[fol. 131–132]

TABLE No. IV

Colorado Interstate Gas Company
Allocation of Cost of Service
Transmission System
Year 1952

Line No.		Annual Sales Volumes MCF[1]	Normal Peak Day Volume MCF[1]	Demand		Commodity		Leased Facilities	Total
				Percent	Amount	Percent	Amount		
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
	Transmission System Sales to Other Utilities								
1	Jurisdictional	86,119,000	363,427	90.036	$2,973,677	83.927	$3,850,243	$ ..	$6,823,920
2	Non-Jurisdictional	535,000	3,680	0.912	30,121	0.521	23,902	..	54,023
3	Total	86,654,000	367,107	90.948	3,003,798	84.448	3,874,145	..	6,877,943
4	Direct Sales	15,958,000	36,536	9.052	298,966	15.552	713,465	..	1,012,431
5	Total Transmission System	102,612,000	403,643	100.000	3,302,764	100.000	4,587,610	..	7,890,374
6	Leased Transmission System[2]	48,051,000	..	..	..	..	..	443,000	443,000
7	Total Transmission	150,663,000	403,643	100.000	$3,302,764	100.000	$4,587,610	$443,000	$8,333,374

[1] Pressure Base 14.65 p.s.i.a.
[2] Sale to Natural Gas Pipe Line Company of America.

TABLE No. IV

Colorado Interstate Gas Company
Cost Classification
Transmission System
Year 1952

Line No.	Particulars	Transmission			Cost Classification		
		Dehydration	Other	Total	Demand	Commodity	Other
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
	Operations						
1	Supervision & Engineering	$ ..	$ 77,974	$ 77,974	$ 31,579	$ 46,395	$ ..
2	Compressor Station—Fuel	..	195,900	195,900	..	195,900	..
9	Compressor Station—S & E	..	253,104	253,104	..	253,104	..
4	Other Operating Expenses	..	1,080,423	1,080,423	540,211	540,212	..
5	Total Operations	.	1,607,401	1,607,401	571,790	1,035,611	..
	Maintenance						
6	Supervision & Engineering	..	71,329	71,329	18,546	52,783	..
7	Compressor Station Equipt	..	358,424	358,424	..	358,424	..
8	Other Maintenance Expense	..	379,739	379,739	189,869	189,870	..
9	Total Maintenance	..	809,492	809,492	208,415	601,077	..
	Miscellaneous						
10	Rents	..	2,497	2,497	1,248	1,249	..
11	Rental of Leased Facilities	..	443,000	443,000	..	..	443,000
12	Total Miscellaneous	..	445,497	445,497	1,248	1,249	443,000
13	Dehydration	44,236	..	44,236	..	44,236	..
14	Administrative and General	..	859,088	859,088	296,385	562,703	..
15	Depreciation	17,485	1,573,054	1,590,539	786,527	804,012	..
16	Other Gas Revenues—Credit	..	(34,050)	(34,050)	(17,025)	(17,025)	..
17	Taxes—Federal Income	1,383	120,361	121,744	60,180	61,564	..
18	Taxes—State Income	41	3,611	3,652	1,805	1,847	..
19	Taxes—Other	6,277	659,608	665,885	329,804	336,081	..
20	Return @ 5¾%	24,431	2,127,270	2,151,701	1,063,635	1,088,066	..
21	Costs Allocated to Dehydration	50,208	17,981	68,189	..	68,189	..
22	Total Cost of Service	$144,061	$8,189,313	$8,333,374	$3,302,764	$4,587,610	$443,000

() Denotes Red Figures.

[fol. 135-136]

TABLE No. V

Colorado Interstate Gas Company
Allocation of Cost of Service
Distribution System
Year 1952

Line No.	(a)	Sales Volumes Mcf[1] (b)	Percent (c)	Commodity Cost (d)	Metering Units Number (e)	Percent (f)	Customer Cost (g)	Total Distribution Cost (h)
	Transmission System							
	Sales to Other Utilities							
1	Jurisdictional	86,119,000	51.837	$ 80,826	64.0	57.554	$ 89,740	$170,566
2	Non-Jurisdictional	535,000	0.322	502	4.0	3.597	5,609	6,111
3	Total	86,654,000	52.159	81,328	68.0	61.151	95,349	176,677
4	Direct Sales	15,958,000	9.605	14,977	15.0	13.489	21,033	36,010
5	Total Transmission System	102,612,000	61.764	96,305	83.0	74.640	116,382	212,687
6	Leased Transmission Facilities[2]	48,051,000	28.923	45,098	6.0	5.396	8,414	53,512
7	Field System	15,472,000	9.313	14,521	22.2	19.964	31,128	45,649
8	Total System	166,135,000	100.000	$155,924	111.2	100.00	$155,924	$311,848

[1] Pressure Base 14.65 p.s.i.a.
[2] Sale to Natural Gas Pipeline Company of America.

[fol. 137] Utilizing the Demand and Commodity costs herein allocated to Sales to Other Utilities—Jurisdictional and the billing units applicable to such sales, we obtain the following rate structure:

Rate Schedules G-1 and G-2
Demand Charge: 81¢ per Mcf
Commodity Charge: 8.5¢ per Mcf
Rate Schedule G-1 adopted by Colorado from Canadian River
14.5¢ per Mcf
Rate Schedule P-1
17.5¢ per thousand cubic feet for the first 5 days' use of the billing demand
8.5¢ per thousand cubic feet for all additional gas
Rate Schedule I-1 (not including that adopted by Colorado)
11¢ per Mcf
Rate Schedule I-2 (including Rate Schedule I-1 adopted by Colorado)
9¢ per Mcf

Such rate structure, which we find to be just and reasonable will result in revenues for the test year of $10,289,269, as compared with the allocated cost of service of $10,273,474 for gas estimated to be sold under the above rate schedules in 1952.

The allocation of the cost of service indicates that the existing rate for sales to Natural Gas Pipeline Company does not cover the cost of service for that sale. The sale to Natural Gas Pipeline Company is made pursuant to Rate Schedule S-2, applicable only to that sale. Estimated revenues under the existing rate do not meet the cost of service for this sale by $380,661. We have already held that under Section 5(a) of the Natural Gas Act we are not permitted to order an increase in the rates to one customer in a rate proceeding, even though the effect of our order is to produce lesser total overall revenues. Atlantic Seaboard Corporation, Op. No. 225, page 40. We shall require by order that Colorado shall file rate schedules which shall effect the reduction heretofore found to be due to customers other [fol. 138] than Natural Gas Pipeline Company.

For the same reason we can not increase the rate applicable to Clayton Gas Company from the present rate of 14.5¢ per Mcf to the rate being prescribed herein for Rate Schedule G-1. Furthermore, the rate being prescribed in Rate Schedule G-2 for the City of Trinidad sale is the same as that being established for Rate Schedule G-1, thus continuing the present rate pattern. While service to Trinidad is not at city-gate, but at the end of a buyer-owned lateral, we cannot say on this record to what extent this factor should be taken into account. No issue with respect thereto was raised at the hearing.

Insofar as the sales to Natural Gas Pipeline Company and Clayton Gas Company are concerned Colorado will have to take the initiative under Section 4 of the Act in proposing rates which are not unjust, unreasonable, unduly discriminatory or preferential.

On November 2, 1951, Colorado filed a motion for a finding that the staff had failed to meet the burden of proof on the ground that staff's presentation up to the time of the filing of the motion consisted of evidence based on the operations of the Company for the year ending June 30, 1951, which did not include the additional facilities proposed to be placed in operation during 1952. Thereafter, both the staff and the company introduced evidence on the company's operations for 1952 including the additional facilities. Indeed, the year 1952 has been used as the test year. It is appropriate therefore to deny Colorado's motion.

On November 15, 1951, Colorado filed a second motion for a finding that staff had failed to sustain the burden of proof. Colorado reserved the right to cross-examine staff's witnesses and introduce its own evidence. By order of November 30, 1951, we reserved decision on the motion until the matter was before us for final decision. In view of our findings heretofore made, and our order thereon, it is appropriate to deny this motion filed by Colorado.
[fol. 139] The Commission further finds:

(1) The rates and charges made, demanded and received by Colorado Interstate Gas Company for or in connection with its transportation and sale of natural gas subject to the jurisdiction of the commission under its Rate Sched-

ules G-1, G-2, P-1, I-1, and I-2, as they appear in its FPC Gas Tariff, Original Volume No. 1, and under Rate Schedules G-1 and I-1, as they appear in the FPC Gas Tariff, Original Volume No. 1 of Canadian River Gas Company, which Colorado has adopted, are unjust, unreasonable and excessive in the sum of $3,111,187 based upon the test year 1952.

(2) The rates and charges of Colorado Interstate Gas Company for or in connection with its transportation and sale of natural gas subject to the jurisdiction of the Commission described in (1) above after reflecting a reduction of $3,111,187 as hereinafter provided and ordered will be just and reasonable.

The Commission orders:

(A) The rates and charges made, demanded, or received by Colorado Interstate Gas Company for or in connection with its transportation and sale of natural gas in interstate commerce for resale for ultimate public consumption under its Rate Schedules G-1, G-2, P-1, I-1, and I-2, as they appear in its FPC Gas Tariff, Original Volume No. 1, and under Rate Schedules G-1 and I-1, as they appear in the FPC Gas Tariff, Original Volume No. 1 of Canadian River Gas Company, which Colorado has adopted, shall be so reduced as to reflect a reduction of not less than $3,111,187 based upon the test year 1952.

(B) Colorado Interstate Gas Company shall file on or before September 15, 1952, the following schedules of rates and charges for or in connection with its transportation and sale of natural gas in interstate commerce for resale for ultimate public consumption, which new schedules of rates and charges shall be effective as to deliveries and sales from and after the date of issuance hereof:

[fols. 140-141] Rate Schedules G-1 and G-2

Demand Charge: 81¢ per Mcf
Commodity Charge: 8.5¢ per Mcf

Rate Schedule G-1 adopted by Colorado from Canadian River
14.5¢ per Mcf

Rate Schedule P-1

17.5¢ per thousand cubic feet for the first 5 days' use of the billing demand

8.5¢ per thousand cubic feet for all additional gas

Rate Schedule I-1 (not including that adopted by Colorado)

11¢ per Mcf

Rate Schedule I-2 (including Rate Schedule I-1 adopted by Colorado)

9¢ per Mcf

(C) The motions to dismiss filed by Colorado Interstate Gas Company on November 2 and November 15, 1951 be and the same are hereby denied.

