move my analysis that way, I mean, it  
6 possibly could happen.

7 Q. Let me refer you to Panhandle Exhibit Number 25.

8 A. Okay.

9 Q. You recall me asking you questions about this document  
10 during your May deposition, don't you?

11 A. December or May. At this point I can't remember which  
12 deposition it was.

13 Q. I think you admitted earlier in your testimony that you  
14 are not an expert on the BEN Manual; isn't that right?

15 A. Yes, I would say I wouldn't be an expert on the BEN  
16 Manual. Economic benefit analysis in general.

17 Q. This case was the first time you were exposed to the  
18 retrofit, quote, end quote, concept in the economic benefit  
19 context; isn't that right?

20 A. Yes, this was the first time I have heard of the  
21 retrofit related information.

22 MR. BOYD: Okay. Give me one second. I am referring  
23 Counsel to page 103 of your deposition on May 16th.

24 Q. (By Mr. Boyd) Do you recall me providing these questions

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1 and you providing the following responses?

2 MR. LAYMAN: I am going to object at this point in time.  
3 Is it Panhandle's Counsel intention to impeach the witness with  
4 respect to referencing the deposition? And if so, what is the  
5 subject matter of the area of impeachment?

6 HEARING OFFICER KNITTLE: Mr. Boyd, are you attempting to  
7 impeach the witness?

8 MR. BOYD: I certainly am. He has provided testimony today  
9 about his understanding of this Exhibit Number 25 which is  
10 inconsistent with what he said in his deposition.

11 HEARING OFFICER KNITTLE: Why don't you tell us what the  
12 inconsistent statement was first and recommit him to --

13 MR. LAYMAN: Or at least have a question addressed to the  
14 witness in a manner that would suggest that there is a basis for  
15 impeachment.



16 MR. BOYD: Well, that's a good point.

17 Q. (By Mr. Boyd) Mr. Styzens, has your understanding of the  
18 BEN User's Manual, Pan Exhibit 25, changed since the time of your  
19 May deposition?

20 A. Regarding this section of the BEN User's Manual, as far  
21 as my studying and reviewing that particular section, that has  
22 been more recent because Mr. Singh had raised this section of the  
23 BEN Manual in his testimony. So prior to that I didn't really  
24 have a need to study this section. So I think back in my

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1 depositions I had not studied that particular section of the BEN  
2 User's Manual. Of course, I was aware of the BEN User's Manual  
3 in general. But, again, that section really came to light for my  
4 study as part of this internal audit when Mr. Singh had mentioned  
5 it, you know, in more detail.

6 Q. Back in May you didn't have an understanding of whether  
7 the BEN User's Manual could be used as Mr. Singh suggested; isn't  
8 that right?

9 A. As Mr. Singh suggested, what do you mean?

10 Q. Well, in his opinion regarding retrofit?

11 A. What did he suggest? I am sorry.

12 Q. That the BEN Manual allowed for a different input for  
13 the cost to comply at the time of the decision versus the cost to  
14 comply at the time the equipment is put in?

15 A. Again, I didn't study that section of the manual, so I

16 was not familiar with that type of situation.

17 Q. Isn't it true that at the time of your deposition in May  
18 you didn't understand the model enough to know for sure what they  
19 were trying to do?

20 A. Again, I didn't study that section. So, obviously,  
21 since I didn't study that section, I would not be able to provide  
22 you with an understanding during my deposition.

23 Q. At the time you didn't know what they were doing in that  
24 section; isn't that right?

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1 A. Again, my answer to that is because I did not study that  
2 section of the manual, I would not be able to provide you any  
3 detailed information about what that section was trying to -- you  
4 know, trying to do.

5 Q. Right. But isn't it true that I gave you a copy of that  
6 section at your deposition?

7 A. Yes, you gave me a copy of that section, I believe.

8 Q. Isn't it true that you read it at the deposition?

9 A. Well, again, I go back to auditors perform analysis, and  
10 I did not analyze that section of the manual back at my  
11 deposition.

12 Q. Well, I didn't say you analyzed it. You read it, didn't  
13 you?

14 A. I wouldn't even say I read it. It was shoved in front

15 of me, and I -- you know, I am a slow reader. I didn't have time  
16 to read it. I perused it or skimmed it maybe.

17 Q. Was that because I didn't give you enough time to read  
18 it during your deposition, sir?

19 MR. LAYMAN: Objection. I think this line of questioning  
20 has been exhausted because the witness has already answered on  
21 numerous questions now that he didn't have the knowledge about  
22 this particular portion of the BEN Manual at the time of his  
23 deposition, and what he did later in time.

24 HEARING OFFICER KNITTLE: I am going to overrule the

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1 objection, and I will let him answer that question. I don't  
2 think it is repetitive.

3 THE WITNESS: Okay. What is the question?

4 HEARING OFFICER KNITTLE: The question is, is it because  
5 Mr. Boyd didn't give you the time to read it at the deposition?

6 THE WITNESS: Is what because he didn't give me time to  
7 read it?

8 HEARING OFFICER KNITTLE: The fact that you didn't read it.

9 MR. BOYD: Correct.

10 THE WITNESS: No, that was not the reason.

11 Q. (By Mr. Boyd) In fact, you didn't complain at your  
12 deposition that I didn't give you enough time to read it, did  
13 you?

14 A. I don't remember me complaining, no.

15 Q. The fact is that you read it at your deposition and just  
16 didn't understand it; isn't that right?

17 A. No, that is not right.

18 Q. Well, sir, isn't it true that at the deposition I asked  
19 you this question and you gave this response:

20 "Question: Let me make it simple. Do you have an  
21 understanding that the BEN Model would allow you to do something  
22 that you just said you don't want to do, and that is to compare  
23 the costs to comply today versus the cost it would cost to comply  
24 in 1998?

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1 Answer: My understanding -- I don't understand enough  
2 about this model to know for sure what they are trying to do  
3 here. I really don't. I have never used this portion of the  
4 model before, so I don't feel comfortable with going much further  
5 about what BEN is trying to do here."

6 A. So what is your question now?

7 Q. Did you provide that answer to that question at the  
8 time?

9 A. What was the question that that answer pertained to?  
10 What was the question?

11 HEARING OFFICER KNITTLE: Mr. Knittle, could you have it  
12 read back?

13 THE WITNESS: I just need the question right before that

14 answer that you just read. I don't remember what the question  
15 was.

16 HEARING OFFICER KNITTLE: Go ahead, Darlene. We can always  
17 read back from the deposition transcript.

18 MR. BOYD: Why don't I do that.

19 THE WITNESS: I just need the question right before that  
20 long answer.

21 Q. (By Mr. Boyd) I will give you both.

22 A. Okay.

23 Q. This is from page 103 of your May 16th deposition.

24 "Question: Let me make it simple. Do you have an

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1 understanding that the BEN Model would allow you to do something  
2 that you have just said you don't want to do, and that is to  
3 compare the cost that it would cost to comply today versus the  
4 cost that it would cost to comply in 1988?

5 Answer: My understanding -- I don't understand enough  
6 about this model to know for sure what they are trying to do  
7 here. I really don't. I have never used this portion of the  
8 model before, so I don't feel comfortable with going much further  
9 about what BEN it trying to do here.

10 A. Okay. Now hit me with the question now that you want me  
11 to answer.

12 Q. I said, did you give me that response to that question  
13 at your deposition?

14 A. Yes.

15 Q. Okay. Isn't it true, sir, that before your testimony  
16 today about that section of the BEN User's Manual, that the only  
17 other information that you looked at was the language of the BEN  
18 User's Manual itself and the July of 1999 Federal Register?

19 A. Yes, I looked at the Manual and the Register. That is  
20 where that section is discussed. I analyzed it. I just didn't  
21 read it. You know, auditors have to sit down and analyze things.

22 Q. Okay. Hold on one second. Isn't it true, sir, that  
23 there is nothing about your training or your experience that  
24 would make you more able to read and interpret page 322 of

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1 Exhibit 25 than any other person?

2 A. No, I would think my knowledge base and experience and  
3 my analysis, my recent analysis based on Singh's bringing this  
4 section up and me reviewing that section of the Manual in detail  
5 and reviewing the June of 1999 Register in detail, that because I  
6 have the knowledge base and I have done the analysis that I would  
7 be able to discuss it more than just the average person.

8 Q. Mr. Styzens, you don't know, do you, that Panhandle was  
9 not able to recover capital costs it incurred in late 1988 or  
10 1987 through FERC approved rates during the period of 1987  
11 through 1996?

12 A. The way I would analyze that question and the way I have

13 analyzed that question is I look towards the information I have  
14 on what happened to Pan Energy's rates during that period. And  
15 as Mr. Singh and Mr. Grygar had indicated, that the rates had  
16 substantially decreased during the period, and that does not fit  
17 in with what I would understand would be occurring if a company  
18 was recovering its capital costs by passing it on to their  
19 customers.

20 I would expect the rates to be increasing to some extent,  
21 not substantially decreasing like Mr. Singh said. It just does  
22 not fit. If it does not fit, I just can't make any other  
23 conclusion that the company was not recovering its capital  
24 expenditures when I see the rates going down. It doesn't make

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1 any sense to me.

2 Q. Well, I appreciate you telling us what does not make  
3 sense to you, but that was not my question. My question was, do  
4 you have any information to suggest that Panhandle, in fact, was  
5 not able to recover the capital costs it incurred in the late  
6 1980s in relation to the Glenarm station through rate increases  
7 that occurred or through FERC approved rates from 1987 through  
8 1996?

9 A. The only information I have is that rates substantially  
10 decreased during the time period.

11 Q. Okay. So you are assuming from the fact that the rates  
12 didn't increase during that time frame, that Panhandle was not

13 able to recover those costs; is that right?

14 A. That's a reasonable assumption that I believe. Yes,  
15 that's a reasonable assumption on my part.

16 Q. I began by asking you about your prior statements to us  
17 regarding -- in your depositions about whether you would be  
18 making opinions. You also recall in your December of 1999  
19 deposition telling us that auditors don't make assumptions?

20 A. Yes, uneducated assumptions.

21 Q. Well, sir, do you recall me asking you this question and  
22 you providing this response in December of 1999?

23 MR. BOYD: For your reference, Counsel, it is on page 144  
24 and 145.

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1 Q. (By Mr. Boyd) Beginning at the bottom page of 144:

2 "Question: I would like you to assume a couple of things.

3 Answer: I can't do that. I can't make assumptions.

4 Auditors don't make assumptions; they just don't do it."

5 Do you recall me asking you that question and you providing  
6 that response?

7 A. Yes, about uneducated assumptions, correct.

8 Q. Sir, you don't say uneducated assumptions, though, do  
9 you?

10 A. That's what I inferred.

11 Q. So you think your assumption in this particular case is



12 an educated assumption; is that right?

13 A. Yes, based on what I have learned over the last year and  
14 a half on this case, I would say I have a knowledge base.

15 MR. BOYD: We are going to let the Board decide that.  
16 That's all of the questions I have.

17 HEARING OFFICER KNITTLE: Mr. Layman?

18 MR. LAYMAN: May we have --

19 HEARING OFFICER KNITTLE: A brief --

20 MR. LAYMAN: A brief five minutes to discuss redirect? I  
21 would not anticipate redirect lasting any more than five minutes.

22 HEARING OFFICER KNITTLE: Okay.

23 MR. LAYMAN: Then we can be done by noon. I would just  
24 like a couple of moments to confer with Counsel.

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1 HEARING OFFICER KNITTLE: Sure. Let's go off the record  
2 for five.

3 (Discussion off the record.)

4 MR. LAYMAN: We have no further redirect.

5 HEARING OFFICER KNITTLE: Okay. Thank you, sir. You may  
6 step down.

7 THE WITNESS: Thank you.

8 (The witness left the stand.)

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

10 (Discussion off the record.)

11 HEARING OFFICER KNITTLE: Okay. We will take a lunch

12 recess and be back at 1:00.

13 (Whereupon a lunch recess was taken from 12:05  
14 p.m. to 1:05 p.m.)

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1 A F T E R N O O N S E S S I O N

2 (November 29, 2000; 1:05 p.m.)

3 HEARING OFFICER KNITTLE: All right. We are back on the  
4 record after the lunch recess.

5 Mr. Layman, would you call your next witness.

6 MR. LAYMAN: The State would like to call Marie Mealman to  
7 the stand.

8 HEARING OFFICER KNITTLE: Ma'am, there is really no stand,  
9 but if you could have a seat over here. The court reporter will  
10 swear you in.

11 (Whereupon the witness was sworn by the Notary  
12 Public.)

13 HEARING OFFICER KNITTLE: All right. Mr. Layman.

14 MR. LAYMAN: Thank you.

15 M A R I E M E A L M A N,  
16 having been first duly sworn by the Notary Public, saith as  
17 follows:

18 DIRECT EXAMINATION

19 BY MR. LAYMAN:

20 Q. Could you state your full name for the record, please.

21 A. Marie E. Mealman.

22 Q. And with whom are you currently employed?

23 A. The Illinois Environmental Protection Agency.

24 Q. Could you tell us what part of the Agency you are

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1 employed with?

2 A. The Bureau of Air.

3 Q. Is there a section that you are employed with?

4 A. Compliance and systems management.

5 Q. How long have you been employed in that current  
6 position?

7 A. A year and a half.

8 Q. Did you work for the Agency prior to that period of  
9 time?

10 A. No, I worked for the State but not that Agency.

11 Q. Okay. Could you describe for us today what your current  
12 job responsibilities for CASM?

13 A. Sending out, receiving, data entry, pulling, filing,  
14 just annual emission reports in general.

15 Q. Okay. So you are familiar, then, with the annual  
16 emission report program?

17 A. Uh-huh.

18 Q. Have you been involved in that capacity with the annual  
19 emission report program since you started work for CASM?

20 A. Since day one.

21 Q. Okay. Could you give us a little bit of an idea of what  
22 happens whenever an annual emission report is submitted to the  
23 Agency? Who receives it within the Agency?

24 MR. BOYD: Just objection to the time frame. Do you mean

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1 now?

2 MR. LAYMAN: Right.

3 THE WITNESS: It comes in. They stamp it as date received.  
4 They go to me. I enter the date that was stamped on it as  
5 received. Then I set it aside and then we do data entry  
6 immediately on the shorter ones, and then within a few months we  
7 try to get all of the data from the reports into the computer  
8 system.

