

Case No. 80911

In the Supreme Court of Nevada

SOUTHWEST GAS CORPORATION,
Appellant,

vs.

PUBLIC UTILITIES COMMISSION OF
NEVADA; and STATE OF NEVADA
BUREAU OF CONSUMER PROTECTION,
Respondents.

Electronically Filed
Jan 04 2021 07:39 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable WILLIAM KEPHART, District Judge
District Court Case No. A-19-791302-J

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PAGES 2251-2500**

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CERTIFICATE OF SERVICE

I certify that on January 4, 2021, I submitted the foregoing “Joint Appendix” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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1 per customer metric, because there is a more direct
2 correlation between increased O&M -- or decreased
3 O&M spending and customer benefits than there is
4 from increased net income and customer benefits.

5 Q Unless that net income increase is
6 driven by a cost decrease; correct?

7 A Generally speaking I still question
8 the net income metric and how it directly benefits
9 ratepayers.

10 I'm not saying that cost containment
11 is not a part of increasing net income, but overall
12 looking at the net income metric, it is more
13 closely aligned with benefiting the shareholders,
14 which is why I recommend allocating the costs to
15 the shareholders, whereas the O&M cost per customer
16 is more directly -- it provides benefits more
17 directly related to the ratepayers.

18 Q So I think it's fair to summarize some
19 of your last responses, is that you agree that
20 lowering costs of service is beneficial to
21 customers.

22 A Yes.

23 Q As part of your testimony, did you
24 review the prepared direct testimony of
25 Randi Cunningham?

1 A I've read it, yes.

2 Q And did you see the discussion in that,
3 that displayed the Company's average monthly bill
4 for a residential customer since 2001 has in fact
5 decreased in Southern Nevada, or only marginally
6 increased in Northern Nevada? And that's in
7 nominal dollars.

8 A I skimmed her testimony, I was reading
9 the parts where she talked about compensation, so
10 I actually do not recall what her testimony was on
11 average bills.

12 Q Okay. And in your response to Q&A 30
13 you state: What is clear is that a higher net
14 income would likely result in higher earnings per
15 share, and a lower net income would likely result
16 in lower earnings per share. Correct?

17 A That is what I wrote, yes.

18 Q How do shareholders realize a higher
19 earnings per share through revenue that is
20 regulated by the Commission, and in an environment
21 where the Company is issuing shares to fund
22 investments in the Company's systems?

23 A I'm not an expert on earnings per
24 shares. I was talking generally that net income
25 divided by numbers of shares equals earnings per

1 shares, and that's why I said likely if the net
2 income increases it's likely to have a higher
3 earnings per share, assuming, assuming the same
4 number of shares. I did not definitively state
5 that's what would happen.

6 Q Okay. So your assumption with that
7 statement was that it was assuming the same number
8 of shares; correct?

9 A It's not making an assumption, or I'm
10 not trying to say specifically here what the
11 number -- or the earnings per shares will be. The
12 point of Q&A 30 is to state how the net income is
13 more closely correlated to benefits for
14 shareholders than it is an increased net income
15 is correlated to benefits for the ratepayers.

16 Q I understand that's the conclusion that
17 you come up with in that question. However, the
18 basis for that conclusion is your statement that
19 a higher net income would likely result in a higher
20 earnings per share, and a lower net income would
21 likely result in a lower earnings per share.
22 Correct?

23 A Correct.

24 Q Okay.

25 A I used the word "likely" in there

1 twice.

2 Q Understood. And so prior to relying on
3 that justification, did you investigate to see
4 whether or not Southwest Gas had actually issued
5 shares within the last year-and-a-half to fund
6 investments in the Company's operations?

7 A No. I looked at the justification that
8 Southwest Gas provided to include the five MIP
9 metric dollar amounts into rates, and I did not
10 agree with all of the justification, and therefore
11 I'm recommending several disallowances.

12 Q So if we were to look at this
13 justification that you use, would a higher net
14 income result in an environment where there are
15 increasing shares? I'm sorry. That was a bad
16 question.

17 Would there be a higher earnings per
18 share if the Company is increasing the number of
19 outstanding shares?

20 A I'm not sure if I can answer that
21 question. I think it would depend on what the net
22 income is, how many shares were offered -- and how
23 many shares were offered.

24 Q So if -- well, we've already discussed
25 how the Company's revenues are regulated and

1 determined by the Commission. And so the Company
2 is not able, absent a rate case, to modify those
3 amounts. And we've also talked about how the
4 Company has also issued shares. In an environment
5 like that, how do shareholders realize a higher
6 earnings per share?

7 A Again, I --

8 Q Would it be through cost savings?

9 A Again, I'm not sure how many shares
10 were offered and I'm not sure if there has been
11 an increase in net income, so I cannot answer that
12 question.

13 But the premise of my recommendation is
14 that the benefits from a higher net income are more
15 likely to go to a shareholder than they are to a
16 ratepayer. I did not find any justification that
17 Southwest Gas provided to include this MIP metric
18 cost in rates to sway me otherwise, and that's why
19 I'm recommending a disallowance.

20 I did not recommend a disallowance
21 based upon the exact number of shares that were
22 earned or that were issued, or the exact earnings
23 per share dollar amount.

24 Q Are you familiar with the rebuttal
25 testimony of Theodore Wood that's been submitted in

1 this case?

2 A No, I'm not.

3 Q And are you familiar with his testimony
4 that identifies that Southwest Gas has issued
5 approximately 1.5 million shares for the 12 months
6 ended June 30th, 2018?

7 MS. CASSITY: Objection. I think that
8 was asked and answered.

9 COMMISSIONER PONGRACZ: Was that
10 contained in the testimony she just said she hadn't
11 read?

12 MR. STEPHENS: Yes.

13 COMMISSIONER PONGRACZ: Then I believe
14 she's already said she hasn't read it.

15 BY MR. STEPHENS:

16 Q So the only way to derive -- well, I've
17 already asked that.

18 How does your analysis of the net
19 income metric, consider the capital raised by
20 Southwest Gas a fund investment in the Company's
21 system?

22 A A discussion of that was not included
23 in Southwest Gas' justification for including the
24 net income cost into the MIP. My analysis, I
25 reviewed the information and justification that

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1 Southwest Gas provided, and based on what they
2 provided I believe that an increased net income is
3 more likely to benefit shareholders than it is to
4 benefit ratepayers.

5 Q Does your analysis of the net income
6 metric consider the capital raised by Southwest Gas
7 to fund investment in the Company's system?

8 A No, Southwest Gas did not include a
9 discussion of that in their justification for
10 including the net income metric in the costs of the
11 net income metric into rates.

12 Q Did you ask Southwest Gas for that
13 information?

14 A No, I did not. I used the information
15 that Southwest Gas provided in its filing. I asked
16 data requests on areas that either I was unsure of
17 or areas where Southwest Gas provided zero
18 information.

19 In areas where Southwest Gas provided
20 what it believed to be adequate justification, I
21 did not follow up and ask additional DRs to get
22 additional justification if I did not agree with
23 their initial justification.

24 Q Do you know if the number of
25 outstanding issues - I'm sorry - outstanding shares

1 of a publicly-traded company is publicly available?

2 A I do not know. I would guess yes, but
3 I do not know.

4 Q In Q&A 37 you referenced the Hay
5 Group's report concluding that the MIP is aligned
6 with the Company's peers, and the total target cash
7 compensation was within the competitive range of
8 the peer group, and was actually below the market
9 median. Correct?

10 A Correct. And this goes back to our
11 discussion that we had yesterday, in that by
12 finding that any of the compensation targets are
13 comparable does not mean they are automatically
14 reasonable to be included in rates.

15 But yes, that Q&A does state that their
16 MIP is comparable to its peers.

17 Q Your testimony does not challenge these
18 conclusions that are referenced in Q&A 37; correct?

19 A No, it does not.

20 Q Let's move on to RSUP. I'm going to be
21 focusing on Q&A 49. And I'm a little mixed up on a
22 couple of things in your testimony, and so I'm
23 going to try and ask you questions to help clarify
24 so that I understand the recommendations that you
25 have made.

1 Moving on to page 22, beginning at
2 line 3, the second point, you state: Southwest Gas
3 has not provided any evidence that including the
4 RSUP revenue requirement in rates creates executive
5 employee retention.

6 And in the sentence after that you say:
7 Staff does not dispute that having to forfeit
8 years' worth of outstanding equity awards when
9 ending employment with Southwest Gas may entice an
10 executive to stay with Southwest Gas.

11 So it seems to me, in the first
12 sentence you state that there is no evidence that
13 RSUP creates executive employee retention, but then
14 in the next sentence you acknowledge that it does.

15 A That misstates my testimony. My first
16 sentence states that including the RSUP revenue
17 into rates does not necessarily create executive
18 employee retention, because if you read down to
19 line 6 where I add: However, this retention
20 incentive does not hinge on who pays for the cost
21 of those equity shares, ratepayers or shareholders.
22 I do agree that offering a long-term stock program
23 might entice executives to stay, but in the last
24 rate case, which was six years ago, the RSUP costs
25 were not allowed in rates.

1 And if you go further down to lines 8
2 to 10, it shows that even though 100 percent of the
3 stock costs were not allowed in rates, only one
4 executive chose to leave and five executives in
5 that time period retired.

6 So again, I do believe including or
7 offering a stock program might entice executives to
8 stay, but I don't think that ratepayers have to pay
9 for the price of that stock to have those
10 executives stay.

11 Q And so your conclusion with respect to
12 RSUP is not based upon the premise that customers
13 don't benefit from the RSUP, because you've
14 discussed that there is a direct benefit of
15 enticing qualified individuals to stay with the
16 Company; correct?

17 A If I could turn your attention to my
18 Q&A 41, which is on page 18, and that discusses
19 Southwest Gas -- Southwest Gas Holding Company,
20 Southwest Gas' Holdings proxy statement where they
21 say their long-term compensation is essentially
22 designed to align the executives' interests with
23 those of shareholders, and therefore have the
24 executives act in the best interests of
25 shareholders, and if you're acting in the best

1 interests of shareholders, you may or may not be
2 acting in the best interests of the ratepayers.

3 I believe the long-term compensation
4 in and of itself is meant to do what the proxy
5 statement states in Q&A 41.

6 Q So you're jumping a couple of questions
7 ahead, and so let me just reset it and we'll take
8 it back to the question that was asked. And maybe
9 I'll ask it a little simpler.

10 Do you agree that the RSUP costs
11 provide a benefit of executive retention?

12 A Not necessarily, no. Again, not having
13 the costs in rates --

14 Q I'm not saying if they're in rates; I'm
15 just saying the Company has an RSUP compensation
16 package. Does that compensation package, whoever
17 pays for it, provide the benefit of executive
18 retention?

19 A Yes, I believe offering a compensation,
20 a long-term compensation package can provide
21 benefits to the ratepayers.

22 Again, I think that hinges on -- or
23 that does not hinge on who pays for that cost,
24 though.

25 Q Okay. So now that we're in agreement

1 that the RSUP provides a benefit to customers in
2 the form of executive retention, let's go back to
3 Q&A 49, page 21, beginning line 18, and I'm going
4 to read the sentence to you: First, Southwest Gas
5 has not provided information to show that the
6 benefits of the RSUP accrue to the ratepayers
7 rather than the shareholders.

8 Is that your testimony?

9 A Yes, my testimony does state that. And
10 I'm talking about here having the program versus
11 having the costs of the program. I believe those
12 are two different things.

13 Offering a program that retains
14 executives is beneficial. However, the costs of
15 this program and the design of this program is to
16 align the shareholders' interests - or sorry - to
17 align the executives' interests with shareholders,
18 therefore the cost of this long-term retention
19 program is not benefitting ratepayers.

20 Q You know, I just don't follow the logic
21 with that. Basically you're saying notwithstanding
22 the fact that customers benefit, they should not
23 pay because shareholders also benefit.

24 A You have to look at the stock
25 holistically, and offering the program that --

1 offering a program, any program that retains
2 executives, would benefit ratepayers.

3 But then you have to look at what is
4 that program doing? And that program is aligning
5 the interests of executives with the ratepayers.
6 You cannot look at this program individually, you
7 have to look at what is the purpose of it, what are
8 the metrics for achieving the stocks, which are
9 earnings metrics, financial metrics, and then you
10 have to see, looking back last year, again if the
11 costs of these stocks were not allowed in rates,
12 did it somehow harm ratepayers by having executive
13 turn-over, and it did not.

14 Q And it did not because there is not
15 substantial executive turn-over because the RSUP
16 program is working; correct?

17 A Correct. But again, those costs were
18 not included in rates because those costs -- or the
19 program is designed to align the interests of the
20 ratepayer -- or of the executives with the
21 shareholders, and you have to look at the RSUP as
22 a whole package, and you can't just pull out one
23 benefit that having executives be retained,
24 therefore all the costs should be included in
25 rates. You have to look at again the program

1 holistically.

2 Q If you were to follow that logic and
3 apply it for a disallowance in this instance, then
4 Southwest Gas is put at a disadvantage because the
5 Company has to choose between either 1, offering
6 compensation at a market competitive level and a
7 market competitive structure, but suffer the loss
8 from the disallowance; or, alternatively, the
9 Company can choose to provide a below-market
10 compensation package that risks the benefits of
11 attracting and retaining qualified talent but,
12 notwithstanding that risk, recovering all of the
13 costs for that below-market compensation package.
14 That's the choice that you're giving Southwest Gas
15 with respect to that logic. Correct?

16 A That is incorrect. If Southwest Gas
17 felt that if a compensation component was not
18 allowed to -- if it was not included in rates it
19 would not offer it, then Southwest Gas would not
20 have offered stock for the past six years when the
21 Commission determined in the 2012 rate case to not
22 include the stock price in rates.

23 Q But that is number 1, which is the
24 Company continued to offer the compensation package
25 because they value the benefits to shareholders and

1 to customers of retaining the executives, and they
2 just suffered the loss from the disallowance. That
3 is Option 1; correct? And that's what Southwest
4 Gas selected.

5 If some day they select Option 2 and
6 offer a below market compensation package, then
7 what will happen is over time the risk of
8 executives leaving will increase, which will have
9 a detrimental impact on customers. Correct?

10 MS. CASSITY: I'm going to object. I
11 think that's asked and answered, and frankly it's
12 argumentative.

13 COMMISSIONER PONGRACZ: Sustained.

14 BY MR. STEPHENS:

15 Q Why does who pays for it change who
16 benefits from it with respect to the RSUP?

17 A Who benefits, there is an economic
18 principle that I was looking at here, that whoever
19 benefits from any program should also share in the
20 costs. If someone, if a group is benefiting from
21 something and they're not paying any of the costs,
22 and there is another group who is paying all the
23 costs and not benefiting from it, that's a pretty
24 bad way to apply an economic principle.

25 So how I looked at all of the

1 compensation components was to see are the
2 ratepayers benefiting from this program? Are the
3 shareholders benefiting from this program? And
4 then dividing the costs accordingly.

5 Q Can you identify one cost that the
6 Company incurs that the customers only benefit from
7 and the Company does not benefit from, or the
8 shareholders don't benefit from?

9 A Actually, I can't so on that line we
10 can say that instead of approving the base
11 salaries, those should be split 50-50 as well so
12 the shareholders can get some benefits as well.

13 Q And you can even take that logic
14 further, if you believe it, to say the pipe in the
15 ground benefits both shareholders because they get
16 to earn a rate of return, and customers because
17 they get the service of natural gas, and so why
18 don't we split that cost 50-50, too. Right? You
19 can extend that logic, if you believe it, to
20 something like that.

21 A I did not look at the costs of any of
22 the pipe in the ground. I only looked at the
23 compensation costs, and I looked at what costs I
24 think truly benefit ratepayers, or have a
25 correlation where I could find - let me take that

1 back, not truly - but where I could find a
2 correlation from a program if it benefitted
3 ratepayers and that costs should be in rates.

4 But if I found a program where I was
5 unsure or could not find any justification for
6 those costs benefiting ratepayers, or I found
7 justification where those costs benefitted
8 shareholders, then I allocated the costs that way.

9 Q But you didn't do that with respect to
10 wages. You just testified that you could extend
11 that logic to wages and say, maybe we should
12 theoretically split that 50-50. But you didn't
13 extend it in that instance, did you?

14 A I did not, because in that instance I
15 believe that the core functioning of the program,
16 its employees, and all their core duties to keep
17 the Company running is providing safe, reliable,
18 and affordable service, and therefore those costs
19 should be included in rates.

20 Q Going back to your statement that Staff
21 did not find any points made in the prepared direct
22 testimony of Brian Holmen to be compelling, what
23 factors would Staff find compelling with respect to
24 the RSUP?

25 A When I reviewed the RSUP, the metrics

1 to getting the performance stock units were solely
2 based on financial metrics, and then when I read
3 the Southwest Gas Holding Company's proxy
4 statement, as I outlined in my Q&A 41, the whole
5 intent of -- or the main intent of offering stock
6 is to align the interests of the executives with
7 the shareholders. So I found that information in
8 the proxy statement.

9 Q I'm glad you mentioned that. So I was
10 going to move on and talk about what you understand
11 with respect to publicly-traded companies.

12 Do you know if publicly-traded
13 companies are evaluated and graded based upon
14 ownership of stock by directors and officers?

15 A No, I'm not.

16 Q Do you know if those -- well, never
17 mind.

18 Let's move on to forward compensation.
19 Are you aware that under California law Southwest
20 Gas is required to have a board of directors?

21 A I was when I read the rebuttal
22 testimony, but nowhere in my testimony did I say
23 to get rid of the board of directors. I was very
24 confused on where that point was coming from,
25 because my recommendation was to acknowledge that

1 the board of directors does benefit ratepayers, but
2 my testimony also acknowledges that having a board
3 of directors also benefits shareholders, and that's
4 why I'm recommending to split the costs between the
5 ratepayers and the shareholders.

6 Again, I'm not saying that Southwest
7 Gas should remove its board of directors.

8 Q Are you aware of any proxy utilities
9 that do not have a board of directors?

10 A I haven't looked at any utilities
11 outside of the State of Nevada.

12 Q Why isn't the costs of the board of
13 directors a necessary and reasonable business
14 expense?

15 A I think that it is a necessary and
16 reasonable business expense. However, looking at,
17 going back to that economic principle that I
18 mentioned earlier, is that the shareholders also
19 benefit by having a board of directors. The board
20 of directors has to act in the best interests of
21 its shareholders, and act in the best interests of
22 its ratepayers, and therefore I recommend splitting
23 the compensation costs 50-50.

24 Q And so your recommendation regarding
25 board compensation is based upon the same logic

1 that we disagree with, of if there is a cost that
2 benefits the shareholders they should share the
3 costs, or they should share a responsibility for
4 a portion of that cost.

5 A Correct.

6 Q Does your proposal regarding board
7 compensation account for the adjustment that
8 Southwest Gas had already made with respect to
9 board costs?

10 A I am not sure what adjustments
11 Southwest Gas made to its board costs. I am
12 stating a policy recommendation that the costs
13 should be split 50-50, and how that adjustment
14 affects the 50-50 I am not sure. But I still stand
15 by the policy decision that the overall costs
16 should be split 50-50.

17 MR. STEPHENS: No further questions.

18 COMMISSIONER PONGRACZ: Thank you.

19 Mr. Stuhff?

20 MR. STUHFF: No questions. Thank you.

21 COMMISSIONER PONGRACZ: Thank you.

22 Redirect, Miss Cassity?

23 MS. CASSITY: Yes, just briefly.

24

25

1 REDIRECT EXAMINATION

2 BY MS. CASSITY:

3 Q Miss Olesky, I believe you were asked
4 some questions about your recommendations, and that
5 you are splitting the costs between certain
6 compensation costs, you're splitting the costs
7 between ratepayers and shareholders equally, and
8 if -- using that logic there are numerous other
9 things which Staff could recommend disallowing
10 50 percent of the costs.

11 Would you agree that Staff's role is to
12 balance the interests of shareholders and
13 ratepayers, to allow the utility the opportunity to
14 earn a fair rate of return?

15 A Yes.

16 Q And so would Staff be supportive or
17 go so far as to disallow 50 percent of all the
18 Company's costs simply because they all benefit
19 shareholders and ratepayers?

20 A Absolutely not.

21 MS. CASSITY: No further questions.

22 COMMISSIONER PONGRACZ: Thank you.

23 Do we have any recross?

24 MR. STEPHENS: Yes.

25

1 REDIRECT EXAMINATION

2 BY MR. STEPHENS:

3 Q So Staff would not go as far to
4 disallow 50 percent of all the Company's costs
5 because they think it's the right thing to do,
6 or because that logic that you apply with respect
7 to the compensation costs is contrary to the
8 Regulatory Compact and the service that Southwest
9 Gas provides and the ability to recover those costs
10 of service from the customers.

11 A I think I followed your question, and I
12 think my answer is neither. When Staff looks at a
13 project or a compensation component, we look to see
14 what costs are needed to provide just and
15 reasonable rates for safe, reliable, and affordable
16 service and that's the principle that we take in
17 looking at any project and any cost.

18 We don't merely say 50 percent of how
19 everything should be split, unless we have a reason
20 for stating something should be split 50 percent.

21 MR. STEPHENS: Thank you.

22 COMMISSIONER PONGRACZ: Thank you.

23 Any redirect on the recross?

24 MS. CASSITY: No, thank you.

25 COMMISSIONER PONGRACZ: Do we have

1 questions on this witness from Carson City,
2 Mr. McDonnell?

3 MR. McDONNELL: No questions. Thank
4 you.

5 COMMISSIONER PONGRACZ: Thank you.

6 Do we have questions from the dais for
7 this witness?

8 Mr. Traxler.

9 CLARIFICATION

10 QUESTIONS

11 BY MR. TRAXLER:

12 Q Miss Olesky, you were asked a number of
13 questions about the impact on earnings per share
14 from the increase in net income, and the additional
15 question with regard to what happens when
16 additional stock is issued by the Company.

17 Now let's talk about the issuance of
18 additional stock. Let's assume that net income
19 remains the same, and we issue another thousand
20 shares of stock. There's no question, it's a
21 mathematical certainty, is not, that earnings
22 per share will go down because of that phenomenon.

23 A Correct.

24 Q Now my understanding is your testimony
25 was not intended to address that situation at all;

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1 is that correct?

2 A Correct.

3 Q Now let me ask you this. Any time, any
4 time that net income is increased in a given year,
5 regardless of the number of shares outstanding,
6 whether or not it doesn't make any difference, we
7 assume that -- does it make any difference whether
8 or not the shares in a given year are higher than
9 they were the previous year, any increase in net
10 income in any given year has an incremental benefit
11 to shareholders; is that correct?

12 A That is my understanding, yes.

13 Q Let me refer you to page 9 of your
14 testimony.

15 A I'm there.

16 Q And in Question 22 you list the five
17 metrics under the current MIP plan; correct?

18 A Correct.

19 Q And I notice that net income is rated
20 at 40 percent.

21 A Correct.

22 Q And I have two metrics for
23 safety-related at 10 percent each.

24 So is it fair to say that the net
25 income was rated twice as high as safety in their

1 plan?

2 A Correct.

3 Q And I have a 20 percent weighting for
4 O&M, control of O&M expenses.

5 A Yes.

6 Q Again, is it fair to say that the
7 Company's plan is rated twice as high for net
8 income than control of O&M expense?

9 A That is correct.

10 Q Now you've had experience prior to this
11 case in dealing with -- in compensation issues in
12 general, including, you know, the research of stock
13 plans for other companies, and the management
14 incentive plans; correct?

15 A Correct. I've also, I'm also the
16 compensation witness for the rate cases for
17 NVEnergy, and I believe I have gone through
18 two since they have been acquired by
19 Berkshire Hathaway, and then one rate case before
20 they were acquired, when they also had a stock plan
21 and a proxy statement.

22 Q Would you agree with the general
23 concept that the only way that an incentive plan is
24 going to benefit ratepayers is if the metrics are
25 set high enough to result in enough effort from

1 employees to actually increase productivity in some
2 metric?

3 A Correct. If the metrics are set too
4 low, then it's no longer variable at pay, it's
5 guaranteed pay, and then an employee does not
6 have to work as hard if it's a very low threshold.
7 Similarly, if a threshold is too high, an employee
8 might feel like that is unachievable and not work
9 so hard to achieve it. So there does have to be
10 some striving to get some effort on behalf of the
11 Southwest Gas employees.

12 Q Let me refer you to page 10 of your
13 testimony, Q&A 24 -- no, 25.

14 There you indicate the historical
15 payout of this Company on the management incentive
16 plan; correct?

17 A That is correct.

18 Q And I'm going to ask you if I restated
19 these percentages correctly.

20 The payout for 2013 was 114 percent --
21 for 2013 it was 114 percent, 2014 was 122 percent,
22 2015 was 103 percent, 2006 was 106 percent, and
23 then we have beginning in 2016 an executive MIP
24 that was paid out at 107 percent, and again in 2017
25 we have two MIPs, one for regular employees that

1 paid out 129 percent -- now this is a test year,
2 correct, 2017?

3 A Correct.

4 Q And the executive was paid out at
5 121 percent.

6 Now would you, in your opinion, your
7 professional opinion, with an incentive plan with,
8 you know, metrics that would really require some
9 effort on the part of an employee to meet plan
10 objectives, this kind of payout, what does that
11 suggest to you with regard to the difficulty of
12 the metrics in the plan?

13 A It suggests to me that some of the
14 metrics are not challenging enough, and it's
15 something that I point out in my Q&A starting at
16 29, where I start looking at it, I mean, especially
17 if we go down to page 27 where I start talking
18 about the damages per 1,000 tickets where I see the
19 actual achievement for the prior year is still set
20 below the target for the next year, and the Company
21 has been achieving at or near the maximum almost
22 every year.

23 And when it comes to safety especially,
24 I would hope that those metrics are set at a level
25 that is having exemplary performance from the

1 employees and not set at a level that is easily
2 achievable to hit the target or even the maximum
3 payout.

4 Q And could you clarify something.

5 With regard to the executive MIP that
6 occurred in 2016 and '17, did the executives only
7 participate under that plan, or did they
8 participate under both MIP plans in 2016 and
9 '17?

10 A In 2016, I believe that it's separate.
11 So in 2016 the CEO, the CFO, and the GC had their
12 own MIP, and then everyone else who was eligible
13 had the otherwise applicable MIP. And then in
14 2017, there is one just for the corporate strategy
15 executives, which is the CEO, CFO, GC, and Vice
16 President of Corporate Strategy and Corporate
17 Development, and then that second MIP, that is for
18 everyone else who is eligible. So there's two, and
19 I don't believe the CEO gets both.

20 Q With regard to the MIP for corporate
21 strategies and executives, is it your understanding
22 that those are the officers that have to be
23 identified in public -- any public publication,
24 public publication, because they are officers of
25 the Company?

1 A I know the top five, the named
2 executive officers, are included in the proxy
3 statement and they're listed. I'm not sure --
4 there are 19 total executives, and I'm not sure if
5 all 19 are publically listed in the proxy statement
6 or any report.

7 Q So your answer is we have 19 employees
8 under this executive plan?

9 A No, there are 19 executives, classified
10 as executives. The MIP is eligible for certain
11 upper level management, directors, vice presidents,
12 and above.

13 Q Okay. For the MIP executive MIP, what
14 is your understanding with regard to which
15 executives participate in that plan?

16 A So for the corporate strategy executive
17 MIP, that is just the CEO, the CFO, the GC, and the
18 vice president of corporate strategy.

19 In the otherwise applicable MIP, it's
20 not just an executive MIP, it is eligible for
21 upper-level management and directors and above.

22 Q And let me, please look at sentence
23 number 1 in Question and Answer 24.

24 A I'm there.

25 Q And you indicate that the benefits

1 under the executive MIP is based on a measurement,
2 a consolidated net income of the entire Southwest
3 Gas Holdings; is that correct?

4 A I can see how that sentence would be
5 misleading. Both MIPs have all five metrics.
6 However, the corporate strategy executives net
7 income metric was the consolidated net income of
8 the entire Southwest Gas Holdings, and the MIP
9 that's eligible for -- that's applicable to all
10 the other employees had those five metrics, but
11 their net income was for Southwest Gas only.
12 It's the net income part that's different between
13 the two MIPs, but they did have -- both MIPs had
14 all five metrics.

15 Q Are you aware that Southwest Gas
16 Holdings has a significant affiliated company, a
17 fully-owned subsidiary that's related to
18 construction, a non-regulated company?

19 A I'm generally aware of that.

20 Q In any event, you're sure, are you not,
21 that Southwest Gas Holdings would also include
22 certainly the gas operations for Arizona and
23 California?

24 A Yes.

25 Q In your opinion, does the earnings of

1 the construction affiliate and/or the earnings of
2 California and Arizona have anything to do with
3 providing a benefit to ratepayers in Nevada?

4 A That's a difficult question, because
5 the MIP is Company-wide so it's not Nevada-only,
6 so it is measuring the results, the net income,
7 the O&M per customer, the satisfaction, the
8 customer satisfaction, and the two safety metrics
9 through all of Southwest Gas, which includes
10 California and Arizona.