By the Commission.

Leon M. Fuquay, Secretary.

Date of Issuance: August 8, 1952.

* * * * * * *

[fols. 142-146] BEFORE THE FEDERAL POWER COMMISSION

* * * * * * *

PETITION FOR REHEARING, VACATION AND MODIFICATION—

Filed August —, ——

Comes now Colorado Interstate Gas Company (hereinafter called Colorado) and presents this its petition and application for rehearing and modification of the order of the Commission issued in the above matter on August 8, 1952 ordering decreases in the rates of Colorado and prescribing rates to be observed, as well as denying motions to dismiss and for findings that due notice required by law had not been granted to Colorado. The rehearing herein applied for is made upon each and all of the errors, objections and grounds set forth in the following Specifications of Errors, Grounds for Vacation and Modification and Grounds Relied Upon. Each matter set forth in said Speci-

fications of Errors and Grounds Relied Upon constitutes objection and exception to the order of the Commission and the Commission erred in every such respect.

A. Specification of Errors

* * * * * * *

[fol. 147] 16. The Commission erred in concluding that a fair rate of return to Colorado would be 5¾% and that such return is "adequate to assure confidence in the financial soundness of the utility; to maintain its credit and to enable it to attract capital necessary for the proper discharge of its public duties" (p. 42)*; and in failing to find

17. The Commission erred in concluding in respect of rate of return that said rate of 5¾% will enable Colorado to attract future new capital, whereas the most recent costs in the record in this case in respect of debt money are 3¾% while the Commission used the average historical cost of debt money of 3.21%, and the Commission further erred in respect thereof in concluding "that appropriate adjustments of rates can be made when experience demonstrates that adjustment is required" (p. 37).

[fol. 148] 18. The Commission erred in concluding as to the cost of equity capital entering into rate of return that purchasers of Colorado stock recently purchased said stock based on an earnings-offering price ratio of 7.03% with earnings-net price to the selling stockholders of 7.44%.

19. The Commission erred in fixing the rate of return solely upon its concept of the bare historical cost of money without allowing over and above the bare cost of money such amount as in its judgment would be proper to attract capital in the future, all as required by applicable law upon this subject.

20. The Commission erred in concluding that Colorado would experience a loss in gasoline operations since it has presumed to follow a theory which is not based upon the substantial evidence of record, which is based upon data

---

* Unless otherwise indicated, page references in parenthesis will refer to the mimeographed opinion of the Commission in the above matter issued August 8, 1952.

that the minimum rate of return should be 6½%.

missing from the record, and which is contrary to all of the substantial evidence of this record.

21. The Commission erred in making the following conclusion (p. 44):

"Westpan in turn, sells the finished gasoline, and after deducting ¼th cent per gallon as cost of marketing, remits 50% of the gross revenues to Colorado."

22. The Commission erred in asserting as follows (pp. 45-46):

"The Staff allocated the joint wellmouth and gathering costs on the basis of the relative market value theory of joint production, a method generally employed in the petroleum industry. Under this method the joint costs are apportioned to the finished product on the basis of the relative market values of such products. The direct costs incurred to make each product fully marketable are deducted from the respective market values of the finished products so as to determine relative market values at the point of processing where joint operations cease."

23. The Commission erred in finding (p. 46):

"The five cent value of the dry gas was based on the then [fol. 149] latest reports of the Texas Railroad Commission as to the weighted average market price at the wellhead paid for gas being used and sold in the Panhandle field. The report of September 12, 1951, based on evidence submitted at a hearing before that Commission states that the Texas Railroad Commission finds that the weighted average wellhead price being paid in the Panhandle Field is 4.8526 cents per M.c.f. measured on a 16.4 pressure base. Further, Colorado or its predecessor, Canadian River, paid the Texas production tax based on the market value of its gas at 4.33 cents per Mcf. The staff assigned all the costs of the gasoline plants to the gasoline operation, except such costs as applied to the steam and cooling facilities to dehydrate the gas entering Colorado's transmission line."

24. In determining the cost of producing, gathering and processing said liquid hydrocarbons, the Commission erred in the following respects:

(a) In failing to find that there is no evidence in this record as to the proper allocation factors to be used in the

application of the relative market value theory of cost allocation.

(b) In finding that the relative market value method as applied by the Staff produces a result more reasonable than Colorado's method and in presuming to apply the relative market value theory of cost allocation in the absence of evidence in this record as to the factors to be used in making an allocation under such method.

(c) In failing to consider that, assuming for the purposes of this Specification of Error only that the relative value factors were present and the method were a valid one, the circumstances of a wide fluct-ation of the value of natural gasoline as opposed to the fixed character of the dry gas price renders the relative market value method valueless and inappropriate in this case.

(d) In failing to recognize that the relative market value method of assuming to determine costs does not in fact de- [fol. 150] termine costs and is used only as an expedient when used at all.

(e) In using the relative market value method for the purpose of allocating joint costs with factors of value which have no relation to reality and in fact are contrary to all of the substantial evidence of record, particularly, to wit, that the value attributed to the dry gas is only 50% of the true value as set forth in this record.

(f) In failing to recognize that authorities agree that the volumetric method of allocation is the preferable one.

25. After concluding that neither the relative market value method nor the volumetric method is entirely satisfactory, the Commission erred by failing to open the record for the purpose of having its Staff or some responsible person introduce such evidence as would in the minds of the Commission provide a method for properly determining and allocating gasoline costs.

26. The Commission erred in determining that the fairness of the method used for the allocation of joint gasoline costs was to be determined from results rather than from an allocation method based upon reality which would produce fair results.

27. The Commission erred in costing gasoline operations by setting forth the conclusion it desired to be reached and

in the light thereof deciding which of the supposed allocation methods in this record it would adopt.

28. In not doing what it purported to do in respect of costing the gasoline plant operations, to wit, the application of the relative market value method as applied by the Staff, the Commission erred as follows: The Commission has allocated wellmouth and gathering costs to gasoline in the amount of $1,116,059 in contrast to wellmouth and gathering costs allocated to gasoline by the Staff in the amount of $715,340.

29. The Commission erred in making its determination [fol. 151] and allocation of costs of the gasoline operations by presuming to follow a method and then failing so to do.

30. The Commission erred in concluding as follows (p. 56):

"Thus, of the total wellmouth and gathering cost, $2,805,920 is allocated to dry gas and $1,116,059 to natural gasoline. The joint gasoline plant costs are allocated $386,764 to dry gas and $150,435 to natural gasoline. The gasoline plant costs directly assigned to natural gasoline amount to $208,863. The total cost therefore applicable to the production, gathering and processing of the liquid hydrocarbons owned by Westpan into finished gasoline is $1,475,357. The total revenue accruing to Colorado under the merger agreement for gasoline operations is estimated by it for 1952 to be $1,053,820. Therefore, from such operations there is a net loss or excess of cost over revenues of $421,537. Under the terms of the certificate which we issued to Colorado in Docket No. G-1326, supra, page 48, which terms and conditions were accepted by Colorado, this loss is not to be considered as *as* cost of service to Colorado Interstate's natural gas customers and consumers. Accordingly, we find and conclude that the loss of $421,537 shall not be considered as a part of the cost of service which we have heretofore determined."

31. The Commission erred in adopting, as stated by it, one of two unsatisfactory methods of costing the gasoline operations and in applying any result obtained by such method, assuming only for the purposes of this Stipulation of Error that such method was properly applied and pre-

sented, since the requirement of the Commission's order in Docket G-1326 allows the adjustment assumed to be made only after determination of "the costs properly allocable to such hydrocarbons."

32. The Commission erred in not setting forth in its opinion the evidence and bases upon which it arrives at its factors for the determination and allocation of costs of the gasoline operations, and in not setting forth such findings, facts, and detail as would enable Colorado or any reviewing court to determine the bases upon which the Commission proceeded in making its determinations in re- [fol. 152] spect of the allocation of joint costs, nor can it be determined what weight the Commission gave to the evidence on this subject, and the Commission erred in not setting forth that information.

33. The Commission erred in the adoption of a 5¢ value for dry gas in each and every one of the particulars set forth below, to wit:

(a) The Commission erred in determining (p. 46): "The 5 cent value for the dry gas was based on the then latest reports of the Texas Railroad Commission as to the weighted average market price at the wellhead paid for gas being used and sold in the Panhandle Field."

(b) The Commission erred in assuming and stating that Colorado's predecessor paid the Texas production tax based in the market value of its gas at 4.33¢ per M.c.f.

(c) Assuming for the purpose of this Specification of Error only that the determinations of the Texas Railroad Commission give a proper value factor, the Commission erred in using a so-called valuation at the end of 1950, whereas the test year purported to be used by the Commission is 1952.

(d) The Commission erred in attributing a so-called valuation of dry gas to Colorado which was based upon patently incomplete data as to its predecessor constituent, Canadian River Gas Company.

(e) The Commission erred in adopting 5¢ as the value of dry gas based on reports of the Texas Railroad Commission since reference thereto (Exh. 2) will show clearly that the Canadian River Gas Company values were based on royalties paid by it, and the order herein shows (p. 23 et

seq.) that royalties are now paid by Colorado on the basis of 8¢ at the wellhead; and the Commission further erred, therefor, in not attributing to the dry gas for allocating gasoline costs this latest determination of value assuming for the purpose of this Specification of Error only that the Commission is justified in using the relative market value theory.

[fol. 153] 34. The Commission erred in ignoring or failing to evaluate all the evidence relating to costing gasoline operations which evidence would show that only the volumetric method is related to the facts of this case.

35. The Commission erred in not weighing the evidence and in not determining that the only substantial evidence indicates that the volume of natural gasoline and dry gas in a common stream governs the size and capacity of wellmouth and gathering facilities.