9 Q. (By Mr. Layman) Okay. Do you do that?

10 A. I do or they hire data entry temporaries to do that.

11 Q. What happens to an annual emission report once you log  
12 it into the data entry system?

13 A. It is filed into the drawer within the office for two  
14 years proceeding, like 1998 and 1999.

15 Q. Do you know where those files are kept?

16 A. Yes, right within CASM.

17 Q. Okay. Within the office?

18 A. Yes, that area itself.

19 Q. Okay. So if they are kept there for a period of two  
20 years, what happens after that period of time lapses?

21 A. 1998 to 1999 would be kept there. 1997 and 1996 are in  
22 the room right behind us, in the next room. And then after that  
23 they are in the BOA storage room, which is locked.

24 Q. Where is the BOA storage room?

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1 A. Down the hall from our offices.

2 Q. Okay. Can you tell us generally who has access to  
3 annual emission reports that are once logged in and then later  
4 kept?

5 A. The 1996 through 1999, pretty much everyone in the  
6 office area has access to it. Prior to that, I have to go to my  
7 superior to get a key to get into there.

8 Q. Okay. For the older annual emission reports, is there a  
9 process or a procedure for someone who wants -- for someone

10 within the Agency who wants to get access to an annual emission  
11 report?

12 A. They usually call me or e-mail me and see if I can get  
13 it for them, and then I will go get the key from Mr. Asermeyer  
14 (spelled phonetically) and go get it.

15 Q. Okay. You mentioned the -- after the two years that are  
16 kept within the area, the office area by CASM, for a subsequent  
17 two year period they are kept in a room adjacent to CASM?

18 A. Yes.

19 Q. Is that room secured?

20 A. No.

21 Q. Is it in a room by itself?

22 A. It is in a room by itself. I mean, the door is not  
23 locked.

24 Q. Okay. What about the older annual emission reports?

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1 Are they kept in a storage area?

2 A. They are kept in a storage area, yes, and that room is  
3 locked.

4 Q. Okay. Those are secured. Okay. Besides being retained  
5 by CASM, are there any -- to your knowledge, are there any copies  
6 routinely made of an annual emission report that would find their  
7 way somewhere else in the Agency?

8 A. Not unless -- I think FOIA might come up and copy them

9 if they get a FOIA request. They don't take them out. They just  
10 copy them and take whatever they copy.

11 Q. So any copies that they would make would be from the  
12 original documents that you logged in and have stored in CASM?

13 A. Uh-huh.

14 Q. Okay. Are you familiar with any procedures regarding  
15 the storage or retention of annual emission reports that may have  
16 been employed by the Agency prior to your employment?

17 A. Pardon me?

18 Q. Are you aware of any other procedures that may have been  
19 in place before you came to work?

20 A. No. I know they tried to microfilm it one time, but  
21 that went by the wayside.

22 Q. Why is that? Do you know?

23 A. I have no idea. We are trying to do that again.

24 Q. Okay. Other than that, though, there are no retention

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1 procedures or storage procedures or anything that were different  
2 before you started work than --

3 A. Not that I am aware of.

4 MR. BOYD: Again, I am just going to make an objection in  
5 terms of lack of foundation, but she said that she was not aware  
6 of it and that's fine.

7 MR. LAYMAN: Okay. That is all I was asking.

8 MR. BOYD: If I may, Mr. Knittle, if you could instruct the

9 witness to wait until Mr. Layman finishes the question to  
10 answer --

11 THE WITNESS: Oh, okay.

12 MR. BOYD: -- because I may interpose an objection if I  
13 have one.

14 HEARING OFFICER KNITTLE: Please try to do that, ma'am.

15 THE WITNESS: Okay.

16 MR. LAYMAN: Just for the record, we do have her response  
17 entered on the record, correct?

18 HEARING OFFICER KNITTLE: Right.

19 MR. LAYMAN: Okay.

20 HEARING OFFICER KNITTLE: You got that she said that she  
21 was not aware of any?

22 THE COURT REPORTER: Yes.

23 MR. LAYMAN: Okay. Thank you.

24 Q. (By Mr. Layman) Do you recall, Ms. Mealman, me asking

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1 you, some time ago, to retrieve annual emission reports for  
2 Panhandle Eastern's Glenarm facility?

3 A. Yes.

4 Q. Do you recall the time frame in which I made that  
5 request?

6 A. You mean for the years?

7 Q. No, I mean just when I asked you to retrieve annual



8 emission reports for the Glenarm facility, do you recall --

9 A. Probably about a month ago.

10 Q. I am sorry?

11 A. Approximately about a month ago.

12 Q. Okay. Do you recall the time period of annual emission  
13 reports that I was interested in when I made that request?

14 A. 1992 through 1999.

15 Q. Okay. Were you able to obtain those documents?

16 A. I obtained all but 1993. I couldn't locate it.

17 Q. Okay. Again, just for the record, where did you obtain  
18 those particular annual emission reports that you retrieved for  
19 me?

20 A. 1998 and 1999 are within our office that we keep. For  
21 1997 and 1996, in the room behind CASM.

22 Q. Okay.

23 A. And the other years out of the BOA storage room.

24 Q. Okay. Again, those documents that you retrieved were

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1 the original annual emission reports and not copies; is that  
2 correct?

3 A. Yes.

4 Q. Okay. Do you recall whether I asked you more recently  
5 to identify or review one of the annual emission reports that you  
6 retrieved for me?

7 A. Yes, this morning.

8 Q. Okay. What did I have you look at, do you recall?

9 A. Just to see if they were the originals.

10 Q. What annual emission reports specifically, do you  
11 remember?

12 A. 1994, I think.

13 Q. I would like to call the witnesses attention to -- well,  
14 strike that.

15 Let me ask this question first. Do you recall what the  
16 document consisted of that I had you look at?

17 MR. BOYD: Objection in terms of the time frame. Do you  
18 mean this morning?

19 MR. LAYMAN: Yes, this morning.

20 THE WITNESS: Yes.

21 Q. (By Mr. Layman) What do you recall about the 1994 annual  
22 emission report that I showed you?

23 A. That it was a short report.

24 Q. You are familiar with short report forms for annual

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1 emission reports?

2 A. Yes.

3 Q. What is your understanding of the difference between a  
4 short form and a long form?

5 A. A short form consists of the source data. The second  
6 page is like the emission summary. The third page is permit.

7 The fourth page is their inventory. And in the long report the  
8 inventory is broke down.

9 Q. Okay. I would like to call the witness' attention to  
10 Stipulated Hearing Exhibit Number 11. I believe it is right  
11 here.

12 A. Okay.

13 Q. Could you identify that document, please?

14 A. It is a cover sheet for Panhandle Eastern Pipe Line.

15 Q. Okay. Can you identify the information contained on the  
16 other pages of this exhibit?

17 A. Yes. The first page is the source data page. It gives  
18 the facility location, where they want their mail and  
19 correspondence, and their signature and date.

20 Q. Okay. Page two, then?

21 A. Is their emission report for the company for the year of  
22 1994.

23 Q. Okay. And what is page three?

24 A. Their operating permit.

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1 Q. Is this an accurate copy of the original 1994 annual  
2 emission report that you reviewed for me this morning?

3 A. Yes.

4 Q. Okay. I would like to call the witness' attention to  
5 Panhandle Exhibit Number 14.

6 MR. LAYMAN: I will have to look for it.

7 HEARING OFFICER KNITTLE: The early ones of Panhandle are  
8 all clipped together.

9 MR. LAYMAN: No, it is not there. Well, I can just have  
10 her look at my copy if there is no objection.

11 MR. BOYD: As long as she identifies it, Rob --

12 MR. LAYMAN: I am sorry?

13 MR. BOYD: -- in terms of Bates numbers.

14 MR. LAYMAN: What is that?

15 MR. BOYD: If she identifies it in terms of the Bates  
16 numbers, I would have no objection.

17 MR. LAYMAN: Okay.

18 MR. BOYD: To make sure it is the same one.

19 MR. LAYMAN: Okay.

20 Q. (By Mr. Layman) Could you identify the first page of  
21 Panhandle Exhibit Number 14, specifically identified as Pan  
22 01321?

23 A. You mean here?

24 Q. Yes, can you just identify that?

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1 A. It is the cover sheet for Panhandle.

2 Q. Is that the same --

3 A. That is the same that was on this, yes.

4 Q. Okay. Could you identify for us the second sheet that  
5 is identified as Pan 01322?

6 A. It is their emission sheet for 1994.  
7 Q. Okay. Have you ever --  
8 A. Their --  
9 Q. I am sorry?  
10 A. Their emission summaries for 1994.  
11 Q. Have you ever seen that document before?  
12 A. No. I need glasses to read it.  
13 Q. Was it attached or made a part of the original 1994  
14 annual emission report that you reviewed for me earlier today?  
15 A. No, not that I could find.  
16 MR. LAYMAN: If I may have just a moment.  
17 HEARING OFFICER KNITTLE: Yes.  
18 MR. LAYMAN: Okay. We have nothing further.  
19 HEARING OFFICER KNITTLE: Mr. Boyd?  
20 MR. BOYD: I have just a few.  
21 CROSS EXAMINATION  
22 BY MR. BOYD:  
23 Q. Is it Mealman?  
24 A. Mealman.

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1 Q. Ms. Mealman, you were not with the IEPA in May of 1995;  
2 isn't that right?  
3 A. Right.  
4 Q. Okay. I will refer you to Panhandle Exhibit Number 14  
5 for just a minute, both to Panhandle Exhibit Number 14 and the

6 Stipulated Hearing Exhibit Number 11. You were not at the  
7 Agency, therefore, when this document was received by the Agency;  
8 is that right?

9 A. Right.

10 Q. So you were not involved in reviewing this document when  
11 it was received and inputting the information into the computer  
12 at that time; is that right?

13 A. Right.

14 Q. In fact, you don't have any information, as you sit here  
15 today, of what was the sent by Panhandle with its annual emission  
16 report, do you?

17 A. Only what I could find in the files.

18 Q. Okay. You don't have information on what the Agency  
19 actually received in 1995?

20 A. Only what is in the files or in the database.

21 Q. You are assuming what was in the files was what the  
22 Agency received; isn't that right?

23 A. Right.

24 Q. But you don't know, for instance, whether somebody

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1 between the time it was received by the Agency and the time you  
2 looked at it this morning could have taken off the Pan 1322,  
3 which is the extra page in Panhandle Exhibit Number 14; is that  
4 right?

5 A. Right. I would have no way of knowing that.

6 Q. There are other people besides yourself who would have  
7 access to these documents before this morning; isn't that right?

8 A. Yes.

9 Q. In fact, someone from the permit section could have had  
10 access to those documents, as well?

11 A. Yes, if they had access to the key, the storage key.

12 Q. Somebody from the field operations section could have  
13 had access to the documents, too; isn't that right?

14 A. If they had the key to the room.

15 Q. Now, you told Mr. Layman that -- strike that. I believe  
16 you told Mr. Layman that you responded to his request to look at  
17 the 1992 and the 1999 emission reports about a month ago; is that  
18 right?

19 A. That's when he asked me to retrieve them.

20 Q. Okay. There was a hearing in this matter in September.  
21 Do you understand that Mr. Layman asked you to retrieve those  
22 documents after the hearing in September?

23 A. I don't know what the time frame actually was.

24 MR. BOYD: Okay. That's all I have.

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1 HEARING OFFICER KNITTLE: Mr. Layman, any redirect?

2 MR. LAYMAN: No, we have no redirect.

3 HEARING OFFICER KNITTLE: All right. Thank you, ma'am.

4 You may step down.

5 MR. BOYD: Thank you.  
6 THE WITNESS: Thank you.  
7 (The witness left the stand.)  
8 HEARING OFFICER KNITTLE: All right. Ms. Carter or Mr.  
9 Layman?  
10 MS. CARTER: Ms. Carter.  
11 HEARING OFFICER KNITTLE: Okay. Your next witness.  
12 MS. CARTER: Thank you. The People call Mr. Dave Kolaz to  
13 the stand.  
14 HEARING OFFICER KNITTLE: Kolaz?  
15 MS. CARTER: Kolaz. It is spelled K-O-L-A-Z.  
16 HEARING OFFICER KNITTLE: All right. Mr. Kolaz, could you  
17 come on up here, please, and have the seat recently vacated.  
18 THE WITNESS: All right.  
19 HEARING OFFICER KNITTLE: Could you swear him in, please,  
20 Darlene.  
21 (Whereupon the witness was sworn by the Notary  
22 Public.)  
23 HEARING OFFICER KNITTLE: Ms. Carter.  
24 MS. CARTER: Thank you.

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1 D A V I D K O L A Z,  
2 having been first duly sworn by the Notary Public, saith as  
3 follows:



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DIRECT EXAMINATION

BY MS. CARTER:

Q. Would you please state your name for the record.

A. My name is David Kolaz.

Q. Can you tell me a little bit about your post high school education?

A. I attended the University of Illinois in Champaign from 1967 to 1971. I obtained a bachelor of science degree in aeronautical and astronautical engineering. And then in approximately 1982 I obtained a master of science degree in environmental engineering from Southern Illinois University.

Q. Okay. With whom are you currently employed?

A. The Illinois Environmental Protection Agency.

Q. How long have you been employed by the Illinois EPA?

A. I have been employed since June of 1971.

Q. Mr. Kolaz, what is your current position with the Illinois EPA?

A. At this time I am Chief of the Bureau of Air.

Q. How long have you held that position?

A. Since June of this year.

Q. Okay. What was your position prior to being Bureau

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1 Chief of the Bureau of Air?

2 A. Prior to that time I was the manager of the compliance  
3 and systems management section.

4 Q. What time frame are you talking about when you were  
5 manager of the compliance and systems management section?

6 A. From approximately 1991 or 1992 until my appointment as  
7 the Bureau Chief this past June.

8 Q. Can you tell me a little bit about your duties as the  
9 manager of the compliance and systems management section?

10 A. Yes. Well, my responsibility was to plan, manage, and  
11 supervise the staff in the section. And the section, really, I  
12 would describe it as functioned in three areas. We were  
13 responsible for all of the computerization and office automation  
14 for the Bureau of Air. So we had computer staff that could  
15 provide assistance and maintain the computer network that we use  
16 to store our information and to conduct our day-to-day office  
17 work.

18 There was also a group of people involved in compiling the  
19 emission inventory for emission sources that we monitor and track  
20 in the State. This would include the annual emission reporting  
21 system and also our seasonal emission reports that now come from  
22 our emission trading program.

23 The third element, the third component of the section was  
24 involved in following up on air pollution violations that

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1 occurred in the State, primarily by implementing the Section 31  
2 provisions of the Environmental Protection Act, but also through

3 other means of noncompliance advisory letters. But generally the  
4 concept being that we would advise people that they were  
5 potentially in violation of the air pollution laws of the State,  
6 and then we would take whatever action was necessary to bring  
7 them into compliance and to resolve that violation.