11 Q I think you misunderstood the question.
12 I'm talking about one specific metric
13 tied to net income, I'm not talking about O&M or
14 anything else, a metric that relates to net income
15 for Southwest Gas Holdings, which includes the net
16 income of California, Arizona, and a net income of
17 the large construction affiliated, the
18 non-regulated affiliate, how does the net income
19 earned by those jurisdictions provide any benefit
20 to ratepayers in Nevada?

21 A I'm not sure if they do.

22 Q Are you aware that the Company's
23 recommendation for the MIP in this case is a
24 three-year average, a historical average?

25 A Correct. I believe that's based off

1 the last Commission's order.

2 Q Okay. So we're talking about an
3 average of 2015, '16, and '17; correct?

4 A Correct.

5 Q And if I look again at your percentages
6 for the regular MIP, for 2015 the payout was 103
7 percent?

8 A Correct.

9 Q For 2016 you state that the payout was
10 106 percent?

11 A Correct.

12 Q And for 2017 you state that the payout
13 was 129 percent?

14 A Correct.

15 Q And hang with me just a minute.

16 Would you accept, subject to check,
17 that the average payout assumed by the Company's
18 normalization adjustment is 113 percent payout?

19 A I would agree with that.

20 Q And assuming that this Company stays
21 out for another six years, would you agree that
22 the Company's asking the Commission to include an
23 MIP payout for incentive compensation that assumes
24 that employees achieve at 113 percent every year
25 for six years?

1 A Yes.

2 Q Do you think that's reasonable under
3 the, you know, what an incentive plan is supposed
4 to accomplish?

5 A I have concerns that some of the
6 metrics are too easy to achieve, and they're not
7 eliciting some of the best behavior to receive a
8 bonus. I do have concerns about that.

9 MR. TRAXLER: That's all the questions
10 I have. Thank you.

11 COMMISSIONER PONGRACZ: Mr. Vinski?

12 MR. VINSKI: No.

13 Miss Harris?

14 MS. HARRIS: No.

15 COMMISSION

16 QUESTIONS

17 BY COMMISSIONER PONGRACZ:

18 Q I do have a few questions.

19 I want to recall you to the
20 conversation you had with Mr. Stephens today where
21 you said that you were willing to talk with
22 Southwest Gas about any additional material you
23 would recommend the Company include in its next
24 rate case.

25 Do you recall that part of the

1 conversation?

2 A Yes, I do.

3 Q When you made that offer to speak with
4 the Company prior to the next rate case filing to
5 share your ideas on MIP metrics, did this offer to
6 share your ideas, in your mind, represent Staff
7 taking on a duty in some way to define what the
8 Company filed in the next rate case, or were you
9 just attempting to be helpful?

10 A It's a little bit of both.

11 And I did not offer to meet with
12 Southwest Gas to determine what their next MIP
13 should be. That is the duty of Southwest Gas to
14 determine how they want to incentivize and reward
15 their employees. When I agreed that Staff could
16 meet with Southwest Gas to talk about the MDRs, I
17 think we realize there's a lot of information that
18 was not provided to Staff, or if it does it was not
19 provided in a timely manner, and I think we need to
20 figure out a better way to have Southwest Gas be
21 ready to be audited in future rate cases, and if
22 that's including more MDRs, or the master data
23 requests, to make sure more information is readily
24 available for Staff, then I think that's something
25 we could consider.

1 But I would also have to talk to my
2 boss about that.

3 Q So are you, in offering -- let's go
4 back to the MIP area. In offering to share your
5 ideas, were you indicating you thought that the
6 Company should substitute your ideas for their own
7 judgment about how best to support their proposals
8 about MIP in the next proceeding?

9 A Absolutely not. It is Southwest Gas'
10 duty to justify and provide information to support
11 the programs they want to offer. I would just like
12 to see more transparency in the safety metrics and
13 targets for the safety metrics to make sure that
14 the level of safety that the Southwest Gas
15 ratepayers is receiving is up to par.

16 Q And when you as a representative of
17 Staff offered to provide suggestions for the
18 Company to consider as it develops its next rate
19 case, are you representing the Commission there,
20 or are you speaking on behalf of Staff as a party
21 that would participate in a proceeding?

22 A Only on behalf of Staff. Staff does
23 not speak on behalf of the Commission.

24 COMMISSIONER PONGRACZ: Thank you. I
25 have no further questions.

1 (The witness was excused.)

2 COMMISSIONER PONGRACZ: And I think
3 this is a good time for our morning break. We'll
4 be back at 11:30.

5 And we'll be off the record.

6 (At 11:18 a.m. a recess was taken.)

7 -oOo-

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1 CARSON CITY AND LAS VEGAS, NEVADA

2 WEDNESDAY, OCTOBER 24, 2018

3 11:34 A.M.

4 -oOo-

5 MR. STUHFF: Thank you, Commissioner.

6 We have on the stand right now BCP's
7 witness Mr. Mark Garrett.

8 We have also prepared copies of the
9 testimony, which are in front of you all there.

10 At this time, we would ask to have
11 Mr. Mark Garrett's testimony marked as the exhibit
12 next in order.

13 MS. HARRIS: The direct testimony of
14 Mark Garrett, will be marked as Exhibit 59.

15 (Exhibit No. 59 was marked for identification.)

16 (One witness was sworn: Mark Garrett.)

17 MARK GARRETT

18 called as a witness on behalf of

19 THE ATTORNEY GENERAL'S

20 BUREAU OF CONSUMER PROTECTION

21 having been first duly sworn

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. STUHFF:

25 Q Mr. Garrett, do you have a copy of your

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1 testimony in front of you?

2 A I do.

3 Q And could you please spell your name,
4 spell your last name, and state your first name.

5 A It's Mark Garrett, G-a-r-r-e-t-t.

6 Q And for whom are you appearing today?

7 A Bureau of Consumer Protection, BCP.

8 Q And do you have a copy of your
9 testimony, which has been marked as Exhibit No.
10 and I'm sorry what was that?

11 A 59.

12 Q 59 in front of you?

13 A Yes, I do.

14 Q And was that prepared by you or at your
15 direction?

16 A Yes, it was.

17 Q And do you have any changes or
18 corrections to make to your testimony this morning?

19 A Not really. I have kind of one global
20 comment to make.

21 In my testimony about short-term
22 incentives I referred to the funding mechanism as
23 an earnings per share trigger. In rebuttal
24 testimony the Company pointed out that it's really
25 just an earnings mechanism; it's not earnings per

1 share.

2 So it doesn't really make any
3 difference for the testimony, from a substantive
4 standpoint it doesn't change anything, but if
5 you're reading the testimony and you see "EPS,"
6 it's correctly earnings, not earnings per share.
7 But it's kind of a distinction without a difference
8 with respect to the testimony itself.

9 Q Okay. Thank you for that
10 clarification.

11 Besides that clarification, if I were
12 to ask you the questions contained in your
13 testimony today, would your responses be the same?

14 A Yes, they would.

15 MR. STUHFF: We would tender Mr. Mark
16 Garrett for cross-examination.

17 COMMISSIONER PONGRACZ: Thank you.

18 Mr. Stephens or Miss Kolebuck?

19 MR. STEPHENS: It's me. Thank you.

20 CROSS-EXAMINATION

21 BY MR. STEPHENS:

22 Q Good morning, Mr. Garrett.

23 A Good morning.

24 Q Did you serve any data requests in this
25 docket?

1 A Yes.

2 Q And did you receive responses to those
3 DRs?

4 A Yes.

5 Q Were there any responses that you
6 requested but were not able to review?

7 A Not that I recall, sitting here today.

8 Q And you've been involved in numerous
9 rate cases as a witness; correct?

10 A Yes.

11 Q In your experiences with those other
12 rate cases, do utilities provide a witness to
13 justify every single expense, or do they generally
14 cover main areas, and then respond to discovery or
15 questions throughout the audit process?

16 A Well, it depends a little bit. So if
17 I'm hearing the question right, in most rate cases
18 there's a Company witness to justify material
19 additions to the rate base. And certainly if there
20 is anything from an affiliate, that has to be
21 justified. There is no presumption of prudence
22 with an affiliate.

23 And certainly for items - and I'm
24 trying to think of examples - where the Commission
25 in the last rate case has said, you need to prove

1 the prudence of this, then there is a witness that
2 deals with the prudence of that issue.

3 There are sometimes expense items where
4 a witness does not justify every expense. If it's
5 just a normal ongoing expense, they record the
6 number, and that's generally sufficient unless it's
7 challenged.

8 But anything from an affiliate has to
9 be supported by a witness, and usually for asset
10 additions, anything material, is usually supported
11 by a witness.

12 Q And those ones are typically called
13 out, like you said, in a prior order from the
14 Commission indicating what type of information they
15 want specifically?

16 A No. Like I said, if in a prior order
17 the Commission says, in your next rate case you
18 have to show the prudence of this issue, then you
19 certainly have to, you have to have a witness
20 there.

21 But just on an ongoing basis, without a
22 prior Commission order, anything that's really new
23 and materially impactful to the rate case, there's
24 usually a - and I'm just talking generally -
25 there's generally a witness to support that

1 material addition.

2 And when I say "material," I'm not
3 talking about materials and supplies, I'm talking
4 about does it make a difference to the rate case
5 or not.

6 Q And those are identified through the
7 audit process of the rate case; correct?

8 A What's that?

9 Q You know, the material, the costs and
10 expenses that parties have issue with.

11 A Yes. And that's why I clarified that
12 when I say "material," I mean important. You know,
13 does it make a difference? Is it big enough to
14 matter?

15 So if there is a material additional,
16 like a new power plant, or something like that, for
17 a gas company a new storage facility, or something
18 like that, something big, or something that is big
19 enough to make a difference to the rate case, there
20 is usually a witness to support that.

21 I'm thinking about in electric rate
22 cases there will be a witness to support
23 distribution additions, there will be a witness to
24 support transmission additions, there will be a
25 witness to support generating plant additions. So

1 there will be a witness that supports the new
2 things that are happening at the Company.

3 Q The first issue you raised in your
4 testimony is the Commerce Substation regulatory
5 assets; correct?

6 A Yes.

7 Q Were you involved in the Company's 2012
8 general rate case?

9 A I was not.

10 Q Was the BCP a party in that docket?

11 A Well, like I say, I wasn't a party, but
12 I assume they were, yes.

13 Q Do you dispute that Southwest Gas
14 incurred these \$6 million costs related to the
15 Commerce Substation?

16 A No, I did not dispute that.

17 Q And in fact, Miss Berger's prepared
18 direct testimony explicitly identified that
19 regulatory asset as something the Company was
20 requesting for relief in this docket; correct?

21 A Her testimony identified the number,
22 but my problem with it was that there was no
23 support for the prudence of those expenditures,
24 as required by the Commission's prior order in
25 the 2012 case.

1 Q You conducted discovery on that issue;
2 correct?

3 A There was discovery. BCP I think asked
4 some questions, and I think Staff asked some
5 questions on it.

6 Q And copies of that discovery and
7 corresponding responses are attached to the
8 rebuttal testimony of Christy Berger as CMB-2;
9 correct?

10 A Yes, that is correct.

11 Q Is there a reason why you do not
12 address those discovery responses in your written
13 testimony?

14 A No. You know, I reviewed those
15 responses. I didn't see that they really supported
16 the prudence, which was my problem with the issue,
17 is that they listed the expenditures, but that's
18 not the same as supporting the prudence.

19 I also had a -- I mean, I really kind
20 of believe that -- there are several things about
21 the Commerce Substation. But just to answer your
22 question, I guess we'll get into the rest of it
23 later, but I have several objections to it, but
24 I didn't say anything about those responses, 1,
25 because they weren't in direct testimony, and

1 that's where the Company has to make its prudence
2 showing. If the Commission has told them that they
3 have to prove the prudence of this expenditure, it
4 has to be done in the direct testimony, not in data
5 requests or rebuttal testimony or somewhere else,
6 it has to be in the case in chief. And they didn't
7 do that, and the time had passed for them, you
8 know, the Company to support the prudence, and so
9 I didn't try to do it for them, in other words.

10 Q You're an attorney; correct?

11 A Yes.

12 Q Are you familiar with the rebuttable
13 presumption standard in Nevada?

14 A Somewhat. And I talked about that some
15 in your first question, that for some expenditures
16 there is a presumption of prudence. Certainly not
17 for this one, because the Commission said you need
18 to prove the prudence. And so when that's the
19 case, you can't just list expenditures and say
20 that's proving the prudence of the expenditures.
21 That's not enough.

22 But that would be enough if you didn't
23 have to prove prudence. If there was a presumption
24 of prudence for ongoing normal expenditures, like
25 you see with operating expenses, the Company lists

1 the expense, and unless someone challenges it in
2 the rate case, it goes into rates. If someone
3 challenges it, then the burden shifts back to the
4 Company, the burden of persuasion shifts back for
5 them to - they always have the burden of proof -
6 but the burden of persuasion shifts back to the
7 Company; they have to prove the prudence of that
8 expenditure at that point.

9 With the Commerce Substation, there was
10 never a shift. I mean, the Company had to prove
11 the prudence in their direct case, and they didn't
12 do that.

13 Q So with respect to the rebuttable
14 presumption standard, just to kind of summarize,
15 the utility enjoys a presumption that the expenses
16 reflected are prudently incurred and taken in good
17 faith until they are objected to otherwise?

18 COMMISSIONER PONGRACZ: And I have a
19 question.

20 MR. STEPHENS: Yes.

21 COMMISSIONER PONGRACZ: Can you cite us
22 to such a standard?

23 MR. STEPHENS: Sure. 122 Nevada 821,
24 PUCN versus Nevada Power.

25

1 BY MR. STEPHENS:

2 Q So under the rebuttable presumption
3 standard, a utility enjoys a presumption that the
4 expenses incurred were prudently incurred and taken
5 in good faith until that is rebutted during the
6 course of the case or the general rate case.

7 MR. STUHFF: Objection. Calls for a
8 legal conclusion.

9 COMMISSIONER PONGRACZ: And do you have
10 copies of that opinion for the parties and the
11 dais?

12 MR. STEPHENS: No, it's Nevada
13 precedent. He's a lawyer. I'm just asking if he
14 has knowledge with respect to that, and clarifying
15 his prior question with respect to the rebuttable
16 presumption.

17 COMMISSIONER PONGRACZ: I understand.
18 But in order to understand the questions, it would
19 be helpful to have the opportunity to look at the
20 decision. So perhaps on the lunch break you could
21 have a copy made and distributed, and then you
22 could move on to another area, and then come back
23 to this.

24 MR. STEPHENS: Certainly.

25 COMMISSIONER PONGRACZ: Thank you.

1 MR. STEPHENS: Let me just get
2 clarification. So that you understand the
3 question, or so that the witness understands the
4 question?

5 COMMISSIONER PONGRACZ: So I would say
6 so we could all understand your area of
7 questioning.

8 Thank you.

9 BY MR. STEPHENS:

10 Q In Q&A 10, you state that in paragraph
11 424 of the order in Docket No. 12-04005 that
12 Southwest Gas represented it would file its next
13 general rate case in 2015. Correct?

14 A Yes.

15 Q Did you understand that the three-year
16 period in reference is not a promise to file in
17 2015, but was a measurement of the prior rate case
18 cycle used to determine a normalization period?

19 A Well, I don't know if it was just that.
20 The Company seemed to have a three-year cycle.
21 They represented to the Commission in that trial,
22 in that hearing, that they were on a three-year
23 cycle. They set up amortization periods to
24 coincide with that three-year cycle, and I think
25 they also used it for normalization. But setting

1 up normalization is a little different than setting
2 up an amortization period.

3 So you set up an amortization period to
4 coincide with the next rate case. It's really been
5 not a problem in this State for the electrics
6 because they're statutorily prescribed, they have
7 them every three years, so all of their
8 amortizations or three years or six years. And
9 back when it was a two-year cycle, it was two
10 years, four years, but it coincided with the rate
11 case cycle.

12 So without a prescribed cycle, the
13 Commission referenced in their order, they just
14 said the Company's rate case cycle, three-year rate
15 case cycle. And so I think, I wasn't at that
16 trial, but I do believe because the Commission put
17 it in its order, that they were anticipating a
18 continuation of the three-year cycle.

19 And I agree with you, it wasn't a
20 prescribed cycle; it was just what was happening.

21 Q So just to clarify, you agree that
22 there is no mandatory rate case cycle for natural
23 gas companies in Nevada?

24 A I don't know about "no mandatory." I
25 would say that if you take advantage of the GIR for

1 more than three years, I think there is a rate case
2 prescribed at that point. I think you have to file
3 a rate case if you want to file -- I don't think
4 you can file four annual gas infrastructure
5 increases.

6 Q The GIR is an optional filing --

7 A Right.

8 Q -- by the Company so --

9 A Well, but --

10 Q -- so there is no mandatory rate case.

11 A Right. If you file three, it is
12 mandatory that you file a rate case then. But
13 that's just my understanding.

14 Q What is your basis for your statement
15 in Q&A 10 that Southwest Gas was overearning
16 throughout all of the 2014, 2015 --

17 A Just the --

18 Q -- and the first quarter of 2016?

19 A The filings they make with the
20 Commission. We asked for those in discovery. And
21 I'm sorry, I didn't attach them to the testimony, I
22 was going to, but I didn't get that done. But it's
23 just what the Company represented they earned.

24 Q Do you know if those calculations
25 demonstrate the Company's actual results, or are

1 there adjustments that are embedded into those
2 calculations?

3 A I think, if I understand, my
4 recollection is that they represent the actual
5 results. And then they started to be -- they were
6 adjusted then for the GIR I think at some point.
7 So they changed over time. But it's what the
8 Company represented their earnings were. That's
9 why I used them.

10 Q Are you aware that the Commission has
11 already specifically addressed the issue of the CEE
12 regulatory asset amortization?

13 A The CEE, the conservation and energy
14 efficiency asset -- yes. Well, do you mean in a
15 prior case?

16 Q Yes.

17 A They set up a three-year amortization
18 of that regulatory asset, if that's what you're
19 asking.

20 Q Do you know if the BCP has ever
21 requested modification to that amortization, or the
22 establishment of a regulatory liability associated
23 with that CEE regulatory asset?

24 A Do you mean during the course of the
25 last six years --

1 Q Yes.

2 A --or the last three years?

3 I don't think they filed anything with
4 respect to that amortization.

5 Q Are you familiar with the Commission's
6 orders in Docket No. 15-06007?

7 A You would have to tell me what that
8 case is.

9 MR. STEPHENS: May I present the
10 witness with copy of the order dated December 29th,
11 2015 in Docket 15-06007?

12 And I'm just going to ask for
13 administrative notice of this.

14 COMMISSIONER PONGRACZ: Certainly.

15 MR. STUHFF: Counsel would request to
16 take a look at that first.

17 Thank you.

18 MR. STEPHENS: And for reference, I'm
19 going to ask him to refer to paragraphs 24 through
20 26.

21 COMMISSIONER PONGRACZ: We will take
22 administrative notice of that order.

23 Thank you.

24 (Administrative Notice Taken.)

25 MR. STEPHENS: Thank you.

1 BY MR. STEPHENS:

2 Q And please take a moment to review.

3 A I did look at this, and I thought I
4 mentioned it in my testimony, but I may not have.

5 Q So I'm going to give you another one as
6 well. Okay. This is an order in the same docket,
7 Docket No. 15-06007. It's an order dated February
8 17th, 2016, and it's an order with respect to
9 Petition for Reconsideration.

10 May I?

11 COMMISSIONER PONGRACZ: Mr. Stuhff?

12 MR. STUHFF: Sure.

13 COMMISSIONER PONGRACZ: And would you
14 like us to take administrative notice of that order
15 as well?

16 MR. STEPHENS: Yes, please. Thank you.

17 COMMISSIONER PONGRACZ: We will do so.

18 (Administrative Notice Taken.)

19 BY MR. STEPHENS:

20 Q And I'll direct your attention to
21 paragraphs 15 and 16 and 17 of the order dated
22 February 17th, 2016.

23 A I'm sorry. Give me the reference
24 again?

25 Q Sure. 15, 16, and 17.

1 A Okay.

2 Q Beginning on page 6.

3 A Yes. I see it.

4 Q So after reviewing both of these
5 orders, would you agree that the BCP has already
6 requested to establish a regulatory liability with
7 respect to the CEE costs twice, once during the
8 course of the case and another time through a
9 Petition for Reconsideration, and those requests
10 were rejected by the Commission?

11 A Yes. Right.

12 Q You write about seven pages of
13 testimony on this CEE issue, but you don't mention
14 this case and the fact that the Commission rejected
15 it multiple times. Is there a reason why you did
16 not address this in your testimony?

17 A I thought I had addressed the first
18 order, but I didn't.

19 I guess one of the things I wanted to
20 do with the testimony is make the Commission aware
21 of this problem where you have a regulatory asset
22 amortization, it's a very preferential rate
23 treatment, it's outside of -- you know, it takes
24 these costs outside of the traditional regulatory
25 lag treatment where the Company earns -- makes

1 money or loses money on the cost. It gives it
2 preferential treatment. And I point out in my
3 testimony that a lot of utilities will, for these,
4 start accruing a regulatory liability at the time
5 it's fully amortized, because the intention of the
6 Commission is not to over-recover a preferential
7 item like that. So if you have a three-year
8 recovery, the Commission doesn't really intend for
9 that to double with a six-year recovery; they want
10 the three-year recovery.

11 And I gave examples of rate case
12 expenses, some other examples of once you're done
13 recovering that regulatory asset, you need to start
14 putting that into an account so that the customers
15 don't over-pay for that regulatory asset.

16 So, and I pointed out also that this is
17 not a problem for the electrics because they have
18 the prescribed three-year cycle for rate cases, so
19 there are no regulatory asset amortizations that
20 are four years or five years, you know, they're
21 always three years or six years, and so this is
22 never an issue there.

23 And so I kind of wanted to raise the
24 awareness so that if you have a company such as
25 Southwest Gas that doesn't have a prescribed cycle,

1 that if you allow regulatory asset amortizations,
2 there is an understanding that at the end of that
3 amortization the Company quits --

4 MR. STEPHENS: I'm going to object, and
5 move to strike as being nonresponsive. The
6 question was why he didn't address these orders in
7 his testimony.

8 I've let him talk for two minutes. I
9 would like to move on with my cross-examination
10 with that question answered.

11 COMMISSIONER PONGRACZ: Mr. Stuhff?

12 MR. STUHFF: Mr. Garrett is explaining
13 why he included this in his testimony, and why
14 he is trying to avoid an overrecovery in this
15 instance. He's making reference to the order
16 that -- the two orders that Mr. Stephens provided,
17 and explaining why it's important not to have an
18 overrecovery, and why the order of the Commission
19 shouldn't be misconstrued to allow for an
20 overrecovery.

21 So I think he's explaining his answer
22 to Mr. Stephens, and I think it's an appropriate
23 response.

24 COMMISSIONER PONGRACZ: Is your
25 response nearly complete, Mr. Garrett?

1 THE WITNESS: It is. And I had one
2 more sentence, and I've now forgotten what that
3 was, but --

4 COMMISSIONER PONGRACZ: Let's move on.

5 MR. STEPHENS: So I'm going to re-ask
6 the question, because I didn't get an answer for
7 it; okay?

8 COMMISSIONER PONGRACZ: Please proceed.

9 BY MR. STEPHENS:

10 Q So you write seven pages of testimony
11 on this issue regarding CEE amortization, but you
12 don't mention the orders in Docket 15-06007;
13 correct?

14 A Correct.

15 Q Is there a reason why your direct
16 testimony does not reference the orders in Docket
17 15-06007?

18 A No reason in particular. You know, I
19 assumed the Commission is aware of its own orders,
20 and I'm really speaking to the Commission with this
21 testimony. And like I said in my initial answer,
22 and I won't repeat it, but I was trying to raise
23 the Commission's awareness of this problem of
24 regulatory assets when there's not a prescribed
25 rate case cycle. It opens up the opportunity for

1 abuse, and that's what we have here.

2 Q Opportunity by abuse from who?

3 A From a utility that continues an
4 amortization of a regulatory asset for more than
5 the prescribed period.

6 So the best example I know of is rate
7 case expenses. When there is not a prescribed
8 period, the utility, for rate cases - and there is
9 a three-year amortization - at the end of that
10 three-year amortization, they start accruing a
11 liability. So they won't over-recover rate case
12 expenses, because that was a preferential
13 treatment, it pulled that money out of the test
14 year, an unusual amount of money that was expended,
15 they let them recover that in the future, but they
16 don't want them to over-recover it.

17 And so at the end of the prescribed
18 three-year period, or whatever it is, two-year
19 period, whatever it is, at the end of that period
20 they need to start accruing a liability or they
21 over-recover on a preferential treatment.

22 Q So you described it as abuse. That's
23 the word you used. So do you think it's abusive
24 for the Company to do that based upon two
25 Commission orders?

1 A Well, I think it's improper for the
2 Company to even ask to keep continuing a
3 preferential treatment like that. I think that
4 they should have, on their own volition,
5 discontinued the amortization, but I didn't --

6 Q So do you disagree with the orders in
7 Docket No. 15-06007?

8 A I think that's the point of my
9 testimony, I'm trying to raise the Commission's
10 awareness that this can happen if you don't -- when
11 you set a regulatory asset, if you don't prescribe
12 an end to it, and the accounting treatment that
13 should occur at the end of an amortization is you
14 should start accruing a liability. Otherwise, you
15 over-recover on that asset.

16 Q So you do disagree with the
17 Commission's orders in Docket 15-06007?

18 A Well, you know, I didn't hear
19 everything the Commission heard, and so I'm not
20 second-guessing the orders. I'm just saying that
21 this can turn into a problem with a material
22 expense.

23 And usually regulatory assets are a
24 material item or they wouldn't have asked for a
25 regulatory asset. So it can turn into a problem

1 that you don't - in this State - that you don't
2 anticipate really with the electricians, because they
3 have this prescribed rate case cycle. With the gas
4 company, it's just something that they need to be
5 aware of.

6 Q I'm sorry. I don't know if I
7 understand your response to that question. I don't
8 know what the electricians have to do with whether or
9 not you agree or disagree with the Commission's
10 orders in Docket 15-06007.

11 MR. STUHFF: Objection. Is that a
12 question?

13 BY MR. STEPHENS:

14 Q Do you agree or disagree with the
15 Commission's orders in Docket 15-06007?

16 MR. STUHFF: Objection, asked and
17 answered.

18 COMMISSIONER PONGRACZ: Sustained.

19 MR. STEPHENS: May I speak for the
20 record on that?

21 COMMISSIONER PONGRACZ: Certainly.

22 MR. STEPHENS: Thank you.

23 I don't think he's provided a direct
24 response to that question.

25 Thank you.

1 COMMISSIONER PONGRACZ: Thank you.

2 BY MR. STEPHENS:

3 Q Do you know if the BCP filed a Petition
4 for Judicial Review after Docket 15-06007?

5 A I don't know that.

6 Q Are you aware that NRS 703.373 requires
7 a Petition for Judicial Review to be filed within
8 30 days after issuance of an order?

9 A I'll take your word for that.

10 Q Your testimony references a letter
11 Southwest Gas sent to the Commission, Staff, and
12 BCP on July 1st, 2015, which explains Southwest
13 Gas' intent to begin collecting the commerce tax
14 through a surcharge on customers' bills.

15 And in fact, the letter that you
16 reference in your testimony references the order in
17 Docket No. 00-1028 as the basis for Southwest Gas'
18 actions; correct?

19 A That's correct.

20 Q Do you know if BCP received that
21 letter?

22 A I don't know if they did or not. I
23 assume they did, but --

24 Q Do you have any reason to believe they
25 did not?

1 A No reason at all.

2 Q Do you know what the BCP did with that
3 letter?

4 A No.

5 Q Do you know if the BCP filed comments
6 or otherwise objected to Southwest Gas' submission
7 of that letter at the time the BCP received the
8 letter?

9 A No.

10 Q Where in the order in Docket No.
11 00-1028 is there an expiration term?

12 A Well, I think some of that treatment
13 expired in the Company's last rate case where the
14 Commission ordered the Company to terminate
15 collection, through a surcharge mechanism, the
16 modified business tax and the mill tax. So I think
17 that it did terminate for those --

18 Q It terminated everything, or just two
19 specific ones?

20 A For those ones, and taxes like them,
21 based on the rationale the Commission used to
22 exclude those taxes.

23 The franchise taxes stayed in, because
24 they're very different in nature. And so the
25 Commission left the franchise tax in the surcharge,

1 but took everything else out.

2 And they articulated their reasons in
3 the order for doing that, and the mill tax
4 articulation would apply to the commerce tax. It's
5 the same type of tax, and there's no real
6 distinction between the two, so the Company should
7 have known that that was not something that could
8 be collected through a surcharge based upon the
9 Commission's prior order, and there was nothing in
10 the statute that allowed it to be collected as a
11 surcharge like there was for the modified business
12 tax. I point that out in my testimony.

13 So the Legislature knew how to
14 authorize a surcharge, and they didn't, for the
15 commerce tax.

16 So to answer your question, it
17 terminated in the Commission's last order in the
18 Company's last rate case.

19 Q So does the order in 2012 in Docket No.
20 12-04055 say, terminate that order with respect to
21 the mill tax, the modified business tax, and
22 related taxes; or is it just specific to the mill
23 tax and the modified business tax?