36. The Commission erred in not finding that the Staff did not satisfy its burden of proof in that it failed to produce a satisfactory method of allocating costs to gasoline.

* * * * * * *

40. The Commission erred in not allowing to Colorado Federal Income Taxes and State Income Taxes, associated with the 5¾ per cent rate of return found by the Commission to be reasonable and, in fact the Commission has reduced the allowed rate of return from 5¾ per cent to 5.01 per cent.

* * * * * * *

[fol. 154] 47. The Commission erred in failing to find that the end result of the proposals of the Staff is unfair, [fols. 155-156] unjust, unrealistic. and amounts to confiscation of property of Colorado.

48. The Commission erred in failing to find that the cost of needed supplies of gas to Colorado is greatly in excess of the commodity price allowed to be charged by Colorado to its customers.

49. The Commission erred in using a cost basis for determining the allowable wellmouth costs for gas produced in the Panhandle Field included in the cost of service and in failing to use the value thereof since the end result thereof is unjust, unreasonable, and discriminatory in that

the said treatment of the Commission allows to Colorado's royalty owners in the Panhandle Field over 3.16 times the amount Colorado realizes from the production operation.

* * * * * * *

[fols. 157-158] 53. The Commission erred in failing to grant a rehearing of its order issued May 26, 1952 wherein it ordered the omission of the intermediate decision procedure in this case and in refusing to vacate said order as requested in said application for rehearing.

54. The Commission erred in failing to find that this proceeding involved one which is accusatory in nature and in which issues of fact were sharply contraverted and that, therefore, the decision of the Presiding Examiner was required in order to grant to Colorado a fair hearing.

55. The Commission erred in concluding in its order issued May 26, 1952 that "due and timely execution of its functions imperatively and unavoidably requires the Commission to omit the intermediate decision procedure in this proceeding."

56. The Commission erred in not recognizing that there was no substantial evidence upon which to base the finding set forth in the immediately preceding Specification of Error.

* * * * * * *

[fols. 159-166] C. Grounds Relied Upon

* * * * * * *

[fol. 167] VIII

Specifications of Errors Nos. 16, 17, 18 and 19

In arriving at the amount of 5¾% as a reasonable rate of return the Commission has used the historical cost of money to Colorado. The effect of the use of this historical cost is to limit the return of Colorado not to a present cost of money but to what it actually has paid in the past for its money assuming that the Commission has arrived at a correct determination on the cost of equity. This clearly does not comport with the legal requirement in respect to rate of return since it is required thereby that the

return should be reasonably sufficient to assure confidence and financial soundness, support credit and enable the Company to raise the money necessary for the proper discharge of its duties. The bare bones cost of money allows nothing for the future attraction of capital. The Commission has recognized this when it holds that its activities in rate matters are a continuing process and that if the Company incurs increased costs for money it may seek relief from the Commission. This is relief after the fact, which comprehends the necessary regulatory lag. The Commission by its own rationale therefore has confirmed the fact that there is missing here that extra fillip which would attract money in the future. The Commission in effect says therefore that since this fillip is missing it will make it up after the fact. Such ex post facto relief withheld from the rate of return clearly does not accord with the judicial standards mentioned above. In speaking of a rate of return large enough to attract capital the Supreme Court of the United States was not talking of what a future rate of return might be but of what a present rate of return must be (Bluefield Water Works, an improvement company, vs. Public Service Commission, 262 U. S. 679 (1922); Federal [fol. 168] Power Commission vs. Hope Natural Gas Company, 320 U. S. 591 (1944)). The Commission moreover did not even allow the present cost of debt money but instead used the historical rate of 3.21%.

The Commission also errs in respect of the equity portion of the rate of return by concluding that the recent marketing of Colorado's stock was equivalent to financing on a 7.44% earnings net price to the selling stockholders. Analysis of the record in this case will show that this conclusion is unfounded. Since there is no appreciable difference between the Staff and Colorado on rate base it is obvious that the rate of return is a crucial factor. Total rate base approximates $57,200,000 (Exh. 26). Since $31,600,000 (Exh. 43) is represented by debt and preferred stock there remains $25,600,000 attributable to common stock and surplus. The Commission asserts that 8.45% (p. 41) return on equity is adequate to attract new capital and seek to support this argument by pointing to the recent marketing of 966,000 shares of Colorado's common stock on April

2, 1952 (Exh. 43). The net received by the selling stockholders (which from the Commission's treatment presumably would be the net that Colorado would receive) was $25.25 per share (Exh. 43). Pro forma 1951 earnings were $1.88 per share (Exh. 43). This the Commission asserts is equivalent to financing on a 7.44% basis and therefore the Commission assumes that allowing the Company 8.45% return on equity would be adequate.

The fallacy of the above reasoning is that the stock could not be sold on 8.45% return on rate base equity. The book value of the stock is $13.63 as found by the Commission and the $1.88 per share represents 13.79% rate of return. It is this book value which the Commission in effect uses in computing rate of return. By applying this 8.45% to rate base equity in the amount of $25,600,000 the earnings of $2,163,200 would be $1.26 per share. The record discloses that the market price of natural gas transmission companies stocks were anywhere from 1½ to 2½ times their book value. (In fact one stock sells at 4 times the book value.) (Tr. pp. 1076-1077.) Therefore a 9% rate of return on rate base equity is the equivalent of a 3.6% to 6% [fol. 169] rate of return on current market prices. It is apparent that a strict application of the Commission's formula in this case would mean that the average natural gas transmission company would have to pay about twice as much for equity financing as has been the case in the past.

IX

Specifications of Errors Nos. 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36

The Commission in its adoption of one of the two methods of costing gasoline which it held to be unsatisfactory has purported to adopt the relative market value method proposed by the Staff. Attending for the moment to the record in this case in regard to such method, analysis will indicate that the fundamental principle of the method is missing. The Staff witness by assuming to use the relative market value method to use prices reflecting the current value attached to the products. He did not do this,

however, but instead, took all of the prices paid for natural gas in the West Panhandle Field of Texas even though this weighted average method resulted from contracts negotiated twenty years or more ago (Tr. pp. 1283-1287). The Staff witness admits that this is not "market Price" but, instead, market price is the price between a willing buyer and a willing seller in a competitive market in recent transactions and the transactions have to be recent (Tr. pp. 1293-1294). This admission from the only witness testifying in support of the relative market value or market price method has the effect of taking from his method one of the factors making up the ratio from which costs under his method are to be determined. The witness did not use the market value or market price method but has used something else. There is no evidence, therefore, to support the use of the method which the Commission purports to use.

As support for the use of 5¢ value for dry gas, the Staff witness and the Commission both use reports of the Texas Railroad Commission (Exhs. 1 and 3). No matter what the Texas Railroad Commission or Colorado or its predecessor, [fol. 170] Canadian River Gas Company, used for the computation of the Texas production tax, the base determined by the Texas Railroad Commission simply is not the market value of the gas. This is apparent from the exhibit itself since this determination is based upon averages of prices stemming from ancient as well as recent transactions. The determination of costs by a relative market value or price ratio comprehends nothing but the use of current prices. To deviate from the method is to repudiate the method. Therefore, the only evidence in this record upon which the Commission could act was that submitted on behalf of Colorado as to the costing of gasoline plant operations.

Even if the Staff witness had used the proper ingredients of his assumed method, the Commission has perverted it and has acted without any evidence in the allocation of wellmouth and gathering costs. This is evident from the fact that the Commission in purporting to use the method of the Staff upon the same facts determined higher costs as being applicable to the wellmouth and gathering operations. Analysis will disclose that what the Commission

has done has been to determine a new ratio for the division of costs by considering what is done inside of the gasoline extraction plant and relating the percentages so determined clear back through gathering and wellmouth facilities. This simply canont be done because all evidence of record indicates clearly that there are two great divisions of operations involved with different costs, different values and different factors involved after the cessation of wellmouth and gathering operations and before the actual extraction process within the gasoline plant. The Commission, therefore, acted without evidence in the premises.

The Commission failed to evaluate and weigh the evidence in regard to the market value method of costing joint products. The Commission has failed to weigh the evidence indicating that the relative market value method does not measure costs but merely divides them (Exh. 42).

The only evidence of record as to the current market value of gas in the Panhandle Field is 10¢ per M.c.f. and not the 5¢ used by the Staff (Tr. pp. 1484-1485). By the [fol. 171] use of this true market value factor, revenues accruing to Colorado would exceed costs in the gasoline plant operations even by the use of the relative market value method of dividing costs. This conclusion is supported by the only evidence in the record as to what the real market value of gas is (Exh. 41). The bald assertion of the Commission that the relative market value method of costing joint products is a method generally employed in the petroleum industry fails to take into consideration the undisputed evidence that where this method is used it is used as an expedient and it is agreed by the experts that it is second in desirability to the volumetric method (Tr. p. 1488). The only reference of record on the subject indicates clearly that the volumetric method is the only one comporting with the facts. This is particularly true of the important items of cost entering into the category of wellmouth and gathering costs, for the facilities of a gas well and gathering lines necessary for the transportation of the combined stream of natural gasoline and dry gas as wet gas are determined by the volume of this combined product (Tr. p. 1418). There is no other

evidence in the record to refute this considered opinion of two expert engineers well qualified on the subject. In fact, the same record supports the proposition that volume determines the cost of the installations within the extraction plant. The Commission apparently would avoid this problem by noting that under the merger arrangement Westpan Hydrocarbon Company may require Colorado to install additional extraction facilities. The Commission does not point out, however, that no such requirement has yet been made, may never be made and, in any event, the criterion of prudent operations marks the top liability of Colorado (Item O).

The Commission here under the justification of the condition in its order in the merger case has assumed to attribute costs to gasoline operations. The merger case condition required Colorado to absorb costs in excess of revenues accruing to it, but as the order in that case expressly recites it is only "the costs properly allocable to such hydrocarbons" which are to be considered in imposing such liability. The Commission cannot determine the costs prop- [fol. 172] erly allocable to the hydrocarbons without having before it a thoroughly satisfactory method of cost determination. The Staff, therefore, failed in its burden of proof in this regard and there is no substantial evidence upon which the Commission could act.