8 Q. Okay. I believe you indicated that one of the three  
9 responsibilities of CASM or, excuse me, the compliance and  
10 systems management section, during that time period dealt with  
11 the emission inventory system. Can you just tell me a little bit  
12 in detail what duties CASM had pertaining to this emission  
13 inventory system?

14 A. Yes. The one element was to actually maintain the  
15 computer software in the system itself that allowed the  
16 information to be stored and easily retrieved and analyzed in  
17 various ways, such as determining emission trends over a number  
18 of years.

19 The second component had to do with receiving the annual  
20 emission reports that are required to be filed by industrial  
21 sources, according to rule 201.302 of the Illinois Pollution  
22 Control Board rules. That involved, first of all, in January of  
23 each year sending out forms and instruction booklets to these  
24 approximately 8,000 sources and then receiving the reports by

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1 their deadline of May 1st and entering that information into the  
2 computer system.

3           The other element that has -- that is a fairly recent  
4 development of the last two years is that we also -- that group  
5 also receives seasonal emission reports that are filed by  
6 approximately 180 sources that are part of our emissions trading  
7 program that provides the volatile organic material emissions  
8 during the ozone trading seasons months of May through September.  
9 And that's entered into the inventory system.

10          Q.    Okay.

11          A.    And the last part that I need to be sure to mention is  
12 that a recent development of the last 18 months to two years is  
13 that that group is now responsible for entering information from  
14 permit applications and permits into the inventory system. That  
15 is a function that was previously the responsibility of the  
16 permit section and has now become the responsibility of the staff  
17 of the compliance and systems management section.

18          Q.    When did this latter -- when was the time frame that  
19 this latter responsibility occurred, do you know specifically?

20          A.    I would say it was in 1998.

21          Q.    Okay. Prior to your position as the manager of the  
22 compliance and systems management section, what did you do for  
23 the Illinois EPA at that time?

24          A.    Well, prior to that time I was manager of the air

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1 systems management section, which was two-thirds of what became

2 the compliance and systems management section, and involved  
3 everything except the compliance part. It involved the emission  
4 inventory, and that included the annual emission reporting,  
5 development of that rule at that time, and maintenance of all of  
6 the office automation programs.

7 Q. Okay. From what time period were you the manager of the  
8 air systems management section?

9 A. I would think that would have been from 1988 to 1992.

10 Q. And prior to this time period of 1988 to 1992, what  
11 position did you hold within the Illinois EPA?

12 A. For the 16 years prior to that time, I was manager of  
13 the air monitoring section.

14 Q. What were your duties as the manager of the air  
15 monitoring section?

16 A. In that capacity I was responsible for planning and  
17 managing and overseeing all of our operations that were directed  
18 toward measuring the quality of the air in Illinois, operating  
19 the air monitoring instrumentation, acquiring the data, storing  
20 the data in a usable format, and then also interpreting the data  
21 and providing reports that were useful to staff in our agency and  
22 the public in general.

23 Q. Okay. Can you please describe for me the annual  
24 emission reporting that was required of the regulated community

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1 when you first began as manager of the air systems management

2 section?

3 A. At that time the annual emission report that was filed  
4 was required, again, by the Rule 201.302, and what was filed was  
5 a one sheet report by industries that simply stated whether the  
6 emissions at the facility went up, went down, or stayed the same.  
7 And that was what was in effect when I was in the air systems  
8 management section.

9 Q. Did a change subsequently take place in terms of the  
10 requirements in the submittal of annual emission reports?

11 A. Yes, it did.

12 Q. When did that take place?

13 A. Well, it took place as a direct result of the  
14 requirements of the 1990 Clean Air Act Amendments. And while  
15 that amendment did not specifically require the level of annual  
16 emission reporting that we subsequently developed, it did require  
17 detailed reporting from certain industries in ozone nonattainment  
18 areas. And we took that opportunity to evaluate our entire  
19 annual emission reporting process at that time. And in  
20 discussing and negotiating this matter with industry, decided to  
21 implement a much more detailed annual emission reporting system  
22 that would not only meet the Clean Air Act requirements of 1990,  
23 but we felt would provide much better information that would be  
24 much more in line with what we felt Rule 201.302 really

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1 anticipated.

2 Q. Okay. You should see a book in front of you, Mr. Kolaz.  
3 It says on the front Stipulated Hearing Exhibits. Do you see  
4 that, sir?

5 A. Yes, I do.

6 Q. Okay. If I could just direct your attention to the tab  
7 marked nine for Stipulated Hearing Exhibit Number 9, and have you  
8 turn to that. Are you there, sir?

9 A. Yes.

10 Q. Can you identify this document for me?

11 A. Yes, this exhibit consists of three pages that appear to  
12 be the first three pages of our annual emission report that is  
13 common to everyone, a common set of forms required by everyone  
14 who files an annual emission report.

15 Q. Okay. If I could just direct your attention to page  
16 two, sir. And there is the term that is noted on page two of  
17 allowable emissions. What is the purpose of the Illinois EPA's  
18 reference to allowable emissions in the annual emission report  
19 form?

20 A. Well, let me answer the question in this fashion. I was  
21 involved in helping to develop this form and implement the  
22 program, our first reporting year being 1992. The original idea  
23 was to provide some benchmark that people could use to determine  
24 how their actual emissions might compare to a number that could

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1 represent their allowable emissions.

2           The reason I am being nebulous is that at the time that we  
3 did that, our computer system did not necessarily have the  
4 allowable emissions for all of the facilities in there. And we  
5 knew that that number would not necessarily represent allowable  
6 emissions. For that reason in our description to facilities in  
7 guiding them in filling out this report, we did note that we did  
8 not require facilities to certify the accuracy of that column,  
9 whereas they are required to certify the accuracy of their number  
10 and much of the other information that is in there regarding  
11 their facility.

12           As we did conduct a number of workshops, we did point out  
13 that this number would have varying degrees of accuracy. As one  
14 example, for most facilities in the State, there is no  
15 restriction for nitrogen oxide emissions. There are no hourly  
16 limits. I mean, this could change in certain instances. I mean,  
17 there could be people who are limited in how much emissions they  
18 could put out. But for most people, for example, who have a fuel  
19 combustion source, there will be a value for the nitrogen oxide  
20 limit, allowable emissions there, but there is actually no limit  
21 for the facility.

22           Q.    Okay.

23           A.    So my point being that it has proven to be a term that  
24 possibly causes greater confusion and we have actually considered



1 deleting that over the last couple of years. I will add, just as  
2 I think a further point of clarification, for our own use of  
3 that, we have never used that number as a compliance tool or even  
4 as a compliance screening tool to where we take any action or  
5 make any decisions on the basis of whether or not the actual  
6 emissions are greater than or less than the allowable emissions.

7 Q. So, sir, what does the Illinois EPA use the allowable  
8 emissions for?

9 A. Well, we actually don't use them.

10 Q. Okay.

11 A. That is the reason why we have considered making the  
12 programming changes, a little bit of a programming change to  
13 remove that.

14 MS. CARTER: Okay. If I could have just one moment, Mr.  
15 Hearing officer.

16 HEARING OFFICER KNITTLE: Yes.

17 MS. CARTER: Mr. Hearing Officer, I have no further  
18 questions for this witness.

19 MR. BOYD: May I have a couple of minutes?

20 HEARING OFFICER KNITTLE: Sure. Let's go off the record  
21 for a few minutes.

22 (Discussion off the record.)

23 HEARING OFFICER KNITTLE: Back on the record. Mr. Boyd,  
24 you said that you wanted the last answer read back?



1 tons. So I can't think of any general systematic way in which we  
2 have used that allowable emissions number.

3 Q. Well, you mentioned earlier that in most cases the  
4 facility would not have a specific nitrogen oxide limit for their  
5 combustion source; is that right?

6 A. In most cases, that's correct.

7 Q. In some cases they could have a federally enforceable  
8 limit; is that right?

9 A. That's correct.

10 Q. Is there ever a situation where you would look at the  
11 allowable NOx emissions and compare them to whether a facility  
12 reported on as actual emissions?

13 A. I do not recall any instances where we have done that.

14 Q. Even in a situation where the facility reported actual  
15 emissions that grossly exceeded the listed allowable emissions?

16 A. Yes, as a general matter, that's correct.

17 MR. BOYD: Okay. That's all I have.

18 HEARING OFFICER KNITTLE: Mr. Layman?

19 MS. CARTER: It is Ms. Carter.

20 HEARING OFFICER KNITTLE: My apologies, Ms. Carter.

21 MS. CARTER: No, I just wanted --

22 MR. BOYD: He looks like Mr. Layman.

23 (Laughter.)

24 MS. CARTER: What?

1 MR. BOYD: He does, I said. Not you. I said he does.  
2 (Laughter.)  
3 HEARING OFFICER KNITTLE: Ms. Carter, do you have any  
4 further questions on redirect?  
5 MS. CARTER: No, not after these disparaging comments.  
6 (Laughter.)  
7 HEARING OFFICER KNITTLE: Okay. Nothing further?  
8 MS. CARTER: No, nothing further, Mr. Knittle.  
9 HEARING OFFICER KNITTLE: Okay. Thank you, sir. You may  
10 step down.  
11 MR. BOYD: Thank you.  
12 (The witness left the stand.)  
13 HEARING OFFICER KNITTLE: Let's go off the record.  
14 (Discussion off the record.)  
15 HEARING OFFICER KNITTLE: We will take a short break.  
16 (Whereupon a short recess was taken.)  
17 HEARING OFFICER KNITTLE: All right. We are back on the  
18 record after a short recess. We are commencing with the People's  
19 rebuttal case.  
20 Mr. Layman, your next witness is already on the witness  
21 stand?  
22 MR. LAYMAN: Yes.  
23 HEARING OFFICER KNITTLE: Could you call him formally,  
24 please.

1 MR. LAYMAN: I will have Ms. Carter do that.

2 HEARING OFFICER KNITTLE: Okay. Ms. Carter, it is still  
3 you, huh?

4 MS. CARTER: Yes, it is, Mr. Hearing Officer.

5 HEARING OFFICER KNITTLE: All right.

6 MS. CARTER: The People call Dr. John Nosari.

7 HEARING OFFICER KNITTLE: Dr. Nosari, we are going to have  
8 the court reporter swear you in.

9 THE WITNESS: Okay.

10 (Whereupon the witness was sworn by the Notary  
11 Public.)

12 HEARING OFFICER KNITTLE: Ms. Carter.

13 MS. CARTER: Thank you.

14 J O H N N O S A R I,  
15 having been first duly sworn by the Notary Public, saith as  
16 follows:

17 DIRECT EXAMINATION

18 BY MS. CARTER:

19 Q. Please state your name for the record.

20 A. John Stanley Nosari, spelled N-O-S-A-R-I.

21 Q. Do you recall where you were on September the 22nd of  
22 2000?

23 A. Yes.

24 Q. Where were you?

1 A. I was here.

2 Q. What were you doing, sir?

3 A. Listening to Jasbinder Singh's testimony.

4 Q. Could you hear all of Mr. Singh's testimony?

5 A. Yes.

6 Q. Did you leave the room during the course of Mr. Singh's  
7 testimony?

8 A. I don't think so.

9 Q. Okay.

10 A. If I did, it was for a brief moment.

11 Q. All right. Can you please define for me the cost of  
12 debt in the context of a weighted average cost of capital  
13 calculation?

14 A. Well, the cost of debt in the context of the weighted  
15 average cost of capital is the cost of long-term debt, and it is  
16 usually calculated in terms of after the tax, after-taxes. In  
17 other words, let's say, for example, that a company pays ten  
18 percent interest on some long-term debt and the tax rate is 40  
19 percent, then the after-tax cost of debt would be six percent.  
20 You have ten percent, less 40 percent of that, which is four  
21 percent, giving the weighted average cost of debt after-taxes of  
22 six percent, and that is what is used in the weighted average  
23 cost of capital.

24 Q. Okay. Thank you. Can you please define for me

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1 short-term debt?

2 A. Well, short-term debt in the context of the weighted  
3 average cost of capital, in the terms of a company managing its  
4 debt, which is how we use the weighted average cost of capital,  
5 consists of basically three components. The first component is  
6 what we would call the interest free or the cost free amount of  
7 short-term debt. And this consists of the accounts payable and  
8 other payables that arise in the normal course of business.

9 They would relate to, for example, bank purchases,  
10 acquiring consumable expenses that are going to be used. And  
11 normally you buy that from a vendor who gives you terms like two  
12 percent net 30, meaning that they give it to you for 30 days  
13 without charging you any interest, or if you pay it within ten  
14 days you would actually get a discount. So there is no cost  
15 associated to that type of debt in terms of the weighted average  
16 cost of capital.

17 The second part of short-term debt would be short-term debt  
18 that is financed and usually through a bank or commercial paper  
19 where a company may borrow on a short term. By short term I mean  
20 less than a year a certain amount of debt and it usually carries  
21 with it an interest expense, a cost. And usually financial  
22 institutions that lend this money and also borrowers, what they  
23 are trying to do in the course of managing their finances is  
24 borrow short-term needs with short-term debt.

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1           In other words, let's say that a company needs some  
2 additional cash for 90 days. They would borrow under this basis.  
3 They would go to a bank and borrow money for 90 days at a set  
4 rate and then in 90 days it would be paid back. We refer to  
5 these in finance as a self-liquidating loan. In other words,  
6 there is a short-term need, there is a build up of inventory, for  
7 example, and then that inventory is sold off and then when it is  
8 sold off that short-term debt is paid.

9           Okay. The third component of short-term debt is the  
10 long-term portion of -- I am sorry. Let me correct myself. The  
11 short-term portion of long-term debt. What this is, let's say,  
12 for example, that a company issued a ten year bond and this is  
13 the ninth year of that bond. Let's say the fiscal year ends  
14 December 31st, and these bonds have to be paid the following  
15 March 31st. Well, in accounting terms these now become  
16 short-term liabilities because they have to be paid in the next  
17 accounting period. Okay. And so this is what we would refer to  
18 as long-term debt that is in the current portion or is a current  
19 liability. Okay. Those would be the three components that you  
20 would find in short-term -- or in current liabilities.

21           Q. Okay. Thank you, Dr. Nosari. Did you include the  
22 short-term debt financed by terms less than one year in your  
23 calculation of short-term debt?

24           A. I included that part of the long-term debt that was



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1 classified as current liabilities. I did not include the part of  
2 short-term debt that was financed, that had a cross to it, namely  
3 because it was not available. Of course, I did not include the  
4 accounts payable or the short-term debt that had no cost.