24 A There were no related taxes at that
25 time. It was specific to those two taxes.

1 But my point is the rationale would
2 apply to the commerce tax, and the Company should
3 have received Commission authority to collect that
4 tax through a surcharge.

5 The electric companies certainly didn't
6 do that. They waited for the next rate cases.

7 So I think the Company didn't have
8 authority from the Commission to collect that tax
9 through a surcharge.

10 Q In Docket 12-04005, did that order
11 change the Company's tariff that allows for the
12 collection of these taxes as Southwest Gas does?

13 A Well, it changed the Company's ability
14 to collect those taxes through a surcharge. Maybe
15 the Company should have changed its tariff; I don't
16 know. But certainly they were not allowed to
17 collect those taxes through the surcharge anymore.

18 So when you look at the tariff it's a
19 bit inaccurate in its language, but it is what it
20 is.

21 Q Does the order in 12-04005 indicate
22 that it is reversing or otherwise eradicating the
23 order in Docket No. 00-1028?

24 A Well, I think it is with respect to the
25 mill tax and the modified business tax. I think

1 that's the outcome.

2 Q Understood. And I don't disagree with
3 that as to those specific two taxes.

4 A Right.

5 Q But that order still stands, and those
6 tariff provisions still stand with respect to
7 subsequent taxes that may arise, and Southwest Gas'
8 authority to collect those taxes through the order
9 in Docket 00-1028 has not been erased; correct?

10 A I don't agree with that. I think the
11 Company should have known.

12 Q How come you don't propose any changes
13 to the Company's tariff language with respect to
14 the collection of the commerce tax in this docket?

15 A Well, my testimony in this docket was
16 with respect to how the commerce tax was, in my
17 opinion, inappropriately collected over the last
18 three years. I think that Staff made
19 recommendations about going forward it should be
20 collected in base rates, and I think that would be
21 consistent with the Commission's order in the last
22 rate case, is that this type of tax is not a
23 surcharge-type charge, it's not something that
24 should be surcharged. And so going forward I would
25 expect that it would be in base rates, but that was

1 not the focus of my testimony; it was more about
2 how it was, in my opinion, inappropriately
3 collected for the last couple years.

4 Q Are you aware of any BCP witness that
5 has offered testimony seeking to modify the
6 Company's tariff with respect to your so-called
7 expiration of the order in Docket No. 00-1028?

8 A I don't know if I have a so-called
9 expiration opinion. I said that the order
10 terminated with respect to those two taxes. So
11 I'm not sure I understand your question.

12 Q Just with respect to those two taxes,
13 or those two taxes and similar-type taxes?

14 A Well, it specifically terminated with
15 respect to those two taxes, but there were no other
16 taxes at the time, other than the franchise tax,
17 and the Commission said the franchise tax is very
18 different. And it is, it's not a cost of the
19 Company, it's a cost to the customer. So the
20 Company is a pass-through for the franchise tax,
21 and so there is a good reason to collect that tax
22 for a surcharge.

23 It went through all the rationale why
24 other taxes should not be collected in a surcharge;
25 they should be collected in base rates. The exact

1 same rationale applies to the commerce tax. There
2 is no difference between that really and the mill
3 tax. I know there is rebuttal testimony that says
4 there is, but there's not.

5 And it's still a tax that's based on
6 prior year revenues, and then there's deductions
7 taken, and then there's a \$4 million deduction
8 taken after that, but it's based on prior year
9 revenues, and just like the mill tax is.

10 So everything the Commission said about
11 the mill tax applies to the commerce tax. And if
12 it had existed at the time, they would have pulled
13 it out of base rates -- I mean, pulled it into base
14 rates at that time, I believe, but it didn't exist.
15 But I think the rationale applies.

16 Q It's reasonable to expect back in 2012
17 that at some point in the future there may be
18 additional taxes that are put forth by the
19 government; correct?

20 A I think that there could be additional
21 taxes, and it might be reasonable for someone to
22 expect that.

23 Q But the order does not specifically
24 account for that in terms of elimination of
25 Southwest Gas' authority to collect taxes --

1 A Well, I think it would also be
2 reasonable --

3 Q -- through the mechanism that the
4 Company does --

5 A Sorry.

6 Q -- because it does not terminate the
7 order in Docket 00-1028, nor does it modify the
8 Company's tariff language allowing the Company to
9 do that; correct?

10 A I'm sorry. I didn't mean to jump in in
11 the middle of your question; I thought you were
12 done.

13 I think it would be reasonable for the
14 Commission to expect that there might be future
15 taxes.

16 I also think when they wrote that order
17 it would be reasonable for them to expect that if a
18 future tax had the same characteristics as the mill
19 tax that was disallowed, that they wouldn't put
20 that through a surcharge without specific
21 Commission authority to do so, and the Company
22 didn't have that.

23 Q So how come nobody objected when
24 Southwest Gas submitted the letter back in 2015
25 indicating its intent to do that?

1 A I can't tell you that.

2 Q The commerce tax is based on the
3 Company's revenues for a particular tax year;
4 correct?

5 A It's based upon the revenues from the
6 prior year.

7 Q And revenues fluctuate from
8 year-to-year; correct?

9 A They can.

10 Q What's the purpose of embedding those
11 fluctuating costs into rates if we already know
12 that they will fluctuate?

13 A Well, because the Company is, 1,
14 responsible for this cost. Like I pointed out
15 before, it's not like a customer cost that's being
16 passed through to the Company like the franchise
17 tax, it's responsible for the cost, and embedding
18 that cost in base rates allows it to be another one
19 of the costs that the Company is responsible for.
20 So when the Company receives this rate of return
21 that shows that it's taking on some risk for its
22 costs, that they might fluctuate, go up, go down,
23 and when we give these 9, 9-and-a-half percent
24 returns instead of 4, 4-and-a-half percent, it's
25 because the Company is taking on some risk. And

1 so if we collected everything through a surcharge,
2 there would be no point in a 9, 9-and-half percent
3 return; we could just go back to a cost of a
4 risk-free return for the utility. But the fact
5 that they take on some risk, allows the higher
6 returns.

7 Q So you think the Company should take on
8 risk with respect to taxes that are mandated be
9 paid by the government?

10 A Well, if they're based on revenues
11 because if the, you know, if the revenues go up,
12 the Company gets the benefit of those additional
13 revenues. If they go down, they suffer the loss
14 from those additional revenues. So the more things
15 that we collect through surcharges, I think was
16 the -- and the witnesses in the 2012 case talked
17 about all of this, and the Commission agreed, that
18 these taxes should be recovered in base rates. And
19 I'm not trying to relitigate that decision, I'm
20 just saying that it would apply to the commerce tax
21 as well.

22 Q Why not allow for Southwest Gas to
23 recover no more or no less than the Company is
24 required to pay for the commerce tax?

25 A The Commission could do that, but

1 they -- they could do that with the mill tax as
2 well, and they could do that with the modified
3 business tax, but they decided to put the costs
4 into base rates and not recover them through a
5 surcharge.

6 And I agree with that, that the fewer
7 things we have recovered through a surcharge, the
8 better, because it makes the utility look more like
9 a regulated utility that's taking on some risk for
10 running its business.

11 Q So you've responded to a few questions
12 here referencing that the annual mill assessment
13 should be used as a model, if you will, and the
14 commerce tax should be treated similarly to the
15 mill assessment; correct?

16 A That's right.

17 Q Isn't the mill assessment an annual
18 assessment determined by the Commission to fund its
19 operations and those of the BCP?

20 A Yes.

21 Q Isn't it true that the mill assessment
22 is calculated annually as a one-time fixed charge
23 based on revenues from the prior year?

24 A Yes.

25 Q So when the mill assessment is charged

1 to the customers, it is a known set amount and does
2 not vary based upon current Company usage - or
3 sorry - current year usage or revenue; correct?

4 A That's right.

5 Q The commerce tax, on the other hand, is
6 a tax based on the statutory rate, multiplied by
7 the current year's revenue; correct?

8 A Well, that's not the way I read the
9 statute. It says that you file a return, a report
10 45 days after the end of the taxable year, and then
11 you pay tax, you compute your gross revenues less
12 your allowed deductions, less the 4 million. But
13 you calculate gross revenues, you apply the tax to
14 that, and then you pay the tax. So it's really
15 based upon the prior year revenues.

16 Now it's collected on the current year
17 revenues, but you have to do. I mean, that's the
18 only way to collect it, is through a monthly charge
19 to ratepayers. The mill tax is collected the same
20 way. But it's not a tax based upon the revenues
21 from that month, because you don't know what gross
22 revenues are. There are 27 deductions you can
23 take, and then you have to deduct the 4 million.
24 So you don't even know what the tax is until you
25 go to the next year after that year, you calculate

1 your gross revenues, you calculate your allowed
2 deductions, you subtract your \$4 million, and you
3 apply the rate to that. That gives you your
4 commerce tax, and that's then what you -- you
5 collect that from ratepayers over the next year.
6 But you pay it based on the prior revenues, the
7 prior year revenues. That's my reading of the
8 statute.

9 Q The rate is determined off of the prior
10 year's revenues, but the total paid by the customer
11 is driven by the current year revenues; correct?

12 A Well, that's the way it would be with
13 anything that's embedded in rates. But that
14 doesn't mean that it's based upon the current --
15 the liability is based upon the current month
16 revenues. The liability is based upon the prior
17 year revenues, and the collection is based upon
18 current year revenues, but that doesn't mean it's
19 a current year tax.

20 Q So similar to a franchise fee, if a
21 customer's usage increases in a particular month,
22 the amount of the commerce tax that is incurred
23 will increase for that month?

24 A You mean the commerce tax that they
25 pay?

1 Q Correct.

2 A Yes. What they pay would increase, but
3 not what they owe.

4 In other words, what the customers pay
5 would increase, but what the Company actually owes
6 would not increase because it's based on the prior
7 year revenues.

8 Q Isn't it true that by collecting the
9 commerce tax through a surcharge on the customers'
10 bills, that each customer only bears the portion
11 of the tax for which it is directly responsible?

12 A Okay. So now we're getting into the
13 merits of going forward of whether it should be a
14 surcharge or a base rate charge, which my testimony
15 doesn't address.

16 So you're just asking my opinion on
17 something I didn't testify about, or --

18 Q Yes, I'm just saying, well, the Company
19 has proposed to collect the commerce tax through a
20 surcharge; right?

21 A Right. That's right.

22 Q And so you've argued against that in
23 your testimony. Correct?

24 A No, what I argued against was the way
25 they collected it over the last three years without

1 Commission authority to collect it. I think they
2 need to give that money back to ratepayers.

3 But going forward, my testimony was not
4 about whether it should be a surcharge or a base
5 rate charge. But I think the Commission has
6 already kind of made that decision in its prior
7 case in the 2012 rate case, because the rationale
8 it applied to the mill tax will apply to the
9 commerce tax as well.

10 But that's a Commission decision.
11 That's up to them.

12 Q Okay. So you're not recommending that
13 the Commission -- I guess your testimony is you do
14 not recommend that the Commission include the
15 commerce tax into base rates on a going-forward
16 basis.

17 A Well, I would agree with the
18 Commission's treatment of taxes, other than
19 franchise taxes, not being collected through a
20 surcharge, I think that's the right decision, and I
21 think it should apply to this tax.

22 So if you're asking do I support that
23 position, yes, I do. But --

24 Q No, I didn't ask that.

25 A -- if you're crossing me about my

1 testimony, I don't know that that's -- I'm not sure
2 that was the focus of my testimony; I think it was
3 more about giving back the money that had been
4 overcollected for the last couple years.

5 Q So you do not make a recommendation in
6 your testimony that the commerce tax be embedded
7 into base rates on a going-forward basis.

8 A I'm not sure I do in my testimony, but
9 I would do that now if you want.

10 Q Let's move on to the Tax Cuts and Jobs
11 Act.

12 The Commission has already had a docket
13 that addresses the Tax Cuts and Jobs Act, and it's
14 Docket 18-02018; correct?

15 A Yes.

16 Q And in that docket the BCP specifically
17 requested that the Commission establish a
18 regulatory liability account to capture the tax
19 savings pending the decision in this rate case;
20 correct?

21 A I think that's correct. I wasn't
22 involved with the BCP in that case.

23 Q And the Commission declined that
24 request, correct, if you know?

25 A I think what the Commission said is

1 that Southwest Gas TCJA issues will be addressed
2 in their rate case.

3 Q But my question was --

4 A So they did address it. I mean, they
5 addressed that the TCJA issues for Southwest Gas
6 would be addressed in the rate case.

7 Q But my question was a little more
8 specific. With respect to the BCP's request to
9 establish a regulatory liability account in Docket
10 18-02018, the Commission declined that request;
11 correct?

12 A Well, they declined to do it there. It
13 doesn't mean they declined the request outright;
14 they just declined to do that in the docket outside
15 of the rate case, where all of the issues
16 concerning the Company were going to be addressed.
17 So the Commission was right in saying those issues
18 should be addressed in their rate case.

19 Q With respect to Docket No. 18-02018, do
20 you know if Staff filed any comments in that docket
21 expressing concern about single-issue and
22 retroactive ratemaking?

23 A Well, I think they did. And it's been
24 a long-time since I looked at them. They expressed
25 those concerns. And those concerns were going on

1 all across the country, and that's why Commissions,
2 you know, had dockets to address the TCJA issues,
3 so that they wouldn't run afoul of retroactive
4 ratemaking concerns.

5 I think that wasn't - and in other
6 states, too - it wasn't a concern for utilities
7 that were having rate cases because, as you well
8 know, a rate case cuts off any retroactive
9 ratemaking concerns. And so if the event occurs in
10 the test year, it's fair game for adjustment in the
11 rate case.

12 And so Commissions across the country
13 weren't concerned about companies that were
14 involved in rate cases, but they were very
15 concerned about companies who were not involved in
16 rate cases because then you would run afoul of the
17 retroactive ratemaking problems, or potentially.
18 And the verdict is still out on that, I guess, in
19 some places. But in a lot of states they issued
20 orders putting the rates subject to refund after
21 this date.

22 Q In your testimony on this subject you
23 list a couple of examples of companies that either
24 voluntarily refunded the tax dollars, for whatever
25 business reason they had, or Commissions that have

1 timely - not retroactively - ordered regulatory
2 accounting treatment; correct?

3 A Yes.

4 Q You also reference the NVEnergy case.
5 NVEnergy had just had a rate case that specifically
6 embedded terms regarding the Tax Cuts and Jobs Act;
7 correct?

8 A Yes, to some extent. I mean, I think
9 what the Commission, if I can recall, I think the
10 Commission said that for NVEnergy those savings --
11 we had a lot of other issues in that case,
12 potential savings after the rate case, and the big
13 one was debt, refinanced debt, and then we also
14 brought up the TCJA savings. And the Commission
15 said, we'll set up this sharing mechanism, this
16 earnings, with earnings bands and a sharing
17 mechanism to capture those, to capture those
18 issues, you know, until we can do something else
19 about the tax issues, I think is what happened.

20 And then NVEnergy actually filed a case
21 in March, or the end of March, to address the tax
22 issues, and so they were all addressed. And the
23 Commission has resolved those issues. I think
24 NVEnergy may be asking for reconsideration on one
25 of the findings but - or one of the orders - but

1 they have addressed theirs in this separate tax
2 proceeding.

3 Q Do you know how FERC is handling the
4 interim savings from the Tax Cuts and Jobs Act?

5 A What do you mean by, "interim savings"?

6 Q Well, the movement from 35 percent down
7 to 25 percent -- 21 percent for the tax rate?

8 A In tax expense? You're not talking
9 about the ADIT?

10 Q No.

11 A Just the tax expense number? And the
12 interim meaning from January 1 until they can have
13 a rate case, or whatever?

14 Q Right. Yes.

15 A No. I mean I can't speak to it.

16 Q Okay. In Q&A 37 you propose a tracker
17 mechanism should be established to make sure that
18 customers do not over-pay taxes. Correct?

19 A Yes. Which Q&A? I'm sorry?

20 Q 37, I believe.

21 A Okay. I'm with you.

22 Yes.

23 Q One of the benefits of a tracker
24 mechanism is that it ensures that there are no over
25 or underrecoveries of costs between rate cases;

1 correct?

2 A That is correct.

3 Q How is that much different than the
4 Company's pass-through surcharge of the commerce
5 tax? Because the way the Company has effectuated
6 recovery of those costs is that the commerce tax
7 makes sure that there -- well, through the
8 surcharge, and makes sure that there are no over
9 or underrecoveries that the Company recovers --

10 A For the --

11 Q -- for the commerce tax.

12 A For the commerce tax? If it was
13 collected through a surcharge?

14 Q Correct.

15 A Right. Right. So great question.

16 And the answer is the difference is the
17 commerce tax is a liability of the Company. It's
18 money they owe to the taxing authority.

19 The difference with the TCJA
20 accumulated deferred income tax, which is excess
21 accumulated deferred income tax, this is money
22 overpaid by ratepayers that the new law says has
23 to go back to ratepayers. It has to be -- the
24 Company has to set up a liability for those costs.
25 They have to be refunded. So it's ratepayer money

1 that needs to come back to ratepayers.

2 That's very, very different than a cost
3 of the Company, a tax, a commerce tax based upon
4 the revenues of the Company.

5 So it's more like the franchise tax,
6 which is a cost of the customers to the taxing
7 authority. The Company has nothing to do with
8 that. The liability is with the customer. And so
9 that's their money that needs to go to the taxing
10 authority. So we do a surcharge for that to make
11 sure it's not overcollected or overpaid to the
12 Company.

13 But the TCJA excess ADIT is ratepayer
14 money that needs to come back to them. So you
15 don't want to put it into base rates where it
16 becomes subject to regulatory lag, and it can be
17 overcollected or undercollected and the Company
18 keeps the difference, especially with protected
19 ADIT, because it turns around when the assets turn
20 around, so it grows over the next few years. And
21 in some utilities it can be enormous. It's tens of
22 millions of dollars of growth over the next few
23 years.

24 So in some utilities we're putting that
25 protected ADIT into a tracker mechanism so the

1 ratepayers get their money back. Otherwise, it's
2 kept by the Company, and that was never the
3 intention of the excess ADIT liability.

4 Q So you made a statement in that
5 response that I need to ask you about. You said
6 the new law requires the utility to set up a
7 regulatory liability for those costs.

8 A Yes.

9 Q What law are you referring to when you
10 made that statement?

11 A The Tax Cuts/Jobs Act law.

12 Q So the Tax Cuts and Jobs Act law has a
13 specific provision that says utilities need to
14 return the costs or the benefits of the tax cut,
15 the interim savings - let's say that, because we
16 agreed upon that description previously - the
17 interim savings -- I'll start over.

18 So it's your testimony that the Tax
19 Cuts and Jobs Act has a specific provision that
20 requires a utility to set up a regulatory liability
21 to address the interim savings that are incurred as
22 a result of the Tax Cuts and Jobs Act?

23 A No. No. We're talking about ADIT, not
24 the interim savings.

25 Q Okay. So ADIT.

1 A So the Tax Cuts/Jobs Act required
2 utilities to segregate the excess ADIT into a
3 separate account where it can be tracked and it's,
4 you know, it's a liability. So maybe it would be
5 better to call it a deferred liability rather than
6 a regulatory liability. But certainly the TCJA
7 required utilities to segregate those excess
8 accumulated deferred income taxes into a separate
9 liability account.

10 Q But there is nothing in the TCJA that
11 requires utilities to establish a regulatory
12 liability for the interim savings associated with
13 the TCJA.

14 A Not for the interim savings, no.
15 That's the Commissions that do that.

16 COMMISSIONER PONGRACZ: Mr. Stephens,
17 would this be a convenient time for our lunch
18 break --

19 MR. STEPHENS: Sure.

20 COMMISSIONER PONGRACZ: -- or would you
21 like to continue for a bit yet?

22 MR. STEPHENS: I'm fine with a break.

23 COMMISSIONER PONGRACZ: Okay. Then let
24 us return at quarter to 2. Thank you.

25 (The witness was temporarily excused.)

1 (At 12:37 p.m. the Lunch Recess was Taken.)

2 CARSON CITY AND LAS VEGAS, NEVADA

3 WEDNESDAY, OCTOBER 24, 2018

4 1:49 P.M.

5 -oOo-

6 COMMISSIONER PONGRACZ: This hearing
7 will come to order.

8 Before the break, I believe,
9 Mr. Stephens, you were questioning Mr. Garrett.

10 MR. STEPHENS: Thank you.

11 MARK GARRETT

12 the witness on the stand at the
13 time of the lunch recess
14 resumed the stand and was examined
15 and testified further as follows:

16 CROSS-EXAMINATION

17 (Resumed)

18 BY MR. STEPHENS:

19 Q The BCP agrees with Southwest Gas'
20 proposal regarding the timing of the amortization
21 of the protected excess ADIT balance; correct?

22 A Protected, yes, using the ARAM method,
23 yes, the average rate assumption method.

24 Q Also, the protected EDIT is already
25 captured in a regulatory liability; correct?

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1 A Protected and unprotected both are
2 captured in a regulatory -- well, it's a deferred
3 liability. I would consider it a regulatory
4 liability, but it hasn't been specified as that
5 maybe.

6 Q Can you point me to the authority --
7 well, I'll direct your attention to Q&A 38 of your
8 testimony. And we had some discussion on this
9 earlier. But on page 25, line 6 you describe it
10 as the Company's prescribed three-year rate cycle,
11 which I think we had discussion earlier today that
12 that's not correct. The Company is not on a
13 prescribed three-year rate cycle?

14 A Right. And I probably should have
15 rephrased that differently, and you're correct,
16 only if they take advantage of the GIR, and they
17 file three cases, they are then.

18 Q With respect to the TCJA, you cited
19 several proceedings that involved the 2018 tax
20 expense in Q&A 41. Isn't it true that the timing
21 of those decisions may have played a role to avoid
22 issues of retroactive ratemaking and single-issue
23 ratemaking?

24 A Let me see.

25 No. Not of the ones I've mentioned.

1 So, I mean, if you want me to elaborate I will,
2 but --

3 Q So, well, I'll ask a follow-up.

4 A Okay.

5 Q Did any of those proceedings that you
6 reference in Q&A 41 involve a decision in which
7 new rates are anticipated to go into effect in
8 2019?

9 A I think for most of these the new rates
10 will go into effect before that. I mean, these are
11 not rate cases, these are tax cases. The only rate
12 case was Public Service Company of Oklahoma. The
13 rest of them were tax cases.

14 Well, I take that back. Oklahoma Gas &
15 Electric occurred during a rate case, but most of
16 them were tax cases, it is what I would call tax
17 cases.

18 Q But the orders --

19 A Those two involved rate cases.

20 Q Sorry.

21 But the orders with respect to those
22 cases or dockets that you referenced addressed the
23 matter concurrently; they didn't retroactively go
24 back. Correct?

25 A Well, no, they all -- I wouldn't say

1 retroactively if you're meaning that in a legal
2 way, but they all go back and pick up the interim
3 savings.

4 You know, the excess ADIT is what it
5 is, it's there, it's set into a separate account,
6 and it sits there until the Commission prescribes
7 the amortization of those dollars in all of these
8 cases.

9 And I know Nevada Power and Sierra
10 Pacific tried to do something different, but I
11 think the Commission corrected that.

12 And so in all of these utilities the
13 ADIT's being amortized to ratepayers from January
14 1st on, although the amortization doesn't start
15 then, but all those dollars are captured for
16 ratepayers.

17 On the interim savings, from January 1
18 forward these cases, the first one is Texas, the
19 next one is Texas, Texas, Oklahoma, Oklahoma,
20 Texas, Nevada, Nevada, most of these had Commission
21 orders that - except for the Nevada case - at the
22 time the case was filed there was the Commission
23 order that set the rates subject to refund at a
24 specific date. In Oklahoma it was January 9th; in
25 Texas it was January 25th.

1 Some of these companies went back to
2 January 1st anyway, to give back the interim
3 savings, like Oklahoma Gas & Electric.

4 But like I say, only PSO Public Service
5 was during a rate case, so all of that money came
6 back. Let me see. Their rates went into effect
7 a little bit after the Commission order, and they
8 asked to keep the money, the interim money that
9 you're talking about, not the ADIT, and the
10 Commission denied that; they said it all goes
11 back to ratepayers.

12 Q So let's talk about the Nevada Power
13 and Sierra Pacific case that you reference.

14 Isn't it true that in that docket the
15 Hearing Officer ruled that the utilities should be
16 allowed to retain the interim savings?

17 A You're talking about from January to
18 March, I guess, that period before they filed their
19 case? Well, before the rider was implemented April
20 1st, I guess, so it was three months. And I think
21 the ALJ recommended that they be allowed to keep
22 that money, because it was not in a rate case, and
23 the Commission hadn't set a date when the rates
24 would be subject to refund. So it was outside of
25 what all these other utilities are experiencing.

1 Q In your testimony you make an argument
2 that incentive compensation tied to financial
3 metrics should be excluded. Correct?

4 A Yes.

5 Q What happens if a company does not have
6 financial targets as part of the company's
7 incentive plan?

8 A Well, I don't know what happens
9 because, you know, I've been looking at these for
10 28 years now, 27, and I have never seen one yet,
11 so I probably looked at over a hundred of them, and
12 I've never seen one yet that didn't have financial
13 measures embedded in it. And so they've all been -
14 at least where I've testified - they've all been
15 disallowed, the financial portion of it.

16 I'm sorry if that's not completely
17 true, but that's my recollection, is that in all
18 the cases the financial portion is disallowed.
19 And certainly, as a general rule, it is.

20 But I've never seen a plan without
21 financial measures of some kind.

22 Q So under such a scenario where a
23 company does not have financial targets as part of
24 the incentive plan, is management incentivized to
25 manage O&M costs?

1 A Yes. Certainly. I mean, management
2 is incentivized to manage O&M costs because of
3 regulatory lag, and so you set rates to recover a
4 certain level of expense. If they can bring that
5 expense down during the rate-effective period and
6 before the next rate case, they keep the money. So
7 there is always -- there is a built-in incentive in
8 ratemaking to manage O&M costs, unless you collect
9 your costs through surcharges.

10 Q But the customers also benefit from
11 that decrease in the costs of service; correct?

12 A Well, no. Not always. If your
13 question were could they benefit, I would agree
14 with that. They can, if the costs go down between
15 rate cases and stay down, what you'll see sometimes
16 is the costs go down for awhile, and then come back
17 up during the test year of the next rate case.
18 It's sometimes up to the level they were, you know,
19 during the last rate case, so they don't get any
20 savings. Sometimes the savings are just between
21 rate cases.

22 Now if your question was would they
23 benefit if the Company controlled its costs, got
24 its costs lower, and on an ongoing basis they were
25 lower, I would agree with that.

1 Q Did you conduct any analysis to
2 determine whether the amount of compensation paid
3 to Southwest Gas executives was comparable to the
4 Company's peer group?

5 A On my own, no. I looked at what your
6 witness, what your expert said about that.

7 Q And did you provide any testimony that
8 refutes the conclusions that Southwest Gas' total
9 compensation is below the median of the peer group?

10 A I did not provide testimony about the
11 payroll costs being below the median.

12 Q So if Southwest Gas' total compensation
13 is below the median peer group, and the Commission
14 disallows a portion of the incentive compensation
15 because, as you recommended, it is tied to
16 financial performance, then would you agree that
17 the message that is being sent to the utility is
18 that the utility should dispose of the incentive
19 compensation and just make that equivalent level
20 of payment part of base pay?

21 A No. And that's the answer to your
22 question. I can explain if you want to, or we
23 can --

24 Q You assert that net income is the
25 equivalent to earnings per share.

1 A Did I say that, or did I say it's --
2 because now I'm getting tangled up in the earnings
3 per share versus earnings. I think I said
4 something to that effect, and I just want to make
5 sure that is what I said, because I said it's -- in
6 the last case the Commission disallowed 25 percent
7 of the short-term incentive plan because it was
8 tied to -- I thought it was tied to ROE, and I said
9 ROE and net income are the same thing. I don't
10 think I said earnings per share and net income are
11 the same thing.

12 Q Okay, so I'll just ask you. Are net
13 income and earnings per share the same thing?

14 A Well, for purposes of our discussion
15 they probably are.

16 Now are they exactly the same thing?
17 No, one is net income divided by the number of
18 shares, and the other one is just net income. So
19 they start with the same number, and then one you
20 divide by the number of shares, and one you don't.

21 Q But there are different components that
22 are taken into account with respect to earnings per
23 share; correct?

24 A There are different components that
25 don't make any difference for the purpose of our

1 discussion.

2 Q Do you know if the Company's net income
3 MIP metric is measured against Southwest Gas
4 Corporation's net income, or is the net income MIP
5 metric measured against Southwest Gas Holdings'
6 earnings per share?

7 A Well, I thought that the net -- you're
8 talking about in the incentive plan.

9 My recollection is the net income for
10 regular employees is net income of Southwest Gas
11 and not the Holding Company, and that the net
12 income for the executives may be the Holding
13 Company total income. But that's just what I'm
14 recalling. I don't -- I didn't put it in my
15 testimony, so I can't tell you.

16 Q Okay. You testify about six general
17 rationale for excluding incentive compensation tied
18 to financial performance; correct?