The Commission, since it has assumed to use the evidence of the Staff regarding the 5¢ value for dry gas, was completely in error when it stated (p. 46) that the 5¢ value was based on the latest reports of the Texas Railroad Commission. The evidence shows clearly that the Staff witness on this problem knew of a higher later published price of the Texas Railroad Commission but did not use it (Tr. pp. 1281-1282). Therefore, the Commission's conclusion is clearly contrary to the evidence.

The statements of the Commission that Colorado's predecessor (Canadian River Gas Company) paid the Texas production tax on a 4.33¢ M. c. f. market value is wrong. Reference to the taxing statute will show that market value is not the criterion for payment in this case since said statute provides:

"The market value of gas produced in this State shall be the value thereof at the mouth of the well, however, in case gas is sold for cash only, the tax shall be computed on the producer's gross cash receipts "(Vernon's Annotated Revised Civil Statutes of the State of Texas, Tit. 122, Art. 7047(b)(2)).

Since Canadian River Gas Company, and now Colorado, sells its gas for cash only, not market value but what is received for the gas on a regulated and old contract basis determines the tax, therefore, the Commission acted with complete disregard of the statute and without the essential factor for its ratio in determining costs under its assumed method.

The dry gas price of Colorado is fixed but the gasoline price fluctuates widely, this fact, authorities agree, renders the relative market value method valueless. The Staff witness, however, was not affected by this defect in his approach (Tr. pp. 384-386).

[fol. 173] In any event the price assumed to be used by the Commission was based at best upon data applicable only for the last six months of the year 1950 (Exh. 2). If the Commission is using 1952 as a test period, it must, therefore, use an indicia of value relating to 1952. It has not done so. The value should be the actual current market value under the relative market value method. The only evidence in this record indicates that the value of gas in the Panhandle Field approximates 10¢ per M. c. f. The Staff has not shown any value of gas beyond 1950, therefore, for the Commission to adopt as a valuation factor this antiquated data constitutes acting without substantial evidence.

Regardless of what else the Commission has done, it also, by the use of the Texas Railroad Commission determinations, has acted without complete data as to almost 2/5ths of the total production of gas involved. This is made abundantly clear from Exhibit 2 wherein the Texas Railroad Commission indicates that it had data in respect to approximately 33 billion cubic feet of Colorado's predecessor's production but no information as to 20½ billion thereof.

If it is assumed that it was proper for the Commission to use data such as the old published reports of the Texas Railroad Commission, which Colorado denies, the Commission did not arrive at a proper value determination since reference to Exhibit 2 will show that the Texas Railroad Commission determination is based upon royalties as to Colorado's predecessor. The Commission in its opinion and order in this case, however, recognized that royalties have increased so that royalty payments are based upon a participation in gas to a valuation of 8¢ (pp. 23-24). The Commission, therefore, has been arbitrary and inconsistent and has acted contrary to the substantial evidence and its own findings in failing to use as the dry gas factor in its valuation the value of natural gas based upon 8¢ per M. c. f. at the wellhead. The effect of the use of such ratio with this changed factor as found by the Commission would be materially to reduce, if not entirely eliminate, the gasoline costs which the Commission determined were not chargeable to the rate payer.

[fols. 174-175] The Commission also has mistakenly used the 5¢ value purportedly based on determinations of the Texas Railroad Commission. The Texas Commission's determinations are at the wellhead whereas the 5¢ value used by the Commission is at the point of split-off in the gasoline plant. Between the wellhead and split-off point the gathering and processing increase the value of the gas. The Commission shows in its opinion (Table I, Line 13, Col. f) gathering costs of $1,244,758 for gathering and (p. 55) $386,764 of joint gasoline plant processing costs applicable to gas at the split-off point. Therefore, there is no evidence that the value of the gas at the wellhead found by the Railroad Commission is the value at the split-off point.

The Commission's determination regarding the costing of gasoline plant operations is defective and such pervades the Commission's whole opinion and order inasmuch as there is not contained therein or in the record in this case such information as is required to understand how the Commission arrived at its determining figures for making the allocation of costs attributable to gasoline appearing at page 55 of the opinion. Specifically, there is required the

details of determination of Joint Well Mouth and Gathering Costs for each gasoline plant and for all plants shown on line 2 of the table on page 55. Also, there are required the details for determining Joint Gas and Gasoline Costs, Direct Gasoline Costs, and Direct Dry Gas Costs for Bivins and Fourway Gasoline Plants shown under note 1 on page 55.

The volumetric method is the only appropriate method here since (i) it accords with the facts—volume determines side of facilities; (ii) it accords with the Commission's method of allocating other costs; and (iii) this is the only method supported by the qualified expert witnesses in this case (Tr. pp. 1417-1418).

* * * * * * *

[fol. 176] XI

Specification of Error No. 4 D —

The Commission in its treatment of the cost of service because of the deduction for the alleged loss on gasoline plant operations has de-rived Colorado of the rate of return to which it is entitled. Under the regulatory concept a utility is to be allowed Federal income taxes which it would pay on a fair return. The Commission clearly has recognized this when it recently stated:

"It has been our consistent practice to allow in the Cost of Service, the amount of Federal income taxes which the utility would actually pay to the Government based upon a fair return, adjusted for all tax credits to which the corporation is entitled." (Mimeo. Opinion No. 227, In re Transcontinental Gas Pipe Line Corporation, Docket No. G-1842, p. 30).

In the present case the Commission did not do this as will be demonstrated below. If the loss on gasoline operations were not treated by the Commission as a tax deduction, which it clearly is not, (no more than would be the disallowed cost of the new fees to be paid to directors and members of the Executive Committee), the following would

[fol. 177] reflect the income tax calculation based upon the return:

Return at 5¾%		$3,280,317
Deduct:		
Interest	$ 964,300	
Amortization and Sundry	12,025	976,325
Sub-total		$2,303,992
Tax Adjustments:		
Depreciation per Cost of Service	$2,537,739	
Depletion per Cost of Service	57,688	
Total	$2,595,427	
Statutory Depreciation	$2,327,417	
Statutory Depletion	1,356,251	
Intangible Drilling Costs	585,920	
Cost of Removal	26,395	
Total	$4,295,983	
Net Tax Deductions		1,700,556
Sub-total		$ 603,436
Surtax Allowance ($25,000 × 22%)		5,500
		$ 597,936
Taxable Income ($597,936 ÷ 48%)		1,245,700
Tax at 52%		647,764
Less Surtax Allowance		5,500
Federal Income Tax		$ 642,264

This tax, assuming all other determinations of the Commission to be correct, is properly calculated. The Commission, however, allowed only $185,599 as tax. The action of the Commission in this regard, therefore, is arbitrary,

capricious, discriminatory and highly prejudicial to Colorado.

* * * * * * *

[fol. 178] XII

Specifications of Errors 43, 44, 45, 46, 47 and 48

The Commission erred in failing to realize that the end result of its rate determination and the end result of all of the proposals made by the Staff is inherently unreasonable and no rate reduction should be made on such basis. This record clearly shows that at present Colorado is having to pay more for its gas in order to keep currently abreast of the demands upon its system than the 8.5¢ allowed by the Commission as a commodity charge under the General Service Rate Schedules(Tr. pp. 727, 1484). The Commission by its order issued in Docket G-1677 (Item N) has found that there is a deficiency of the supply on the part [fol. 179] of Colorado and the conclusions of the Commission implicitly require Colorado constantly to increase its available supply of natural gas. It is inherently unreasonable and confiscatory, therefore, to set rates at a city gate on a basis which is less than the cost which Colorado has incurred and will have to incur in the field in order to acquire such additional supplies.

XIV

Specification of Error 49

The end result of the Commission's order is obviously unjust and unreasonable when one makes comparison of the amount of money accruing to Colorado as return upon the basis determined by the Commission . It is well recognized that the greatest of risks inhere in the activities of a producer of oil or gas. The result, however, of the Commission's determination in this case is not to compensate Colorado for these risks but rather to prejudice it therein. Analysis of the result of the Commission's order will show that Colorado's royalty owners, who do nothing but receive their royalties, are compensated more than three times more for the production activity necessarily required than is Colorado. This is evident from the following analysis:

Analysis of Panhandle Field Well Mouth Costs Found Reasonable by the Commission in Opinion 235

Item	Total Cost	Unit Cost Per Mcf Sold
(1)	(2)	(3)
Gas Royalties	$1,422,730	1.02¢
All Other Operating Expenses	16,125	.01
Total Operating Expenses	$1,438,885	1.03¢
Depreciation	$ 377,807	0.27¢
Depletion	57,688	0.04
Federal Income Taxes	25,455	0.22
State Income Taxes	764	..
Other Taxes	403,518	0.29
Return @ 5¾%	449.888	0.32
Total of Above	$2,753.975	1.97¢
[fol. 180]		
Less Portion of Above Costs Allocated to Gasoline.	617,719	0.44
Net Well Mouth Cost Allocated to Gas	$2,136,356	1.53¢

Note: Figures in Column (2) are from Opinion 235, Table I and pp. 23-24. Figures in Column (3) are derived by driving costs in Column (2) by sales of 139,430,000 Mcf which is the volume of gas produced in Panhandle Field and sold to customers by Colorado Interstate (Exh. 37, Sched. 14).

Since the Commission adds to the production activity only costs of transportation, distribution, etc., it is obvious that Colorado is being dealt with discriminatorily when its compensation for the production of gas is restricted as above indicated. This is a most graphic portrayal of an unjust end result. The unit cost per M.c.f. of the gas sold at the well is 1.53¢. This, in the face of the prices shown in this record, and of which the Commission has official knowledge, indicates clearly the need for a new approach to the problem.