5 Q. Okay. Do you recall if Mr. Singh discussed this in the  
6 testimony that he provided on September 22nd of 2000?

7 A. Yes, he did.

8 Q. Do you recall what Mr. Singh indicated?

9 A. Yes. He indicated that my calculation was in error  
10 because I did not include the short-term portion -- well, it did  
11 not include that part of the short-term debt that was financed  
12 for a short period of time, in other words, the self-liquidating  
13 type of loans that Panhandle Energy made. Because I had included  
14 the short-term portion of long-term debt. And consequently he  
15 indicated that my cost of debt would be different than his, and  
16 he indicated that it would not be a material difference.

17 Q. When you say the term material difference, can you tell  
18 me what you mean by that?

19 A. Well, that's an accounting term. Material difference  
20 means that it would not have an impact in somebody's decision as  
21 to whether to invest in the company either with terms of  
22 investing in the stock or investing in the bonds or evaluating  
23 the company.

24 In this particular case, I think he was referring to the

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1 differences in his calculations and the differences in mine would  
2 be slightly different because I did not include the  
3 self-liquidating portion of the short-term debt. In other words,  
4 that part of the short-term debt that was financed originally for  
5 less than 12 months.

6 MR. BOYD: Just let me object to the extent that he is  
7 testifying as to what he thinks Mr. Singh said. The record  
8 certainly will speak for itself in that regard.

9 HEARING OFFICER KNITTLE: That is noted.

10 MS. CARTER: May I continue?

11 HEARING OFFICER KNITTLE: Yes, you may.

12 Q. (By Ms. Carter) Did you agree with the statement made by  
13 Mr. Singh at the time of the hearing?

14 A. Yes, I did.

15 Q. Why so?

16 A. Because I did not have available the short-term portion,  
17 that particular portion of short-term debt that we are talking  
18 about and, thus, I did not include it in the calculation of the  
19 cost of debt. By not including it, my percentage of cost of debt  
20 would have been slightly higher than his, but not materially,  
21 which is what he said.

22 Q. Again, I apologize if you previously answered this  
23 question. But why didn't you include the principal amount of the

24 short-term debt in your calculations?

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1 A. Well, the main reason I didn't include it is because it  
2 was not available. Now, the reason it is not available is  
3 generally accepted accounting principles do not require it to be  
4 disclosed. The reason they don't require it to be disclosed is  
5 because the general consensus is it is not material. It is not  
6 important.

7 Q. Okay. Subsequent to Mr. Singh's discussions that you  
8 did not include the short-term debt in your calculation, did you  
9 review your calculations of the cost of debt in relation to Mr.  
10 Singh's calculations of the cost of debt?

11 A. Yes, I did.

12 Q. Okay. And did you make a determination based on his  
13 review?

14 A. Yes. In fact, I made a year by year comparison of his  
15 cost of debt and mine, and I am talking here this cost of debt in  
16 terms of before taxes and also after taxes. And what I  
17 discovered is that there was a significant difference. At the  
18 high end the difference was 1.8 percent. At the low end, it was  
19 I think about -- well, it was about .7 percent. Then the  
20 after-tax affect of that, depends, of course, upon the percentage  
21 that the -- the percentage of total equity that is made up by  
22 debt and the end result is a difference in cost of capital, the  
23 weighted average cost of capital, of about probably .3 percent to

24 .8 percent, which would, in my opinion, be significantly greater

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1 than what you would expect it to be, caused by the difference  
2 that he was talking about. In other words, the differences in my  
3 not including the self-liquidating portion of current debt.

4 Q. Okay. Were you able to replicate Mr. Singh's  
5 calculations of the cost of debt?

6 A. I tried to do that. In his testimony he indicated he  
7 used Moody's Public Utility Handbook in calculating the cost of  
8 debt. In fact, he said that he used Moody's Public Utility  
9 Handbook to calculate the cost of long-term debt. So I tried to  
10 do that.

11 Q. Were you able to do that sir?

12 A. No, I wasn't.

13 Q. And why weren't you able to replicate Mr. Singh's  
14 calculations pertaining to the interest expense for the long-term  
15 debt?

16 A. Well, basically the calculation of that has two  
17 components. One is, of course, the principal amount and the  
18 second part is the interest expense. Now, in going to Moody's  
19 for 1987 I could replicate the principal dollar amount that was  
20 outstanding, in other words, the amount of the long-term debt.  
21 The problem was I couldn't calculate the appropriate interest  
22 expense.

23           The reason for that was Pan Energy or Panhandle Eastern --  
24 well, there was a couple of reasons. The major reason was that

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1 they had two issues, two major bond issues. One was their own  
2 and the other was Trunkline. They had a variable -- I wouldn't  
3 say that they had a variable interest rate, but they described in  
4 the footnotes these issues as having more than one interest rate.  
5 Thus, I could not, from the notes to the financial statements or  
6 the notes that accompany, you know, the financial statement in  
7 Moody's, I could not then calculate the interest expense related  
8 to the long-term debt, as would have been required to replicate  
9 Mr. Singh's calculation.

10           There is another schedule of issues outstanding, and it did  
11 not tie into the financial statements. So from my perspective it  
12 was impossible for me to calculate the interest expense related  
13 to the long-term debt. What Mr. Singh indicated was that he had  
14 calculated the long-term interest expense, which is what he had  
15 used in his schedule that replicated my schedule, the cost of  
16 debt. Okay. The cost -- yes, the cost of debt.

17           So the two issues were -- one issue was Trunkline, and they  
18 had 300 -- I think it is a \$360 million issue, and it had an  
19 interest rate -- they were revenue bonds, and they had an  
20 interest rate of seven and a half percent to 14 percent. So,  
21 obviously, that would be a material significant difference in  
22 terms of what the lowest would be and what the highest would be.

23 And then Panhandle itself had a major issue. I think it was  
24 between 400 and something million that also had a variable

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1 interest. Well, I won't say a variable interest rate, but the  
2 interest rate was stated in terms of a range and, thus, it was  
3 difficult to calculate that.

4 Q. Okay. Thank you. Since you could not replicate Mr.  
5 Singh's calculations at the cost of debt, did this indicate  
6 anything to you?

7 A. Well, it would indicate to me that he may not have  
8 gotten -- well, I guess it would -- I shouldn't say this. It  
9 indicates to me that it would be impossible to calculate the  
10 interest expense, the long-term interest expense of the current  
11 long-term interest expense that is outstanding from the  
12 information that was in Moody's Public Utility Manual, not only  
13 for 1987 but for a number of years after that, because these two  
14 issues were issued outstanding for at least four or five years  
15 after that, making the same -- we would have the same problem.

16 The other thing was Moody's Public Utility Manual issued --  
17 you know, had disclosed the same dollar amount of interest  
18 expense that I had, that I had used, because it came from the  
19 published financial statements. So another approach would be to  
20 eliminate from the interest expense the short-term interest  
21 expense, so that you could calculate, you know, you could

22 subtract from the \$134 million an appropriate amount to get the  
23 long-term interest expense, the amount of interest expense left  
24 over that you would classify as relating to the long-term debt.

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1 And since the information on the amount of information that would  
2 let you calculate an appropriate amount for short-term debt was  
3 not present, I could not make that calculation either.

4 Q. Okay. Thank you. How would you then characterize the  
5 ensuing difference that results between the State's and  
6 Panhandle's interest expense on long-term debt?

7 MR. BOYD: Objection. Asked and answered.

8 MS. CARTER: I don't think that he has actually answered  
9 this question. He previously testified to the calculations that  
10 he employed. But I am looking for specifics just regarding the  
11 difference between the two results.

12 HEARING OFFICER KNITTLE: It is overruled.

13 Sir, do you remember the question?

14 THE WITNESS: Could you please repeat the question?

15 Q. (By Ms. Carter) How would you characterize the  
16 difference that resulted between the State's and Panhandle's  
17 calculation of the interest expense on long-term debt then?

18 A. Well, based on the Moody's Public Utility Manual I would  
19 say is unexplainable.

20 Q. Okay. While you just indicated that the cause was  
21 unexplainable, do you have an opinion pertaining to the amount of

22 the difference between the State and Panhandle's interest expense  
23 on long-term debt?

24 A. Well, I would say -- would you repeat the question?

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1 Q. You previously just indicated the cause or what you  
2 perceived to be the cause in the difference between the two  
3 results.

4 A. Uh-huh.

5 Q. My question, though, is how would you characterize the  
6 amount of the difference between the State's results and  
7 Panhandle's results pertaining to the interest expense on the  
8 long-term debt?

9 A. I would say that the difference would not be related to  
10 my including or my excluding the short-term portion of  
11 self-liquidating debt. That the amount of difference is  
12 significantly greater than that, and that I could not -- Mr.  
13 Jasbinder indicated -- or Mr. Singh indicated that he had made  
14 his calculations from Moody's Public Utility Manual. What I am  
15 saying is that it would be impossible.

16 Q. Okay. What does this difference in the cost of debt  
17 generated by Panhandle do to the weighted average cost of capital  
18 calculation that you performed?

19 A. Well, it would significantly reduce it. I mentioned  
20 that, that the -- and the difference would be -- you know, the



21 differences for each year would be different. They would range  
22 between point -- almost .8 percent for one year to probably at  
23 least point -- no less than .4 percent.

24 Q. Okay.

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1 A. So for each year there would be a range difference  
2 between .8 and .4 percent. And this is after taxes.

3 Q. Okay. Dr. Nosari, can you tell me what is the growth  
4 rate?

5 A. Well, the growth rate relates in the -- the weighted  
6 average cost of capital model has two components, as we are aware  
7 of. It has the cost of debt and then it has the cost of equity.  
8 The cost of equity has two components. It has the dividend yield  
9 and the other component is the growth rate. The growth rate  
10 relates to the increase -- it relates to basically two things,  
11 but for the most part it relates to the increase in the price of  
12 stock over time. The other thing it relates to is the increase  
13 in dividend yield. But basically the increase in dividend yields  
14 gets thrown into the price of the stock, because as the stock  
15 pays more dividend the price of the stock goes up.

16 Now, the growth rate is important because this is the  
17 reason why people buy stock. The reason somebody buys stock --  
18 let's say that a share of stock is selling for \$40.00 and is  
19 paying a \$2.00 dividend. When somebody buys a share of stock,  
20 the reason they are buying it is they are hoping to participate

21 in the growth of the company. If we wanted a set rate of return,  
22 we would buy a bond or we would buy a CD from the bank, and we  
23 would have a set rate of return. We would be guaranteed seven  
24 percent or eight percent or five percent for the life of the

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1 investment. But in the case of a common stock, what the  
2 stockholder is hoping to do is to participate and then get a  
3 greater return on their investment by having the price of the  
4 stock go up and, thus, by making let's say this \$40.00 investment  
5 in the stock which pays -- I forgot what I said. Let's stay a  
6 \$4.00 dividend, so the dividend yield is ten percent. So what  
7 this person is hoping is that over a period of time this  
8 corporation takes some of its earnings or in some way manages to  
9 get the price of the stock to move up from \$40.00 to \$60.00 and  
10 then let's say pay a \$6.00 dividend. The original investment was  
11 \$40.00, so instead of them getting a ten percent yield on the  
12 dividend, on their original investment, they are now getting 15  
13 percent. This is what is reflected in the growth rate. That is  
14 what the growth rate is all about. So it is a major component of  
15 the weighted average cost of capital.

16 The other thing that I should mention here is that the  
17 growth rate and the cost of the company borrowing or tapping the  
18 capital market, both in terms of debt and in terms of equity, is  
19 a managed thing. This is what the chief financial officer's

20 duties are, is to minimize the cost of the company doing that and  
21 to maximize the return to the common stockholder.

22 Q. Okay. Thank you, Dr. Nosari. Can you tell me how the  
23 growth rate is generally determined?

24 A. Well, the growth rate generally determined over time is

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1 basically we take the price of the stock at one point in time and  
2 the price of the stock at another point in time and calculate the  
3 geometric growth and we will usually do that with the compound  
4 sum out of the dollar table. But it is definitely that I am  
5 looking at the price of the stock at one point in time, a set  
6 point in time, and the price of the stock at another point in  
7 time. For example, in my calculation of growth I use 12-31 --  
8 the price of the stock at 12-31-87 and the price of the stock at  
9 12-31-96. But generally speaking, when we calculate -- when we  
10 are publishing information on growth, that is how it is  
11 calculated.

12 Q. Okay. Dr. Nosari, do you have an opinion as to the  
13 appropriate time frame to determine growth in this case?

14 MR. BOYD: Objection. Asked and answered. This is  
15 certainly stuff that he covered on his direct exam, and is not  
16 really rebuttal. It is just repeating what he said before.

17 HEARING OFFICER KNITTLE: Ms. Carter, is this different  
18 than what was done on direct exam?

19 MS. CARTER: In some regards, no, Mr. Hearing Officer. I

20 will acknowledge that. What I was simply trying to do was lay  
21 the framework for some additional questions to Dr. Nosari  
22 pertaining to his opinion regarding the growth rate calculated by  
23 Mr. Singh.

24 HEARING OFFICER KNITTLE: Okay. We will give you a little

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1 bit of latitude. But in light of Dr. Nosari's time constraints  
2 and the fact that we don't want to redo testimony that we have  
3 already elicited on direct exam, I would ask you to limit that,  
4 please.

5 MS. CARTER: I will definitely do so.

6 Q. (By Ms. Carter) Do you recall the question, Dr. Nosari?

7 A. Sure.

8 Q. Okay.

9 A. My position was that the appropriate time frame of  
10 measuring the growth was December 31st of 1987 to December 31st  
11 of 1996.

12 Q. Do you have an opinion as to Mr. Singh's development of  
13 the time period that he employed to calculate growth?

14 A. I would have to review his schedule that he used.

15 Q. Okay.

16 A. But I believe he started with a 26 week weighted average  
17 or 26 week average of the price of the stock at 12-31 of 1987, I  
18 believe, and the average price of the stock for a 26 week period

19 ending September -- close to the end of September of 1996, if I  
20 recall correctly.

21 Q. Dr. Nosari, if I could just interrupt you for a second,  
22 because you are referring to Mr. Singh's report.

23 A. Right.

24 Q. It might provide you some assistance. There is a stack

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1 of documents sitting there. It is Panhandle Exhibit Number 23.  
2 It would not be in that binder, Dr. Nosari?

3 A. Oh, okay.

4 Q. Is that the document that you just referenced?

5 A. Yes, it is.

6 Q. Previously you were talking about Mr. Singh's employment  
7 of the 26 week average. Do you have an opinion regarding that?