19 A Yes.

20 Q So let's discuss those.

21 The first rationale is that quote,
22 "payment is uncertain," unquote. Right?

23 A That is the first rationale. And then
24 I go on to discuss that a little bit.

25 Q Okay. Isn't that what normalization

1 across three years addresses?

2 A No. Not necessarily.

3 And just to lay a background for these
4 six rationale, these are not necessarily mine, and
5 I just say these are rationale I've seen
6 Commissions give when they disallow financial
7 incentives. And so I don't, you know, I don't want
8 there to be a misunderstanding about what they are.

9 But payment, where I've seen it be a
10 problem is when there have been years when
11 utilities don't make their incentive payments at
12 all, and so it goes to zero, and so the Commission
13 set the incentives in the rate case based upon
14 maybe a normalization that, you know, was
15 95 percent, 100 percent, 105 percent, and they
16 normalized to 100 percent, so they set the
17 incentives based on that, and then in the next year
18 or the next year after that the Company didn't make
19 a payment at all and they kept the money. And that
20 didn't sit well with the Commission, and so when
21 they came back in, you know, we talked about that
22 some.

23 But so I don't think a normalization
24 adjustment completely takes care of this, because
25 going forward, one, the incentives could be much,

1 much different than they have been in the past, so
2 it's just -- it's a concern that I've seen raised
3 by Commissions in the past.

4 Q And so let me make sure I understand.
5 You're not applying any of these concerns in this
6 instant case; it's just a reference point, I guess?

7 A Right. What I did is I went through
8 and explained how, in the 24 western states
9 incentives are treated, and there is a very, very
10 strong direction that the Commissions go, and
11 that's to focus their decision drawing the line
12 between financial and non-financial incentives.
13 And they give different rationale for disallowing
14 the financial incentives, but that's kind of the
15 line they draw.

16 And so from there, I just included this
17 because it's explaining why that line between
18 financial and non-financial incentives is
19 important. And I think when Commissions draw that
20 line, they think about a lot of these different
21 things.

22 And what I've seen most often is a
23 benefits analysis, who benefits more from a
24 financial based incentive. Because the argument is
25 always there that ratepayers - and you've made this

1 argument in your questioning - that ratepayers
2 benefit from financial incentives. And there is
3 some truth to that. But Commissions weigh that
4 against the benefit to the Company, and they
5 usually say the Company benefits more from the
6 incentives than the - financial incentives - than
7 the ratepayers do, and that's why they believe the
8 shareholders should pick them up.

9 Q The next rationale is that there are
10 factors outside the control of management that
11 impact earnings, and thus have limited value to
12 customers. Correct?

13 A Yes.

14 Q And the example you give there is in
15 reference to a hot summer day, or an unusually hot
16 summer?

17 A Yes. So I said for electric companies.

18 Q Correct. And so that wouldn't apply
19 necessarily to Southwest Gas.

20 A That wouldn't apply to Southwest Gas,
21 right. I mean, there's lots of examples of this
22 that would apply, but they're not here.

23 Q But the point of your example was, at
24 least with respect to an electric company, if it's
25 a hot summer then theoretically people are using

1 more electricity, and therefore increasing revenues
2 to the electric company; right?

3 A That was the example. And for some gas
4 companies you would say an unusually cold winter,
5 you know, especially for one that's not decoupled,
6 they could benefit from that.

7 Q Do you understand that Southwest Gas is
8 decoupled?

9 A I do understand that.

10 Q You also point to customer growth as a
11 factor that is outside of management's control;
12 right?

13 A Yes, I do.

14 Q Do you understand that in Nevada the
15 Commission regulates the revenues the Company can
16 recover from new customers?

17 A Yes.

18 Q Let's talk about your third rationale,
19 which is you state that the earnings-based
20 incentive plans can discourage conservation;
21 correct?

22 A Yes.

23 Q And again, with respect to that you
24 understand that Southwest Gas is decoupled so
25 that's not an issue; right?

1 A Well, it shouldn't be, it shouldn't be
2 an issue with Southwest Gas. I think that's
3 generally correct.

4 Q Are you aware of the Company's annual
5 CEE filings with respect to energy conservation?

6 A Yes, I know about them, but I've not
7 been involved in them.

8 Q Okay. Are you aware that without fail,
9 every year the BCP opposes many of the Company's
10 CEE programs?

11 A I'm not aware of that.

12 Q The fourth rationale that you provide
13 is that shareholders assume none of the risk
14 associated with incentive payments.

15 A Yes.

16 Q Are you aware of any instance in the
17 Company's history where the incentive payment
18 levels were met but Southwest Gas kept the money
19 as retained earnings instead?

20 A Well, I personally don't know of any
21 where they retained the money. But I guess it does
22 kind of raise the question, if the Company is
23 always making its incentive payments are they
24 really incentives or not, you know? Are they
25 really variable pay? So that kind of brings that

1 into question.

2 But I don't know of any examples with
3 Southwest Gas where they've retained the money; not
4 made their payments.

5 But this would apply to not making the
6 payment at all, or making a much lower level than
7 that embedded in rates, you know, that the payment
8 is a lot lower because they missed the targets.
9 What's embedded in rates stays the same, and if
10 they pay less, the Company keeps the money.

11 Q But if they pay more, the Company is
12 responsible for that share of the money; right?

13 A Well, they typically pay more because
14 they're doing -- because their financial targets
15 have been exceeded; so, in other words, they have
16 more money to pay with.

17 And so yes, they do make -- they assume
18 the cost of that, but their incentives are higher
19 because their financial targets have been exceeded.

20 Q So contrary to the statement that they
21 assume none of the risks, the shareholders do take
22 on risk associated with high performance; correct?

23 A Well, to the extent that if it were
24 true that they were paying higher incentives
25 without the excess earnings to pay for them, that

1 would be true, they would assume that risk.

2 But the risk here I'm talking about is
3 the risk that the utility will instead retain the
4 amounts collected through rates; that the employees
5 assume the risks that they won't get paid their
6 incentive, and the utility and its shareholders
7 don't assume any of the risks in that situation,
8 and so that's what this is talking about.

9 You're talking about the converse of
10 that; if they pay higher payments, would that come
11 out of shareholder money if it's above the amount
12 embedded in rates, and I would agree with that.

13 Q Your fifth rationale is that incentive
14 payments should be paid out of increased earnings
15 because the Company always receives a financial
16 benefit from the measure being met.

17 A Well -- oh, go ahead. I think you read
18 that wrong, but --

19 Q Okay.

20 A -- go ahead.

21 COMMISSIONER PONGRACZ: Could we get a
22 page reference here, Mr. Garrett?

23 MR. STEPHENS: Sure. Page 40.

24 COMMISSIONER PONGRACZ: Oh, thank you,
25 Mr. Stephens.

1 MR. STEPHENS: And it's number 5.

2 COMMISSIONER PONGRACZ: Thank you.

3 THE WITNESS: Line 33.

4 I thought you said incentive payments
5 should be made out of increased earnings, but it's
6 incentive payments based on financial performance
7 should be made out of increased earnings.

8 BY MR. STEPHENS:

9 Q This rationale is not much different
10 from the second rationale; correct?

11 A No. The second rationale is more about
12 for a utility, earnings are typically increased by
13 things either outside of management's control, like
14 weather, or -- and I go on to talk about things
15 that are in the control of the Company. But
16 they're like in the control of very, very few
17 employees, not the whole employee base, like
18 arguing for a higher ROE in rates case. That
19 would increase earnings, it would trigger
20 everybody's incentive payments, but the employees
21 would have done nothing to achieve those higher
22 returns.

23 A utility could cut payroll costs, the
24 management could cut payroll costs, and that would
25 increase their earnings and trigger their incentive

1 payments, but the rest of the employees, those
2 that kept their jobs, would have done nothing to
3 increase that; it would have been the employees
4 who lost their jobs that increased those earnings.

5 So it's not the employees all the time
6 that are really -- they're getting the incentive
7 payment, but they're not the ones that are really
8 increasing earnings, you know, for a utility
9 company.

10 So, and there's lots of other examples
11 we could go through, but --

12 Q Well, a couple that you just discussed
13 was impact on net income through cost savings;
14 right?

15 A Yes.

16 Q And that benefits customers; correct?

17 A Well, as I explained before, no. If
18 it's between rate cases, and you can even see
19 in like the table provided in Mr. Thomas' testimony
20 where employees levels were cut after the last rate
21 case pretty severely for several years so
22 ratepayers got none of those benefits. Then they
23 came up, and they backed up to those original
24 levels now that this rate case has been filed, so
25 the ratepayers have shared none of those benefits,

1 but they did increase earnings each year, and
2 helped trigger the incentive payments.

3 So it's not always the case that
4 ratepayers benefit from cost controls.

5 Q Aren't earnings a component of the cost
6 of capital for a utility? The higher the earnings,
7 the higher the stock?

8 A So I don't understand your question.
9 Are earnings a component of cost of capital?

10 Q Yes.

11 A Or maybe the other way around? Do you
12 mean it the other way around?

13 Q No. As earnings improve, does that
14 also have an improvement, meaning downward, on the
15 cost of capital for a utility?

16 A Well, it's an interesting question.
17 I assume you're talking about over time. Could
18 increased earnings make the Company more
19 financially sound and drive their debt cost down?
20 Is that what you're thinking?

21 Q Yes.

22 A It would take a lot of increased
23 earnings to do that, but I suppose that's possible,
24 although debt costs are really a function of a lot
25 of other things, probably a lot more driven by, you

1 know, Fed decisions, and stuff like that, than
2 earnings of the Company. And then you lock into
3 your debt for 20, 30 years, I mean, so higher
4 earnings is not going to -- I mean technically,
5 theoretically could it have some impact? I guess.
6 But it would be pretty small.

7 Q The sixth rationale is that incentive
8 payments in rates shelter the utility against the
9 risk of attrition. Correct?

10 A Yes.

11 Q Can't the same be said of every other
12 expense that is recovered through rates?

13 A No, I don't think so. No, because most
14 of the expenses recovered through rates are for the
15 ongoing operations of the Company, and so the
16 Company -- it's harder for the Company to convert
17 that money from employees to shareholders, like
18 they can with incentives. They can decrease their
19 incentive payments, put that money into net income
20 instead, and bolster earnings with it. And that's
21 exactly what they would do, if you didn't make
22 your target level for earnings with the funding
23 mechanism. If you don't hit 80 percent of that
24 target, you don't pay your incentives, so it would
25 all just go to increased earnings, and it would

1 shelter the utility from the risks of attrition.
2 But other expenses aren't like that necessarily;
3 they're pretty different.

4 Q So --

5 A In other words, the Company can't just
6 not make its payroll costs and keep the money and
7 increase earnings that way; although the examples
8 I gave they can do it in increments by laying off
9 employees and keeping that money.

10 Q But recovery of those costs through
11 rates, other business expenses, shelters the
12 utility from the risk of attrition associated
13 with those expenses on a going-forward basis;
14 right?

15 A No, because the risk of attrition is
16 that costs are going to go up, inflation, and costs
17 are going to go up, and with a level embedded in
18 rates that doesn't increase the Company is going to
19 receive lower net income because of inflation after
20 the rates are set.

21 Some of these other costs, you can't
22 just stop paying them, you can't quit doing
23 vegetation management, you can't quit making
24 payroll costs, you can't quit, you know,
25 maintaining your plant; you have to keep making

1 those payments. But with incentives you can stop.
2 You can just not make the payment, keep the money,
3 and that shelters the Company from the risk of
4 higher prices that they're having to pay.

5 And again, these are not my rationale,
6 they're just rationale I've seen Commissions use,
7 and I think they're valid, and that's why I put
8 them in here.

9 Q If you're worried about Southwest Gas
10 over or undercollecting on the incentive payments,
11 then why not propose to put those costs in a
12 tracker, like you propose to do with the protected
13 EDIT?

14 A Well, one, I don't really like
15 trackers, we've talked about that, and I don't like
16 surcharges. I think every time you do that you
17 take away something that the Company is responsible
18 for. It's something they've assumed in the risk,
19 and it's something they're getting compensated for
20 in their ROE.

21 So each time you put something in a
22 tracker, you decrease the risks of the Company.
23 And so if there was a decrease in their ROE with
24 each tracker that you set up, I would be okay with
25 that. But that never happens. And so they still

1 keep the high ROE, but assume less and less and
2 less risk with each surcharge.

3 The reason the EDIT is in a tracker
4 mechanism is because it's not the Company money,
5 the Company's money, it's the ratepayers' money
6 that needs to be refunded to them. And so that
7 is something that you should track because it's
8 not money that belongs to the Company.

9 Q Is the incentive compensation survey by
10 Garrett Group published anywhere?

11 A Well, we've furnished it many, many
12 times, many, many times in the past to utility
13 companies that have asked for it. Southwest Gas
14 didn't ask for it, but. And we publish it with
15 each of the Commissions that we survey in the phone
16 survey.

17 And so all of these responses are
18 provided by Commission Staff, and I will say except
19 for Oklahoma and Nevada, and I provide those to you
20 because I've been in most of the rate cases in
21 those states for the last 20 years.

22 But the rest of it is provided by
23 Commission Staff, and we publish it with them. So
24 what they always ask for -- we call, ask our series
25 of questions, they answer them, we write it down,

1 we send it to them, they sign off on it, they send
2 it back to us, and then when the survey is done we
3 send them a copy of the survey. So we publish it
4 with Commissions, but not publicly, and we provide
5 it in response to data requests.

6 Q And you do that process every time you
7 update it; correct?

8 A Yes.

9 Q I see that the incentive compensation
10 survey was recently updated in 2018; is that
11 accurate?

12 A Yes.

13 Q Is there a reason the incentive
14 compensation survey did not capture the fact that
15 Southwest Gas receives 100 percent cost recovery
16 for MIP and RSUP in California?

17 A Yes, there is a reason for that.
18 Because when we contacted California - and I'm
19 sorry, if I had the survey I would be able to
20 refer to the person with their phone number, and
21 everything, that we talked to, and when we talked
22 to them, and all that - but this is what they said,
23 and they didn't mention Southwest Gas. Maybe it's
24 the person we talked to wasn't aware of it; maybe
25 it's not on their radar; I don't know why.

1 And if we had known, if I had known
2 that Southwest Gas incentives were approved in
3 California, I would have asked them about it. But
4 I didn't know that at the time, and this is just
5 what they said.

6 Q And you didn't do any further
7 investigation into that yourself; you just
8 took whatever member of CPUC staff said as
9 accurate.

10 A For the most part, yes. What we do
11 is we talk to the person at Staff that is believed
12 to be the most authoritative on this topic, and we
13 record what they say, and we send what we record
14 back to them, and they sign off on it.

15 And then we collect the cases that they
16 reference, and we put those into a file. And so
17 we, and read a lot of those, and we're fairly
18 satisfied each time that what they're telling us is
19 the general rule in their state.

20 And in every state, the truth is I
21 think Commissions look at incentives on a
22 case-by-case basis. I mean, how else would you do
23 it? And so they look at the facts of the case at
24 the time. And so I don't think they plug in, you
25 know, some formula in every situation, except for

1 maybe Hawaii. But they look at the Company and the
2 case on a case-by-case basis, and their incentives,
3 and they make a decision. But this is what the
4 staff's in those states tell us their general
5 treatment is of incentives.

6 The only one that I think follows a
7 formula is Hawaii, and they just disallow all
8 incentives.

9 MR. STEPHENS: No further questions.

10 COMMISSIONER PONGRACZ: Thank you.

11 Are there questions from Staff?

12 MS. CASSITY: Yes, just briefly.

13 CROSS-EXAMINATION

14 BY MS. CASSITY:

15 Q Hello, Mr. Garrett.

16 Do you know whether Southwest Gas has
17 an integrated resource plan?

18 A I've never been involved in one.

19 Q So assuming they don't have an
20 integrated resource plan process, then wouldn't it
21 be true that Southwest Gas does not obtain any
22 prudency approvals prior to filing its general rate
23 case?

24 A That, as a general rule, would be true.
25 I mean, there is a lot of states that have IRPs

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1 that don't decide prudence. I think this state
2 does for the electrics, I mean to a large degree,
3 but not for the gas company.

4 But I think your statement is right,
5 that there is certainly no prudence determination
6 outside of a rate case.

7 MS. CASSITY: No further questions.

8 Thank you.

9 COMMISSIONER PONGRACZ: Thank you.

10 Mr. Stuhff, redirect?

11 MR. STUHFF: Thank you. Just a second
12 here.

13 No further questions.

14 COMMISSIONER PONGRACZ: Thank you.

15 Do we have questions from the dais in
16 Carson City for this witness?

17 MR. McDONNELL: No questions,
18 Commissioner.

19 Thank you.

20 COMMISSIONER PONGRACZ: Thank you.

21 Do we have questions from the dais here
22 in Las Vegas?

23 I see Mr. Traxler.

24 MR. TRAXLER: Thank you, Commissioner.

25

1 CLARIFICATION

2 QUESTIONS

3 BY MR. TRAXLER:

4 Q Mr. Garrett, you were asked a number
5 of questions by Southwest Gas counsel regarding
6 the full decoupling here in Nevada?

7 A Yes.

8 Q Do you have a full understanding of how
9 that calculation is actually made?

10 A I have not been in a case where I was
11 involved in that portion of the case where we made
12 that calculation. I have a general understanding
13 of it.

14 Q Well, let me ask you this. Do you
15 understand that the calculation is based on
16 maintaining a margin per customer?

17 A Yes. That's about as much as I
18 understand about it. But I do understand that
19 that's the way it's done here. In other states
20 there's different approaches. Sometimes it's just
21 put in the customer charge, you cover all your
22 fixed costs through that charge, and then the rest
23 is volumetric. Here it's a little bit different.

24 Q So, for example, if the margin per
25 customer were a hundred bucks, and in any given

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1 year what's measured is any increment above or
2 below a hundred dollar margin, and that's what's
3 tracked and either collected or refunded to
4 customers?

5 A Right.

6 Q And let me ask you this. Between rate
7 cases, let's assume that the Company has an
8 additional new customer. The basic margin of the
9 hundred dollars that flows right to the Company is
10 not subject to a -- is part of a refund or an
11 additional collection, it's only the increment on
12 the hundred dollars, but the initial hundred
13 dollars from a new customer produces additional
14 income to the Company, additional revenue.

15 A Right. Yes.

16 Q And between rate cases, just like your
17 example with regard to if the Company -- in fact,
18 you did state that the Company did in fact
19 institute a fairly significant reduction in
20 employees after the last rate case, and the
21 reduction in that payroll expense, to the extent it
22 continued, benefitted the Company all the way for
23 the entire six years that they've been out without
24 a rate case; is that correct?

25 A That's my understanding of how that

1 would work.

2 Q And similarly, based on your answer to
3 my questions the way decoupling works in Nevada,
4 any increase in customers, that additional hundred
5 dollars in margins would benefit the Company
6 completely for the first six years.

7 A It would exacerbate the problem, yes.

8 Q Okay. You mentioned in your testimony
9 that the disallowance made by the Commission last
10 time was 25 percent based on ROE, and is it your
11 recollection the 25 percent was a full allowance
12 for ROE in the plan at that time?

13 A That's my recollection, right. And now
14 it's 40 percent, and it's based upon net income,
15 which is the same as ROE.

16 Q So you would agree that increasing that
17 from 25 to 40 is a fairly significant increase in
18 terms of providing an incentive to employees to
19 direct their efforts towards net income.

20 A Absolutely.

21 Q And in fact this plan now has another
22 incentive, which you mentioned in your testimony,
23 that nothing gets paid until the Company sees at
24 least 70 percent of its net income target; is that
25 correct?

1 A Right. I remembered 80 percent, but
2 maybe it's 70.

3 Q Well, it was whatever you had in your
4 testimony.

5 A Yes.

6 Q 70 or 80 percent.

7 A Right.

8 Q And so we have a plan that's weighted
9 40 percent in total based on net income, and then
10 we have another incentive at 80 percent of net
11 income before you get one nickel.

12 A Right.

13 Q Okay.

14 A So --

15 Q Go ahead.

16 A Maybe where the 70 percent came in, and
17 I'm thinking of the 70 percent I put in my
18 testimony, I disallowed 40 percent because it was
19 directly tied to --

20 Q Right.

21 A -- and then half of what was left,
22 because it had the funding mechanism, the net
23 income funding mechanism. And I said this is the
24 approach in Texas, this is what they do with their
25 utilities down there, all of the direct and half of

1 the indirect comes out. So half of the indirect
2 would be 30 percent, and that the 40 plus 30 makes
3 70 percent.

4 Q Now you indicated in testimony in
5 response to some of your questions from Southwest
6 Gas' counsel that you've got over 20 years of
7 experience here in Nevada looking at these types of
8 incentive plans, and you've looked at them all
9 around the country?

10 A Yes.

11 Q Now let me ask you this. With regard
12 to the metrics that appeared in any management
13 incentive plan, what is your view with regard to
14 what are those metrics in an incentive plan that
15 need to be established in order for any achievable
16 productivity to occur which would benefit
17 ratepayers?

18 A So can you ask that one more time? I
19 apologize.

20 Q Let me ask it this way. What is your
21 view of whether or not -- if the metrics are not
22 sufficiently challenging --

23 A Oh. Gotcha.

24 Q -- to the employees, are there any
25 meaningful productivity gains achieved that would

1 actually benefit ratepayers?

2 A No. I think for most employees, no.
3 I think that there are some maybe incentives for
4 upper management to do things that would increase
5 earnings to get their incentives paid, but I'm not
6 sure it really motivates the rank and file.

7 And quite frankly, by the way, I
8 allowed those incentives, you know, that were to
9 the ordinary employees. It's the management
10 incentives that I really have a problem with,
11 because they're based mainly on net income and
12 increasing net income, and really only a few people
13 in the Company control that.

14 Q Under a properly designed management
15 incentive plan that had sufficient difficulty built
16 into the metrics, would you expect a utility to
17 achieve at 100 percent or above 100 percent on a
18 continual basis?

19 A No. Not if they're real goals. It
20 would be very hard to do.

21 Q You were in the room, were you not,
22 when I had questions for Miss Olesky?

23 A Yes.

24 Q Her testimony indicates that the
25 average annual payout under the management

1 incentive plan since the last rate case has been
2 115 percent every year.

3 What is your view with regard to
4 whether or not the metrics for that particular
5 case are sufficiently difficult to produce any
6 meaningful results.

7 A Well, they're not. They're not very
8 difficult. And, you know, we hear a lot of
9 rebuttal testimony about how the Company is - and
10 original testimony, too - about how the Company is
11 underearning and they can't make their earnings,
12 authorized returns, we need more money; yet they're
13 paying out incentives every year for meeting their
14 net income goals, you know.

15 And so that's kind of a paradox. How
16 are you meeting these goals while you're
17 underearning so badly? And why has it been six
18 years since you had a rate case, if you you're
19 underearning that badly? And so there's all these
20 questions.

21 And I think maybe to partially answer
22 your question, I think it's problematic when
23 utilities have goals that are based on net income,
24 because for a utility there is not that much you
25 can do to really increase net income, except things

1 that may not be all that appropriate, like cutting
2 payroll, or extending your amortization of
3 regulatory assets, both beyond the three-year
4 period, or asking for a higher ROE that's not
5 really reasonable.

6 Or I know in one case we had a utility
7 that cut its vegetation management costs in between
8 rate cases, and took 20, \$30 million a year to net
9 income, and then came back to the Commission and
10 said: We're in trouble; we have been falling
11 behind on our vegetation management; we need a lot
12 more money. And they gave them a lot of extra
13 money to make up for the cuts they had made for
14 three years and kept the money.

15 You know, so these goals to increase
16 net income are not a good idea for regulated
17 utilities. But I will, in answering the Company's
18 question, they all have them, they're virtually all
19 disallowed, and they still keep doing it. So,
20 you know, if they wanted to be treated like other
21 utilities, they are being treated like other
22 utilities.

23 Q The recommendation for the Company in
24 this case with regard to recovery of MIP is a
25 three-year average?

1 A Yes.

2 Q 2/17, '16, and '15, which represents an
3 average per year of 113 percent?

4 A Yes.

5 Q Would you agree that if the Company
6 achieved only 100 percent, which is an extremely
7 optimistic assumption, 100 percent, now for the
8 next six years that 13 percent increment we're
9 building into rates for purposes of this case is
10 a cash windfall every year.

11 A Every year, that's right.

12 You know, that raises a really good
13 question, because I know we've been through this
14 before with Nevada Power about how to normalize
15 incentives. And sometimes, you know, with some
16 utilities they use like the past three years or
17 the past five years to normalize them. Other
18 utilities, other Commission say your target is what
19 it should be set at. If your target, you know, is
20 100 percent, and that's what you're shooting for,
21 that should be what the incentive normalization is,
22 you know, it should be normalized at your norm,
23 what your goal is, not at something above that.

24 Q Let me ask one last question.

25 For any utility, not just Southwest

1 Gas, that files general rate cases on a historical
2 time frame, a historical test year, would you agree
3 that there is a financial incentive to maximize
4 costs in that test year so that rates have a --
5 well, to maximize costs in order to maximize the
6 amount of recovery you're going to get for O&M or
7 payroll, or anything else.

8 A Right. There's certainly an incentive
9 to maximize costs in the test year and then, you
10 know - I'm not accusing Southwest Gas in any way -
11 but with some utilities then you see a lot of cuts.
12 As soon as the rate case is over, then the cutting
13 starts.

14 And so it's just that's a problem
15 that's built into the formula, and I think overall
16 the formula still works, but it's something that
17 Commissioners need to be careful about.

18 Q The management incentive plan from 2016
19 to the test year, the payout increased from 106
20 percent to 129 percent, a 23 percent increase for
21 the test year. For the executives, the increase
22 went from 107 percent in 2016 to 121 percent.

23 Would you consider that kind of
24 increase in one year fairly significant?

25 A That's a significant increase,

1 especially when earnings are going down. So, yes,
2 it's very significant.

3 MR. TRAXLER: That's all the questions
4 I have.

5 Thank you.

6 COMMISSIONER PONGRACZ: Thank you.

7 Mr. Vinski?

8 MR. VINSKI: No.

9 COMMISSIONER PONGRACZ: Miss Harris?

10 MS. HARRIS: No.

11 COMMISSION

12 QUESTIONS

13 BY COMMISSIONER PONGRACZ:

14 Q I do have a few questions, Mr. Garrett.

15 At the beginning of your testimony
16 today you talked with Mr. Stephens about the
17 practice of how different utilities support their
18 applications, and what utilities typically do in
19 terms of providing witnesses to justify material
20 expenditures --

21 A Yes.

22 Q -- do you recollect that part of the
23 conversation?

24 A Yes.

25 Q How does it assist the Commission if a

1 utility includes in its rate case, testimony by
2 management that has responsibility for the programs
3 whose expenditures we're evaluating?

4 For example, how would it help us if we
5 had testimony from a vice president of engineering
6 and operations, or from a director of human
7 resources? What value does that bring to the
8 process?

9 A Well, I think that that brings a lot of
10 value. And you see that all the time in rate
11 cases.

12 I gave the example of an electric
13 company. You will typically see a witness in
14 charge of transmission who will provide detailed
15 testimony about every project that's been added,
16 every material project that's been added, why
17 it's needed, and why they did it.

18 The same thing for distribution, and
19 certainly for plants. If you add a new plant -- I
20 know in this State you have IRP dockets, and so the
21 plants are kind of pre-approved. In a lot of
22 states that's not the case. They have other ways
23 of getting them pre-approved if they select those
24 routes sometimes. But sometimes you have to just
25 come into a case with a plant that's a new plant.

1 And there's never been a case where a company that
2 I know of has brought in a new plant to be approved
3 by the Commission without extensive testimony, you
4 know, justifying that addition.

5 Q And if we're looking at something
6 that's material but smaller than bringing in a new
7 plant, for example, expenditures of, say, 100 to
8 500,000, or over a million dollars, would those be
9 considered material, even if they don't entail
10 actually construction of an entire new plant?

11 A Yes. Right. And the Commission -- and
12 the Company will set its scope, or the Commission
13 could set the scope from prior cases. But there's
14 typically expenditures over some amount that they
15 justify, what they're for, what we were doing with
16 these projects, and you'll have a -- and not
17 regulatory people, you'll have technical people,
18 you know, that know something about transmission,
19 or something about pipelines, or something about
20 plant, or something about distribution plant that
21 will come and explain why those expenditures were
22 made.

23 Q And how does that assist in the
24 prudence review? What additional information can
25 a Commission gain from the opportunity to question

1 witnesses like that rather than witnesses of a more
2 administrative nature?

3 A Well, that advantage is huge, I mean,
4 because then you're talking to someone who actually
5 knows about, in my example, transmission projects,
6 you know, or the distribution projects that were
7 added because they're usually in charge of that
8 department, you know, and you can question them
9 about every project they have on their list, and
10 they can tell you all about it. And it's a better
11 way to do it, obviously.

12 And then, of course, with affiliate
13 transactions, those all have to be -- there has
14 to be a witness that knows about those, because
15 you can't even argue that there is a presumption
16 of prudence that attaches to those, so.

17 Q So the actual subject matter knowledge,
18 the personal knowledge of the projects, is pretty
19 important; isn't it?