XVI

Specifications of Errors 53, 54, 55, 56, 57, 58, 60, 61, 62 and 63

The Commission omitted the intermediate decision procedure over the objection of Colorado and by inaction is deemed to have denied Colorado's petition for rehearing

filed in respect of such omission. This proceeding was defi- [fol. 181] itely accusatory in nature as the Commission was advised in the answer and in the petition for rehearing filed by Colorado in this matter. That the issues were sharply controverted also is so demonstrated, and the Commission's opinion indicates this fact. For the Commission so to act and omit the intermediate decision procedure in this case was therefore a violation of the Administrative Procedure Act (Section 8), the requirements of due process of law and amounted to a denial to Colorado of that fair hearing to which it is entitled. While Section 8 of the Administrative Procedure Act empowers an administrative agency to omit the intermediate decision, it still requires the finding "upon the record that due and timely execution of its functions imperatively and unavoidably so requires." Bearing in mind that this investigation of the Commission began September 2, 1948 and was not brought to hearing until October 1, 1951, the finding of the Commission that it had to omit the intermediate decision is made without any substance or evidence whatsoever.

The Commission has not and could not demonstrate that the timely execution of its functions "unavoidably" required it to take this case from the Presiding Examiner. The Commission's first obligation is to accord to Colorado a fair hearing. That a fair hearing may require more time than an unfair hearing is no reason for granting only an unfair hearing. The effect of what the Commission has done has been to deny to Colorado that appraisal of the credibility of witnesses and the weight to be given to their evidence which only the presiding officer could have given. There can be no excuse for the Commission's action other than undue haste to dispose of a case. Thus there has been taken from Colorado a part of the record in this all-important controversy to which Colorado is entitled and which a court may consider in determining whether the Commission's ultimate findings are based upon substantial evidence.

The facts of this case indicate unfairness toward Colorado also in that the action of the Commission was taken after all briefs had been filed. In a case as involved as a rate proceeding is, the great and detailed analyses are

made in briefs. But the brief submitted to a trial examiner [fol. 182] is pitched to a different plane than that which is submitted to a body which has not heard the evidence. Therefore, Colorado in effect has been denied its right to brief the questions involved. The Commission allotted to Colorado only 60 minutes of time in which to present orally its contentions. The circumstances clearly indicate that such time is not adequate in which to detail all of the matters involved in this rate proceeding and this grant of an oral argument cannot be considered as an acceptable substitute for the right to brief the question or argue the same in full. Therefore the Commission has effectively thwarted Colorado's right to a fair hearing and its conclusions, therefore, are not in accordance with the requirements of due process of law and cannot stand.

Aside from the general requirement of due process of law that reasonable notice must be given, the Administrative Procedure Act in Section 4 requires notice which, by the legislative history of the Act, is to be such notice as could fairly appraise Colorado of the issues involved so that it may present relative data or argument (see report of the House Judiciary Committee, Administrative Procedure Act, Legislative History, Senate Document No. 248, 79th Congress 2d Sess., p. 258). Colorado assiduously tried in this case to learn from the Staff of the Commission what claims were being made. The record clearly indicates that the Staff constantly refused to give such notice (Tr. pp. 330, 1085, 1143-1146, 1180-1187, 1205-1206). In fact, it was not until Staff counsel filed his first brief, at which time Colorado also had to file a brief contemporaneously with that of Staff counsel, that it was indicated that Staff counsel was depending for the claims made against Colorado upon the test period of 1952 as set out in Exhibit 26. This the Commission refers to as Staff rebuttal. Therefore, in its principal brief Colorado was unable yet to know what assertions and claims were being made by the Staff against it. This is an obvious denial of reasonable notice any *any* findings, conclusions or orders of the Commission made in pursuance of such proceedings cannot stand. Furthermore the Staff in so acting has acted outside of the pale of fair play, due process of law and thereby has failed to sustain

[fols. 183-187] any proof or proffer any proof upon which the Commission may act.

XVII

Specification of Error No. 59

Both under the Administrative Procedure Act (Section 7) and the Commission's Rules of Practice and Procedure (Section 1.27) the Presiding Examiner is in control of the proceeding and his actions in the matter of recessing hearings and other procedural steps are not subject to interference with this Commission in the absence of arbitrary action. Therefore, the action of the Commission in interfering with a recess declared by the Presiding Examiner after weighing all relevant facts (Tr. pp. 1217-1229) constituted a denial to Colorado of its right to a fair hearing particularly inasmuch as the Commission's interference occurred midway in the recess period found by the Examiner to be required.

* * * * * * *

[fol. 188] BEFORE THE FEDERAL POWER COMMISSION

OPINION No. 235-A AND ORDER ON APPLICATION FOR REHEARING—Issued September 29, ——

Before Commissioners: Thomas C. Buchanan, Chairman; Dale E. Doty, Claude L. Draper and Harrington Wimberly. September 26, 1952.

Application for rehearing and motion for stay of our Opinion No. 235 and Order issued on August 8, 1952, in the above-docketed proceeding, were filed by Colorado Interstate Gas Company (Colorado) on August 27, 1952.

Numerous specifications of errors are advanced by Colorado. None require rehearing, although one of them warrants minor modification of the opinion and order respecting the industrial rate schedule applicable to Clayton Gas Company. Our order establishes a rate of 9¢ per Mcf for sales of industrial gas to Clayton as compared to the prior rate of 9.5¢ per Mcf. This reduction is inconsistent with

our finding that Colorado's rates for service to Clayton are below the cost of service. Accordingly, we will modify our order issued August 8, 1952 to retain the 9.5¢ per Mcf rate in Rate Schedule I-1 for firm industrial service to Clayton. [fol. 189] Colorado complains that we did not indicate in our opinion and order which of the data we considered for 1952, the test year. This complaint is frivolous for the data upon which we based the rate reduction are explicitly set forth. Thus, the table on page 4 of the opinion (mimeo. copy) shows the components involved in the rate-making process as claimed by the Staff and Colorado, and the differences between them. These data, underlying our decision, are fully discussed in the balance of the opinion and order.

In this connection, we note that Colorado is concerned regarding our description in the opinion of certain evidence offered by the Staff and by Colorado as "rebuttal" evidence. It is Colorado's concern that such reference shows that we may not have accorded such evidence the consideration to which it is entitled. Our description, however, is directed to the point of time or order in which the evidence was introduced at the hearing. Our decision regarding the weight of that evidence and the inferences, findings and conclusions to be drawn from the evidence were not influenced by or dependent on the order in which the evidence came into the record. All of the evidence received in the record, whether introduced as part of the case-in-chief, rebuttal, or sur-rebuttal has been fully considered. Indeed, we allow as part of Colorado's expenses, amounts claimed by Colorado in what we may properly call its "sur-rebuttal" case.

Colorado also challenges our consideration of federal income tax accruals as available for working capital purposes. Our determinations in this case disclosed that there were available to Colorado for working capital purposes tax accruals of $139,199.00. We, therefore, found that the working capital requirement which should be included in the rate base should be offset by that amount. Colorado does not, in its application for rehearing, challenge the propriety of off-setting tax accruals against working capital requirements. Its contention is only that it had no

notice during the hearings that tax accruals would be so treated and that it has, therefore, been deprived of due [fol. 190] process of law, and that this deprivation amounts to confiscation of its property.

It is an accepted practice in computing the rate base on which the utility is entitled to earn a fair return to include an amount representing the utility's working capital requirements. This is done on the theory that the funds required for such purpose are contributed by the investors and, therefore, are in the same category as funds contributed by investors for the construction of utility plant which is devoted to the customer's service.

From this it is obvious, of course, that in any computation of the working capital requirements it is appropriate to take into account funds contributed by the customers which are available for working capital purposes and which diminish the amount required to be made available by the investors for such purposes. In the case of Colorado, it is not open to question that Colorado's customers contribute, through rates, amounts which are intended to enable Colorado to meet its federal income tax liabilities. These funds are contributed by the customers in advance, often far in advance, of the time when they must be paid over by Colorado to the Federal Government. It is not open to question that such amounts are available for working capital purposes and do not represent funds contributed by the investors upon which the utility is entitled to earn a return.

We do not believe that any deprivation of procedural due process is involved. The computation of a proper working capital allowance was one of the issues in the case as to which Colorado had full notice and the availability of tax accruals for such purposes was equally well known to Colorado.

The exclusion from the rate base of $139,199 only affects Colorado's return by $8,003.94 representing 5¾% return on $139,199. Not only is this amount of $8,003.94 de minimis, but under the rate we have ordered to be placed in effect, there will be an excess of $15,795 in revenues over cost of service (p. 74 of the opinion), which amount easily absorbs the $8,003.94. We find, therefore, that rehearing

is not required with respect to the working capital determination.

[fol. 191] Colorado attacks our allowance of a 5.75% rate of return contending that:

(1) We did not allow present cost of debt capital but, instead, used an historical rate of 3.21%;

(2) We did not allow that extra "fillip" as Colorado puts it which is necessary to attract money in the future; and

(3) In determining the reasonable cost of common stock capital we erred in applying earnings-price ratios in relation to the book value of the common stock.

As to the first contention, it is true that 3.21% cost of debt capital was historically incurred in the sense that Colorado's Serial Notes were issued in the past. It is completely erroneous, however, to state that we did not allow the present cost of that capital. Actually, Colorado's present cost of debt capital is 3.21%. Interest and other costs associated with debt capital naturally continue in respect to that part of the capital represented by the debt until such debt is redeemed or is retired. There can be no question whatsoever that the present cost of debt capital is 3.21% and this we fully recognized.

There are no facts of record which show what the rate of debt money will be at some unknown time in the future when the company may raise additional debt capital. As a matter of fact, there is not-ing in the record which shows that the company has either definite or indefinite plans to raise additional debt capital. The use of a higher rate of interest than that which is presently being paid by the company would, therefore, merely represent and unwarranted additional allowance for the common stock equity and would not represent proper cost of debt capital.

As to the allowance of an extra "fillip," such allowance was not made in respect to debt capital because of the absence of any showing that such an extra allowance was even remotely appropriate. We did, however, make an allowance over and above the percentage of returns on common stock which are currently reflected in the purchase of natural gas company securities. Thus it was shown that

[fol. 192] investors have been buying common stocks since 1945 on the basis of approximately 8.3% earnings. In other words, the earnings which appear to be available to natural gas common stocks when related to the purchase price of those stocks by investors indicate that investors have been requiring on the average an earning of 8.3%. As of October 1, 1951 the stock of representative natural gas companies was being bought on the open market on the basis of 6.4% earnings. Moreover, a large block of the stock of Colorado Interstate Gas Company was sold in April 1952 in the face of a pending rate reduction proceeding on the basis of 7.03% earnings as measured by relating earnings to the market price of the stock. Our rate of return of 5.75% when broken down by capital elements, results in an 8.45% return on the common equity after an allowance of ½% for the cost of floating the stock. Accordingly, we allowed more than the "bare bones" cost of capital.