8 A. Well, a 26 week average, if you recall, 26 weeks is one  
9 half a year. And so by using a 26 week average, that would be  
10 synonymous with giving somebody -- well, it would -- in that  
11 sense if somebody is borrowing money not at the interest -- at a  
12 risk-free rate, it would, in effect, give them the free use of  
13 the money, of the amount of money that they have for half a year  
14 interest free. For example, let's say that the risk-free rate of  
15 lending money is five percent. This company has a -- or a  
16 particular company has a risk rate of borrowing at ten percent.  
17 So their risk premium is five percent. And you take a 26 week  
18 average, in terms of calculating the debt, that would give them,

19 in essence, a two and a half percent interest break, if you  
20 follow what I am saying. What I am saying is the price of the  
21 stock moves over a 26 week period, and by taking the average  
22 price of that for 26 weeks, it has an affect of not acknowledging  
23 any rate of growth for that 26 week period.

24 Q. Okay. Do you --

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1 A. Well, I shouldn't say any growth. But it would  
2 certainly minimize the growth over that 26 week period.

3 Q. Okay. Do you have any other opinions pertaining to Mr.  
4 Singh's development of the time period in which he used to  
5 calculate growth?

6 A. Well, since -- of course, he used -- let me make sure  
7 that I am right. Yes, he used the 26 week average period for  
8 12-31-87, which gives him a starting price of \$27.05 versus the  
9 price as of 12-31-87 of \$20.25, so that is a \$6.80 difference in  
10 the beginning price of the stock which would have a significant  
11 impact on reducing the growth rate.

12 Q. Okay.

13 A. Likewise, on 09-27-96 he, first of all, ignores the last  
14 three months of 1996 and, you know -- the last three months of  
15 1996, because he -- I believe he thought, and I am just saying  
16 this is what I believe he thought, that the price of the stock  
17 started going up then according to him, based upon the pending

18 merger. So he thought it was appropriate to use the 26 week  
19 average ending 09-27-96, which is roughly at least, just in rough  
20 terms, roughly about \$12.40 less than the price at 12-31-96 of  
21 45. So both of those would have a tendency of -- well, in fact,  
22 has a tendency of reducing the growth rate that I calculated at  
23 slightly over eight percent to slightly over two percent. So I  
24 would take exception to both of those.

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1 Q. Okay.

2 A. You know, first of all, they are 26 week averages and 26  
3 week averages are not used to calculate growth. And the other  
4 thing is he ignores the last three months of 1996. And when we  
5 look at what growth is, this is what growth actually is. It is  
6 an increase in the value of stock because of action that  
7 management has taken to increase the value. Thus, he is ignoring  
8 exactly the reason why people buy stock and eliminating it from  
9 calculating the growth rate.

10 Q. Do you know what the price of Pan Energy's stock was in  
11 the remainder of 1997?

12 A. Well, it merged with Duke Energy and the high was, I  
13 believe, 56. It ranged, I think, from around 44 to 56 was the  
14 high.

15 Q. Okay. What affect does the two percent growth rate,  
16 calculated by Mr. Singh, have on the weighted average cost of  
17 capital calculated by the State?

18           A.   Well, the difference between it and mine, of course, is  
19 six percent. Now, it is not going to have a six percent impact  
20 on the weighted average cost of capital because you have to take  
21 that six percent difference and multiply that times the  
22 proportion of the total equity that it is funded by -- I am  
23 sorry. Let me rephrase. You have to take that increase in debt  
24 and multiply it times the proportion that equity makes up of the

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1 total financing of that company. So let's say, for example, that  
2 this would have an affect of a six percent difference in the cost  
3 of equity, but then if equity only made up 50 percent of the  
4 total financing of the company, the affect of that would be three  
5 percent.

6           Q.   Okay.

7           A.   Likewise, if it was -- if it made up 56 percent, in  
8 other words, if 66 percent of the total financing of the company  
9 was with equity and we had a six percent difference, like we do,  
10 then it would have a net effect of four percent.

11          Q.   Okay. Do you have an opinion pertaining to the two  
12 percent growth rate calculated by Mr. Singh?

13          A.   Yes.

14          Q.   What is that opinion?

15          A.   Well, my opinion is I think it is unrealistic.

16          Q.   Why do you say that?



17           A.    Well, because the total return on investment for the  
18 Standard & Poor's industrial surveys -- I am sorry -- the  
19 Standard & Poor's and 500 industrials, which is the 500 largest  
20 corporations traded publicly, for the period in question, 1988 to  
21 1996, had a total return on investment of 16.4 percent. Let's  
22 see. Let me think about this. Right. So if -- if we look at  
23 Pan Energy, there is something called beta, which shows the  
24 relationship between how --

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1           Q.    Can I stop you for just a moment, Dr. Nosari?

2           A.    Okay.

3           Q.    If I could just back you up for a second. You indicate  
4 that the Standard & Poor's 500 talked about a 16.4 return on  
5 investment?

6           A.    Uh-huh.

7           Q.    What exactly does that mean, then?

8           A.    Well, that means that for the market, that is the stock  
9 market that relates to the Standard & Poor's 500, which Pan  
10 Energy is one of, the stock market over this period of time, as  
11 an average for those stocks, providing a return to someone  
12 holding that stock for that period of time, 12-31-87 to 12-31-96,  
13 they earned a return of 16.4 percent.

14          Q.    How does that compare to the growth rate that you  
15 calculated?

16          A.    Well, I am not sure that -- I guess what I am saying is

17 that in terms of Pan Energy, if you look at the dividend yield,  
18 you know -- first of all, the rate of return to the investor is,  
19 in essence, the same thing that the weighted average cost of  
20 capital is to Pan Energy.

21 Q. Okay.

22 A. Okay. Because the investor is getting two things. They  
23 are getting the growth and they are getting the dividend yield.

24 Okay?

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1 Q. Okay.

2 A. So it depends on who you are talking about. In this  
3 case if we are talking about the investor, the 16.4 percent  
4 return translates to a 16.4 percent cost of equity to those 500  
5 stocks that are issued, you know, that goes 500 companies that  
6 make up the Standard & Poor's 500. If we look at the dividend  
7 yield over this period of time and deduct that from the 16.4  
8 percent, you will find that my growth rate of eight percent would  
9 slightly, I would say within a range of two to three percent,  
10 underestimate the total yield to a Pan Energy stockholder. In  
11 other words, my eight percent, if we make that calculation, would  
12 show that my eight percent is conservative.

13 Q. Okay. Thank you.

14 A. If we looked at it in terms of a two percent growth rate  
15 it would indicate that it is significantly below the 16.4

16 percent. In fact, it would be about half.

17 Q. Okay. I believe I had cut you off previously. You had  
18 begun to discuss something called the beta coefficient. Can you  
19 tell me what the beta coefficient is?

20 A. Well, the beta coefficient is provided by a number of  
21 stock publications, handbooks, publications for investors. What  
22 it does is relate the movement of the market to the movement of  
23 the particular stock that we are looking at. A beta coefficient  
24 of one -- let's say, for example, that a company had -- if a

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1 company had a beta coefficient of one, it would move in  
2 accordance with the market. If the market went up -- let's say  
3 if the Standard & Poor's 500 had an increase of ten percent over  
4 a year, then this stock would also have an increase of ten  
5 percent. If it had a beta of .9, and the Standard & Poor's went  
6 up ten percent, this stock would have gone up 9 percent. If it  
7 had a beta of 1.1 percent and the Standard & Poor's went up ten  
8 percent, this stock would have gone up 11 percent. Okay.

9 Q. Okay.

10 A. It also relates to the total return on investment,  
11 because the beta coefficient reflects how close this company's  
12 return is to the investor to the market.

13 Q. Okay. Do you recall whether Mr. Singh discussed the  
14 beta coefficient in his testimony?

15 A. Yes, he did.

16 Q. And what did Mr. Singh indicate about the beta  
17 coefficient?

18 A. He basically -- his description of the beta coefficient  
19 is very similar to mine.

20 Q. Did Mr. Singh discuss the beta coefficient in terms of  
21 Pan Energy?

22 A. Yes, he did.

23 Q. What did Mr. Singh indicate?

24 A. Mr. Singh indicated that since Pan Energy was a

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1 regulated company that he suspected that -- well, first of all,  
2 he said that -- I believe he said that he did not do any analysis  
3 of Pan Energy's beta coefficient. In other words, he had not  
4 looked it up. But he said since it was a regulated industry, he  
5 believed that the beta coefficient would be around I think he  
6 said 8, .8, or .85. And because it was a regulated company,  
7 people would anticipate that it's risk would be less than an  
8 unregulated company and, thus, its beta coefficient would be  
9 lower. That is what he said.

10 Q. Subsequent to -- strike that. Did you then conduct a  
11 review of the beta coefficient?

12 A. Yes. I reviewed the Value Lines report, the beta  
13 coefficient for Pan Energy or Panhandle Eastern for the period in  
14 question.

15 Q. What did your review indicate?

16 A. Well, I looked at Value Line and it gave the beta  
17 coefficient by quarters. And for this particular period, the  
18 beta coefficient for Pan Energy or Panhandle Eastern, with the  
19 exception of two quarters, was between .95 and 1.05. There was  
20 one quarter when it was .9, and one quarter when it was 1.1, so  
21 it closely approximates the market.

22 Q. Okay.

23 A. Which would indicate that its rate of return that it  
24 provided to its shareholders was close to 16.4 percent for the

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1 period in question.

2 Q. So based on this review, take, for instance, if the  
3 market had a rate of return close to 16 percent, what would Pan  
4 Energy's rate of return be during this time period?

5 A. It would be close to 16 percent. It would be plus -- I  
6 would say with the exception of those two quarters it would be 16  
7 percent plus or minus five percent of that. In other words, not  
8 16 percent plus or minus five percent, but 16 percent plus or  
9 minus five percent of 16 percent, which would be roughly point --  
10 let's see. It would range between 15.1 percent and 16.9  
11 percent --

12 Q. Okay.

13 A. -- to clarify that.

14 Q. How does your growth rate, Dr. Nosari, compare to the

15 beta coefficient for Pan Energy?

16 A. Well, as I said before, if you look at the relationship,  
17 knowing that the Standard & Poor's 500 for that period of time,  
18 top 500, their index, provided a 16.4 percent rate of return, if  
19 you take the dividend yield and you add a growth rate of eight  
20 percent you will find that I basically underestimate the total  
21 return of the stockholders by two percent a year, roughly.

22 Q. And how does Mr. Singh's growth rate compare to the beta  
23 coefficient?

24 A. Well, obviously, the easiest comparison is since he has

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1 a growth rate of two percent and I have a growth rate of eight,  
2 it is a six percent difference. So he would underestimate the  
3 rate of return provided to Pan Energy stockholders by six percent  
4 more for each year.

5 Q. Dr. Nosari, are you familiar with the audit requirements  
6 of publicly held companies?

7 A. Yes, I am.

8 Q. Can you describe those?

9 A. Well, publicly held companies are required by the SEC to  
10 have audited financial statements, audited by licensed certified  
11 public accountants who are licensed specifically to render  
12 objective opinions about the fairness of the financial  
13 statements.

14           As part of that, they are required to review all of the  
15 information that accompanies what we would refer to as the basic  
16 financial statements, which is the balance sheet, the income  
17 statement, the statement of changes -- I am sorry -- the  
18 statement of cash flows, and the statement of retained earnings.  
19 In other words, in addition to auditing those -- and the  
20 footnotes. The footnotes are considered an integral part of the  
21 financial statements.

22           In addition to that, the statement on auditing standards  
23 number eight requires the CPAs that audited the financial  
24 statements to review all of the accompanying information that

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1 accompanies those basic financial statement in both the SEC  
2 filings and the published annual reports. And if there is a  
3 disagreement, they have to modify their opinion accordingly.

4           Q. Have you had an opportunity to review the annual reports  
5 for Pan Energy for calendar year 1995?

6           A. Yes, I have.

7           Q. Have you had the opportunity to review the annual  
8 reports for Pan Energy for calendar year 1996?

9           A. Yes, I have.

10          Q. Sitting before you, Dr. Nosari, you should see People's  
11 Exhibit Number 37 and People Exhibit 38?

12          A. I have them.

13          Q. Okay. Would any of the statements made by management in

14 the annual reports for Pan Energy pertaining to growth and return  
15 on investment fall within those requirements that you just  
16 described?

17 A. Yes. As I just described, any representation made by  
18 management in the annual report has to be reviewed by the CPA  
19 firm and has to be determined by them to be consistent with the  
20 basic financial statements. If they are not, they have two  
21 options; they either get management to change the statements or  
22 they render a qualified opinion, meaning a statement to the  
23 effect that the financial statements are not fair.

24 Q. Okay. Now if I could just direct your attention, Dr.

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1 Nosari to People's Exhibit Number 37.

2 A. Okay.

3 MR. BOYD: Could you give me just one second to find that?

4 MS. CARTER: Yes. It is the bound one.

5 MR. BOYD: Yes.

6 Q. (By Ms. Carter) Okay. Do any of the statements made by  
7 management in the 1995 annual report support the eight percent  
8 growth rate that you calculated?

9 A. Well, they support a higher growth rate but remember  
10 that my eight percent relates to the period of 1987 to 1996, and  
11 they are alluding to a much higher growth rate, but it is  
12 covering a shorter period of time.



13 Q. Can you refer me to some of those statements made by  
14 management then in the 1995 annual report?

15 A. I will see if I can find them.

16 Q. Okay.

17 A. On page three of the annual report, the letter to the  
18 stockholders. Well, actually we could start on page two. Do you  
19 see the financial operating highlights?

20 Q. Yes.

21 A. And you will see total stockholder return, one, two --  
22 about nine major lines from the top it says total stockholder  
23 return in 1995 is 46 percent. In 1994 it is a minus 14 percent.  
24 And in 1993 it is 47 percent.

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1 Q. And what do those figures represent to you?

2 A. Well, they represent that for the period of 1993, in  
3 looking at the value of stock of this company as of 12-31-92, and  
4 the price of the stock at 12-31-93 and taking into consideration  
5 the dividend payment, stockholders for the year 1993 got a total  
6 return on their investment of 47 percent.

7 For 1994 the same calculation would have showed that they  
8 lost 14 percent. The reason, of course, for that, is if you look  
9 at the close of the stock, if you go up it says common stock per  
10 share on the same page and you go down to 1993, you will see the  
11 close is 23 and three-quarters. The close in 1994 is 19 and  
12 three-quarters. And so that loss, that reduction of return is

13 caused by the price drop.

14 But then in 1995, the close is 27 and seven-eighths, and  
15 along with the dividend it provided a shareholder return of 46  
16 percent. So these represent the total return to shareholders for  
17 a specific point in time, the calendar years that they are  
18 reporting the results of operations. Okay.

19 Q. Okay. Dr. Nosari --

20 A. Go ahead. I am sorry.

21 Q. I didn't mean to interrupt you. What do these  
22 statements that you just referred to indicate to you about the  
23 growth rate that you have calculated in this case?