20 A It's vital, yes, absolutely.

21 COMMISSIONER PONGRACZ: Thank you. I
22 have no other questions.

23 Oh. However, Mr. Traxler would like to
24 ask one more question.

25 Mr. Traxler?

1 CLARIFICATION

2 QUESTIONS

3 BY MR. TRAXLER:

4 Q And I'm trying to think of the term
5 used in testimony in this case. There are a
6 considerable number of projects related to software
7 that have been taken up by the Staff. How do they
8 define them?

9 Anyway, they fall into the category
10 where they're allocated to all jurisdictions. And
11 that description, or what I just provided, is the
12 same thing you're talking about with regard to an
13 affiliated or an allocation of --

14 A Absolutely. And I was --

15 Q -- that there should be a witness for
16 that?

17 A -- hoping that I would remember to say
18 that. But part of the problem in this case is with
19 assets that are at the Holding level, you know,
20 that are allocated. Those are affiliate
21 transactions, and there is no presumption of
22 prudence that attaches to an affiliate transaction.
23 All of that has to be supported by a qualified
24 person to show the prudence of that investment.

25 MR. TRAXLER: Thank you.

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1 COMMISSIONER PONGRACZ: Thank you,
2 Mr. Garrett.

3 You are excused.

4 THE WITNESS: Thank you. I appreciate
5 it.

6 (The witness was excused.)

7 COMMISSIONER PONGRACZ: So at this
8 point would we resume with Staff testimony?

9 MS. CASSITY: Yes.

10 And Commissioner, Mr. Maguire has a
11 flight to catch, and so we were hoping to maybe
12 take him out of order. The next witness in line
13 was Jason Martin, but I thought maybe if we could
14 take Paul Maguire, if none of the other parties
15 object to that?

16 COMMISSIONER PONGRACZ: Okay. There is
17 no objection?

18 MR. STUHFF: No objection.

19 MR. STEPHENS: No objection, but I
20 would also like to remind the Commission that we
21 also have a witness that we need to get done today
22 on her rebuttal so that she can have her flight --

23 COMMISSIONER PONGRACZ: Good point.

24 MR. STEPHENS: -- so just to keep that
25 in consideration as the day progress.

1 COMMISSIONER PONGRACZ: Excellent
2 point, Mr. Stephens.

3 And perhaps we could go directly to
4 that witness after Mr. Maguire. Would any party
5 object to that?

6 (No Response)

7 COMMISSIONER PONGRACZ: Well, but there
8 may be a short break before her, but if she could
9 go immediately after that, depending on how long we
10 have Mr. Maguire, would that suit, would that
11 address her need?

12 MR. STEPHENS: Yes. Thank you.

13 COMMISSIONER PONGRACZ: Thank you.
14 I appreciate you bringing that to my attention,
15 Mr. Stephens.

16 MS. CASSITY: So Staff calls
17 Paul Maguire.

18 And I would ask that Mr. Maguire's
19 prepared direct testimony for Phase 2 revenue
20 requirement be marked as the next hearing exhibit.

21 MS. HARRIS: The direct testimony of
22 Paul Maguire, in Phase 2 revenue requirement, will
23 be marked Exhibit 60.

24 (Exhibit No. 60 was marked for identification.)
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PAUL MAGUIRE

called as a witness on behalf of

THE PUCN REGULATORY OPERATIONS STAFF

having been previously duly sworn

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. CASSITY:

Q Mr. Maguire, you testified on behalf of

Staff earlier in this hearing; correct?

A Yes, in the depreciation phase.

Q And you understand that you're still

under oath?

A I do.

Q Do you have what's been marked Exhibit

60 in front of you?

A I do.

Q And what is that?

A That's my Phase 2 prepared direct

testimony in the revenue requirement.

Q And was that prepared by you or under

your supervision?

A It was.

Q Do you have any revisions or

corrections to your testimony?

A I don't.

1 Q So if I were to ask you those questions
2 in your testimony today, would your answers be the
3 same?

4 A They would.

5 MS. CASSITY: I tender Mr. Maguire for
6 cross.

7 COMMISSIONER PONGRACZ: Mr. Stephens?
8 Or Miss Kolebuck?

9 MR. STEPHENS: It's mine. Thank you.

10 CROSS-EXAMINATION

11 BY MR. STEPHENS:

12 Q Are the \$200,000 in costs associated
13 with the Battle Mountain lateral project included
14 in rates in this docket?

15 A I don't know. I know in the rebuttal
16 testimony, I think it's Miss Cunningham said they
17 aren't. If she's correct, as I said, in her
18 rebuttal, sworn rebuttal she said they aren't, so
19 if that's true, then I guess they aren't.

20 MR. STEPHENS: No further questions.
21 Thank you.

22 COMMISSIONER PONGRACZ: Thank you.

23 Mr. Stuhff?

24 MR. STUHFF: No questions. Thank you.

25 COMMISSIONER PONGRACZ: Any redirect?

1 MS. CASSITY: Yes.

2 REDIRECT EXAMINATION

3 BY MS. CASSITY:

4 Q Mr. Maguire, did the Company provide
5 any documentation showing that those costs were
6 removed?

7 A No. And this is the issue. And you
8 know, we asked about those costs late June. We got
9 a DR that was kind of, well, there is a
10 change-order out there. And in fact, it wasn't
11 until the end of September that they supplemented
12 that, providing the invoice and the payment, and I
13 have attached it to my testimony. Let me just find
14 it here.

15 You know, it's attachment PRM-7, 5 of
16 5, which is the invoice. And, you, I know a little
17 bit about accounting, I know typically large
18 companies use accrual accounting. The work was
19 done in May, it was done in the certification
20 period, our folks were out there and watched it.
21 They invoiced them in July, which was in the
22 certification period. The utility said, well,
23 we didn't pay it until August.

24 I think the accountants could, given
25 the work was done in the certification period, the

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1 invoice was submitted, they could have easily have
2 booked it in there. So if Miss Cunningham is
3 saying it isn't, I'll take her word for it, but
4 that was the confusion. I think the utility
5 could have went either way on this. And I'm
6 still unclear. They didn't provide journal
7 entries, or anything that I saw, but she said
8 it's not in there so, you know, I guess if we
9 found it later that would be an issue, but I'll
10 take her word for it.

11 MS. CASSITY: And Commissioner, at this
12 time I would just ask that maybe the Commission
13 could order Southwest Gas to provide documentation
14 showing that that was removed or not included.

15 MR. STEPHENS: So I do have a response
16 to that. I was going to ask a clarifying question.

17 It's Southwest Gas' position that it
18 was never in rates, and so it didn't need to be
19 removed per se because it was incurred subsequent
20 to the certification period. And so there's
21 nothing to remove because nothing was ever in
22 there. And so there is not a journal entry
23 removing it, because it wasn't in there in the
24 first place.

25 COMMISSIONER PONGRACZ: Miss Cassity?

1 MS. CASSITY: I guess my question would
2 be, is there any way to show that it's not
3 included, and was never included? I don't know if
4 that's possible.

5 COMMISSIONER PONGRACZ: Perhaps in the
6 form of a letter --

7 MR. STEPHENS: I am told we can do
8 that --

9 COMMISSIONER PONGRACZ: Okay.

10 MR. STEPHENS: -- and so we will put
11 something together, and demonstrate that it's not
12 in there.

13 COMMISSIONER PONGRACZ: Thank you.

14 MR. STEPHENS: Thank you.

15 MS. CASSITY: Staff appreciates that.
16 Thank you.

17 COMMISSIONER PONGRACZ: Thank you.

18 MS. CASSITY: I have no further
19 questions.

20 COMMISSIONER PONGRACZ: Any recross?

21 MR. STEPHENS: No, with that
22 clarification out of the way, no.

23 COMMISSIONER PONGRACZ: Okay. Thank
24 you.

25 Mr. Stuhff, did I give you your chance?

1 MR. STUHFF: You did.

2 I'm just wondering if we need to
3 reserve a late-filed exhibit for the letter or
4 other documentation, or how that's going to be
5 done?

6 COMMISSIONER PONGRACZ: I don't see an
7 objection to that, if the Company and Staff are
8 willing.

9 MR. STEPHENS: That's fine. We can put
10 a placeholder in.

11 MS. CASSITY: Yes, that sounds like a
12 good idea. Thank you.

13 COMMISSIONER PONGRACZ: Miss Harris?

14 MS. HARRIS: Okay. We'll go ahead and
15 reserve 61. So we'll have Late-Filed Exhibit 61,
16 which will be a letter attesting --

17 MR. STEPHENS: Documentation regarding
18 the costs associated with the Battle Mountain
19 lateral project.

20 MS. HARRIS: Lovely. Documentation
21 regarding the costs associated with the -- can you
22 please say the project again, please, sir?

23 MR. STEPHENS: Sure. With the
24 approximately \$200,000 related to the Battle
25 Mountain lateral project referenced in

1 Mr. Maguire's testimony.

2 MS. HARRIS: Okay. Just for
3 clarification, Late-Filed Exhibit 61 will be
4 documentation regarding costs associated with the
5 Battle Mountain lateral project.

6 (Late-Filed Exhibit No. 61
7 was marked for identification.)

8 MS. HARRIS: Can we have an anticipated
9 date of filing?

10 MR. STEPHENS: May I confer?

11 COMMISSIONER PONGRACZ: Certainly.

12 MR. STEPHENS: I believe we can provide
13 that tomorrow.

14 COMMISSIONER PONGRACZ: Thank you.
15 That would be excellent.

16 Is there anything further for
17 Mr. Maguire?

18 (No Response)

19 COMMISSIONER PONGRACZ: Do we have any
20 questions for Mr. Maguire from the dais in
21 Carson City?

22 MR. McDONNELL: No questions.

23 COMMISSIONER PONGRACZ: Are there any
24 questions for Mr. Maguire from the dais here in
25 Las Vegas?

1 MR. VINSKI: No.

2 MR. TRAXLER: No questions.

3 COMMISSIONER PONGRACZ: Thank you. And
4 I have no questions.

5 Thank you very much, Mr. Maguire. You
6 are excused.

7 (The witness was excused.)

8 COMMISSIONER PONGRACZ: So
9 Mr. Stephens, Ms. Potokar, am I correct --

10 MR. STEPHENS: Yes.

11 COMMISSIONER PONGRACZ: -- that that's
12 the witness?

13 MR. STEPHENS: Do you want to do her
14 now, or after a break, or what's your preference?

15 COMMISSIONER PONGRACZ: Will there be
16 enough time for her if we take a 10-minute break?

17 MR. STEPHENS: You know, I think I
18 would ask the others.

19 MS. BARTGIS: Commissioner, I don't
20 need a break just yet, if you're doing it for me.

21 Thank you.

22 COMMISSIONER PONGRACZ: Okay. Then
23 let's proceed --

24 MR. STEPHENS: Okay.

25 COMMISSIONER PONGRACZ: -- with

1 Miss Potokar.

2 MR. STEPHENS: So Southwest Gas recalls
3 Miss Potokar for her rebuttal testimony.

4 COMMISSIONER PONGRACZ: Thank you.

5 MR. STEPHENS: Give me a moment,
6 please. Thank you.

7 ERIN E. POTOKAR

8 called as a rebuttal witness on behalf of

9 SOUTHWEST GAS CORPORATION

10 having been previously duly sworn

11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. STEPHENS:

14 Q You understand you're still under oath?

15 A Yes.

16 Q Please restate your name for the
17 record.

18 A Erin E. Potokar.

19 Q Have you prepared written prefiled
20 rebuttal testimony, with exhibits, in this case?

21 A Yes.

22 Q Was your rebuttal testimony and
23 exhibits prepared by you or at your direction?

24 A Yes, they were.

25 MR. STEPHENS: At this point we would

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1 request to mark Miss Potokar's rebuttal testimony,
2 and exhibits, as the next exhibit in order.

3 MS. HARRIS: The rebuttal testimony of
4 Erin Potokar, will be marked Exhibit 62.

5 (Exhibit No. 62 was marked for identification.)

6 BY MR. STEPHENS:

7 Q Do you have any changes to your
8 prepared written rebuttal testimony or exhibits?

9 A I do not.

10 Q If I were to ask you the questions you
11 answered in your written rebuttal testimony today,
12 would your answers be the same?

13 A They would.

14 MR. STEPHENS: Miss Potokar is
15 available for cross-examination.

16 COMMISSIONER PONGRACZ: Thank you.

17 BCP?

18 MR. STUHFF: No questions. Thank you.

19 COMMISSIONER PONGRACZ: Thank you.

20 Staff?

21 MS. CASSITY: No questions.

22 COMMISSIONER PONGRACZ: Thank you.

23 MR. STEPHENS: No questions. Thank
24 you.

25 COMMISSIONER PONGRACZ: Thank you.

1 And thank you very much, Miss Potokar,
2 for being here today.

3 THE WITNESS: I appreciate it. Thanks.

4 (The witness was excused.)

5 COMMISSIONER PONGRACZ: And let's
6 return to Staff testimony.

7 MS. CASSITY: Thank you, Commissioner.
8 Staff calls Jason Martin.

9 (One witness was sworn: Jason Martin.)

10 MS. CASSITY: And May I have
11 Mr. Martin's prepared direct testimony marked as
12 the next hearing exhibit?

13 MS. HARRIS: The direct testimony of
14 Jason Martin, will be marked Exhibit 63.

15 (Exhibit No. 63 was marked for identification.)

16 JASON MARTIN

17 called as a witness on behalf of
18 THE PUCN REGULATORY OPERATIONS STAFF
19 having been first duly sworn
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. CASSITY:

23 Q Mr. Martin, could you please state your
24 name, spelling your last name for the record,
25 please.

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1 A My name is Jason Martin, M-a-r-t-i-n.

2 Q And what is your position on Staff?

3 A I'm a Staff Financial Analyst.

4 Q Do you have what has been marked as
5 Exhibit 63 in front of you?

6 A Yes, I do.

7 Q And what is that?

8 A That is my written direct testimony.

9 Q And was that prepared by you or under
10 your supervision?

11 A Yes, it was prepared by me.

12 Q Do you have any revisions or
13 corrections to your testimony?

14 A I do not.

15 Q So if I were to ask you the questions
16 in your testimony today, would your answers be the
17 same?

18 A Yes, they would.

19 MS. CASSITY: I tender Mr. Martin for
20 cross.

21 COMMISSIONER PONGRACZ: Thank you.

22 Southwest Gas, Mr. Stephens?

23 CROSS-EXAMINATION

24 BY MR. STEPHENS:

25 Q Would you agree to the following

1 summary of Staff's position on the pension tracker?

2 1, Staff does not oppose the pension
3 tracker, but would prefer to address the issue of a
4 pension tracker in an investigation or rulemaking,
5 but Staff doesn't want to have that investigation
6 or rulemaking right now because of Staff's
7 schedules. Correct?

8 A No, I would not agree with that
9 statement.

10 Q What part of that is inaccurate?

11 A I would say both parts is inaccurate.

12 Q So by "both parts," which are you
13 referring to?

14 A It sounded like to me the first part
15 was that Staff is not opposed to the pension
16 tracker, was part 1.

17 And Part 2 is that Staff does not --
18 it's Staff's position that we do not want to have
19 a rulemaking to address any deficiencies of the
20 pension tracker.

21 Q Okay. Well, let me try and clarify by
22 citation to your testimony.

23 If you go to Q&A 6, you testify in
24 Q&A 6 that Staff is not fundamentally opposed to
25 a pension tracking mechanism, but don't want to

1 approve it at this time because, 1, Staff does not
2 believe the general rate case is the proper venue
3 for such a topic; and 2, Staff wants to -- Staff -
4 and I'll just read it - Staff believes that a
5 pension tracking mechanism could be an attractive
6 mechanism for other utilities in Nevada to
7 implement, and Staff wants to make sure they're
8 involvement is considered.

9 Correct?

10 A That is a somewhat mischaracterization
11 of a summarization of my testimony, but if you
12 would like to address each piece we can go through
13 that.

14 Q Sure. So is Staff fundamentally
15 opposed to the pension tracking mechanism?

16 A Staff is not fundamentally opposed to
17 a tracking mechanism. The tracking mechanism, as
18 proposed by the Company, Southwest Gas, Staff is
19 opposed to.

20 Q And in the second part you say: Staff
21 does not believe the general rate case is the
22 proper venue to give this topic the attention it
23 deserves.

24 Why is that?

25 A That's for a couple of reasons.

1 One, I think the deficiencies in the
2 pension tracker, as proposed by Southwest Gas in
3 this case, I think are substantial enough that a
4 fair amount of time would be needed to go through
5 them all, and to address them all in this
6 proceeding might not afford the time and attention
7 needed to go through them all.

8 Additionally, as I stated in the second
9 part, a pension tracking mechanism could be
10 attractive to other companies to implement, and
11 rather than kind of taking those different
12 mechanisms on piecemeal as they are introduced,
13 it's Staff's position that it would be more
14 efficient to provide or come up with a tracking
15 mechanism that is thorough, that's comprehensive,
16 that could be adopted by multiple companies at the
17 same time, and have some level of consistency
18 between those companies.

19 Q Do you know if other utilities in
20 Nevada are interested in a pension tracker?

21 A I do not know whether or not there are
22 any companies in Nevada who are actively seeking a
23 pension tracking mechanism besides Southwest Gas.

24 Q Has Staff, to your knowledge, had any
25 discussions with any other Nevada utilities about

1 a pension tracker?

2 A Not to my knowledge.

3 Q Do you know if other utilities received
4 notice about this docket?

5 A I believe they have. I think it was
6 publicly noticed.

7 Q Are you aware of any utilities that
8 joined this docket or otherwise filed comments
9 in this docket to indicate interest in a pension
10 tracker?

11 A I am not.

12 Q In Q&A 7 you provide a long response to
13 the question, and you indicate in part that a party
14 may want to argue that there should be a reduction
15 of risk premium demanded by shareholders in the
16 event that a pension tracker is implemented.
17 Correct?

18 A Can you point me to that? I'm trying
19 to find that.

20 Q Sure. Let me find it.

21 Page 3, beginning at line 21.

22 A Okay. What was your question? I'm
23 sorry.

24 Q So my question was simply you indicate
25 that a party may want to argue that there should be

1 a reduction of the risk premium demanded by
2 shareholders because of the --

3 A I think it's an issue that -- oh, I'm
4 sorry. Go ahead.

5 Q Sorry. Because of the implementation
6 of a pension tracker.

7 A I think that is a point that could be
8 brought up in any discussion of implementation of
9 a pension tracking mechanism.

10 Q So if a party wants to make an argument
11 that there should be a reduction to the risk
12 premium demanded by shareholders because of a
13 pension tracker, then what better place to consider
14 that, and the tracker, but in a general rate case
15 setting where that sort of argument can be made and
16 implemented?

17 A I think that's one of many issues. And
18 whether or not this is the proper, I guess venue to
19 vet that, among all of the other potential issues,
20 is where I'm not exactly sure this is the proper
21 venue.

22 So I know we do look at cost of
23 capital, and risk is addressed in that portion
24 of a rate case proceeding. I'm not sure that
25 the associated risk premium or reduction thereof

1 associated with a pension tracking mechanism
2 specifically should be addressed here.

3 Q Should a reduction to the risk premium
4 or the ROE of a company be considered outside of a
5 rate case?

6 A I think whether or not it should be
7 introduced, and to the level and extent of what
8 that reduction could be, would require more time,
9 or could require more time, and a more broad view
10 and expertise than what we are lending it in this
11 conversation.

12 Q Would you agree that there are at least
13 35 gas utilities across 18 states that have a
14 tracker focused on pension costs?

15 A I am aware of testimony and discovery
16 provided by Southwest Gas that indicates that.

17 Q Do you have any reason to dispute that?

18 A No, I do not.

19 Q The pension tracker proposed by the
20 Company is risk-neutral in that it just trues up
21 so that the Company recovers no more or no less
22 than what the Company incurs. Correct?

23 A I don't believe that's correct.

24 Q And why is that incorrect?

25 A I think you're misusing the word

1 "recover." The pension tracker mechanism, as it's
2 proposed, trues up the level of pension expense
3 incurred, but it is agnostic or doesn't address
4 anywhere the amount of revenue specific to pension
5 expense that's actually recovered from customers.

6 So it's not risk-neutral, it's shedding
7 the risk to, I think, customers for any variance in
8 pension expense levels, without giving customers
9 credit for any revenue payments that are made,
10 whether they be greater or lesser than what's
11 established in the rate case.

12 Q If you're not willing to accept a
13 tracker, then why normalize the pension expense?

14 A Again, I'm not saying we're not willing
15 to accept a tracker. The tracker, as proposed, I
16 think we're unwilling to accept.

17 I think the utilization of
18 normalization of pension expense is a balanced
19 approach to providing both ratepayers and the
20 Company with some degree of safety without
21 adversely harming one or the other.

22 Q With normalization there could still be
23 an incurrence of pension expense above or below the
24 normalized level; correct?

25 A Yes, that's correct.

1 Q Are you aware of how long pension
2 expenses have been included in rates here in
3 Nevada?

4 A No, I'm not aware.

5 Q How long have you been with the
6 Commission?

7 A I have believe it will be two years at
8 the beginning of 2019. So in January it will be
9 two years.

10 Q Well, we don't have much of a history
11 to draw off of on that one.

12 But for your entire time at the
13 Commission, are you aware of pension expenses being
14 included in the Company's cost recovery?

15 A Yes, I believe NVEnergy has pension
16 costs that were recovered in their last rate case.

17 Q And the same with Southwest Gas?

18 A Yes, the same with Southwest Gas.

19 Q Are you aware of any instance where
20 the Commission normalized the pension expense,
21 or otherwise did not use the test year amount?

22 A No, I'm not aware.

23 Q The rest of your testimony just
24 quantifies the recommendations of other witnesses;
25 correct?

1 A Yes, essentially, that's correct.

2 Q So the only one question I have for
3 you is with respect to the board expense in
4 recommendation 7.

5 You state that 100 percent of the
6 compensation expense for the board of directors
7 is included in revenue requirement. Correct?

8 A To my knowledge, yes.

9 Q Do you know if the Company makes an
10 adjustment with respect to the board of directors'
11 costs?

12 A Can you be more specific as to what
13 type of adjustment you're referring to?

14 Q Sure. Adjustment number 12 in the rate
15 case.

16 A I'm not familiar with adjustment 12.

17 MR. STEPHENS: No further questions.

18 Thank you.

19 COMMISSIONER PONGRACZ: Thank you.

20 Mr. Stuhff?

21 MR. STUHFF: No questions.

22 COMMISSIONER PONGRACZ: Staff Counsel,
23 any redirect?

24 MS. CASSITY: Yes.

25 COMMISSIONER PONGRACZ: Please proceed.

1 REDIRECT EXAMINATION

2 BY MS. CASSITY:

3 Q Mr. Martin, do you know whether the
4 Commission's notice, public notice, specifically
5 stated that Southwest Gas was seeking a pension
6 tracker? Just if you know.

7 A I don't know.

8 Q Is it your understanding that there is
9 a legal standard that must be met in order for a
10 party to intervene in a case?

11 A I don't have any knowledge on that.

12 Q And are you aware that the prospect of
13 normalization was somewhat addressed in an NVEnergy
14 rate case? Are you aware of that?

15 A I'm generally aware that it was brought
16 up. I believe it was Staff's position at that
17 point that normalization could be introduced at a
18 later date.

19 Q Given all of the questions asked by
20 Southwest Gas' counsel related to the pension
21 tracker, wouldn't you agree that this issue is
22 more appropriately addressed in some sort of
23 investigation and rulemaking?

24 A Yes, I believe it is. I think, you
25 know, some of the questions that I've heard, and

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1 some of the answers that have been given from other
2 witnesses specific to the pension tracker have, I
3 think, at least in my opinion, made it a less
4 palatable proposition than when it was initially
5 introduced.

6 I think the complexities -- I think
7 on one hand you have deficiencies in the mechanism
8 because of oversimplification, and on the other,
9 you have overly-burdensome applicability of the
10 pension tracker through over-complication
11 in its annual true-up where there's been discussion
12 of addressing some of the assumptions made that are
13 establishing the pension tracker, whether we're
14 looking at the discount rate, the assumed return
15 on assets of the pension assets. And I think if
16 we're trying to now introduce that on an annual
17 true-up, we're almost trying to measure and track
18 the variables that are part of a variable that
19 we're tracking.

20 So we've just gone exponentially more
21 complicated than what we need to do. So I think
22 taking a step back, looking at the pension tracking
23 mechanism, and going through a comprehensive
24 analysis, is probably the best approach so
25 that some of the deficiencies through

1 over-simplification are mitigated, and some of
2 the overly-burdensome problems that arise through
3 over-complication are also mitigated.

4 Q Mr. Martin, if adjustment 12, as raised
5 by Mr. Stephens, concerns Southwest Gas' current
6 and past directors on deferred compensation and
7 annuities from test year expenses in compliance
8 with the order in the 1993 docket, which is 93-3003
9 and -3004, would that affect your quantification of
10 Miss Olesky's recommendations?

11 A I don't believe it does. My basis
12 for my adjustment was based on the amount of
13 compensation, board of directors' compensation
14 that was included in the revenue requirement that
15 was provided by the Company in Staff Data Request
16 280.

17 MS. CASSITY: Thank you.

18 No further questions.

19 COMMISSIONER PONGRACZ: Thank you.

20 Additional questions, Mr. Stephens?

21 MR. STEPHENS: No, thank you.

22 COMMISSIONER PONGRACZ: Mr. Stuhff?

23 MR. STUHFF: Nothing further.

24 COMMISSIONER PONGRACZ: Do we have
25 questions from the dais in Carson City for this

1 witness?

2 MR. McDONNELL: I have no questions.

3 Thank you.

4 COMMISSIONER PONGRACZ: Do we have
5 questions from the dais in Las Vegas?

6 Mr. Traxler.

7 MR. TRAXLER: Thank you, Commissioner.

8 CLARIFICATION

9 QUESTIONS

10 BY MR. TRAXLER:

11 Q Mr. Martin, is it your understanding
12 that the pension tracker being proposed by the
13 Company is intended to address a significant level
14 of annual volatility that occurs from year-to-year
15 in the determination of pension costs?

16 A I believe that's part of the intent,
17 yes.

18 Q Do you know how much pension cost
19 increased in the test year over the previous
20 year?

21 A Offhand, I think it was in the
22 neighborhood of \$8 million, if my memory serves
23 correctly.

24 Q Has the Staff done any investigation
25 to determine which specific assumptions under the

1 calculation of pension costs under FASB 87 were
2 responsible for the significant increase in pension
3 costs?

4 A Yes. And that's actually addressed in
5 Southwest's, I think the testimony of Miss Berger.
6 I think the most significant driver was the
7 reduction of the discount rate from 4-and-a-half
8 percent to 3.75 percent. It appears that each
9 quarter of a -- or 25 basis point reduction
10 of the discount rate led to about \$3.7 million
11 of increased pension expense, so they came down
12 75 basis points, so it was actually closer to
13 about \$12 million.

14 Q And what understanding do you have with
15 regard to whether or not the Company executives
16 have a considerable amount of input into terms of
17 what that discount rate is from year-to-year? Do
18 you have any knowledge or have you done any
19 discovery on that?

20 A I don't have knowledge or discovery as
21 to the considerable amount. I do believe that
22 executives have some degree of input. I think they
23 get the information from their actuarials, their
24 third-party group that calculates all of that.

25 To what degree they can influence what

1 actually gets booked as expense or incorporated in
2 the periodic pension expense, in Southwest Gas'
3 case I don't know.

4 MR. TRAXLER: Okay. That's all the
5 questions I have.

6 Thank you.

7 COMMISSIONER PONGRACZ: Thank you. And
8 I have no questions.

9 Mr. Martin, you are excused. Thank you
10 very much.

11 THE WITNESS: Thank you.

12 (The witness was excused.)

13 COMMISSIONER PONGRACZ: I think this
14 would be a good time for our afternoon break, and
15 we'll return at 25 minutes to 4.

16 (At 3:24 p.m. a recess was taken.)

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1 CARSON CITY AND LAS VEGAS, NEVADA

2 WEDNESDAY, OCTOBER 24, 2018

3 3:40 P.M.

4 -oOo-

5 COMMISSIONER PONGRACZ: We'll be back
6 on the record.

7 Miss Cassity?

8 MS. CASSITY: Staff calls Adam Danise.

9 (One witness was sworn: Adam Danise.)

10 MS. CASSITY: May I have Mr. Danise's
11 prepared direct testimony marked as the next
12 hearing exhibit?

13 MS. HARRIS: Do the parties have any
14 preference about whether Part 1 and Part 2 are
15 marked together or separately?

16 MR. STEPHENS: No preference.

17 MR. STUHFF: No preference.

18 MS. CASSITY: Probably just one, if
19 that's fine.

20 MS. HARRIS: We'll go ahead and mark
21 the direct testimony of Adam Danise, as Exhibit 64.

22 (Exhibit No. 64 was marked for identification.)

23 MS. CASSITY: And may have Mr. Danise's
24 confidential testimony and attachments marked as
25 the next confidential hearing exhibit?

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1 MS. HARRIS: The redacted confidential
2 and attachments of Adam Danise's direct testimony,
3 will be marked as Exhibit C-4.