Colorado contends that, in measuring the return required by investors, we misapplied the percentage relationship of the earnings available to common stock to the market value of common stock that is, the earnings-price ratio. Colorado argues that if the earning-price ratio is used it should be applied to the market value base for the stock instead of the book value. Such an application would have the effect of departing from the investment rate base and substituting, in part, a fair value base according to the proportion of common stock to other capital of the company.

In the alternative, Colorado contends that the 8.45% earnings-price ratio should be applied to the actual investment in such manner as to effect a 13.79% return on the common equity. This contention is as novel as it is lacking in merit. It too would require the rate of return to be fixed so as to maintain the market value of the stock. This is circular reasoning. It is well known that the chief factor affecting the market value of a common stock is the earnings of a corporation. Accordingly, inasmuch as market [fol. 193] value reflects the earnings position, the allowance of earnings sufficient to maintain that market value would completely defeat effective regulation. Excess earnings would result in excess market value which, under the

theory, must be maintained; inadequate earnings which would result in a depressed market value would likewise have to be maintained if all that is required under the principle stated is the maintenance of the market value of the stock. Under this scheme, if high earnings are once obtained the*f* could never be reduced through rate regulation, whereas inadequate earnings could not be increased. The plan is entirely devoid of merit. Market values of securities are the result and not the cause of earnings. A fundamental error would be committed in the determination of a fair rate of return if it were fixed with a view of maintaining the market value of securities.

Evidently there is misunderstanding by Colorado as to the Commission's weighing of earning-price ratios and yields on common stocks in determining the over-all rate of return. It has long been recognized that the best means of determining what investors require in the way of return as to all classes of capital, debt, preferred stock, and common stock, is by resort to the prices prevailing on the securities markets. If a corporation has 4% bonds outstanding and such bonds are selling at a premium so as to yield 3%, that is good evidence that the return required of such a bond by investors i*n* 3%. By the same token, if investors are investing large sums of money in common stock on the basis that their return, expressed in earnings, will amount to 8% and yield 5½% to 6%, that is good evidence of how the investors appraise the common stock in relation to other investment opportunities and is likewise good evidence as to the return required by investors to attract their capital.

The significant factors, therefore, the *the* relationships of earnings to price paid by investors and dividends to price. These relationships disclose the investor's appraisal of the securities under consideration and, as stated above, what the investors require in the way of return. The market value of the stock is not here important per se but is [fol. 194] only important in showing the percentage return which investors will insist upon to be attracted to the enterprise.

It is not possible, on this record at least, nor is it in any way necessary, for us to determine a reasonable rate of

return for Colorado a long time in the future. The return may be affected by many events such as the amount and interest rate of debt securities issued, the additional stock, preferred or common, floated, and the ratio of the capital items to the total capital structure. It is not at all unlikely that the issuance of additional debt capital, even at a higher rate than 3.21%, would result in a lower over-all cost of money because of the change in the capital structure whereby a larger percentage thereof would be represented by low-cost capital items. It will be appropriate to consider these matters when their occurrence is a fact or at least is shown to be imminent.

Accordingly, we affirm our determination that a 5.75% rate of return in this case is just and reasonable.

Colorado contends we erred in several respects in our use of the relative market value method for allocating between dry gas and natural gasoline the joint production, gathering and processing costs. It is alleged that there is no evidence to support the use by us of such method. Such allegation appears to be negated by the extended discussion by Colorado of the evidence dealing with this subject. Other than its expressed preference for the volumetric method which we have already considered and rejected as producing an unreasonable result, Colorado's chief criticism centers upon our use of a 5¢ per Mcf market price for dry gas.

Colorado seems to believe that the relative market value method is invalid unless the current market prices of the respective products are used. We do not agree, for in our judgment it would not be proper to use the spot market prices of either dry gas or natural gasoline for allocating joint costs, and we have, therefore, used average market prices both for dry gas and gasoline. Colorado finds no fault with our use of the average market price for gasoline but maintains that the true market value factor which we should use for the dry gas is the current market value of [fol. 195] 10¢ per Mcf alleged to prevail in the Panhandle field. The evidence relied on by Colorado, in our judgment, does not require alteration of the 5¢ per Mcf price. That evidence consists of testimony by a witness for Colorado that he had seen a contract for the purchase of gas

in the West Panhandle field by Panhandle Eastern Pipe Line from Shell Oil and Sinclair Oil dated August 30, 1951, providing for a price of 9.5¢ per Mcf at a 16.4 pound pressure base. Moreover, the contract prices of natural gas in other fields which are in the record could only be recognized if data of probative value relative to the market prices of natural gas in the Panhandle field were lacking. This is not the case.

The Texas Railroad Commission is required by law [1] to determine annually or semiannually the market price being paid at the wellhead for natural gas to be used or sold in the Panhandle field for light and fuel purposes. The record contains two reports of the Texas Railroad Commission wherein there are set forth data with respect to market prices being paid at the wellhead for gas used and sold for light and fuel purposes. In the report (Exhibit No. 3), dated January 10, 1951, there are set forth various contract prices paid for gas at the wellhead under contracts made during the period commencing July 1, 1948, and extending through October 31, 1950, as well as prices paid under contracts between various pipe-line companies. In the second report (Exhibit No. 2), dated September 12, 1951, the weighted average market price was found to be 4.8526¢ per Mcf (16.4 psi). The earlier report does not purport to cover prices paid on a field-wide basis such as does the latter report, of September 12, but reflects only prices paid under the contracts made during the period indicated. Such wellhead contracts specify prices ranging from a low of 3,12655¢ per Mcf to a high of 5.36¢ per Mcf, the arithmetical average being 4.37059¢ per Mcf. The report of [fol. 196] September 12 also contains a comparison of the weighted average prices for various periods running from 1942 through 1950. These data show that over this period there has been a gradual but steady increase in the weighted average prices paid for gas at the wellhead in the Texas Panhandle field. The weighted average price on a 16.4 pressure base was 4.1005¢ per Mcf in 1942. During

---

[1] Senate Bill No. 227, amending Section 3 of Article 6008a, Title 102, Vernon's Annotated Civil Statutes of the State of Texas, Subdivision (f).

the intervening years the prices increased gradually to 4.8526¢ in the last half of 1950.

Colorado makes reference to the fact that there is a higher later published price of the Texas Railroad Commission which was not considered. The evidence shows, however, that such later report does not require a revision in the 5¢ per Mcf we have used.

Colorado also claims that we were wrong in stating that Colorado's predecessor (Canadian River) paid the Texas production tax on a 4.33¢ per Mcf market value and cites the applicable provision of the Texas statute which reads as follows:

"The market value of gas produced in this State shall be the value thereof at the mouth of the well, however, in case gas is sold for cash only the tax shall be computed on the producers gross cash receipts." [2]

Colorado contends that, since it (and its predecessor) sold gas for cash, only, it cannot be said that the production tax was based on the market value. We think Colorado has misread the statute since the cash sale referred to must obviously be at the wellmouth. The record does not show that the Texas production tax is computed by Colorado on the basis of the cash received by it for the gas sold in its market areas but rather it is computed upon the basis of a declared market value. The declaration by Colorado of a market value of 4.33¢ per Mcf as the basis for computing its production tax is only one of the indicia of the market price of gas in the Panhandle field which we may and did properly take into consideration. Our conclusion would [fol. 197] not be altered even if we disregarded Colorado's payments pursuant to this statute.

Colorado maintains that since the market price determinations by the Texas Railroad Commission are wellhead prices whereas the 5¢ per Mcf price used by us is at the point of split-off in the gasoline plant, the cost of gathering and processing should be added since that increased the value of the gas. We were well aware of this fact and

---

[2] Vernon's Annotated Revised Civil Statutes of the State of Texas Tit. 122, Art. 7047b(2).

gave consideration thereto in determining the 5¢ price used in the allocation. We also took into consideration the fact that the wellhead price determined by the Texas Commission is for wet gas and that the gas after extraction of the liquid hydrocarbons would have a lesser value. The evidence shows the value of the gasoline content of the gas at the split-off point is approximately 2¢ for each Mcf of wet gas processed.

In our determination of an appropriate market price to be used for the dry gas at the point of split-off in the gasoline plant we took all of these factors into account. It is our view that the 5¢ per Mcf price is reasonable, based upon the evidence, and may be appropriately used for the purpose of allocating the joint production, gathering and processing costs between dry gas and natural gasoline.

Colorado complains that we have not included in our opinion full details as to how we arrived at the determining figures for making the allocation of costs attributable to gasoline appearing at page 55 of the opinion (mimeo. copy). We think our opinion contains sufficient details for Colorado to verify from the record the basic data which we used and to ascertain precisely how our determinations were made. Nevertheless we annex hereto as part of this opinion and order Tables I and II containing appropriate record reference which will facilitate Colorado in determining the details which it states it requires.

Colorado alleges that it has been deprived of the rate of [fol. 198] return to which it is entitled by reason of our treatment of the loss on gasoline operations in computing income taxes. Colorado claims the federal income tax allowance is properly calculated at $642,264, whereas our allowance is $185,599, or a difference of $456,665.

The difference between the claimed income tax liability and the income tax allowance we provided is the result of our treatment of the loss on gasoline operations of $421,537. We have found that the loss on gasoline operations should not be considered a part of the cost of service and with this finding Colorado does not take issue. Colorado would have us compute its federal and state income tax liabilities on the basis of earnings which do not reflect a reduction in the cost of service of the $421,537. To accede to Colorado's

contention, however, is to nullify the removal of the $421,537 from the costs which the customers of Colorado should bear. For under Colorado's claim the $421,537 denied it as recovery of a loss on gasoline operations would be recovered in substantial part from the customers in the guise of a reimbursement for a higher tax liability only part of which would in fact be incurred.