24 A. Well, as I say, my growth rate was a long term growth

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1 rate. When I testified about that originally I indicated that  
2 was one of my objectives, because this firm had, particularly in  
3 the late 1980s, had some -- what do I want to call it? Some  
4 volatility in earnings. So if I had made a calculation, you  
5 know, year-to-year, you would have had something like you see  
6 here, 47 percent, a 14 percent loss, and then a 46 percent gain.  
7 So my projection was a long-term projection. These are just the  
8 results that are published for those particular months. I mean,  
9 those particular years. And so this would be consistent with my  
10 eight percent in terms of the higher -- this company really had  
11 much better results of operations the further we move away from

12 1987.

13 Q. Are there, Dr. Nosari, any other statements in the 1995  
14 annual report that may support your eight percent growth rate?

15 A. Well, if you go to page three, again, they are just  
16 reiterating what was on page two. They are stating that the  
17 results for investors was 46 percent. Pan Energy rose 21  
18 percent. Their stock rose 41 percent, to close at 27 and  
19 seven-eighths for December 31st of 1995. Of course, also, then  
20 their annual -- the rate of return to the stockholders is 46  
21 percent, so they are saying their dividend yield was five  
22 percent, which is basically what we had calculated.

23 Q. Okay. If you could just give me a moment, Dr. Nosari?

24 A. Sure. I could continue to go through this if you would

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1 like.

2 MR. BOYD: If I could ask that when we have time for a  
3 convenient break, that we take a break?

4 HEARING OFFICER KNITTLE: Yes. Now seems to be as good a  
5 time as any.

6 MS. CARTER: Okay.

7 (Whereupon a short recess was taken.)

8 HEARING OFFICER KNITTLE: We are back on the record after a  
9 short recess. We are continuing with the direct examination of  
10 Dr. Nosari.

11 Q. (By Ms. Carter) If I could redirect your attention to

12 People's Exhibit Number 37, specifically page four, is there  
13 anything on there that supports the eight percent growth rate  
14 that you calculated in this case?

15 A. Well, if you go to the top of the page on the top left  
16 side column, the 1995 financial results, Pan Energy's 1995 net  
17 income rose 35 percent, to approximately \$304 million and \$2.03  
18 per share. It indicates, again, the significant increase in  
19 growth. Their operating income -- later on at the bottom of that  
20 paragraph, energy services operating income total of \$106  
21 million, a 42 percent increase over 1994. Those would all  
22 indicate a significant growth rate.

23 Q. Okay. If I could just direct your attention to People's  
24 Exhibit Number 38, Dr. Nosari. It is the 1996 annual report.

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1 A. Okay.

2 MR. BOYD: I am sorry? Are you referring to a different  
3 one?

4 MS. CARTER: Yes, I am referring to the 1996 annual report.

5 MR. BOYD: Is that Exhibit 38?

6 MS. CARTER: Yes, it is.

7 MR. BOYD: Okay. I am sorry.

8 MS. CARTER: That's okay.

9 Q. (By Ms. Carter) Do you have it, Dr. Nosari?

10 A. Yes, I do.

11 Q. Okay. Do any of the statements made by management in  
12 the 1996 annual reports support the eight percent growth rate  
13 that you calculated?

14 A. Yes. In fact, the front cover. It says earnings per  
15 share have grown at a compound rate at 23 percent annually since  
16 1991, and the total return to shareholders has averaged 29  
17 percent.

18 Q. What does that indicate to you?

19 A. It indicates to me that the growth rate is -- that the  
20 shareholders enjoyed a rate of return from 1991 of 29 percent,  
21 from 1991 to 1996.

22 Q. I am sorry, Dr. Nosari. What does it indicate to you  
23 about the growth rate that you calculated?

24 A. Well, it would say that my growth rate is very

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1 reasonable.

2 Q. Okay. Is there anything within the document itself,  
3 People's Exhibit Number 38, that supports the eight percent  
4 growth rate that you calculated?

5 A. Well, if you turn to page one, it talks about financial  
6 operating highlights. It has the 1994 and 1995 results that we  
7 already talked about that were in the 1995 annual report, but it  
8 has the 1996 figures, and the total shareholder return for 1996  
9 was 66 percent.

10 Q. What does that indicate to you in terms of the growth

11 rate that you calculated in this case?

12 A. Well, again, this relates to the period of 12-31-95 to  
13 12-31-96, and for that period there was a 66 percent growth rate.  
14 And remember that my eight percent growth rate goes from 1987 to  
15 1996, so this certainly would support, you know, an average  
16 growth rate of eight percent. The total shareholder return is 66  
17 percent. I think you will find that most of that is coming from  
18 the increase in the price of stock. In 1995, if you look at the  
19 close in 1995, it was 27 and seven-eighths, and in 1996, as we  
20 already know, the close is \$45.00. And that's how most of that  
21 66 percent is coming from. It is not coming from dividend yield,  
22 but an increase in the price of stock.

23 Q. Okay.

24 A. Okay. Let's see. On page four you will see that it

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1 talks about the headlines. In 1996 Pan Energy produced a 66  
2 percent return. The shareholder, total stockholder return  
3 achieved record earnings and announced plans to combine with Duke  
4 Power. If you look down further in the letter to the  
5 shareholders, it says that their expectations -- let's see.

6 Income from before extraordinary items increased 19 percent  
7 to \$361 million. So their earnings during 1996, not considering  
8 the price of stock, their earnings increased 19 percent, again,  
9 exceeding eight percent. This significantly exceeded our

10 original goal of increasing earnings by ten percent and our  
11 revised goal of 15 percent. Then the total return to  
12 shareholders rose to 66 percent, up from 46 percent the year  
13 before.

14 Q. Okay.

15 A. Then there is some comments later on in this report  
16 about the amount of money that they are spending on capital  
17 improvements. I think it totals \$800 million, which is very  
18 significant growth.

19 Q. Okay. Dr. Nosari, within either of these annual reports  
20 that we have just been referencing, People's Exhibit Number 37  
21 and People's Exhibit Number 38, did you anywhere see the use of a  
22 26 week average?

23 A. In calculating growth or in calculating return on  
24 investment.

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1 Q. Yes.

2 A. No.

3 Q. What did you see employed?

4 A. I see employed the close as of the fiscal year end,  
5 12-31, as of the appropriate year that they were measuring.

6 Q. Is that consistent with what you did in calculating the  
7 growth in this case?

8 A. Yes, it is.

9 Q. Okay. Dr. Nosari, People's Exhibit Number 37 and

10 People's Exhibit Number 38, when did you first see these?

11 A. A couple of weeks ago.

12 Q. Where did you attain copies of these?

13 A. From you or from your -- you know, Gary Styzens.

14 Q. If I could just ask, do you recall your previous  
15 testimony pertaining to your calculations of the weighted average  
16 cost of capital?

17 A. Well, yes, but, I mean, that's a very broad question.

18 Q. Okay. I apologize, Dr. Nosari. You caught me on that  
19 one. Let me be more specific. Specifically, what you relied  
20 upon in developing the weighted average cost of capital?

21 A. Yes.

22 Q. Again, what did you rely upon in developing the weighted  
23 average cost of capital?

24 A. I relied upon the annual reports, and also some 10-K SEC

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1 filings.

2 Q. Where did you look at these annual reports?

3 A. What do you mean, where did I look at them?

4 Q. Where did you obtain copies of them, Dr. Nosari?

5 A. Well, I obtained copies of the annual reports from the  
6 University of Illinois Springfield, Brookins Library.

7 Q. Okay.

8 A. The 10-Ks I got from Gary Styzens.



9 Q. Okay. Dr. Nosari, there is a pile of documents sitting  
10 before you. If I could specifically direct your attention to  
11 People's Exhibit Number 25A.

12 A. Okay.

13 Q. It should be a big stack. Exhibit 25A and 28A and --

14 A. I see a 25A.

15 Q. Yes, Exhibit 25A and 28A.

16 A. Okay. There is 29A.

17 Q. Yes, 29A.

18 A. Okay. Exhibit 30A, 31A.

19 Q. Yes, 31A, that's it. Stop there.

20 A. Okay.

21 MR. BOYD: Could you hold on one second while I get them,  
22 please.

23 MS. CARTER: Yes.

24 MR. BOYD: Are these the ones that you gave us this

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1 morning?

2 MS. CARTER: Yes, that's my writing on there, on the  
3 People's exhibit stickers.

4 MR. BOYD: Okay.

5 MS. CARTER: There should be five of them, Mr. Boyd.

6 MR. BOYD: Okay.

7 Q. (By Ms. Carter) While he is looking for those documents,  
8 Dr. Nosari, if I could just have you look at these exhibits

9 before you?

10 A. Okay.

11 MR. BOYD: If I could just have her wait to pose a question  
12 until I find the document. Thank you.

13 MS. CARTER: Okay. That is fine. I am just trying to  
14 conserve time.

15 MR. BOYD: Okay. Could you tell me which ones you are  
16 looking at again?

17 MS. CARTER: Okay. I have People's Exhibit Number 25A,  
18 28A, 29A, 30A and 31A.

19 MR. BOYD: Okay. Thank you.

20 MS. CARTER: Okay.

21 HEARING OFFICER KNITTLE: These were just given today?

22 MS. CARTER: Yes.

23 HEARING OFFICER KNITTLE: I don't have these here.

24 MS. CARTER: I believe Mr. Layman should have provided you

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1 a copy when he was going through direct examination with Mr.  
2 Styzens. I can --

3 MR. LAYMAN: Are you talking about the --

4 MS. CARTER: You didn't provide him with those?

5 HEARING OFFICER KNITTLE: I don't need them now, but I am  
6 going to at some point.

7 MS. CARTER: I will find them for you.

8 MR. LAYMAN: Here you go. Sorry about that.

9 HEARING OFFICER KNITTLE: Thank you, sir.

10 MS. CARTER: Mr. Hearing Officer, may I proceed? Are we on  
11 the record?

12 HEARING OFFICER KNITTLE: Mr. Boyd, are you ready?

13 MR. BOYD: Just one minute, please.

14 HEARING OFFICER KNITTLE: Let's hold on just one second.

15 MS. CARTER: Okay.

16 HEARING OFFICER KNITTLE: All right. Ms. Carter, you may  
17 proceed with your examination.

18 MS. CARTER: Thank you.

19 Q. (By Ms. Carter) Turning to these People's Exhibits 25A,  
20 28A, 29A, 30A and 31A, do they reflect the annual reports as you  
21 viewed them on microfiche?

22 A. Well, I looked at these earlier and examined them and  
23 compared them to the original microfiche, and they are the same.

24 Q. Okay.

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1 A. The figures are the same. There are -- I think in the  
2 first two reports, there is two -- there is a page missing out of  
3 the first page which relates to a very complex schedule regarding  
4 minority shareholder interest, which I did not use in my  
5 calculation. I think it is page -- I can tell you here in a  
6 minute. It is page 38 that is missing.

7 Q. Which report are you referring to?

8           A.    I am referring to People's Exhibit Number 25A, the 1987  
9 annual report.

10          Q.    Okay.

11          A.    Then in the 1998 report -- I am sorry.  In the 1988  
12 report -- I am sorry.  That is incorrect.  In the 1990 annual  
13 report --

14          Q.    I am sorry.  Dr. Nosari, you said 1990?

15          A.    I am correcting myself.

16          Q.    Okay.

17          A.    It is the 1990 annual report.  The statement of cash  
18 flows, I believe, is missing.

19          Q.    What page is that?

20          A.    I am trying to find it.

21          Q.    Okay.  Thank you.

22          A.    But, again, I did not use that information.  I am just  
23 telling you.  You asked me, and I am telling you that that page  
24 was missing.  I don't remember what page it is.  If I can find

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1 the basic financial statements I can tell you.  Here they are.  
2 The balance sheet, okay.  This is page 27.  Page 28.  No, that  
3 can't be right.  Let me correct this.  It is page 31.  Page 31 is  
4 missing.  It is the statement of cash flows.  I did not use the  
5 statement of cash flows in any of my calculations.  That page was  
6 missing.

7 Q. Okay. If I could just direct your attention back to  
8 People's Exhibit Number 25A, where you indicated page -- that a  
9 page was missing, page 38.

10 A. Uh-huh.

11 Q. What did you compare that to to determine that that page  
12 was missing?

13 A. I compared it to original printout of the microfiche  
14 copies that I made.

15 Q. And is the original printout of the microfiche copy that  
16 you made sitting before you Dr. Nosari?

17 A. Yes, it is.

18 Q. Okay. What exactly are you referring to? What is the  
19 Exhibit number on there?

20 A. Exhibit Number 25.

21 Q. Okay. If I could direct your attention back to the  
22 annual report for 1990, where you indicated that page 31 was  
23 missing, what did you compare People's Exhibit -- I am sorry.

24 Just a second. What did you compare People's Exhibit Number 28A

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1 to, to make that determination?

2 A. The original copy of the -- the original microfiche copy  
3 printout that I used.

4 Q. Is that original microfiche copy printout sitting before  
5 you today?

6 A. Only if it is included here.

7 Q. If I could maybe direct your attention to People's  
8 Exhibit Number 28. It should be sitting before you, Dr. Nosari.  
9 Is that perhaps the document?

10 A. No, this is Exhibit 25.

11 Q. I understand that. Yes, keep going?

12 A. I don't see it.

13 Q. Okay. The --

14 A. What can I say? I see People's Exhibit Number 25. I  
15 don't see Exhibit 28 unless it is in here.

16 Q. Okay. I apologize if it is not before you.

17 MS. CARTER: Mr. Hearing Officer, are there other People's  
18 exhibits that were the big forms that we previously introduced  
19 into evidence?

20 HEARING OFFICER KNITTLE: The large oversized forms?

21 MS. CARTER: No, they were like this size, sir.

22 HEARING OFFICER KNITTLE: I think they are all in that  
23 cardboard box. I can open the cardboard box.

24 MR. LAYMAN: Well, those are --

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1 HEARING OFFICER KNITTLE: I know you guys think those are  
2 only the poster forms, but the oversized exhibits are also in  
3 there.

4 MR. LAYMAN: I know the economic benefit sheets are there.  
5 I don't think they are the annual reports.

6 HEARING OFFICER KNITTLE: They are. I put them in there  
7 and then sent them all up together.

8 MR. LAYMAN: Oh, all of them you mean?

9 HEARING OFFICER KNITTLE: Yes. The oversized ones are in  
10 there, too.

11 MR. LAYMAN: Oh, okay.

12 HEARING OFFICER KNITTLE: Let's go off the record while we  
13 open this box.

14 (Discussion off the record.)

15 MS. CARTER: May we proceed?

16 HEARING OFFICER KNITTLE: Yes. We are on the record.

17 MS. CARTER: Thank you.

18 Q. (By Ms. Carter) Dr. Nosari, what did you compare the  
19 1999 annual report, People's Exhibit Number 28A, to so that you  
20 could determine that page 31 was missing?