4 (Confidential Exhibit No. C-4
5 was marked for identification.)

6 MS. CASSITY: And we do have a copy.
7 We'll get that to you shortly.

8 ADAM DANISE
9 called as a witness on behalf of
10 THE PUCN REGULATORY OPERATIONS STAFF
11 having been first duly sworn
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. CASSITY:

15 Q Mr. Danise, can you please state your
16 name, spelling your last name for the record,
17 please.

18 A My name is Adam Danise, D-a-n-i-s-e.

19 Q And what is your position on Staff?

20 A I'm an Electrical Engineer with Staff.

21 Q Do you have what has been marked as
22 Exhibit 64 in front of you?

23 A Yes, I do.

24 Q And what is that?

25 A It's my prepared direct testimony.

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1 Q Was that prepared by you or under your
2 supervision?

3 A It was prepared by me.

4 Q Do you have any revisions or
5 corrections to your testimony?

6 A I have one small correction.
7 Page 21, line 28, "Phase 2" should be
8 "Phase 1."

9 Q And is that all of your corrections?

10 A Yes.

11 Q Okay. So with that correction, if I
12 were to ask you the questions in your testimony
13 today, would your answers be the same?

14 A Yes.

15 MS. CASSITY: I tender Mr. Danise for
16 cross.

17 I tendered Mr. Danise for cross. I
18 apologize.

19 COMMISSIONER PONGRACZ: Okay. And no
20 questions about the documents?

21 MS. HARRIS: No.

22 COMMISSIONER PONGRACZ: Okay. Very
23 good.

24 Mr. Stephens?

25 MR. STEPHENS: Yes. Thank you.

1 CROSS-EXAMINATION

2 BY MR. STEPHENS:

3 Q Good afternoon.

4 A Good afternoon.

5 MR. STEPHENS: Pardon me. Paul, can
6 you move that microphone down?

7 MR. McDONNELL: Commissioner?

8 COMMISSIONER PONGRACZ: Is that someone
9 in the room?

10 MR. McDONNELL: Yes, this is Craig up
11 in Carson City.

12 We are having a great deal of
13 difficulty hearing Mr. Stephens.

14 MR. STEPHENS: Yes. I just asked Paul
15 to relocate a microphone that was in between myself
16 and the witness, so I was getting --

17 COMMISSIONER PONGRACZ: Can you hear
18 him better now, or do we need to provide him with a
19 different microphone, do you think?

20 Could you talk a little more,
21 Mr. Stephens?

22 MR. STEPHENS: Can you hear me now? Is
23 it working? Can you hear me up North, yes or no?

24 MR. McDONNELL: Yes, it's becoming
25 audible now. Thank you.

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1 MR. STEPHENS: So if you can't hear me
2 just let me know, and we'll switch microphones, or
3 whatever we need to do.

4 All right. Are we ready?

5 COMMISSIONER PONGRACZ: Yes, sir.

6 BY MR. STEPHENS:

7 Q You indicated in your direct
8 examination that you're an electrical engineer
9 by trade; correct?

10 A Yes.

11 Q Prior to your audit in this docket, how
12 many audits had you conducted?

13 A Throughout my nine, almost nine years
14 on the Commission, I would say, between the various
15 dockets, almost a dozen.

16 Q Do you have any experience in project
17 management?

18 A No, I do not.

19 Q Have you ever been a system implementer
20 for a major software upgrade?

21 A No, I have not.

22 Q I was looking at your summary of
23 qualifications and prior to the Commission you
24 worked at the Yucca Mountain project for a couple
25 of different entities; correct?

1 A Correct.

2 Q Were you ever a project manager for
3 a software upgrade as part of your job
4 responsibilities at Yucca Mountain?

5 A No, I was not.

6 Q With respect to the projects that you
7 question in your testimony and recommend a
8 50 percent disallowance, you do not allege that
9 Southwest Gas did not spend money on those
10 projects; correct?

11 A No, not at all. I reviewed all the
12 costs that they had spent, so they were expended
13 by Southwest Gas.

14 Q Instead, your contention is whether
15 certain expenditures were not appropriate, or
16 excessive; correct?

17 A That's correct.

18 Q And I believe you indicated that you
19 looked at every voucher, every invoice - is that
20 what you just stated on the record - that was
21 produced?

22 A I looked at pretty much everything that
23 I requested in discovery.

24 Q And in fact, for every expenditure that
25 you cite in your testimony, you had a copy of the

1 corresponding voucher and receipts; correct?

2 A That is correct. And that led me to my
3 findings that -- my concerns that there were those
4 vouchers that were in there.

5 Q In a number of points -- I'm sorry.

6 In Q&A 7 of your testimony, you
7 reference that Southwest Gas closed approximately
8 660 million to plant since its last general rate
9 case. Correct?

10 A Correct. That's from MDR 106, or
11 RLC-4.

12 Q In number of costs, how much of that
13 600 million -- 666 -- let me start over. Sorry.

14 In amount of costs, how much of that
15 660 million did you review as part of your audit?

16 A I can say as part of Staff, Staff
17 reviewed pretty much all of the 366 million with
18 the - or I mean, excuse me - the 294 with the GIR
19 projects, and I conducted a sample review of the
20 remaining capital projects that are listed.

21 Q Do you have an estimate in terms of the
22 total amount that Staff reviewed as part of its
23 audit, in comparison to the 660 million you state
24 in your testimony?

25 A No, I don't have one.

1 Q Q&A 7 also references 366 million in
2 non-GIR projects; correct?

3 A Correct.

4 Q How much of that 366 million in non-GIR
5 projects did you review?

6 A I couldn't give you an exact dollar
7 amount.

8 Q Was it most of it?

9 A I wouldn't say so. I went on the path
10 of sampling in my audit, and expanded that sample
11 when I encountered issues during my review, and
12 tried to review more documentation. But as the
13 timeline came around in getting documentation, it
14 limited my ability to perform a review on those
15 other projects because of the timeline involved
16 with the GRC. Staff has 200 -- you know, this
17 Commission has 210 days, and when it takes 90 days
18 to get something, that eats into a lot of the time,
19 along with all the other duties that this
20 Commission has to do.

21 Q We're going to go through the
22 discovery, so you'll be able to get your answers
23 out with respect to questions in that phase.

24 How many pages of costs support did
25 Southwest Gas provide to you as part of discovery

1 in this docket?

2 A I'm unclear of cost support. I
3 reviewed vouchers. If there is something
4 justifying that voucher, I would say minimal.

5 Q So by my count, Southwest Gas provided
6 you with 95 work orders, over 700 - I'm sorry -
7 over 7,700 vouchers, and nearly 55,000 pages of
8 documentary support for the costs incurred.

9 Do you have any reason to dispute that?

10 A No, and I pretty much reviewed all of
11 that information that was provided when it was
12 provided.

13 Q Your Q&A 7 also references NAC 704.7984
14 Subpart 2, which explicitly requires a copy of each
15 invoice, work order, accounting, et cetera, for a
16 GIR project in the Company's next general rate
17 case. Correct?

18 A Yes.

19 Q I believe you testify that the Company
20 complied with NAC 704.7984 Subpart 2, and that the
21 GIR costs are reasonable; correct?

22 A They complied with the regulation.
23 However, I did take -- I have concern with some of
24 the costs that arose due to a contract change-order
25 with one of the Southern Nevada contractors. So

1 I'm not sure that all costs were prudent. Some of
2 the costs are very small because it occurred during
3 the certification period.

4 Q I believe the costs you're referring to
5 there are the costs associated with work that was
6 performed by a Southwest Gas contractor called APL,
7 Arizona Pipeline; correct?

8 A Correct.

9 Q So other than those costs, you believe
10 the remaining GIR costs are reasonable?

11 A Yes.

12 Q So back to Q&A 7. I noticed that there
13 was no corresponding citation to a regulation
14 requiring the same level of documentation for
15 non-GIR projects that you provide for GIR projects
16 in the form of NAC 704.7984 Subpart 2.

17 A That's correct. However, Southwest
18 Gas, in its last general rate case, was aware of
19 the level of documentation that Staff was reviewing
20 in looking for, and also was addressed by this
21 Commission in Southwest Gas' general rate case as
22 to the lack of documentary support for its capital
23 projects.

24 So it wasn't -- although it's not in
25 regulation, Southwest Gas had been apprised of this

1 issue.

2 Q Just by reference, is the order for
3 Docket 12-04005 still over there?

4 A Yes, it is.

5 Q Can you point to me where in that order
6 that the Commission requested that Southwest Gas
7 explicitly provide additional testimony relating to
8 MDR 106 in its next rate case?

9 A Yes. Can you give me just a second?

10 Q Sure.

11 A So the discussion of MDR 106 begins on
12 page 136 of the Commission's order. It lays out
13 Southwest Gas' position, BCP's, Staff's position,
14 Southwest Gas's rebuttal position on page 137, and
15 page 138 gets into the Commission's findings.

16 And if I could read some of that
17 into the --

18 Q Sure.

19 A Okay.

20 The Commission agrees with Southwest
21 Gas and Staff that some form of testimony is needed
22 to support any projects identified in MDR 106. It
23 goes on to cite the NAC.

24 An applicant -- NAC 703.2231 states:

25 An applicant must be prepared to go forward at

1 hearing -- at a hearing on the date -- on the data
2 which has been submitted, and to sustain the burden
3 of proof of establishing that its proposed changes
4 are just and reasonable and not unduly
5 discriminatory or preferential.

6 To avoid delay by the Commission in its
7 consideration of the proposed changes, the
8 applicant must ensure that the material it relied
9 upon is of such composition, scope, and format that
10 it would be served -- that it would serve as to
11 complete case -- serves as its complete case if the
12 matter is set for hearing.

13 And then page, on page 139 it starts
14 paragraph 460, it states: As the applicant,
15 Southwest Gas has the burden to ensure that it is
16 prepared at the hearing to present the appropriate
17 witnesses to advocate for the data filed in support
18 of the application, and to prove that any proposed
19 changes in the application are just and reasonable.
20 Failure to produce a witness capable of advocating
21 that the capital projects listed in MDR 106 are
22 just and reasonable, subjects Southwest Gas to a
23 potential violation of NAC 703.2231.

24 Therefore, the Commission directs
25 Southwest Gas and Staff to meet prior to the next

1 general rate proceeding to determine the proper
2 scope of testimony necessary to support the work
3 orders produced in response to MDR 106.

4 Q Thank you.

5 And Southwest Gas and Staff did meet in
6 advance of this rate case; correct?

7 A Yes.

8 Q And I believe that is testified about
9 in the direct testimony of Randi Cunningham;
10 correct?

11 A I don't believe the direct testimony
12 addresses the meeting with Staff, no.

13 Q Your testimony on page 5 -- well,
14 first, are you aware of Staff and Southwest Gas
15 meeting to discuss MDR 106 prior to this rate case?

16 A I attended a 30-day meeting regarding
17 the Southwest Gas application in which a small
18 discussion of MDR 106 and capital projects took
19 place.

20 Q Do you have the testimony of, the
21 prepared direct testimony of Randi Cunningham in
22 front of you in one of those binders?

23 A I have that. Hold on. Let me get
24 there.

25 Okay. I am at her prepared direct

1 testimony.

2 Q Okay. I'll direct your attention to
3 page 20, and there is a discussion beginning on 46
4 and 47 with respect to the compliance item required
5 in the order in Docket No. 12-04005.

6 Would you agree?

7 A Yes. Thank you. I see that now.
8 Thank you very much. There was a discussion in
9 here about MDR 106, and it was a small discussion
10 in our 30-day meeting pertaining to the sponsorship
11 of testimony and providing a summary of each
12 project.

13 Q And in fact, in your testimony,
14 Footnote 3, you even acknowledge that in this
15 filing Southwest Gas improved from what it had
16 filed in Docket No. 12-04005; correct?

17 A Yes. Southwest Gas added a little bit
18 more information to MDR 106, and actually had a Q&A
19 going in and sponsoring MDR 106.

20 In the prior GRC in 2012, there was no
21 discussion of any capital projects by any Southwest
22 Gas witness, nor was there anyone sponsoring any
23 capital project.

24 Q And nowhere in your testimony do you
25 assert that Southwest Gas did not comply with that

1 compliance directive in the order of Docket No.
2 12-04005; correct?

3 A I don't state that in my testimony, but
4 I have yet to find a summary of some of the system
5 allocable programs that I had mentioned in my
6 direct testimony.

7 Q Okay. So back to Q&A 7. Are you aware
8 of any regulation or statute requiring
9 documentation to the level of NAC 704.7984 Subpart
10 2 for non-GIR projects?

11 A No. As I state, I am not sure that
12 there is a regulation specific as to GIR. However,
13 there is the regulation that was mentioned in the
14 Commission's order that it is the burden on the
15 utility to provide such documentation to support
16 its application.

17 Q Is it reasonable to assume that if the
18 GIR regulations specifically call for such
19 documentation -- I'm sorry. Is it reasonable to
20 assume that the GIR regulations specifically call
21 for such documentation because there is no
22 corresponding equivalent requirement for non-GIR
23 projects in a general rate case?

24 A You know, I --

25 MS. CASSITY: Objection. I think that

1 calls for a legal conclusion.

2 COMMISSIONER PONGRACZ: Mr. Stephens,
3 would you like to respond?

4 MR. STEPHENS: I'll approach it a
5 different way. That's fine.

6 COMMISSIONER PONGRACZ: Okay.

7 BY MR. STEPHENS:

8 Q Are you aware of any -- well, you're
9 not aware of any equivalent regulation -- you're
10 not aware of any regulation equivalent of
11 NAC 704.7984 Subpart 2 for non-GIR projects;
12 correct?

13 A I am not aware of any.

14 Q Did you review all of the GIR
15 documentation produced in this docket?

16 A Staff has, yes. I reviewed quite a
17 bit, and I also had a member of Staff assisting in
18 that endeavor.

19 Q Did your review include the same level
20 of detail as used in the audit of the software
21 projects?

22 A Yes, that's generally Staff's level of
23 review when it conducts an audit of a utility's
24 general rate case. And it's my belief that that's
25 how the GIR Mechanism was put in place, was because

1 this is what Staff looks for, this is the type of
2 information Staff seeks in every rate case, and
3 therefore this was something we wanted on the front
4 end in reviewing GIR projects.

5 Q Did you find instances of a systemic
6 problem with the GIR projects?

7 A No, I didn't identify anything at the
8 construction, operation levels; mainly at the
9 corporate level.

10 Q Your testimony responds to the
11 testimony of Randi Cunningham; correct?

12 A Correct.

13 Q I notice that your testimony does not
14 rebut Miss Cunningham's testimony that even in
15 nominal dollars the Company's average monthly bill
16 for a residential customer has decreased since
17 2001, as she identifies in her Exhibit RLC-1.

18 A I don't believe that's in the scope of
19 my testimony.

20 However, I don't necessarily believe
21 how minimal a utility's bill compares to what
22 expenditures and what costs it incurs and tries
23 to recover from ratepayers, I mean, just because
24 a Southwest Gas bill may be lower than another
25 utility's bill doesn't mean that it shouldn't be

1 prudently spending ratepayers' money.

2 Q Do you have Miss Cunningham's testimony
3 in front of you?

4 A Yes, I do.

5 Q Can you please flip to RLC-1.

6 A I am there.

7 Q Okay. Now RLC-1 demonstrates a, even
8 in nominal dollars, a pretty level average
9 residential customer bill since 2001 for Southwest
10 Gas customers; correct?

11 A Correct. And to be frank, in my
12 experience with reviewing the costs in this docket,
13 those costs could be lower if Southwest Gas was a
14 proper steward of ratepayer funds.

15 Q So how do you think Southwest Gas is
16 able to reduce, even in nominal dollars, the
17 average monthly bill for a residential customer if
18 the Company has a systemic lack of oversight, as
19 you allege in your testimony?

20 A Well, I'm not a rate design expert or
21 someone who can speak to the exact cost components
22 that are contained in that chart. However, I have
23 followed the natural gas pricing trends, and I can
24 tell you there has been a big difference in the
25 actual price in those years, and right now natural

1 gas is at very historic lows. So I'm not sure how
2 that discussion plays into -- I mean, you got to
3 look at it holistically; you can't just say, well,
4 we spent costs over here, so the rates have gone
5 down. The rates have gone down also because of
6 nothing that Southwest Gas has done; it's gone down
7 because we've had technology advances in producing
8 natural gas.

9 Q And that's actually accounted for in
10 her Exhibits RLC-1 and RLC-2; correct?

11 A As I said, I'm not a rate design expert
12 so I can't get down into that level.

13 Q Your Q&A 7 also complains that a
14 Company witness did not offer substantial testimony
15 on any of the non-GIR projects.

16 Where did you develop this substantial
17 testimony standard?

18 A I would like to have you flip to
19 Miss Cunningham's direct testimony, Q&A 21 -- or
20 page 21, Q&A 49. And I'll read it into the record.

21 Are you providing support for projects
22 over \$1 million that are identified in MDR 106?

23 Answer: Yes, I'm providing support for
24 all nine GIR projects over \$1 million that are
25 identified in MDR 106. Exhibit RLC-4 provides a

1 description, work order number, amount, and brief
2 project summary for each item over \$1 million
3 placed into service since the last GRC. There are
4 35 items in Southern Nevada, 11 items in Northern
5 Nevada, and nine items for system allocable. Of
6 these items, nine in Southern Nevada and five in
7 Northern Nevada are blank work orders.

8 I do not see any substantial discussion
9 of any of those projects included in this Q&A or in
10 the attachments that were provided.

11 Q Yes, and I guess my question is, is not
12 with respect to Miss Cunningham's testimony, but
13 it's where did you develop or create this
14 substantial testimony standard?

15 A Just in my years of performing audits
16 with this Commission, it's the level of -- the
17 level of documentation has been provided to me in
18 other dockets. I've compared that to this docket,
19 and in this docket it seemed severely lacking.

20 Q Is that written anywhere? Is it
21 contained in any sort of regulation or MDR, or
22 anything else like that?

23 A No, I --

24 Q It's just your understanding?

25 A It's my understanding, and as, you

1 know, I --

2 Q Your expectation?

3 A Not only my expectation, but I think
4 it's kind of a common business practice to at least
5 provide some witness or somebody that can speak to
6 projects that they are requesting recovery from
7 ratepayers.

8 It's very difficult to perform a review
9 of a utility that provides minimal information and
10 does not identify the key decisionmakers in its
11 application, and have those key decisionmakers
12 appear before this Commission so this Commission
13 can ask those questions and have its concerns
14 addressed. And Southwest Gas can't do that.

15 And in fact, you know, I was surprised
16 and officially appalled yesterday that the answer
17 was, I haven't reviewed any costs that were
18 submitted for recovery from ratepayers. This
19 Commission cannot accept that. This Commission has
20 to expect more from the utility as a proper utility
21 in front of this Commission. That is unacceptable.

22 MR. STEPHENS: I would like to mark the
23 next exhibit in order. It is the approved master
24 data request list.

25 MS. CASSITY: Commissioner? Just as a

1 recommendation, the Commission could also take
2 administrative notice of this. This is on the
3 Commission's Website.

4 COMMISSIONER PONGRACZ: Mr. Stephens,
5 is that acceptable to you?

6 MR. STEPHENS: That's fine as well.

7 COMMISSIONER PONGRACZ: Thank you.

8 And we will take administrative notice
9 of this document that's already available on the
10 Commission's Website.

11 We will take administrative notice of
12 the Nevada master data request that was just
13 distributed by Mr. Stephens.

14 (Administrative notice taken.)

15 BY MR. STEPHENS:

16 Q So let's take a look at MDR 106. It's
17 on page 21. Okay?

18 A I'm there.

19 Q What does MDR 106 require to be
20 provided pursuant to that MDR?

21 A MDR 106 states: Provide a list,
22 preferably in a computer file or files, of all work
23 orders greater than 100,000 in total costs closed
24 to plant since the end of the immediately preceding
25 test period. At a minimum, include the work order

1 number, the date closed to the plant, the
2 expenditure amount, the AFUDC IDC amount, and if
3 available any CIAC amounts.

4 Q Does MRD 106 require copies of all
5 vouchers or invoices?

6 A No, it doesn't. But I believe that's
7 kind of a common auditing tool that's used to
8 review costs for reasonableness, is to review
9 vouchers.

10 Q Does MDR 106 require substantial
11 testimony on those projects?

12 A No, it does not.

13 Q Now you provided testimony in the
14 Company's last general rate case, Docket -- well,
15 it's consolidated Docket No. 12-02019 and 12-04015;
16 correct?

17 A Correct.

18 Q Okay. And in fact, in that testimony
19 you raised this issue with respect to justification
20 in business cases to support the work orders listed
21 in MDR 106 --

22 A Correct.

23 Q -- is that correct?

24 You testified previously that Southwest
25 Gas' testimony and production of information

1 related to MDR 106 projects was better in this case
2 than what it had been in 2012; correct?

3 A Yes, I believe they added a title to
4 the work order number.

5 Q Did the Company provide -- what did the
6 Company provide with respect to MDR 106 in its 2012
7 rate case?

8 A If my memory serves correct, I believe
9 it was a similar list of work orders, it had dollar
10 amounts. I'm not sure if it included the date
11 closed to plant. It had total dollars. I'm not
12 sure if it included the allocation to Nevada. And
13 it didn't include a title.

14 Q And Southwest Gas, as you acknowledged,
15 improved upon that and provided some Q&A's with
16 respect to Miss Cunningham's testimony and some
17 additional explanation; correct? Summaries.

18 A There are summaries for some of the
19 projects. However, I did not find summaries for
20 the software applications that I raised in my
21 testimony. I didn't find those anywhere in the
22 electronic files or in the testimony.

23 And in fact, after Miss Cunningham
24 had -- I believe she was generally shocked that it
25 wasn't included in her testimony, and thought that

1 it was included in the electronic files, so I even
2 went through the electronic files that we received,
3 and I still couldn't find it there as well.

4 Q Did you inform Southwest Gas that those
5 files were missing?

6 A I didn't know that those files existed,
7 so I wouldn't know that they were missing. I went
8 by the page numbers in the attachment, and there
9 were all 19 pages in the attachment, so I didn't
10 see an error.

11 Q You pointed me to Q&A 49 earlier of
12 Miss Cunningham's testimony. And she describes
13 what RLC-4 has, and it has a description, work
14 order number, amount, a brief summary for each item
15 over a million dollars placed in service since the
16 last general rate case; correct?

17 A Correct.

18 Q And she continues to say there are 35
19 items in Southern Nevada, 11 items in Northern
20 Nevada, and nine items for system allocable.

21 And so as I would read that, I think
22 it's reasonable to assume that RLC-4 included each
23 item over a million dollars, and that would have
24 included the Northern Nevada and system allocable
25 ones.

1 So it's in her testimony in terms of
2 what RLC-4 contained; it was just a mistake to
3 not include that as part of that attachment.
4 Correct?

5 A Again, you know, I read this and I take
6 something different.

7 I also take this to have a summary of
8 the blanket work orders as well, a summary to how
9 many services were installed, mains were installed,
10 some type of discussion of what economic activity,
11 what level of construction activity that this new
12 business center is seeing.

13 Other utilities in Nevada provide,
14 sponsor testimony with how many -- how much
15 distribution plant, how much transmission plant
16 they install and, you know, other than stating
17 these are blanket work orders and providing a
18 simple dollar amount and title, there is no summary
19 for those as well either.

20 Q Understood. But that was discussed
21 between Staff and Southwest Gas in advance of the
22 rate case; correct?

23 A I'm sure a discussion was had. Whether
24 or not we each had a mutual understanding of what
25 should or shouldn't be placed, in the end it's

1 Southwest Gas' application to support.

2 Q But your testimony does not assert
3 that Southwest Gas was not in compliance with the
4 Commission directive in Docket 12-04005; correct?

5 A No, but, you know, I would also note,
6 and if you go to page 136 of the prior Commission's
7 order, paragraph 450, and I'm just going to read
8 this into the record.

9 Notwithstanding, the Commission is
10 troubled by what appears to be poor recordkeeping
11 practices and a lenient review and approval
12 practice for contract work. Clearly, it would be
13 advisable for Southwest Gas to develop a more
14 detailed paper trail to substantiate that the work
15 was completed properly and in a reasonable time,
16 particularly with hourly contracts, contracts of
17 this size, and when Southwest Gas is requesting
18 that such expenses be recovered through rates.

19 I mean, it's pretty clear here that the
20 Commission is concerned. It doesn't take a nodding
21 from Staff -- I mean, Southwest Gas has to own some
22 responsibility here, and take what this
23 Commission's concerns are and ensure that it has
24 the proper documentation, proper paperwork.

25 And we can sit here and discuss whether

1 or not we each mutually understood each other
2 during the 30-day meeting, and obviously we didn't,
3 but in the end it is Southwest Gas' application to
4 support, and I didn't see that here.

5 Q But as discussed, the Company did sit
6 down with Staff. There is no allegation that we
7 were not in compliance with that requirement. If
8 there was more specificity that was required, then
9 how come we did not embed that either, A, in the
10 Commission order back in 2012; or B, through the
11 meetings in advance of the rate case saying, hey,
12 this is an expectation that we want these specific
13 projects to be sponsored by operational folks,
14 IS folks, what have you, rather than what has
15 traditionally been done, was done in 2012, was done
16 in 2009, and every rate case that I'm aware of,
17 with respect to the sponsorships of projects by a
18 rate witness, and then the Company responding
19 through the audit process.

20 How come that wasn't indicated in any
21 sort of discussion or paper trail with respect to
22 Southwest Gas' meeting with Staff?

23 MS. CASSITY: I'll object. I think
24 that is extremely compound, and I believe at least
25 part of that was asked and answered.

1 COMMISSIONER PONGRACZ: What question
2 were you attempting to ask the witness,
3 Mr. Stephens, that was not already answered by
4 paragraph 450 of the 2012 order?

5 MR. STEPHENS: My question had nothing
6 to do with paragraph 450 of the order. My question
7 had to do with Staff's meeting with Southwest Gas
8 subsequent -- well, prior to this rate case.

9 And the directive from the Commission
10 was to sit down with Staff and come up with an
11 understanding with respect to what would be
12 provided, and so --

13 COMMISSIONER PONGRACZ: I see paragraph
14 450 providing exactly that type of directive to the
15 Company.

16 MR. STEPHENS: The paragraph there
17 references -- okay.

18 BY MR. STEPHENS:

19 Q And didn't the Company produce, as
20 you've testified, every single invoice and voucher
21 that you requested as part of your discovery
22 responses?

23 A I would say that the Company has
24 provided information, albeit very slow, due to
25 various factors I don't know. However, I don't

1 believe that Southwest Gas has truly responded to
2 a business case question.

3 And it's extremely frustrating when you
4 walk on-site to an on-site audit and you have a
5 discussion with the Director of Regulatory and
6 Energy Efficiency, and the question is asked to
7 you, what is a business case? That's extremely
8 frustrating on my part, and telling of Southwest
9 Gas' internal handling of its processes.

10 Q Was that - and I was not part of that
11 conversation - but was that in a conversation to
12 try to elicit more information in terms of what
13 you were expecting to see or wanted to receive
14 for documentation from the Company?

15 A No, it was asking where are the
16 business cases that I requested to be on-site? And
17 I was told there is no document that's titled
18 business case. Although I'm not a, you know,
19 project management professional, I am seasoned
20 enough in auditing and reviewing projects to know
21 that a business case is a pretty -- it's a pretty
22 essential part of conducting a capital project of
23 any business, whether regulated or non-regulated.

24 Q We're going to get into that
25 information here in a little bit when we talk about

1 some of these specific data requests.

2 In Q&A 10 of your testimony you state
3 that: Southwest Gas should provide sponsoring
4 testimony for a project sponsor or officer for all
5 capital projects the Company is seeking recovery.
6 Correct?

7 A Yes, that should be in reference to
8 capital projects over a million dollars. That
9 should be taken in that discussion.

10 Q Even with that, if that was the
11 standard in Nevada, Southwest Gas would have
12 upwards of maybe 30, even 40 different witnesses
13 providing testimony just for capital projects;
14 correct?

15 A No, I'm not sure that's correct.
16 NVEnergy also conducts numerous capital
17 expenditures and makes available an officer that
18 has the ultimate authority. So I don't believe
19 Southwest Gas has 30 or 40 officers. I think that
20 the officer should be sufficient enough to
21 encompass many capital projects.

22 Q Well, we don't have 30 or 40 officers,
23 but your testimony doesn't require an officer. It
24 says the project sponsor or officer.

25 And so Southwest Gas has different

1 types of projects than NVEnergy; correct?

2 A Correct. And that's what I alluded
3 to here is and/or, so an officer who is a vice
4 president of IT can sponsor all software,
5 hardware-type related projects. An officer who
6 oversees any type of engineering can support all
7 capital projects that were either construction or
8 engineering related.

9 Q And in your testimony you identified --
10 well, you reviewed 95 different work orders, right,
11 for different projects?

12 A That sounds about right, yes.

13 Q And out of all those, your testimony
14 identifies five.

15 A Correct. It identifies five because
16 of the amount of time and the amount of workload
17 that I put into requesting and getting necessary
18 information to be able to even review five projects
19 or six projects. Had I had more time, I would have
20 dug even deeper.