Colorado alleges that the Commission by its order changed the character of service of Rate Schedule I-1 as contained in the tariff of Canadian River Gas Company, applicable to the sale of industrial service gas to Clayton Gas Company from "firm service to service subject to curtailment and having a priority below that which Clayton had enjoyed." Of course, we did nothing of the sort. In the case of all rate schedules referred to at pages 74 and 79 of the opinion, we specified the rates to be included in the rate schedules required to be filed by Colorado Interstate. No change in any existing service classification was ordered, and none was contemplated or inferred.

Colorado objects to the omission of the intermediate decision procedure. In our order of May 23, 1952, omitting that procedure, we stated the subsidiary facts on which we made our finding that "due and timely execution of our functions imperatively and unavoidably required" the omission in this proceeding. We adhere to the view expressed [fol. 199] there that these subsidiary facts are sufficiently substantial to warrant and support the requisite statutory finding. We have had occasion recently to note the increased number and magnitude of formal proceedings now pending before us, particularly rate proceedings under the Natural Gas Act, and that this increase has created a growing burden on our limited staff, including examiners, necessitating unavoidable delay in the disposition of these matters before this Commission.[3] These factors, while not

---

[3] Mississippi River Fuel Corporation, Docket No. G-1641, order of June 3, 1952; Alabama-Tennessee Natural Gas Company, Opinion No. 226-A, June 10, 1952.

necessary to our decision to omit the intermediate decision procedure in this case, cannot be overlooked in any consideration of the matter.

Finally, we note that Colorado filed a motion for stay of our rate reduction order on August 27, 1952, and thereafter, on September 8, 1952, while the motion and its application for rehearing were still pending, sought and secured a stay of our order and an injunction from the United States Court of Appeals for the Tenth Circuit. We have moved to vacate the stay and injunction on the ground, inter alia, that the court was without jurisdiction until Colorado has exhausted its administrative remedies and filed a petition for review in the court. However, we are faced with the fact that a stay and injunction have issued which deprive the Commission of its discretion respecting Colorado's motion for stay, rendering inappropriate any action on that motion at this time.

The Commission further finds:

(1) Opinion No. 235 and order, issued August 8, 1952, should be modified as hereinafter ordered.

(2) No new facts have been presented or alleged in Colorado Interstate Gas Company's application for rehearing and no principles of law are stated in the application, which either were not fully considered by the Commission before it entered Opinion No. 235 and order issued August 8, 1952, or which, having now been considered, warrant further hearing, modification except as hereinafter ordered, [fol. 200] or abrogation of the opinion and order.

The Commission orders:

(A) The following, appearing on page 74 of the opinion (mimeo. copy):

"Rate Schedule I-2 (including Rate Schedule I-1 adopted by Colorado)
9¢ per Mcf"

be modified to read as follows:

"Rate Schedule I-2
9¢ per Mcf
Rate Schedule I-1 (adopted by Colorado)
9.5¢ per Mcf"

(B) The following, appearing in paragraph (B) of the order issued August 8, 1952:

"Rate Schedule I-2 (including Rate Schedule I-1 adopted by Colorado)
9¢ per Mcf"

be modified to read as follows:

"Rate Schedule I-2
9¢ per Mcf
Rate Schedule I-1 (adopted by Colorado)
9.5¢ per Mcf

(C) The petition for rehearing be and the same is hereby denied.

(D) The effective date of this Opinion No. 235-A and Order is September 26, 1952.

By the Commission. Commissioner Draper not participating. Commissioner Wimberly concurs in the findings and order.

Leon M. Fuquay, Secretary.

Date of Issuance: September 29, 1952.

(Here follows Table I, Table II, folios 201, 202, 203, 204)

[fols. 201-202]

TABLE I

Determination of Joint Well Mouth and Gathering Costs
Year 1952

	Overall Costs			Gasoline Plants			
	Amount	Mcf at 16.4 p.s.i.a.	Cents per Mcf	All Plants	Bivins	Fourway	Fritch
Gas taken by plants, per Sch. A-21, Exh. 26, Mcf at 16.4 p.s.i.a.				115,617,651	50,640,762	21,177,290	43,799,599
Determination of Joint Well Mouth Costs							
Total Panhandle Field Well Mouth Costs, per Line 11, page 68 of Opinion 235	$2,753,975						
Add back credit for Gas Used in Operations, per Exh. 26, Sch. A-11	167,100						
Total gas available at Well Mouth (Mcf per Exh. 26, Sch. A-21.1)	$2,921,075	129,430,635	2.256865				
Well Mouth costs at 2.256865 cents per Mcf				$2,609,335	$1,142,894	$ 477,943	$ 988,498
Gasoline Royalties, per Sch. A-21.1, Exh. 26				133,600	26,790	13,710	93,100
Total Joint Well Mouth Costs				2,742,935	1,169,684	491,653	1,081,598
Determination of Joint Gathering Costs							
Total Panhandle Field Gathering Costs, per Line 11, page 68 of Opinion 235	$1,244,758						
Texas Gathering Tax, per Sch. A-14, Exh. 26	(573,332)						
Net Unit Cost (Mcf per Sch. A-21.1, Exh. 26)	671,426	123,695,853	.542804				
Sales to Amarillo Oil Co. from gathering system (Mcf per Exh. 26, Sch. A-21.1)	(37,545)	(6,916,922)	.542804				
Net	633,811	116,778,931					
Texas Gathering Tax, per Sch. A-14, Exh. 26	573,332						
Total Gas Available from Gathering System	$1,207,213	116,778,931	1.033759				
Total Joint Gathering Costs at 1.033759 cents per Mcf				1,195,207	523,503	218,922	452,782
Total Joint Well Mouth and Gathering Costs				3,938,142	1,693,187	710,575	1,534,380
To eliminate fuel:							
Bivins—340,403 Mcf (per Sch. A-21, Exh. 26) at 3.343526 cents per Mcf ($1,693,187 divided by 50,640,762)				(11,381)	(11,381)		
Fourway—142,513 Mcf) per Sch. A-21, Exh. 26) at 3.355363 cents per Mcf ($710,575 divided by 21,177,290)				(4,782)		(4,782)	
Joint Well Mouth and Gathering Costs Allocated				$3,921,979	$1,681,806	$ 705,793	$1,543,380

[fol. 203-204]

TABLE II

Determination of Joint Gas and Gasoline Costs, Direct Gasoline Costs, and Direct Dry Gas Costs for Bivins and Fourway Year 1952

Bivins		Percent Per Exh. 34, Sch. 1 and 3	Amount
Operation and Maintenance Expenses			
Total, per Schedule A–10, Exh. 26	$211,592		
Add: 4% Labor Increase on $82,341 of Labor shown on Schedule A–11, Exh. 26	3,294		
	214,886		
Gasoline Royalties, Sch. A–11, Exh. 26	(26,790)		
Gas Shrinkage, Sch. A–11, Exh. 26	(20,300)		
Other Gas Revenues, Sch. A–9, Exh. 26	(2,200)		
Net Operation and Maintenance Expense	$165,596		
Allocated to:			
Joint Gas and Gasoline		65.94%	$109,194
Direct Gasoline Costs		26.21	43,403
Direct Dry Gas		7.85	12,999
All Other Costs			
Depreciation, per Schedule A–9, Exh. 26	$ 36,556		
Taxes—Federal Income, Per Page 68 of Opinion 235	2,017		
—State Income, Per Page 68 of Opinion No. 235	61		
—Other, Per Schedule A–9, Exh. 26	14,313		
Return at 5¾%, Per Page 68 of Opinion No. 235	35,647		
General Expenses Allocated to Bivins:			
Per Schedule A–10, Exh. 26	46,310		
Add: 3.857% (Sch. A–22, Exh. 26) of Labor Increase in General Expenses of $24,131 (4.16% of $504,611, Accts. 790 & 791, Plus 4% of $78,470, Other Accounts Per Sch. A–11, Exh. 26)	931		
Total All Other Costs	$135,835		
Allocated to:			
Joint Gas and Gasoline		78.51%	$106,644
Direct Gasoline Costs		16.37	22,236
Direct Dry Gas		5.12	6,955
Summary			
Joint Gas and Gasoline	$215,838		
Direct Gasoline Costs	65,639		
Direct Dry Gas	19,954		
Total	$301,431		

Fourway		Percent Per Exh. 34, Sch. 2 and 4	Amount
Operation and Maintenance Expenses			
Total, per Sch. A–10, Exh. 26	$114,310		
Add: 4% Labor Increase on $52,643 of Labor shown on Sch. A–11, Exh. 26	2,106		
	116,416		
Gasoline Royalties, Sch. A–11, Exh. 26	(13,710)		
Gas Shrinkage, Sch. A–11, Exh. 26	(6,803)		
Other Gas Revenues, per Sch. A–9, Exh. 26	(1,250)		
Net Operation and Maintenance Expense	$ 94,653		
Allocated to:			
Joint Gas and Gasoline		48.80%	$ 46,191
Direct Gasoline Costs		35.58	33,678
Direct Dry Gas		15.62	14,784
All Other Costs			
Depreciation, per Schedule A–9, Exh. 26	$ 50,290		
Taxes—Fed. Income, Per Page 68 of Opinion No. 235	3,961		
—State Income, Per Page 68 of Opinion No. 235	119		
—Other, Per Schedule A–9, Exh. 26	17,785		
Return at 5¾%, Per Page 68 of Opinion No. 235	70,008		
General Expenses Allocated to Fourway:			
Per Schedule A–10, Exh. 26	29,609		
Add: 2.466% (Sch. A–22, Exh. 26) of Labor Increase in General Expenses of $24,131 (See Bivins)	595		
Total All Other Costs	$172,367		
Allocated to:			
Joint Gas and Gasoline		58.3%	$100,491
Direct Gasoline Costs		31.9	54,985
Direct Dry Gas		9.8	16,891
Summary			
Joint Gas and Gasoline	$146,682		
Direct Gasoline Costs	88,663		
Direct Dry Gas	31,675		
Total	$267,020		

[fols. 205-206] BEFORE THE FEDERAL POWER COMMISSION

Colorado Interstate Gas Company

SUPPLEMENT TO PROSPECTUS DATED APRIL 2, 1952

Upon the public offering of the 966,000 shares of Common Stock to which the Prospectus relates, the several Underwriters sold an aggregate of 988,905 shares of Common Stock, at the public offering price of $26.75 per share, the additional 22,905 shares having been sold on over-allotments made in connection with such public offering. The several Underwriters intend to cover their short position of 22,905 shares, resulting from such over-allotments, (a) by purchasing from Sinclair Oil Corporation, at $27.3125 per share, flat, when, as and if received by Sinclair Oil Corporation and subject to certain other conditions, the 13,688 shares of Common Stock to be received by Sinclair Oil Corporation upon the dissolution of The Mission Oil Company described in the Prospectus under the heading "History and Business," subheading "Merger of Constituent Companies," and (b) by purchasing the remaining shares in the open market.