21 A. Well, it was the 1990 annual report, okay.

22 Q. Okay.

23 A. You indicated that it was 1999. I know that was just a  
24 misstatement.

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1 Q. Okay.

2 A. Okay. I compared it to People's Exhibit Number 28, the  
3 original printout of the microfiche copy that I looked at that I  
4 obtained at Brookins Library.

5 Q. Dr. Nosari, apart from the missing pages, are People's

6 Exhibits 25A, 28A, 29A, 30A, and 31A accurate copies of the  
7 documents that you reviewed, the annual reports that you  
8 reviewed?

9 A. Yes.

10 Q. And, again, where did you review the annual reports?

11 A. Which ones are you talking about?

12 Q. I am talking about the original annual reports, Dr.  
13 Nosari, when you originally --

14 A. I reviewed them in my office.

15 Q. Excuse me. I apologize. Where did you get access to  
16 those documents, Dr. Nosari?

17 A. Originally I got access to the ones that we are talking  
18 about here at Brookins Library, which is the library at the  
19 University of Illinois at Springfield.

20 Q. Okay. Thank you, Dr. Nosari.

21 MS. CARTER: Mr. Hearing Officer, at this time the People  
22 move for the admission of People's Exhibits 37 and 38, and 25A,  
23 28A, 29A, 30A and 31A.

24 HEARING OFFICER KNITTLE: Mr. Boyd?

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1 MR. BOYD: Can you give me just one more minute here?

2 HEARING OFFICER KNITTLE: Sure.

3 MR. BOYD: Okay.

4 HEARING OFFICER KNITTLE: Mr. Boyd, let's take them one at



5 a time. People's Exhibit 37 and --

6 MR. BOYD: Okay. We are going to go backwards?

7 HEARING OFFICER KNITTLE: She started with 37 and 38.

8 MR. BOYD: Well --

9 HEARING OFFICER KNITTLE: If you are more comfortable doing  
10 25A, 28A and --

11 MR. BOYD: Either way. That's fine.

12 HEARING OFFICER KNITTLE: Okay.

13 MR. BOYD: If I may, the concern we had originally was that  
14 they were microfiche copies and we were not sure that they were  
15 full and complete copies of the documents. Just perusing these  
16 quickly this afternoon, it seems that most of the documents are  
17 missing pages, missing information. So I am not sure that we are  
18 curing the defect that originally existed with these documents.

19 For People's Exhibit 37, it appears to me to be, from a  
20 quick review, to be a complete and accurate copy, and that there  
21 is no pages missing.

22 For People's Exhibit Number 38, it appears to me that there  
23 is either page two or page three that is missing. It appears to  
24 me that pages 46 and 47 are missing. It appears to me that pages

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1 51 and 52 are missing.

2 For People's Exhibit 25A, it appears to me that page 38 is  
3 missing.

4 For People's Exhibit 28A, it appears to me that the page

5 following page 21 is cut off and then there is a blank page and  
6 then there is a partial page following that. It also appears to  
7 me that page 24 is missing, and it appears to me that page 31 is  
8 missing in that document.

9 Exhibit 29A seems to be complete, from our review sitting  
10 here.

11 Exhibit 30A, again, has a cut off page following page nine  
12 and also either page 11 or page 12 is missing.

13 Then People's Exhibit 31A appears to be complete.

14 HEARING OFFICER KNITTLE: Ms. Carter?

15 MS. CARTER: I will try to take these one at a time, Mr.  
16 Hearing Officer. If I have this right, Mr. Boyd indicated  
17 that --

18 HEARING OFFICER KNITTLE: Before I let you get started, Mr.  
19 Boyd, is that your only objection to these?

20 MR. BOYD: Well, I would also state that before we had let  
21 the exhibits come in for the limited purpose of showing what Mr.  
22 Nosari had relied upon. Again, if we are going to allow them to  
23 be introduced for that limited purpose, I would agree. I think  
24 that in general the reports, while relevant to support what his

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1 testimony is, may contain other information that is not relevant  
2 to the proceeding. So as long as it is introduced for the  
3 limited purpose to show what he relied on, then I have no

4 objection other than --

5 HEARING OFFICER KNITTLE: I think the witness has testified  
6 that the portions that he relied upon are present in all of these  
7 reports. Is that a sufficient ascertainment by Mr. Boyd, Ms.  
8 Carter?

9 MS. CARTER: I --

10 MR. LAYMAN: I think that's accurate. I would note for the  
11 record that the other witness, Mr. Styzens, also referred to  
12 portions of the annual reports and the 10-K filings earlier this  
13 morning. In that regard, I would offer that, you know, his  
14 testimony refers to portions of the same report in much the same  
15 way that Dr. Nosari's testimony does.

16 HEARING OFFICER KNITTLE: Mr. Boyd, would your limited  
17 purpose of accepting these documents include those portions  
18 relied upon by Mr. Styzens in his testimony?

19 MR. BOYD: It certainly would.

20 HEARING OFFICER KNITTLE: All right. Ms. Carter or Mr.  
21 Layman, based on that assertion, do you have any response to the  
22 objection, slash, offer?

23 MS. CARTER: Just a moment, please.

24 HEARING OFFICER KNITTLE: Sure. 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. Go ahead, Ms. Carter.

4 MS. CARTER: The State's position tends to be that we are  
5 submitting these documents for the full purpose, not simply for  
6 what Mr. Boyd was referring to as a limited purpose in this  
7 matter. If need be, the State would ask for a simple leave to  
8 supplement these pages if they are, in fact, missing or had  
9 problems in terms of copying, to remedy those problems.

10 HEARING OFFICER KNITTLE: Well, Mr. Boyd, can we admit the  
11 ones that are complete, to your knowledge?

12 MR. BOYD: Well --

13 HEARING OFFICER KNITTLE: Or do you have a further  
14 objection?

15 MR. BOYD: My objection was two part. It seems to me that  
16 there is no relevance established for other portions of this  
17 document, other than what Mr. Styzens or Mr. Nosari have relied  
18 upon. To that extent --

19 HEARING OFFICER KNITTLE: Let's take that one first, if you  
20 don't mind. What is the relevance, then, of these, if not to  
21 support the testimony as provided?

22 MS. CARTER: Well, the relevance of these documents is that  
23 they state throughout the documents, not just simply on certain  
24 pages, but throughout the entire documents pertaining to numbers

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1 that were obviously used in the weighted average cost of capital  
2 and growth and competition, but in addition to that they are

3 basically admissions by Pan Energy pertaining to their financial  
4 state during this time period. Like Dr. Nosari said, that they  
5 have to be certified by their CPAs to make sure that any opinions  
6 or any information provided in these documents is accurate and  
7 complete pursuant to general --

8 HEARING OFFICER KNITTLE: Right. I am not concerned with  
9 the accuracy or the completeness of this, but more the relevancy  
10 of it. I am not -- I don't think Mr. Boyd is objecting to it on  
11 accuracy or --

12 MR. BOYD: Correct.

13 HEARING OFFICER KNITTLE: You are completeness, however.  
14 But in terms of the accuracy, he is not raising that as an issue.  
15 But if you look at it, I don't -- there is a lot of information  
16 here, and I fail to see how -- and I am willing to be  
17 convinced -- but I fail to see how all of it is relevant to these  
18 proceedings.

19 MR. LAYMAN: In all fairness, I don't know that we are  
20 saying that every page in the annual reports is relevant to this  
21 proceedings. I think the one area that we are particularly  
22 concerned about is the fact that the witnesses are testifying to  
23 certain portions of the documents. You have indicated that the  
24 documents will be -- or perhaps could be admitted for the limited

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1 purposes of supporting their testimony. But does that also  
2 include and allow the Board to recognize that in their

3 referencing or discussion today and previously in their testimony  
4 to certain portions of the annual reports, is that going to  
5 preclude the Board from recognizing certain parts of the annual  
6 report as admission. That is the first concern.

7           Secondly, in all due respect, I would offer up that the BEN  
8 Manual, which was received by the Hearing Officer today in its  
9 entirety, likewise contains numerous portions throughout its  
10 contents that are probably not and, indeed, I think it is fair to  
11 say that they are clearly not relevant to the proceeding today.

12           HEARING OFFICER KNITTLE: I am glad you mentioned that, Mr.  
13 Layman. I agree. I think that for the same reasons that I  
14 admitted the BEN Manual, the Board's evidentiary standards  
15 documents that a reasonable person would rely upon in the pursuit  
16 of serious affairs, I think that the annual reports of Panhandle  
17 do, indeed, qualify as such evidence. I would admit them. I am  
18 a little worried that there might be some prejudice resulting  
19 from the incomplete report. I don't know how we cure that. I am  
20 open to suggestions.

21           MR. LAYMAN: Well, I think as an initial matter we will  
22 certainly review the documents we have and go back to the  
23 original microfiche to make sure that we have available those  
24 copies.

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1           HEARING OFFICER KNITTLE: Is Mr. Boyd -- Mr. Boyd, are you

2 secure in the fact that the microfiche version that they are  
3 looking at is accurate? I mean --

4 MR. BOYD: I have no knowledge one way or the other.

5 HEARING OFFICER KNITTLE: -- doesn't Panhandle or someone  
6 have certified copies of these or something like that?

7 MR. BOYD: Let me suggest this as a possible remedy.

8 HEARING OFFICER KNITTLE: Okay. I am open.

9 MR. BOYD: Why don't I ask Panhandle to get us copies of  
10 the reports for 1987 to 1996.

11 MR. LAYMAN: That would be ideal.

12 MR. BOYD: All of those reports, not just the ones that he  
13 has presented here, and we will put them into the record, if you  
14 say that they can come in the record, Mr. Knittle, let's get the  
15 whole thing.

16 MR. LAYMAN: That would be ideal.

17 MR. BOYD: We will talk to Panhandle about that after the  
18 proceeding and make arrangements for that.

19 MR. LAYMAN: As we have indicated to the Board before, we  
20 have not -- unfortunately, we did not ask for that information, I  
21 believe, in discovery. Specifically, it was not provided. We  
22 did not have the ability to secure them from the web site,  
23 because they only went back three years and didn't go back  
24 further in time, to be made available. So I think that proposal

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1 that is being offered by Panhandle's Counsel would be perfect for

2 this situation.

3 HEARING OFFICER KNITTLE: I like that. Let's do that. We  
4 will give -- I will grant you leave now to submit those after the  
5 hearing is closed and we will keep the record open until we get  
6 those in.

7 Now, as to 37, 38, and 25A through 31A, we are missing 26  
8 there, it looks like, and 27, I am going to accept these until we  
9 get the annual reports that Mr. Boyd is going to submit and then  
10 I will replace them with the same exhibit numbers, and I will  
11 make an asterisk in the hearing report, once we get the full  
12 copies. I am not going to give these to the Board, then. Is  
13 that sufficient, Ms. Carter and Mr. Layman?

14 MS. CARTER: Yes, that's fair.

15 HEARING OFFICER KNITTLE: Do you understand, Mr. Boyd?

16 MR. BOYD: Just two points. The first point is that these  
17 already are additions to documents that are in the record. These  
18 are marked as As, so you will have two that --

19 HEARING OFFICER KNITTLE: I understand. I am going to get  
20 rid of both of them, the oversized as well.

21 MR. BOYD: Okay. The second point is that we are providing  
22 copies, as well, for the years that there are not annual reports  
23 here. So they will have to be marked a separate number.

24 HEARING OFFICER KNITTLE: I will mark those appropriately.

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1 MR. BOYD: Okay.

2 HEARING OFFICER KNITTLE: And maybe I will make them all  
3 different numbers. But I will worry about that later.

4 MR. BOYD: Okay.

5 HEARING OFFICER KNITTLE: That is administrative. I will  
6 handle it and let you guys know before you do your briefs. All  
7 right. I think that is all -- is everybody happy with that  
8 solution?

9 MS. CARTER: Yes, Mr. Hearing Officer.

10 HEARING OFFICER KNITTLE: Mr. Boyd has proposed it, so he  
11 is not too displeased. I appreciate it. Let's get moving on.

12 MS. CARTER: Mr. Hearing Officer, we have no further  
13 questions for this witness.

14 HEARING OFFICER KNITTLE: Okay.

15 MR. BOYD: Could I take five minutes and --

16 HEARING OFFICER KNITTLE: Yes, you may.

17 MR. BOYD: Thank you.

18 HEARING OFFICER KNITTLE: We are off the record.

19 (Whereupon a short recess was taken.)

20 HEARING OFFICER KNITTLE: All right. We are back on the  
21 record after a short recess.

22 We are now starting with the cross-examination of the  
23 witness. Mr. Boyd.

24 MR. BOYD: Thank you.

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CROSS EXAMINATION

BY MR. BOYD:

Q. Dr. Nosari, on your direct examination in rebuttal, you implied that the way in which Mr. Singh calculated the cost of debt was impossible?

A. Well, what I said was in his testimony he inferred that he got the information when he recalculated the cost of debt from Moody's Public Utility Manual. What I said was I tried to replicate it from the information that was there and I couldn't do it. You know, in terms of trying to get the appropriate amount of interest expense, it could not be generated from that information.

Q. Well, it is possible, isn't it, that Mr. Singh was able to do it using the information from Moody's but that you weren't?

A. I don't think so. The reason I don't think so is because you would have to make some assumptions about the interest rate on those two particular issues that I talked about.

Q. Okay. So are you implying, then, that Mr. Singh fabricated those numbers in terms of the growth rate? I am sorry. In terms of the short-term debt?

A. Well, he didn't fabricate any figures on the short-term debt, because in his testimony he stated that he figured his interest expense, the interest expense that he used was related to long-term debt, and that he didn't take into consideration

1 short-term debt at all. At least that is how I remembered his  
2 testimony.

3 Q. So from what you remember of his testimony, was it  
4 possible to figure out the debt number the way he described?

5 A. No, I don't think so, not from Moody's Public Utility  
6 Manual. Now, if he used something else, yes, but not from -- you  
7 know, not from public -- you know, not from the Moody's Public  
8 Utility Manual.

9 Q. Okay. I think at one point you also testified that you  
10 recalled Mr. Singh discussing the beta coefficient in relation to  
11 Panhandle. Do you remember that?

12 A. Yes, sir.

13 Q. I think you said something to the effect that you  
14 recalled Mr. Singh talking about a beta coefficient of like 8.5;  
15 is that right?

16 A. .85.

17 Q. Okay. Do you recall, sitting here today, that he used  
18 that .85 number in his testimony?

19 A. No, he did not.

20 Q. Okay. Did he use another number in his testimony to --

21 A. I --

22 Q. Sir, let me just finish the question.

23 A. Sure. I am sorry.

24 Q. Did he use any other number in his testimony that you

1 recall to characterize the beta coefficient for Panhandle?