21 Q But I thought you testified that you
22 had looked at all the documents --

23 A No, I'm saying --

24 Q -- that were provided?

25 A -- the documents associated with these

1 projects. Had I had more time, I would have delved
2 into additional work orders.

3 Q So you looked at all of the vouchers
4 for the approximately 95 different work orders that
5 we discussed; right?

6 MS. CASSITY: Objection. Misstates his
7 testimony.

8 COMMISSIONER PONGRACZ: I'm sorry.
9 Could you restate your objection, please?

10 MS. CASSITY: It misstates his
11 testimony.

12 COMMISSIONER PONGRACZ: Misstates.
13 Okay.

14 Mr. Stephens, I'm sure you didn't
15 intend to misstate his testimony. Could you just
16 rephrase your question.

17 MR. STEPHENS: Sure.

18 BY MR. STEPHENS:

19 Q We've had some discussion before that
20 you reviewed approximately 95 work orders as part
21 of your audit?

22 A I performed some level of review on
23 95 work orders. To the extent that I had reviewed
24 vouchers for each of those 95 work orders, whatever
25 time was possible I did.

1 I first segregated my time into the
2 work orders over a million dollars, and having
3 trouble getting data, and the other things that
4 came up, had I had more time, Mr. Stephens, I would
5 have delved in and reviewed a lot more of this.
6 Given what I have seen, I can tell you I would have
7 delved into it a lot further than I did, if I had
8 the time and resources.

9 Q But out of all of all that, your
10 testimony identifies five projects out of the 95
11 you reviewed.

12 A Correct. As I discussed, there's not a
13 infinite amount of time in doing a rate case, and
14 there are resources that are needed everywhere and
15 so you can only spend so much time.

16 And I tell you, I probably put in a
17 couple hundred hours reviewing documentation just
18 on this case alone. So had I had more time, I
19 would have delved further.

20 Q And when the Company and Staff met in
21 advance of the rate case, did you convey to the
22 Company your desire for how the information was
23 to be presented to you?

24 A I don't believe I did. However, I
25 believe my Manager, Mr. Maguire did. He

1 specifically, as I recall, requested you guys to
2 look at NVEnergy's filings to get an idea of what
3 we were looking for. So I believe some direction
4 was given.

5 Q And the parties discussed that, and
6 ultimately agreed upon what was represented in
7 Miss Cunningham's testimony; correct?

8 MS. CASSITY: Objection. Asked and
9 answered.

10 COMMISSIONER PONGRACZ: Actually, I'll
11 overrule the objection.

12 THE WITNESS: I don't believe the
13 parties had any further discussion after
14 Mr. Maguire stated that.

15 I believe that the discussion was, I
16 mean, it was a quick decision on MDR 106. This
17 was a 30-day meeting to discuss the entirety of
18 Southwest Gas' application, and all of the
19 highlights, including ROE, and everything, so it
20 wasn't a meeting specifically to discuss MDR 106,
21 it was -- there was a small discussion.

22 I don't believe we ever agreed to, and
23 nor we could agree to what was provided in
24 Miss Cunningham's testimony because we had never
25 seen it. I mean, they don't file any information

1 with us before they file their testimony, so we had
2 no idea of what Miss Cunningham or Southwest Gas
3 was going to provide in its application.

4 BY MR. STEPHENS:

5 Q But it was discussed, and Staff's
6 testimony has not refuted the representations in
7 Miss Cunningham's direct testimony; correct? With
8 respect to paragraph or Q&A 49.

9 A I guess so. I mean, they did have a
10 witness sponsor MDR 106 in capital projects, so
11 I guess if you take it to the very basic level of
12 the plain meaning of each word, I guess they did,
13 yes.

14 Q And so we'll put the filing to bed, and
15 now let's move on to a production of documents,
16 either through MDRs or through other data requests.

17 Did you convey to Southwest Gas, during
18 this meeting, the magnitude of the information that
19 you wanted, and the form that you wanted it
20 presented from them, to assist you with your audit?

21 A Again, other than a discussion
22 regarding what has typically been done for NVEnergy
23 rate cases, I don't believe there was much
24 discussion on the exact specifics.

25 I believe there was a discussion, you

1 know, that typically NVEnergy sets up a data room
2 that has all the information readily available that
3 is quickly assembled and tabulated. I mean, it's
4 readily available, and I think that was put out
5 there. But other than that, I'm not sure that
6 there was much more discussion.

7 Q In this case, you had an opportunity to
8 audit all the projects and conduct discovery on the
9 ones you decided to focus on; correct?

10 A I'm not sure how to answer that
11 question. I had an opportunity to select capital
12 projects to review. Given the amount of time it
13 took to actually get documentation to assist my
14 review, I'm not sure that I was able to review as
15 much as I felt I should review given the amount of
16 expenditures that I believe were frivolous.

17 Q You received as part of the discovery
18 responses information about project sponsorship and
19 team members; correct?

20 A Yes, that was well into my review. I
21 believe it was in, sometime in August when I
22 started asking for information towards the end of
23 June.

24 Q Did you ever request to interview or
25 depose any of those sponsors or team members to

1 respond to questions that you had about that
2 particular project?

3 A No, nor did Southwest Gas offer any
4 discussion to those individuals.

5 Q Well, Southwest Gas made multiple
6 individuals available for Miss Olesky; correct?

7 A As I say, I believe -- I'm not exactly
8 sure in Miss Olesky's case. I believe those were
9 actual witnesses in this case. I'm not sure. I
10 know at least one or two of them were.

11 The witnesses in this case were there,
12 they were providing -- trying to provide me with
13 information. However, I'm not sure how much help
14 that would have been. As we heard yesterday, they
15 had not reviewed any of the documentation prior to
16 filing the application. So I don't know.

17 Q Does MDR 106 require Southwest Gas to
18 provide documentation for all expenditures and --
19 sorry.

20 Does MDR 106 require Southwest Gas to
21 provide documentation for all expenditures?

22 A No, that's part of an auditor's job
23 to review documentation expenditures and other
24 documentation associated with issues that the
25 auditor -- or the projects the auditor reviews.

1 I mean, that's just a general auditing practice.

2 Q So to be clear, there is no requirement
3 in MDR 106 that obligates the utility to provide
4 copies of each and every invoice for an expenditure
5 in response to MDR 106?

6 A I don't see that in there, no.
7 However, it's a tool that's used by Staff in its
8 audit of the utilities that this Commission
9 regulates to select projects and review invoices
10 associated with those projects.

11 Q As part of the discussions between
12 Staff and Southwest Gas regarding MDR 106, did
13 Staff request the documentation for non-GIR
14 projects to be presented in the same fashion as
15 GIR projects?

16 A No, I don't believe that discussion
17 was -- occurred.

18 Q Other than the improvements you
19 reference in Footnote 3 of your testimony, are
20 you aware of any other changes about Southwest Gas'
21 general rate case filing in this instance when
22 compared to the last two general rate case filings?

23 A I can't compare it to the last two. I
24 can compare it to the last one in 2012, as I
25 performed an audit of Southwest Gas' projects

1 similar to what I did here.

2 And in fact, the process of delivering
3 documents and getting information with Southwest
4 Gas here was tremendously slow as compared to the
5 last rate case that I audited.

6 The last rate case I was provided a
7 conference room, and all the data was available in
8 cardboard boxes so I could just thumb through it as
9 I needed. I didn't have to gather information on
10 my own.

11 Q I believe there was a reference
12 yesterday, DRs 66 through 69. You issued those to
13 the Company; correct?

14 A Yes.

15 Q And I believe --

16 MR. STEPHENS: Do you know what exhibit
17 that is?

18 MR. STUHFF: Is it Exhibit 44?

19 MR. STEPHENS: That might be right. I
20 know it's in the 40s somewhere.

21 MS. CASSITY: I believe that was
22 Exhibit 44? Did you say DRs 66 to 69?

23 THE WITNESS: And if I can clarify, is
24 it okay -- I attached those in my testimony.

25

1 BY MR. STEPHENS:

2 Q Sure. We can refer to that.

3 A Okay.

4 Q That may be easier rather than going
5 back.

6 A Okay.

7 Q What's the exhibit in your testimony?

8 A AED-3.

9 Q There's a lot of documents.

10 So looking at AED-3 to your direct
11 testimony, you indicated that in 2012 Southwest Gas
12 had provided the information in boxes. Correct?

13 A Correct.

14 Q If you look at the responses that the
15 Company provided with respect to each of these, the
16 Company stated that it will make the requested
17 materials available electronically during that
18 audit; correct?

19 A Yes, and the response, and this is key,
20 also says: Is in the process of gathering.

21 Q Yes.

22 A Yes.

23 Q Yes. Organizing it so that it would
24 all be there for you to look at electronically when
25 you're on-site for the audit.

1 A I'm not sure I agree with that. I'm
2 not sure that how a document resides in its native
3 form is organizing a document available for me to
4 review.

5 Q Well, if they're in different systems,
6 and you want to be able to identify and find the
7 vouchers, they need to be organized; correct?

8 A Yes. And if I may, Commissioner, I
9 think this also needs some discussion around it.

10 This process that was put in place by
11 Southwest Gas is actually the financial systems
12 application program. It was part of that program
13 in other various capital projects that it did.
14 And these are new systems. And for it to have
15 limitations on it to have to copy and paste one
16 voucher at a time to bring up an image is
17 troubling, when there is no way of performing any
18 type of batch gathering where you can implement a
19 work order number and have data presented.

20 This was a multi-million dollar
21 project, and the capability is not there. And
22 that's kind of troubling that we have a system
23 limitation. And the response yesterday was, it is
24 what it is. That system was designed by Southwest
25 Gas, its contractors, its IT people and knowing

1 those limitations, this is why I kind of came back
2 to the office was, well, maybe if they have a --
3 Southwest Gas has a discussion with its IT
4 personnel, that they can maybe extract the data
5 out. Because I don't know how to use their system,
6 the people that are helping me audit don't know how
7 to use the system, and it just wasn't a very
8 efficient process.

9 Q But if you wanted the information
10 through paper format, did you contact Southwest Gas
11 after receipt of the responses to DRs 66 through 69
12 in AED-3, and say, my preference would be to
13 receive them in paper format rather than
14 electronically?

15 A I'm not sure I stated I would rather
16 have it in paper format; just readily available,
17 you know, a document that I can scroll through
18 quickly or a folder that has all the files, or
19 something that I don't have to manually go into the
20 system each and every time to pull up the copy of
21 the record as it resides native in Southwest Gas'
22 system.

23 And that's what's troubling to me --
24
25

1 COMMISSION

2 QUESTIONS

3 BY COMMISSIONER PONGRACZ:

4 Q Mr. Danise, can I ask you a clarifying
5 question here --

6 A All right.

7 Q -- because this has been very puzzling
8 to me as we've had conversations with several
9 witnesses.

10 Had Southwest Gas gathered together all
11 of the documents relevant to the projects you were
12 auditing and made available to you when you arrived
13 for your audit either in electronic or in paper
14 format, had they been gathered together into a set,
15 or were you put into a position where you were
16 provided access to an unfamiliar system and put
17 into the position of attempting to search for
18 related documents yourself?

19 I just don't understand enough about
20 how that experience unfolded.

21 A Yes, and I can expand on that.

22 And what happened was, is when I
23 arrived on-site I was assigned a laptop, probably
24 exactly the same one as Miss Kolebuck is using over
25 there, the same size, the same everything, and it

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1 was logged into another Southwest Gas' employee's
2 account. Having any other discussions as to
3 whether that goes against software protocols having
4 an unauthorized user use an authorized user's
5 account, I was logged into their corporate network,
6 and then also logged into their record management
7 system, I believe it's called CODIS.

8 So what I was provided was a listing of
9 vouchers that pertained to a work order, and for
10 each voucher that I wanted to see I had to go to
11 the Excel file, go into it individually into the
12 Excel file and copy the text out of that cell,
13 and then paste it in their CODIS document retrieval
14 system to pull up an image of that document.

15 So nothing was gathered. It was as
16 resided on its native format at the utility's
17 systems.

18 Q And was there -- that was for vouchers;
19 correct?

20 A Correct.

21 Q Were the additional materials regarding
22 one of the projects that you addressed, any one of
23 the projects that you addressed in your testimony,
24 were the budgeting materials, the RFPs, the
25 contracts, in some way gathered together with the

1 vouchers for you, or how did you get access to
2 those?

3 A So on the contracts, I was taken into a
4 contracts conference room, where similar to what we
5 have on Staff is a computer and a screen in the
6 conference room, and a contract personnel logged
7 into the computer under their user name, and pulled
8 up whatever contract I wanted to see on the screen.
9 And it would be displayed as if I were reading it
10 here in the hearing room.

11 Q So this was done on an item-by-item
12 basis and in response to your request. It had not
13 been gathered together with related material ahead
14 of time.

15 A Correct.

16 COMMISSIONER PONGRACZ: Okay. That's
17 helpful. Thank you.

18 Mr. Stephens, please proceed.

19 MR. STEPHENS: Yes, I've got some
20 follow up on that.

21 CROSS-EXAMINATION

22 (Resumed)

23 BY MR. STEPHENS:

24 Q So you referenced an Excel file that
25 had voucher numbers and reference points and that

1 sort of stuff; right?

2 A Correct.

3 Q Do you know if that information had
4 been gathered to provide you a key to what the
5 vouchers or the invoices were with respect to a
6 specific project?

7 A I'm sure they had to pull a listing of
8 vouchers and assemble that into an Excel file. I'm
9 not sure how that is considered gathering the data
10 I was requesting.

11 Q But the data that you requested was
12 thorough, and in fact everything was available to
13 you when you were on-site for the audit. Right?

14 A It was available as I -- it was
15 available as a user who is unknown to Southwest
16 Gas' operations, computer network, and computer
17 processes, and records management system. It was
18 available for me to copy and paste a voucher
19 number, and pull up an image, which is a very
20 tedious process, and it was not readily available.

21 Q Well, it was available, because was
22 there any instance where you searched for a voucher
23 or a contract and were not able to review it during
24 your on-site audit?

25 A No. I said it wasn't readily

1 available, and I think there is a distinction
2 between readily and just regularly available.

3 Q And the Company didn't leave you there
4 alone to figure it out; the Company provided you
5 office space, it provided you equipment, and it
6 provided you with personnel to assist you, as you
7 needed to, in your audit; correct?

8 A Correct. The Company personnel were
9 very helpful and very cordial, and I just felt that
10 that process was inefficient.

11 Q Did Southwest Gas ask you to leave or
12 otherwise terminate the audit, the on-site audit?

13 A Not at all.

14 Q And in fact, you terminated the audit
15 for your own convenience; correct?

16 A I'm not sure I terminated the audit.

17 Q Well, I guess, how did the audit end?
18 How did the on-site audit end?

19 A I performed two days of on-site audit,
20 performing the same task over and over, copying and
21 pasting, pulling up the files and reviewing, and
22 determined that it would be more efficient to have
23 somebody try to extract this data out of the
24 records management system.

25 And to be honest, I was almost at that

1 point where I was going to try and manipulate the
2 Company's software and process to gather that data.
3 I felt that if I came back to the office and
4 submitted a data request requesting all the
5 documentation, that Southwest Gas could then
6 consult with its IT department, or individuals
7 who were very familiar with the processes and the
8 programs that were used, could perform some kind
9 of batch programming, something to automate this
10 a little further.

11 And it's very troubling to find that,
12 through Miss Cunningham's testimony, that they
13 eventually had to do the same thing. I mean,
14 that's a very inefficient business process.

15 Q And in fact, at the conclusion of your
16 second day there was a discussion about you coming
17 back a subsequent day; correct?

18 A Correct. At that time, at the end of
19 the second day I wasn't sure with how to proceed,
20 so to keep my options open I scheduled some
21 additional days with the regulatory personnel.

22 As I was indicated by the admin who
23 schedules the conference room that, I needed to
24 schedule dates ASAP because the conference room is
25 highly sought after, and if I didn't schedule them

1 now, that the conference room, you know, it would
2 be harder availability to get in there. So I
3 thought it best, to keep my options open, to
4 schedule additional dates.

5 Q But you never came back on-site?

6 A No, as I indicated in my previous
7 answer, I felt that it was more appropriate for
8 me to request a copy of all the documents, than
9 to have them on-site.

10 Q At any time when you were on-site did
11 Southwest Gas prevent you from reviewing any
12 documents you wanted to review?

13 A No. In fact, I'm sure if I wanted to I
14 probably could have went through their system and
15 tried to extract information. And I was almost
16 tempted to do that, to try to do some batch
17 processing, or something, to see what was
18 available.

19 So I don't think Southwest Gas ever --
20 I never felt, I never felt that I was being handled
21 by Southwest Gas, I just merely indicated that
22 there was an individual there because I was logged
23 into their system.

24 MR. STEPHENS: At this point we would
25 like to mark the next exhibit in order. It is

1 Staff DR-170.

2 I believe a pared down version of this
3 was admitted as an exhibit yesterday, but Southwest
4 Gas wanted to provide a complete copy of the
5 response, rather than the five or six pages that
6 were provided last week, so - or I'm sorry -
7 yesterday.

8 And so Southwest Gas would like to mark
9 this next exhibit in order as Staff-170.

10 MS. HARRIS: Mr. Stephens, is this more
11 properly classified as Southwest Gas' response to
12 Staff-170?

13 MR. STEPHENS: Yes.

14 MS. HARRIS: Southwest Gas' response to
15 Staff DR-170, will be marked Exhibit 65.

16 (Exhibit No. 65 was marked for identification.)

17 THE WITNESS: If could I get a copy,
18 please?

19 MR. STEPHENS: Yes.

20 THE WITNESS: Okay.

21 MR. McDONNELL: Commissioner, there are
22 no copies available in Carson City.

23 MR. STEPHENS: No, this is a
24 substantial document, and we will get you a copy of
25 this in the morning, or I guess I could talk about

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1 it in the morning, this line of questioning, if you
2 guys want one up there before I go into it.

3 COMMISSIONER PONGRACZ: I wonder, is
4 there some way Staff can assist in providing a copy
5 of the response they received?

6 MR. STEPHENS: Yes, part of the problem
7 is -- yes. Part of the problem is, is we could
8 produce this electronically, but that you just
9 can't see it, and so we have a handful of these
10 that we're going to walk through and talk about,
11 but it doesn't really work when it's on a thumb
12 drive.

13 When we saw, I think Exhibit 49
14 yesterday as being incomplete, we felt it was
15 necessary to provide a complete version of this
16 response, as well as others, and so that's our
17 intent.

18 I can certainly --

19 COMMISSIONER PONGRACZ: Okay. Let me
20 just clarify.

21 MR. STEPHENS: Sure.

22 COMMISSIONER PONGRACZ: Does this
23 document we've just marked, does it have material
24 in it in addition to the Company's response to
25 Staff Data Request 170?

1 MR. STEPHENS: No.

2 COMMISSIONER PONGRACZ: Okay. So I'm
3 wondering if Staff in the North might have access
4 to this?

5 MR. McDONNELL: Miss Cordova --

6 MS. CASSITY: We probably, we should
7 have --

8 MR. McDONNELL: I'm sorry.

9 MS. CASSITY: We should have access to
10 that up North. It's very voluminous, but we can
11 probably print it out.

12 COMMISSIONER PONGRACZ: It may not be
13 readily available.

14 So, okay. Are there other areas,
15 Mr. Stephens, that you would like to discuss with
16 this witness? I do want us to productively utilize
17 the next hour or so of time today.

18 MR. STEPHENS: Yes, I can move on to
19 other things, and we can make sure that there is
20 sufficient copies. Has this one been marked, or
21 is it --

22 COMMISSIONER PONGRACZ: Okay. Well, if
23 we had a short break, is there some way to remedy
24 this issue tonight, or do we need to leave it until
25 the morning, Mr. Stephens?

1 MR. STEPHENS: I think we need to leave
2 it until the morning. We were working on printing
3 these out this morning, because there's -- it's
4 thick --

5 COMMISSIONER PONGRACZ: Right.

6 MR. STEPHENS: -- and so we will take
7 our break, and plan to address these questions
8 tomorrow morning with a copy or copies provided up
9 North.

10 COMMISSIONER PONGRACZ: And do I take
11 it that you do have additional questions --

12 MR. STEPHENS: Yes.

13 COMMISSIONER PONGRACZ: -- other than
14 those related to 170, for Mr. Danise?

15 MR. STEPHENS: Yes.

16 COMMISSIONER PONGRACZ: Okay.

17 MS. CASSITY: And Commissioner?

18 COMMISSIONER PONGRACZ: Yes,
19 Miss Cassity.

20 MS. CASSITY: I would just ask, since
21 they're providing additional copies, if we could
22 just get one for Mr. Danise's counsel?

23 MR. STEPHENS: I will get one for
24 everybody.

25 MS. CASSITY: Thank you.

1 THE WITNESS: And me.

2 MS. CASSITY: And Mr. Stuhff.

3 COMMISSIONER PONGRACZ: Ah, yes. So do
4 you currently not have them?

5 MS. CASSITY: Not readily available.

6 COMMISSIONER PONGRACZ: Okay.

7 MR. STEPHENS: We were able to make
8 five. I have one and --

9 COMMISSIONER PONGRACZ: We have some.

10 MR. STEPHENS: -- and you have the
11 rest. But we'll talk about it tomorrow.

12 COMMISSIONER PONGRACZ: Okay. And
13 Miss Harris and I can share.

14 MR. STEPHENS: Yes. It's not up North,
15 so we'll get it fixed tonight.

16 COMMISSIONER PONGRACZ: Okay. Then
17 that sounds fine.

18 Let us take a 10-minute break until
19 5:05, and then we'll come back, and we'll see what
20 more we can accomplish in the next -- in the
21 following hour. Thank you.

22 MR. STEPHENS: Thanks.

23 COMMISSIONER PONGRACZ: We'll be off
24 the record.

25 (At 4:58 p.m. a recess was taken.)

1 CARSON CITY AND LAS VEGAS, NEVADA

2 WEDNESDAY, OCTOBER 24, 2018

3 5:09 P.M.

4 -oOo-

5 COMMISSIONER PONGRACZ: We'll be back
6 on the record.

7 Mr. Stephens?

8 MR. STEPHENS: Thank you.

9 CROSS-EXAMINATION

10 (Resumed)

11 BY MR. STEPHENS:

12 Q So after the on-site audit, did you
13 file a motion to compel with respect to Southwest
14 Gas for your requested information?

15 A I don't know what a motion to compel
16 is, sir.

17 Q Do you understand that if you do not
18 feel that you have been provided the information
19 that's requested in a discovery request, that there
20 is recourse through the Commission to make sure a
21 company provides the information that was
22 requested?

23 MS. CASSITY: I'll object. That calls
24 for a legal conclusion.

25 MR. STEPHENS: I asked if he knew.

SILVER STATE COURT REPORTERS (775) 329-6323

1 COMMISSIONER PONGRACZ: Sustained.

2 BY MR. STEPHENS:

3 Q So when you left on the second day for
4 the on-site audit, you and Southwest Gas were still
5 working together with respect to the production of
6 the documents; right?

7 A Correct. I don't believe Southwest Gas
8 and I never -- I don't think that ever stopped.

9 Q And so through the whole process,
10 Southwest Gas was working to provide you the
11 information that you had requested.

12 A Correct. I had continuing discussions
13 with Southwest Gas about producing the information,
14 the timelines -- I tried to convey that, just give
15 me what you can and, you know, even if you give me
16 something every couple of weeks, I can't -- if you
17 dump thousands of pages on me, I can't review them
18 all at once, so it's okay that you get a couple
19 documents here and there, just send them, because
20 it's easier on me as well. And I tried to convey
21 that, and that wasn't received as well.

22 Q But did Southwest Gas provide you with
23 the documents ultimately that you requested?

24 A Yes, after many, many days, and I tried
25 to convey, as I said, in discussions with Southwest

1 Gas, is it would be easier on both parties to just,
2 as documentation is gathered, just send it over,
3 and not wait until the entirety of the
4 documentation is gathered. That way, you know,
5 they're proactively gathering their documents, and
6 I'm proactively reviewing, and not wait a month or
7 so more to give all the data, just -- I tried to
8 set that up, and that didn't occur.

9 Q And at no point did Southwest Gas say,
10 hey, we gave you access on-site, so we're not going
11 to produce it to you. We continued to work with
12 you to get you the information you requested.

13 A Correct.

14 Q In Q&A 15 you reference vouchers that
15 you had identified as part of your audit that you
16 felt were inappropriate. The European Massage
17 Therapy School for approximately \$1700, ScottMark,
18 one for \$800 and \$90,000, relating to the costs of
19 a backhoe.

20 What was Southwest Gas' response when
21 you presented the Company with those vouchers?

22 A Their response was that they -- let
23 me -- can I turn to it --

24 Q Sure.

25 A -- because I believe I provided that.

1 I can't find it rather quickly. But it
2 was to the effect that Southwest Gas didn't dispute
3 the reasonableness of the costs, but it would pull
4 those costs from recovery in the certification.

5 And I accepted that, but as an auditor
6 reviewing projects, you have to look at the
7 decisions the utility made at the time the costs
8 were incurred, and what actions they were
9 conducting at that time. Just because Southwest
10 Gas took those costs out upon discovery, does not
11 give any -- me, does not give me comfort that any
12 other costs that it made at that same time those
13 purchases were made were also prudent.

14 You have to look at the time the
15 utility was incurring those costs, and what
16 oversight and what reviews they were doing at
17 the time, not after the fact.

18 Q So the Company did not reject your
19 notion, and in fact it was accountable and agreed
20 that those costs should be removed; correct?

21 A Correct. Which further supports my
22 statement that it also identified those costs that
23 shouldn't be recovered, so no review was performed
24 during the execution of those projects, and that's
25 what creates the -- that's what provides my

1 questioning of all the costs, because these costs
2 were deemed reasonable when Southwest Gas paid for
3 them, along with all of the other costs.

4 So just because Southwest Gas, after
5 the fact, removed certain costs, doesn't mean that
6 the other costs that weren't removed were
7 reasonable.

8 Q In fact, Southwest Gas, on its own
9 volition, conducted additional analysis and removed
10 more costs than you had identified; correct?

11 A Correct, they -- I was going this
12 route. They had identified the food vendors and
13 other vouchers -- or and other work orders that
14 they pulled out in addition to what was identified
15 in the work orders that I had reviewed. So I was
16 going along that path. Southwest Gas I guess, you
17 know, was a little more proactive in providing that
18 information up-front.

19 But again that doesn't impact my
20 review, my audit of the activities that Southwest
21 Gas performed at the time the costs were paid for
22 and incurred.

23 Q And in fact, the Company's removal of
24 those costs were incorporated into the Company's
25 certification filing; correct?

1 A I believe they were addressed by a
2 Company witness, yes.

3 Q And so by the time that you had
4 filed -- by the time you filed your testimony, they
5 were not part of what was being requested in rates
6 in this case. Correct?

7 A Correct. But they paint a picture of
8 the oversight and the level of project management
9 Southwest Gas was endeavoring at the time those
10 costs were paid for.

11 Q But you reviewed all of the invoices
12 for the work orders that we discussed earlier up to
13 95, and you identified specifically in your
14 testimony specific instances of what you found to
15 be unreasonable; correct?

16 A Correct. And I think that's key here.
17 As what's been pointed out by Southwest Gas, is I
18 am not a system engineer, I have not performed
19 project management duties, I have not conducted
20 these types of projects, so as an auditor I look at
21 it from an auditor's point of view, and I see these
22 costs that are in there that are totally
23 unreasonable. Therefore, I have to start looking
24 deeper into the project, and looking at all the
25 costs associated with the project.

1 I'm not an expert to say how many
2 consultants does it take to write a script or,
3 you know, how many hours does it take to perform
4 testing? I can't do that on that level. But
5 because of these issues, these systematic issues
6 that I saw, these easy, I mean, these low hanging
7 fruits, it's troublesome that one has to believe
8 that if these were allowed in, what other costs
9 were also allowed in that weren't reasonable?

10 Just because a consultant worked, and
11 provided a time sheet that he worked that many
12 hours, doesn't mean that it was reasonable for that
13 consultant to do that for that task. I don't have
14 the expertise to sit here and be able to perform
15 that level of review, and that's what goes into
16 my analysis here.

17 Q And we're going to go through cost by
18 cost as we go through your testimony, but, and we
19 will address that as those discussions are had.

20 But again, you testified that you
21 reviewed all the invoices associated with the
22 projects, and you identified all of the costs
23 that you felt to be excessive or frivolous;
24 correct?

25 A Yes, and I also state in my Q&A 19 --

1 or not 19, excuse me; let me get there - Q&A 36 on
2 page 18. Because of this lack of accountability
3 with respect to the expenditures I can as an
4 auditor determine are unreasonable, I have to then
5 question all of the costs associated with that
6 project, sir.

7 And as an auditor, I don't have the
8 computer expertise to determine, like I said, you
9 know, how many hours does the consultant -- how
10 many consultants do you need, and how extensive
11 that programming and that integration is. I don't
12 have that, and so that's --

13 Q Did you ask Southwest Gas for that
14 information?

15 A I requested many documents and many
16 justifications and such, and frankly, it's on
17 Southwest Gas to support, it's not Staff -- it's
18 not my role to try to rehabilitate or try to fix
19 any issues that occur in a rate case.

20 I identify issues that I see, and say
21 because of those issues, you can't say that all
22 these costs are prudent.

23 And in fact, even through rebuttal the
24 Company hasn't supported the fact that these costs
25 are prudent.

1 Q Well, I think that is a difference of
2 opinion with respect to that.

3 But notwithstanding, the point being is
4 Southwest Gas was to preemptively identify which
5 costs you're going to want an explanation or
6 justification for?

7 I mean, if you identified these
8 consultants, how come you didn't ask Southwest Gas
9 about the hours that they worked, or their job
10 responsibilities with respect to the project?

11 A I received some documentation that did
12 explain what was going on. But as I stated, it's
13 not Staff's role here to rehabilitate lack of
14 support and lack of documentation from Southwest
15 Gas.

16 If Southwest Gas feels that it's
17 appropriate -- the level of information is
18 appropriate in its application, then that's
19 Southwest Gas' determination, not mine.

20 Q So is it your position that Southwest
21 Gas is supposed to provide in its direct case an
22 explanation for why Vincent Walsh and Mrs. Harrop
23 from via Barnabus Consulting worked 155 hours -
24 I'm sorry - 153 hours in November of 2015?

25 A No, but as questioning from the

1 Commissioner yesterday to Miss Cunningham, it's
2 the ability to have the Company sponsor -- a
3 witness sponsor testimony that can actually testify
4 to the actual decision points, any issues that
5 occurred --

6 Q But we're talking about something
7 different. We're talking about discovery here,
8 okay, so we're not talking about testimony, we're
9 talking about the discovery process and the audit
10 that you conduct, and you roll through, and you
11 identify specific costs that you find to be
12 frivolous or unreasonable.

13 Other than the food costs that we have
14 generally discussed, and we'll get into more detail
15 later, did you ask Southwest Gas for an explanation
16 with respect to the consultant costs or the
17 travel expenses associated with the various
18 projects?

19 A Actually, I did believe I asked a data
20 request associated with travel.

21 Q Okay. Which data request is that; do
22 you recall?

23 A I don't have it off the top of my head,
24 but I did ask a data request.

25 Q Okay. We'll walk through, and go

1 through these data requests, and identify that.

2 But notwithstanding, if you had seen
3 additional invoices or vouchers that you thought to
4 be unreasonable or frivolous when you reviewed all
5 of them for these projects, you would have
6 identified them in your testimony; correct?

7 A No, because, you know, my testimony
8 already is 600 pages, sir. I provided what I
9 believed is a good sampling of the information in
10 the stuff that I found. And I think that's suffice
11 this Commission enough to say that there are some
12 serious errors here. If I were to provide
13 everything that I found, I mean, it would be very
14 voluminous.

15 And that's the issue at hand here. Is
16 it my responsibility as an auditor to question
17 every expense or ask Southwest Gas down to the
18 penny everything it expends, or should the utility
19 also take it on itself and review those costs and
20 be able to determine that those costs are prudent
21 and just and reasonable?

22 Q Which the Company did, and we removed
23 it from the case; correct?

24 A But the Company has removed some costs,
25 but have not delved through and gone through all of

1 the consultants' costs and all the costs with the
2 projects to determine what actually was reasonable.

3 Q Were there any other costs that you
4 identified through your audit that you found to be
5 unreasonable, other than the ones you have provided
6 in your testimony?

7 A I gave a sampling of the types.
8 There's consultant hours, there's travel, there's,
9 you know, not having an actual business case to
10 determine what the actual schedule should be, who
11 determined that schedule? Why that schedule was
12 needed? Why was it needed, you know, a quick
13 turnaround that drove a lot of those costs --

14 Q And which project was that?

15 A All of them.

16 Q So for FSM, did you not receive the
17 charter for FSM?

18 A I did, and that charter indicates that
19 it's a 22-month schedule. It doesn't get down into
20 why it was so important, or why the schedule needed
21 to be set that way.

22 And frankly, sir, I've reviewed troves
23 of documentation that on this FSM program
24 specifically that stated that over 50 percent of
25 the people on the FSM project either didn't agree

1 that the timeline was achievable, or couldn't give
2 an opinion that that timeline was achievable.

3 This is the concerns I have. And
4 Southwest Gas has not provided any information, nor
5 a witness, to be able to say why this timeline,
6 which eventually drove the costs, was so
7 imperative.

8 Q Well, on a project that's a project
9 that came on -- came in on time, it was completed
10 on time and under budget; correct?

11 A As of what the documentation shows.
12 And as I questioned in my testimony, that if a more
13 thorough review of the costs were done, I can tell
14 you that it probably would even come more under
15 budget.

16 Q Well, and it did in fact, because
17 Southwest Gas removed certain costs from that,
18 correct, explicitly the costs that you identified.

19 A Correct. But Southwest Gas didn't take
20 any other initiative as it was doing this project
21 to review the reasonableness of those costs that
22 were booked to that project.

23 And as I have stated here before, I, as
24 an auditor, can't get down to the level of detail
25 that a project manager actually writing this

1 project and implementing this project and
2 overseeing software developers, I can't get into
3 that level of detail needed and managing the scope
4 and the budget and the schedule and the scope on
5 that. As an auditor, I can't do that.

6 Q In Q&A 17 of your testimony you
7 indicate that Southwest Gas was not forthcoming
8 with the documentation you requested, specifically
9 citing business cases for work orders.

10 When you were on-site for your audit,
11 did you request to see any of those business cases?

12 A Yes, and as I discussed earlier, I even
13 had a conversation with the director of regulation
14 and energy efficiency about what a business case
15 was and, you know, what Southwest Gas actually had
16 that would fit that type of definition.

17 Q And as Southwest Gas understood what
18 you're asking for, did they restrict you from
19 seeing any of that documentation when you were
20 on-site?

21 A No, but it also didn't provide me any
22 information.

23 Q Well, it was available for you when you
24 were on-site, and then subsequently it was provided
25 to you when you issued a separate DR asking for it

1 to be provided in paper format, or electronically
2 on a thumb drive, correct, through DR-170, I
3 believe?

4 A No, and I don't believe that's correct.
5 The business cases weren't there. And they were
6 available, I don't -- I question why it would then
7 take an additional month, if not later, to actually
8 produce some documentation if it was made
9 available.

10 I don't -- I specifically remember
11 having a conversation with the director and asking
12 for that, and it was, well, we don't have a
13 document labeled business case.

14 And if a -- you know, that's my
15 concern.

16 Q In Q&A 19 you reference the package of
17 documentation that NAC 704.7984 Subpart 2 required
18 Southwest Gas to provide as part of the GRC.

19 Isn't it true that you were provided
20 access to that same information for non-GIR
21 projects during your on-site visit, but it just
22 wasn't pre-packaged the same way as the GIR project
23 information?

24 MS. CASSITY: I'm going to object.
25 I think this has been asked and answered.

1 COMMISSIONER PONGRACZ: What new
2 information are you asking for here, Mr. Stephens?

3 MR. STEPHENS: Yes, I don't think I've
4 asked him whether or not he was provided the same
5 type of information when he was on-site.

6 We did talk about whether there is a
7 requirement to provide that information in the same
8 format as the GIR, but I don't think we have a
9 response as to whether or not that same information
10 was available to him when he was on-site.

11 COMMISSIONER PONGRACZ: Are you asking
12 in the same form as it's provided for the GIR?

13 MR. STEPHENS: No.

14 COMMISSIONER PONGRACZ: Ah.

15 MR. STEPHENS: The question
16 specifically said it wasn't pre-packaged in the
17 same form, but the same information was provided in
18 a different form.

19 COMMISSIONER PONGRACZ: So is the
20 question, was it provided in a different form? Is
21 that your question?

22 MR. STEPHENS: Yes. Generally.

23 COMMISSIONER PONGRACZ: I'll overrule
24 the objection.

25 THE WITNESS: Okay. It was provided in

1 its -- as it was retained by Southwest Gas in its
2 native state on the utility's record management
3 system.

4 BY MR. STEPHENS:

5 Q Let's discuss the five different
6 software projects that you address in your
7 recommendation number 1.

8 A Okay.

9 Q Each of those projects you discuss are
10 system allocable projects; correct?

11 A Yes.

12 Q And what is your understanding of a
13 system allocable project?

14 A It's a project that is used by -- I'm
15 not necessarily sure if it's the Holding Company,
16 but the multiple companies that Southwest Gas uses,
17 whether it be Paiute, its transmission company, and
18 Southwest Gas in all of its different rate
19 jurisdictions.

20 Q Would you agree that Nevada benefits
21 from the Company's system allocable approach for
22 back-office and corporate support?

23 A Yes, I would agree that there is some
24 efficiencies there, yes.

25 Q In Q&A 23 you identify five work orders

1 that you had specific concerns about; correct?

2 A Correct.

3 Q I know I've referenced it with respect
4 to the 95, but I'll just do it specifically with
5 respect to the work orders referenced in Q&A 22.

6 Did you review the data associated with
7 all work orders listed in your Q&A 22?

8 A Yes.

9 Q And you were provided all the vouchers
10 and the receipts and invoices associated with those
11 work orders; correct?

12 A It was eventually provided to me so
13 that I could have a copy, yes.

14 Q And as part of your review you did not
15 identify in your written testimony any specific --
16 well, let me back up.

17 And you've identified five companies --
18 sorry. It's late in the day.

19 You've identified five work orders in
20 that list that you express issues and concerns
21 over; correct?

22 A Correct.

23 Q And in your testimony you do not
24 identify any specific issue or concerns regarding
25 the other 15 projects listed in Q&A 22; correct?

1 A Correct. Partly because I wasn't
2 really able to have the time, after I received
3 data, to formulate. I mean, I was able to review
4 the documentation, but at that point it was late
5 in the timeline. And I didn't uncover any major
6 issues, as was discussed earlier in my testimony,
7 with these other five projects. So I would say I
8 didn't identify any low hanging fruit, as I did on
9 these.

10 Q Okay. Well, in fact, your testimony
11 doesn't identify any issues with any of those
12 projects; correct?

13 A That's correct.

14 Q I believe the first project you discuss
15 is the FSM program. In your Q&A 24 you provide a
16 pretty good description of the project. Where did
17 you get that information?

18 A From a data request. And this would be
19 an example type of description that would be
20 helpful in direct testimony about a project over a
21 million dollars.

22 Q But nonetheless, you did receive it
23 through your audit, and you were able to understand
24 the basis of the project; correct?

25 A Eventually, yes.

1 Q And in fact, you attached the program
2 charter to your testimony, which provides
3 discussion about the program, the need for the
4 replacement, the governance of the program, and
5 the implementation plan. And that's AED-9 of your
6 testimony; right?

7 A Correct. That is a program charter, as
8 Southwest Gas labels it. I am not sure I would
9 consider that a business case as it doesn't
10 identify alternatives to the software or the
11 companies, or anything that was identified in
12 charter. It doesn't lay out risks associated with
13 any alternatives, it doesn't lay out budgets, cost
14 data, any other pertinent information that you
15 would see typically in a business case.

16 Q Well, let's turn to AED-9.

17 And as happenstance would have it, I
18 turned to page 31 of 35 for AED-9. I think you
19 just testified it doesn't discuss risks associated
20 with the program.

21 Would you agree with me that
22 Section 4.8.3 specifically discussed key risk and
23 mitigation of that program?

24 A No. You had mischaracterized my last
25 answer. I stated that there is not a document that

1 lays out all the alternatives of software
2 applications, or all the other avenues Southwest
3 Gas could do to replace its project, and then
4 identify all those risks associated with each
5 different alternative solution. This identifies
6 risks as in the program that was already defined.
7 It's not a definition of risks that are associated
8 with a different alternative, such as a not to do
9 anything alternative, that's typically included in
10 a business case.

11 Q Well, we're dealing with 30-year-old
12 software here, right? That's what you have in your
13 description, with respect to the FSM program;
14 right?

15 A Right. And there is no dispute that
16 the software didn't need to be replaced. What my
17 dispute -- what my question is, is there is no
18 discussion by Southwest Gas why it chose this
19 particular alternative, and did it evaluate other
20 alternatives, and did it associate or identify
21 risks with each alternative, and/or identify cost
22 impacts to ratepayers, or any other documentation,
23 other than, this is what we're doing, and here's
24 some risks with what we're already doing.

25 Q Well, if you look at AED-9, it provides

1 a good description of - at least in my opinion - a
2 lot of those. It defines the program, it discusses
3 the need for replacement, it provides a roadmap
4 with respect to the project, it goes over key
5 roles, team structures. I believe there is even
6 a lay-out of the preliminary budget, correct --

7 A Yes.

8 Q -- a financial plan, if you will?

9 A Correct. But I believe you're still
10 misunderstanding my explanation here.

11 And let me give you an example. If you
12 go to 4.8.2, the 1, 2, 3rd bullet down says: Post
13 go-live support for the Oracle EBS components.

14 What I'm looking for is a decision tree
15 that states: We arrived at Oracle EBS components.
16 What other alternatives were there available? What
17 were the risks associated with all these
18 alternatives. What were the costs? What were the
19 cost impacts to ratepayers?

20 This just identifies: We've already
21 identified Oracle EBS as our solution.

22 So although this discusses risk, this
23 does not discuss what went into -- what did
24 Southwest Gas do in preparation to actually
25 selecting Oracle EBS, and identifying all of those

1 risks associated with either choosing Oracle EBS or
2 not choosing Oracle EBS. That's a typical type of
3 corporate business plan that is done daily by
4 everywhere I've worked.

5 Q And that is at the Commission and at
6 Yucca Mountain where they've implemented that? I
7 mean, did you see any sort of documentation like
8 that at all from Southwest Gas?

9 A I have not seen any documentation --
10 well, actually - excuse me - I have seen some
11 type of documentation referring to the purchase
12 of the corporate buildings that was on that type
13 of level that had an analysis of what the costs
14 were associated with continuing of leasing, and
15 then the costs associated with purchasing the
16 buildings. There was that type of analysis
17 performed for that.

18 Q But with that, you're doing a decision
19 of go or no-go in essence, buy the building or
20 continue to lease. You don't dispute, in fact you
21 testified that there is no dispute over the need
22 to replace this 30-year old software; right?

23 A Correct. But in that need to replace
24 the 30-year old software, there has to be an
25 identification of what do we replace it with? And

1 then there's multiple vendors out there, and there
2 are risks associated with each vendor's project,
3 or each vendor's program, and I didn't find any
4 documentation that actually performed that type of
5 analysis or performed an analysis that had any cost
6 impacts to ratepayers or risks associated with to
7 ratepayers, any type of, you know, discussion to
8 an actual business case.

9 Q And maybe that's consistent with your
10 testimony previously about a -- the parties working
11 together to try and figure out what you meant by a
12 business case, and how the Company conducts its
13 business.

14 A Correct. I would agree to that.
15 And I think, you know, maybe I guess
16 I assumed too much to believe that Southwest Gas
17 performed that type of analysis, and I'll
18 incorporate that into my next general rate case
19 review.

20 Q And it's also fair, I mean, you know,
21 what you've got here provides in AED-9 a thorough
22 description of the project, it discusses the needs
23 for it, and maybe this is the format that Southwest
24 Gas implemented with respect to a business case for
25 the FSM program at that time. Would that be fair?

1 A I will agree with you that this lays
2 out exactly what it lays out on this piece of
3 paper. And what we're not agreeing to here is that
4 this does not evaluate any other alternatives that
5 were considered.

6 So we can, I guess, go through this all
7 night long. Yes, the information you're seeing
8 here is on this piece of paper; but, yes, the
9 information I'm also looking for is not in this
10 document.

11 Q In your Q&A 36 you acknowledge that the
12 FSM program provides benefit to the Company's
13 Nevada customers; correct?

14 A Yes. As we discussed prior, the system
15 was 30 years old, so there are obviously some
16 benefits to ratepayers, yes.

17 Q And so your complaint is not with the
18 project itself, but with respect to specific
19 expenditures that you identified in your testimony.

20 A No, I would say that my complaint is
21 with the lack of oversight of the project, that
22 because I found these excessive or frivolous costs,
23 I'm led to believe that Southwest Gas didn't do any
24 type of prudence review of the costs, or didn't try
25 to ascertain or act as a good stewardship of

1 ratepayers' funds; it just spent money as it felt
2 it should.

3 Q Notwithstanding the final costs of the
4 FSM program came under budget by approximately
5 \$900,000; correct?

6 A Correct. And could have, if proper
7 cost controls were placed, even been under budget
8 more than that.

9 Q And in fact it was because, as we've
10 discussed, Southwest Gas removed the costs that you
11 identified; correct?

12 A Correct. And again, it could have been
13 even lower than that that was contained in the
14 certification filing.

15 Q With which costs that were identified
16 in your testimony?

17 A All projects could have come under,
18 even more under budget, had Southwest Gas prudently
19 overseen the project, and prudently managed the
20 project.

21 Q With respect to the budget, what did
22 you do as part of your investigation to determine
23 whether \$19 million was a reasonable budget?

24 A I reviewed the documentation that was
25 provided to me.

1 Q Did you review other similar projects
2 for utilities?

3 A No.

4 Q Did you issue an RFP to determine
5 similar costs?

6 A No, that would be something that we
7 would technically look for the utility to have done
8 in its type of business case.

9 Q Did you seek information from system
10 implementers to gauge what a reasonable budget
11 should be?

12 A No, again that, I believe, is something
13 that the utility should be able to provide its
14 regulatory body.

15 Q And would it surprise you if Southwest
16 Gas did all of those things to come up with the
17 budget for the FSM project?

18 A No, it wouldn't surprise me. As I was
19 going through my review I had seen some RFPs and
20 other evaluations of implementers -- or integrators
21 or consultants.

22 There wasn't, however, an over-arching
23 business case that specified why Southwest Gas
24 chose certain vendor products over other vendors.

25 Q If you turn to AED-9, page 5 of 35, the

1 executive summary specifically identifies the
2 Company individuals who are responsible for certain
3 parts of that program; correct?

4 A Correct. However, these weren't the
5 individuals that approved costs of the program.

6 Q During your investigation did you seek
7 information from any of these individuals about the
8 Oracle general ledger system led by Frank Nichols,
9 for example, or the Oracle E-business suite supply
10 chain applications led by Ryan Darwick?

11 A No, and I'll give to you that I didn't
12 seek out any individual on this list. And I'll
13 also state that Southwest Gas never also
14 proactively offered any information from these
15 individuals as well.

16 Q And did you request information from
17 any individual directly associated with the FSM
18 program? Or ask to meet with them?

19 A No. I propounded numerous data
20 requests, and Southwest Gas chose who Southwest Gas
21 chose to respond to those data requests. I'm not
22 sure, you know, if they didn't have one of these
23 individuals or another person in IT respond to a
24 data request, or had the regulatory division
25 respond to all my data requests. It was a choice

1 by Southwest Gas.

2 Q But when you identified the question in
3 your mind, hey, why did Southwest Gas select this
4 vendor over another one with respect to the Oracle
5 general ledger, you didn't seek out Southwest Gas
6 to say, hey, can I talk to Frank Nichols about
7 that, about why that decision was made?

8 A No, as I have stated it, it took quite
9 a long time to get the data I was looking for, and
10 it's on, it's my belief, that it's Southwest Gas to
11 support its filing and its projects.

12 If Southwest Gas -- Southwest Gas
13 received numerous data requests from me. I was
14 very open and candid with Southwest Gas individuals
15 about what I was seeking, what I was looking for,
16 and the issues that I was finding. And not once
17 did I hold back anything from the director --

18 Q But did Southwest --

19 A -- I talked to the director many times
20 to indicate my level of frustration with the
21 documentation, the types of information that I was
22 looking for, and numerous different things. And
23 Southwest Gas didn't provide anything as well.

24 The responsibility can't all be on me
25 to propound thousands of data requests to try to

1 get the information. There has to be some
2 accountability and some -- the utility has to step
3 up and actually give, you know, assist Staff.

4 I can sit here all night long and write
5 data requests, but if the utility is not going to
6 proactively engage -- especially when so many DRs
7 were asked. It's troubling that not one person
8 reached out to me and said, hey, what are you
9 looking for? What's really going on?

10 Q Well, I believe you testified that that
11 did occur. I mean, you talked about it on the
12 first day you were there, a discussion about the
13 business case. Southwest Gas was talking with
14 you about that, trying to identify what you meant,
15 what you were trying to -- what sort of information
16 you wanted to see. And in fact, Southwest Gas,
17 even beyond that date, was open with you and was
18 working with you to provide the information.
19 Correct?

20 A Correct. Through the regulatory
21 department. I'm not sure what other individuals
22 the regulatory department pulled from other
23 departments to assist in that. But the regulation
24 department knew very well how I felt, and very well
25 what was going on in my audit process.

1 If they determined that they didn't
2 need to go to, say, the CIO, or other departments
3 to the assist, then that's not -- I can't control
4 that.

5 Q Well, you know, these concerns that
6 you identify of not providing an explanation or
7 justification over one vendor versus the other,
8 quite frankly, this is the first time I've heard
9 of that, and I don't see that anywhere in your
10 testimony.

11 MS. CASSITY: Objection. I think
12 counsel is testifying.

13 BY MR. STEPHENS:

14 Q Can you point to where that is provided
15 in your testimony?

16 A That is a general description of a
17 business case. A business case lays out
18 objectives, solutions, risks to each solution. And
19 in fact, I've identified these same concerns in the
20 last rate case. And I don't know how many times I
21 have to be here in front of this Commission for
22 something, frankly, to effectuate change in
23 Southwest Gas. I don't know what more I can do
24 to get data, and it's frustrating.

25 Q Well, and notwithstanding all of that,

1 you were still, at the end of the day, provided all
2 of the invoices, all of the vouchers with respect
3 to the projects that you requested; correct?

4 A Correct. At the end of the day, I was
5 provided with everything, yes.

6 Q Back to the budget with respect to
7 the FSM program. You don't actually state that
8 Southwest Gas had an unreasonable budget; you
9 just state that given the costs identified, the
10 costs of the FSM program could have been lower.
11 Correct?

12 A Correct. I don't believe I had enough
13 information to even delve into -- I mean, there was
14 a line item of the budget, but there was no
15 discussion of how the budget was developed. So
16 I took the budget as what it was, and went from
17 there.

18 Q Let's go back and discuss the specific
19 vouchers that you identify in your testimony as
20 being frivolous or excessive.

21 In Q&A 30 - let me get there as well -
22 in Q&A 30 you reference some electronic equipment,
23 a couple of dozen Polo shirts, and some other
24 employee appreciation expenditures, and
25 approximately \$41,000 in non-travel meals, and

1 \$3,000 in non-travel entertainment; correct?

2 A Correct.

3 Q And has the Company already voluntarily
4 removed those costs from this case?

5 A It has. But the fact that those
6 expenditures reached the filing and reached this
7 rate is very troublesome. That's why I laid it out
8 in my testimony, is the fact that this shows the
9 level of oversight and the lack of accountability,
10 frankly, on Southwest Gas.

11 And that has to be a part of this
12 discussion, because although Southwest Gas, at the
13 end of the day, actually took those costs out,
14 those costs were incurred at the same time all the
15 other costs were incurred. This shows the amount
16 of oversight, and what the Company at the time is
17 paying for those costs, deemed reasonable.

18 So I couldn't in fact determine that
19 all of the other costs were reasonable as well. If
20 the Company at the time was paying for all of this,
21 it felt that these were reasonable, and these
22 clearly weren't, how can all the other costs
23 associated with the project then be automatically
24 considered reasonable?

25 There has to be a more thorough -- more

1 vetting. And that's a vetting that, frankly, I
2 can't do. I can't sit here, like I said, and say
3 a consultant should have worked this many hours.
4 I identified that the consultants worked this many
5 hours. They appeared to be excessive to me. I
6 don't have the level of expertise in system
7 programming, and all that, to say is this needed?
8 All I can say is holistically given everything that
9 I've seen, I can't be -- I can't for a certain fact
10 say that all these costs are reasonable.

11 Q And you said it describes Southwest
12 Gas' lack of accountability, but I would directly
13 challenge you on that, because when presented with
14 those costs, Southwest Gas acknowledged that they
15 were misclassified, it was a mistake, and they
16 removed them. So the Company was accountable;
17 correct?

18 A The Company was accountable for the
19 costs I identified at the time this occurred.
20 There was no accountability or determination of
21 reasonableness of the costs that were incurred.

22 And to me, sir that's the real issue
23 here is, yes, after you were alerted to these costs
24 you pulled them out, but when they were incurred
25 and booked to plant, Southwest Gas didn't care.

1 It didn't either look, or didn't care, and that's
2 troubling. I think that that plays into all the
3 other costs that are listed that somebody with
4 some expertise has to sit down and say, these costs
5 aren't reasonable.

6 I can't here -- I have to question
7 every cost, since these were deemed reasonable and
8 prudent at the time all the other costs were
9 booked. No assurance has been given that the other
10 costs are then reasonable.

11 Q Well, the Company was accountable,
12 because not only did they acknowledge it was a
13 mistake and remove the costs that you identified,
14 but the Company, on their own volition, went and
15 removed additional costs after additional Company
16 review. Correct?

17 A Correct. And how do I know as an
18 auditor that there wasn't mistakes in, or lack of
19 oversight or over-allowable of working over hours
20 in any of these other costs, deemed what I've seen.

21 Southwest Gas booked these, all these
22 costs into plant. There has to be some
23 accountability for all the costs, based upon what
24 has been seen. And that's what my testimony points
25 out, is this is the level of review that was

1 performed when the project was occurring and
2 executed, not when Southwest Gas comes to this
3 Commission and seeks approval of those costs.

4 Q Let's talk about those consultant
5 expenses for the FSM program.

6 A Okay.

7 Q Your complaint in Q&A 31 of your
8 testimony is that the consultants were working
9 too much overtime. Correct?

10 A Well, I'm not sure that I said "too
11 much." I said there appears to be a lot of
12 overtime, and I can't, through my review or the
13 documentation provided, can't assess if that was
14 necessary, or because it was driven because of
15 timeline, schedules, implications.

16 This is what I'm saying, is this all
17 has to be reviewed in context holistically. And
18 these are some of the issues that I believe that
19 come to the rise of the Commission needing to look
20 at.

21 Q And you were provided the contracts for
22 the consultants for the FSM program; correct?

23 A Correct.

24 Q You understand that the consultants are
25 not paid overtime, and that the first hour of their

1 consultation costs are the same as the last hour?

2 A Correct. And the reason why I chose
3 overtime, is because in my review of documents
4 provided by Southwest Gas that's how they
5 classified it. They classified in the, I believe
6 it was the last steering committee on the FSM
7 project, that there was 6,800 hours of overtime
8 worked on this project. So that's why I used the
9 term "overtime." Although it's not a premium wage,
10 it is in excess of 40 hours.

11 Q Yes. But you're also aware that the
12 go-live date for the project was January of 2016;
13 correct?

14 A Yes, I learned that through discovery.
15 And that was a date chosen by Southwest Gas. There
16 is no justification why that date was necessary.
17 There is no justification as to what decisions were
18 made -- that's the type of information an auditor
19 looks for.

20 Q It's end-of-year. You're dealing with
21 financial system software. Do you think it would
22 be a natural transition to do it from the end of
23 one year to the next; correct?

24 A Correct. But there is also end of next
25 year, too. I mean, there's January 1st every year,

1 so why did it have to be done in, and actually
2 implemented in one year. Although it was a
3 22-month schedule, from the time that the
4 requirements were developed and the time that the
5 go-live date was, it was one year.

6 This is my concern, is that was the
7 Southwest Gas decision. There is no documentation
8 or support of why it was necessary to do it in that
9 timeline.

10 Q Would it have been your preference for
11 Southwest Gas to drag it out and continue to use
12 30-year old software?

13 A I don't know. I have to look at the
14 documentation that's provided, and there would have
15 to be some discussion of, key discussion points of
16 why dates were selected, and such. And I can't
17 tell you yes or no. I mean, all I can say is that
18 there was no documentation to support that
19 decision.

20 Q As part of your investigation, what did
21 you do to determine whether the amount of time the
22 consultants worked was reasonable or unreasonable
23 for the project of this nature?

24 A I reviewed all of the consultants' time
25 sheets. I reviewed the amount of hours.

1 And I would like to point out, in
2 Q&A 31 I list a few consultants, but there's a
3 handful of other consultants that were booking this
4 much time as well. So this is only a snapshot of
5 a few consultants. I just tried to show that this
6 was the type of level of activity that was
7 occurring at this time.

8 Q Did you --

9 COMMISSIONER PONGRACZ: Let me just ask
10 a question, because we had talked about going until
11 6 --

12 MR. STEPHENS: Yes.

13 COMMISSIONER PONGRACZ: -- and we're
14 almost there. Do the parties believe we're at risk
15 at this point of not being able to complete the
16 hearings by the end of the day on Tuesday?

17 MR. STUHFF: Yes, with this level of
18 questioning on issues, I think there is that risk,
19 so obviously at some point it may be appropriate
20 just to maybe focus on certain issues, and try to
21 take steps to prevent this hearing from going on
22 at too much length.

23 MS. CASSITY: Staff would agree with
24 Mr. Stuhff. I think that there is that risk,
25 especially if we have quite a bit of cross or