2 A. No. In his testimony he indicated that he did not  
3 review the beta coefficient for Panhandle, that he did not use  
4 it, and that he anticipated that the beta coefficient would be  
5 significantly less than one.

6 Q. Do you recall him using the term significantly less than  
7 one?

8 A. No. I think he indicated that it was -- that he thought  
9 it was around .85.

10 Q. Well, I just asked you that and you said that he didn't  
11 use the number of .85 in his testimony.

12 A. No, no, you said significantly. I don't --

13 Q. Well, did Mr. Singh say that the beta coefficient for  
14 Panhandle was around .85?

15 A. Yes.

16 Q. All right. Sir, I am going to hand you the testimony of  
17 Mr. Singh from the September 22nd hearing in this matter.

18 (Mr. Boyd passed transcript to the witness.)

19 A. Okay.

20 Q. (By Mr. Boyd) I would like for you to find for me, as a  
21 reference in the back about beta coefficient, I would like for  
22 you to find for me where he references a .85.

23 A. Okay.

24 MS. CARTER: Objection to this question. I don't

1 understand why the witness needs to sit through and thumb through  
2 the transcript of Mr. Singh.

3 HEARING OFFICER KNITTLE: Hold on, Doctor.

4 MS. CARTER: Excuse me, Dr. Nosari. Just wait a second,  
5 please.

6 THE WITNESS: Okay.

7 MS. CARTER: I don't understand why he needs to thumb  
8 through the deposition transcript of Mr. Singh. I think that as  
9 Mr. Boyd would state that -- or excuse me. The testimony, excuse  
10 me, would speak for itself.

11 MR. BOYD: If I may, Mr. Knittle, this witness has said  
12 three things now. He first said that Mr. Singh said that the  
13 beta coefficient was .85. Then he told me it wasn't. Then he  
14 told me it was. There is nothing in that testimony which  
15 suggests that Mr. Singh stated the value for the beta coefficient  
16 for Panhandle, much less stating a value of .85.

17 HEARING OFFICER KNITTLE: That may be the case, but I am  
18 going to sustain her objection. I don't want Dr. Nosari to have  
19 to thumb through this -- is that the testimony from the previous  
20 hearing?

21 MR. BOYD: Yes, it is.

22 HEARING OFFICER KNITTLE: I think his testimony will speak  
23 for itself, as will the testimony in that transcript.

24 MR. BOYD: Okay.

1 Q. (By Mr. Boyd) You also talked about the growth rate that  
2 Mr. Singh calculated. I am going to refer you back to his  
3 report, which is Panhandle Exhibit Number 23. Do you have that  
4 in front of you?

5 THE WITNESS: Can I borrow your report again?

6 HEARING OFFICER KNITTLE: Exhibit 23. Here you go.

7 Q. (By Mr. Boyd) I believe you said that you disagreed with  
8 Mr. Singh's use of a 26 week average in calculating the growth  
9 factor; isn't that right?

10 A. Yes, sir.

11 Q. If you could, I would like you to refer to three pages  
12 from the end of this Exhibit 23. At the top it says growth  
13 factors, page two. Do you see that?

14 A. Yes, I see it.

15 Q. Okay. Isn't it true that Mr. Singh on this page is  
16 showing the affect of using point in time stock values in  
17 determining a growth factor?

18 A. Yes, he does.

19 Q. Doesn't this page show that using point in time stock  
20 values could lead to growth factors ranging from zero to 5.667  
21 percent?

22 A. Yes.

23 Q. You testified earlier that the fact that in People's  
24 Exhibit Number 37 and 38 Pan Energy used closed stock values as

1 opposed to a 26 week average supported your use of the closed  
2 stock value; isn't that correct?

3 A. Yes.

4 Q. Isn't it true, though, for purposes of these reports  
5 that they were talking about the financial status of the company  
6 for a one year period?

7 A. That's correct.

8 Q. Isn't it true for purposes of your evaluation and Mr.  
9 Singh's evaluation of the growth rate that you were looking over  
10 a much longer period of time?

11 A. That's correct.

12 Q. Let me refer you to -- well, first of all, if you could  
13 turn to Exhibit Number 37. I will refer you to page two of that  
14 exhibit. I believe earlier you were looking at the line marked  
15 total shareholder return on that page, were you not, sir?

16 A. Yes, sir.

17 Q. Okay. Do you know whether this was the first year that  
18 Pan Energy included the line on total shareholder return in their  
19 financial operating report?

20 A. No.

21 Q. Let me ask you, sir, to refer back to Exhibit 25A, which  
22 is the 1987 annual report, and Exhibits 28A, 31A, 30A and 29A. I  
23 will ask you, first of all, to go to 25A. In this exhibit did  
24 Pan Energy include a reference to total shareholder return?

1 A. I will have to look.

2 (Witness reviewing document.)

3 A. On page one of the financial highlights they do not.

4 Let me go to another page. Sorry to take your time here.

5 Q. That's fine. Take your time.

6 HEARING OFFICER KNITTLE: Mr. Boyd, are you going to want  
7 him to go through each exhibit?

8 MR. BOYD: No.

9 HEARING OFFICER KNITTLE: Okay. I was going to put a halt  
10 to that if that's the case.

11 THE WITNESS: I am sorry about this.

12 HEARING OFFICER KNITTLE: Oh, no, you are fine.

13 THE WITNESS: I did not find a reference to that in  
14 People's Exhibit 25A.

15 Q. (By Mr. Boyd) Instead of asking you to find it  
16 throughout the rest of the exhibits, I am just going to ask you  
17 generally, sir, in People's 28A, 29A, 30A, and 31A, did Panhandle  
18 find it appropriate to include the reference to total shareholder  
19 return in the financial operating highlights at the beginning of  
20 those annual reports?

21 A. Do you have the page that it is on?

22 Q. Sure. I will go through each one, if you like.

23 A. Sure. That would be great.

24 Q. For the year 1991, which is 29A?



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1 A. Okay.

2 Q. If you would look at page one.

3 A. I am sorry. I didn't mean to do that to you, if it was  
4 on page one.

5 (The witness reviewing document.)

6 A. It is not on page one.

7 Q. Sir, if you could turn to Exhibit 30A. I am sorry.

8 A. 28A.

9 Q. Yes, 28A. Exhibit 28A is the 1990 report.

10 A. Okay. I have got it.

11 Q. Page one again.

12 A. Okay. Page one.

13 (The witness reviewing document.)

14 A. There is no reference to it.

15 Q. Okay. Now go to 30A, which is the 1993 annual report,  
16 again page one.

17 (The witness reviewing document.)

18 A. There is no reference to it.

19 Q. What about 31A, which is the 1994 annual report, again,  
20 on page one.

21 (The witness reviewing document.)

22 A. There is no reference.

23 Q. Isn't it possible, sir, that the reason there is no  
24 reference to the total shareholder return in any of those annual

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1 reports that we just mentioned, or at least in the operating  
2 highlights of those reports, is because Panhandle did not want to  
3 focus on that factor?

4 A. Probably.

5 MS. CARTER: Objection. It calls for speculation.

6 MR. BOYD: He answered the question.

7 HEARING OFFICER KNITTLE: It is sustained.

8 MS. CARTER: Motion to strike the answer.

9 HEARING OFFICER KNITTLE: Granted.

10 MS. CARTER: Thank you.

11 HEARING OFFICER KNITTLE: It is clear speculation, Mr.  
12 Boyd.

13 MR. BOYD: I believe it is within his purview to answer,  
14 since he speculated on a number of other things and, besides, he  
15 gave the answer very readily before Counsel --

16 HEARING OFFICER KNITTLE: Whether he speculated readily or  
17 speculated slowly, I am not going to allow speculation in.  
18 Because past speculation has been allowed in because either you  
19 or Ms. Carter did not object, is no reason to allow this in.

20 Q. (By Mr. Boyd) As you sit here today, sir, do you know  
21 when the announcement of the merger with Duke Energy occurred?

22 A. I do not know the exact date, no.

23 Q. Do you know an approximate date?

24 A. I would think it was around November.

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1 Q. Of what year?

2 A. 1996.

3 Q. Okay. You talked about a 16 percent number earlier. I  
4 think you said it was from the Standard & Poor's 500; is that  
5 right?

6 A. Yes.

7 Q. Did you look at any numbers in relation to regulated  
8 utilities only?

9 A. That is -- no. Wait a minute. Regulated utilities  
10 only? I am sorry. I have to think about it.

11 Q. That's fine.

12 A. I did, but I can't -- in terms of -- not in terms of a  
13 covering -- well, first of all, I did look at information  
14 relating to regulated utility companies only particularly to  
15 transmission of natural gas. But I do not believe that they gave  
16 a figure like that in terms of -- well, in terms of total  
17 stockholder equity return. There was a figure given on return on  
18 equity, which was defined as return on the -- not the value of  
19 the stock, but the book value of the stock.

20 So it was an accountant's measurement of return on equity.  
21 But it was not given for a period, such as ten years. It was  
22 each individual year. And, again, it came from the Moody's  
23 Public Utility Manual, but it was not -- you know, it was not  
24 given for an average for a certain period of time. And it did

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1 not reflect return on total stockholder equity.

2 Q. You said earlier that you sat in through Mr. Singh's  
3 testimony in this matter?

4 A. Yes.

5 Q. Do you recall him discussing his review of the Value  
6 Line information for entities similar to Panhandle?

7 A. I remember him discussing the use of Moody's Public  
8 Utility Handbook. And he referred to a page in there that  
9 summarized the information for the segment of -- well, what he  
10 referred to, I think, as the segment of that industry that  
11 Panhandle -- he characterized it as the segment industry that  
12 Panhandle used to be a part of.

13 Q. You don't recall him talking about his review of Value  
14 Line information for companies similar to Panhandle regarding  
15 dividend yield?

16 A. No, I don't.

17 Q. Okay. Just one point of clarification, sir. The 16  
18 percent number that you were talking about earlier, was that a  
19 rate that was calculated before or after tax?

20 A. That would have been a return after taxes.

21 MR. BOYD: Okay. That's all I have.

22 HEARING OFFICER KNITTLE: Okay.

23 MS. CARTER: Mr. Hearing Officer, if I could just have a

24 few moments.

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1 HEARING OFFICER KNITTLE: Yes, you can have a few minutes  
2 if you would like.

3 MS. CARTER: I would like just a few minutes, if that is  
4 possible. Thank you.

5 HEARING OFFICER KNITTLE: Okay. Let's go off.

6 (Discussion off the record.)

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

9 Any redirect for this witness, Ms. Carter?

10 MS. CARTER: No, we have no redirect for Dr. Nosari.

11 HEARING OFFICER KNITTLE: Sir, you can step down. Thank  
12 you very much for your time.

13 THE WITNESS: Thank you.

14 (The witness left the stand.)

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

16 (Discussion off the record.)

17 HEARING OFFICER KNITTLE: All right. We are back on the  
18 record.

19 Do you have any more rebuttal witnesses, Mr. Layman, Ms.  
20 Carter?

21 MS. CARTER: No.

22 HEARING OFFICER KNITTLE: All right. Off the record we had  
23 a discussion about closing arguments.

24 The Petitioner is not going to give closing argument; is

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1 that correct?

2 MS. CARTER: Yes.

3 MR. LAYMAN: Yes, that is correct.

4 HEARING OFFICER KNITTLE: Mr. Boyd, are you going to give a  
5 closing argument at this point in time?

6 MR. LAYMAN: No, sir.

7 HEARING OFFICER KNITTLE: Okay. We are not going to have  
8 closing arguments. We have talked about briefing schedules off  
9 the record. Before I state that, I want to note that there are  
10 still no members of the public here. Were they, in fact, here  
11 they would be allowed to provide public comment and we would  
12 encourage and be eager to receive such public comment, but that  
13 is not the case here today.

14 I also want to note that I am required to give a  
15 credibility determination. I didn't find any credibility issues  
16 with any of the witnesses based on my legal experience and  
17 judgment.

18 I also would like to note that we have had some preliminary  
19 matters, before I get to the closing here. Off the record we  
20 discussed that the transcript will be due on December 11th of  
21 2000, and it will be available on that date. We based the  
22 briefing schedule off of that. The Petitioner's brief will be

23 due on or before January 8th of the year 2001. The respondent's  
24 brief will be due on or before February 5th of 2001 and the reply

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1 brief of the Petitioner will be due on or before February 20th.

2 We have also had the off-the-record discussion about the  
3 length of briefs. I don't know which party made it, but we have  
4 come to an agreement that the briefs will exceed 50 pages.

5 You have requested that I make that determination; is that  
6 correct?

7 MS. CARTER: Yes.

8 HEARING OFFICER KNITTLE: And that is a joint request, Mr.  
9 Boyd?

10 MR. BOYD: Yes, sir.

11 HEARING OFFICER KNITTLE: Okay. I grant that motion and  
12 the briefs are -- the petitioner's and the respondent's initial  
13 brief, I grant leave that they exceed 50 pages. However, that  
14 does not apply, to my recollection, to the reply brief, correct?

15 MS. CARTER: That's correct, as long as we can ask for  
16 leave, if need be.

17 HEARING OFFICER KNITTLE: You may ask for leave and we will  
18 take it up at that point in time. But the petitioner's reply  
19 brief is still set at 25 pages.

20 Finally, we have also set a time to file any appeal of the  
21 Hearing Officer decision. Although I don't know why anyone would  
22 want to do that, Darlene.

23 (Laughter.)

24 HEARING OFFICER KNITTLE: But if, in fact, you want to file

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1 any appeals of any decisions I have made at the hearing or any  
2 other decision prior to hearing leading up to hearing, you have  
3 until December 26th to file that motion and any responses due on  
4 or before January 5th.

5 The mailbox rule will apply, but I request -- in fact, I am  
6 directing you to make sure that opposing counsel has it on that  
7 date, of December 26th, so that you can respond in timely  
8 fashion. Either overnight or fax it. Okay. With your filings  
9 for the Board, just mail them in.

10 All right. That's all I have. Is there anything else?  
11 Any other issues?

12 I am seeing all shaking heads. So that's it. Thank you  
13 very much.

14 (Hearing Exhibits retained  
15 by Hearing Officer Knittle.)

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1 STATE OF ILLINOIS )  
 ) SS  
2 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E  
4

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 181 pages comprise a true, complete and correct  
8 transcript of the proceedings held on the 29th of November 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 8th day of December A.D., 2000.

15  
16  
17  
18

Notary Public and  
Certified Shorthand Reporter and  
Registered Professional Reporter

20 CSR License No. 084-003677  
21 My Commission Expires: 03-02-2003

22

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24

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