* * * * * * *

[fols. 207-210] BEFORE THE FEDERAL POWER COMMISSION

TRANSCRIPT OF TESTIMONY

Q. Now, will you look at Exhibit No. 1, Mr. Wiskup, and the first schedule that you are sponsoring is Schedule No. 3; isn't that so?

A. Yes, sir.

* * * * * * *

[fol. 211] COLLOQUY BETWEEN EXAMINER AND COUNSEL

Mr. Goldberg: I say if it is a matter of law, why not let us close the record and brief this question of law. Why go through the whole process of cross-examination, and every-

thing else, when right here we are faced with the bald proposition of law, and I maintain I am willing to submit the staff's case on the question of law that Your Honor has raised. We have not included the new facilities, and we are perfectly willing to let the Commission determine rates which we say as a matter of law the Commission can determine for the future without including those new facilities. I think that is simple enough.

* * * * * * *

Mr. McGee: We appreciate the consideration you have given to our request, Mr. Examiner.

Whereupon, at 2:40 p. m., the hearing was recessed, to reconvene at 10:00 o'clock a. m., November 6, 1951.

---

* * * * * * *

Mr. Goldberg: Mr. Examiner, on November 2, 1951 Colorado Interstate Gas Company and Canadian River Gas Company, the companies involved in this rate proceeding, filed two motions: One, a motion for a finding that the Staff has failed to meet the burden of proof; and two, a motion for continuance pending the disposition of the motion for a finding that the Staff had failed to sustain the burden of proof.

The motion for a finding that the Staff has failed to meet the burden of proof is grounded on the fact that Staff's case is based on the actual experience of these two companies on a pro forma merged basis for the 12 months ending June 30, 1951 and does not take into consideration the operations of the merged company resulting from au- [fol. 212] thorized future expansion.

There is nothing in this record to show when these added facilities will go into operation, nor is there anything in this record to show how the omission of these new facilities will affect the net revenues of the merged company.

Further, when Staff prepared its direct testimony, it appeared that the additional facilities would not go into operation in the immeditate future.

It is still our view that as a matter of law, based on the facts and circumstances as disclosed on this record to date, the Commission may legally fix the rates in this proceeding for the future based on the record as it now stands.

However, because we now understand for the first time that some of these facilities are expected to go into operation during the current month, and in order to expedite these proceedings and avoid further delay by any present arguments on the motion filed by these companies that Staff has failed to meet the burden of proof, the Staff requests the opportunity to adduce evidence with respect to these future expansions.

In view of the fact that the two motions hereinbefore mentioned were filed only last Friday, although the hearing was recessed a month ago, the Staff requests that it be granted two days' time—in other words, to Thursday, November 8, 1951—to prepare such additional evidence.

To this extent it joins in the request for continuance filed by the companies.

If this request to adduce additional evidence is granted, it is submitted that the motion for a finding that the Staff has failed to sustain the burden then becomes moot.

Presiding Examiner: Do you gentlemen wish to make any statement?

Mr. White: Mr. Examiner, I think in the interests of [fol. 213] orderly procedure, that the request of the Staff should be denied.

They have put in their case in chief and the record to that extent, as I conceive of it, is closed.

I do not know how many shots they are supposed to have at this particular piece of game, but it appears to me that when they closed their case, they have put in what we should consider to be the best case which under the circumstances they could offer and, if that case is defective as a matter of law, I think we are entitled to a ruling on that point.

I would vigorously oppose any reopening of the Staff's direct case, or in effect what I imagine it would amount to would be putting in a new direct case, and in effect the Staff would be asking that the previous direct evidence put in by it be ignored.

Now, if that is the situation, it seems to me that we might go on here for years and years, with everybody putting in cases in chief all the time and, consequently, we would always have to open up our right again to investigate that and put in our own answer to it.

It seems to me that, as I said in the beginning of my remarks, they have had their opportunity to present the best case they could present. I think the presumption is that that is what they have done and, if that is defective as a matter of law, I believe that we are entitled to a ruling on it, sir.

So far as the time element is concerned, it appears to me that, in view of the pendency of the motion to in effect dismiss this proceeding because of insufficiency as a matter of law in the evidence, that the continuance should be granted for that to such a period of time as all parties in interest might have an opportunity to answer under the rules and, consequently, it would be more or less a waste of time and effort to proceed this morning with the cross-examination of the Staff's witnesses when in the end the result might be that the case would be thrown out anyway.

Presiding Examiner: As the Examiner stated earlier, [fol. 214] the period for cross-examination was fixed in the light of the existing record and the nature of the material; that is, the nature of the material, weighing the elements that were new as against the elements that were simply book figures. We made a very careful analysis of that.

The Staff's request—in fact, there are two requests, as I understand it, Mr. Goldberg: One is that you be permitted to supplement your direct case.

Mr. Goldberg: Yes, sir.

Presiding Examiner: It seems to me that before ruling on the matter of continuance, the Examiner should consider that request, and I think the record well should show the things that appear to the Examiner that are pertinent to that ruling.

There has been no cross-examination on the case. Therefore, all that has been said is that we have finished. The Staff now, before there is any cross-examination, indicates that they desire to supplement their direct testimony.

It seems to me that, while in the courts that is discretionary, nevertheless where there is indication that the new testimony relates itself to new facts, that the court would certainly be remiss not to permit a party to supplement their direct case, and I think that is the situation before the Examiner.

It seems to me there could be no possible harm. After all, the purpose of these hearings is in order that the Commission may have all of the facts that bear upon the performance of their statutory duty.

It seems to me, therefore, I am compelled to grant the motion to reopen and supplement the direct case.

The Staff says they only need two days. That certainly is not such a delay as would adversely affect anybody, and it seems to me that the only thing for the Examiner to do, therefore, is to grant the motion for continuance for two days.

* * * * * * *

[fol. 215] Mr. White: Mr. Examiner, I think it is appropriate to point out at this time that the exhibits which have been introduced in evidence this morning on behalf of the staff contain data, some of them, in respect of three different years, 1951, 1952, 1953. Both Exhibit 13 of Mr. Wiskup and Exhibit 18 of Mr. French purport to show cost of service and purport to show some type of allocation for all of those three years.

Now, it appears to me, sir, that we are entitled here to reasonable notice of the claims which are going to be made

against us, so that if the proceeding reaches a point where we put in our own case in chief, we know what contentions we have to meet, and what we have to controvert.

I submit under the exhibits here we do not have such notice. We do not know whether we are dealing with 1951 on the basis that the staff purports to deal with it, or 1952, or 1953. It does not appear that they have attempted to accumulate in any particular actual period of time such future adjustments as might be necessary to be made in order to intelligently fix future rates, so I submit, sir, we are entitled to notice under any type of orthodox procedure, so that we know what contentions we have to meet.

Now, that is the first inquiry I have to make, and I think we are entitled to that answer. I would appreciate it very much if we could have that issue resolved, and then I have another statement to make.

Presiding Examiner: By what method do you propose to get it. By cross-examination?

Mr. White: That is something I don't know, but I think under the rules of any orthodox procedure, as I pointed out, it is not necessary to resort to the method of cross-examination to get all of the fundamental contentions that are made against us. It seems to me that the type of notice which a person is entitled to is notice which appears from the pleadings. Pleading may be amended by evidence, but the evidence, I submit, which would make a case for them, upon which to stand, it is their duty to elicit upon their direct examination. They have not done that. We don't know what to cross-examine on. We might have [fol. 216] to cross-examine on all three years, we might have to prepare on all three years. We don't know exactly what is being contended against us, and I submit, sir, in the absence of pleading, that should be made evident upon the record before we have any obligation to proceed further in the matter, whether by cross-examination, or otherwise.

Presiding Examiner: Mr. Goldberg?

Mr. Goldberg: I think that Mr. White miscon-trues the full import of a rate proceeding, Mr. Examiner.

I think it should be clearly understood that it is the Commission that fixes rates, based on all the evidence and all the record before it and I wish that fixing rates were an exact science, so that we could give Mr. White the exact pleading that he contends for. Unfortunately, fixing rates is not an exact science. It involves questions of judgment. Counsel here have taken issue with the evidence that we have presented of actual experience, and wanted some evidence as to the future facilities. We have done our best to supply evidence on that score, and I think that that is all they are entitled to get.

* * * * * * *

Mr. Goldberg: The thing can be answered two ways, and that is why I preferred to leave it to the body that decides to determine which approach they would take.

Presiding Examiner: Does that mean that the staff isn't going to recommend anything to the Commission?

Mr. Goldberg: No, sir, we are not going to recommend anything.

Presiding Examiner: Well, right now is the time to let us know what your position is.

Mr. Goldberg: Our position as to the use of this material is as follows, Mr. Examiner. You can do it either the way your Honor suggested, use this new material to adjust the figures for the actual, or you can do the reverse, you can use this new material and adjust that by the actual, and [fol. 217] frankly we have not made up our minds which is the approach. Obviously it is either one of the two, and we are not in a position to say which is the method that should be followed.

Mr. McGee: I am all confused. I think we have reached a point in this proceeding where we have to stop, look and listen.

I think that some day in the future, I am sure, the case will be presented that is understandable, that can be an-

swered, and one upon which we can present a case of our own. I will be frank with the Examiner and state that up to this period we have been unable to determine what we should do. W- don't know how we can prepare for cross-examination, we don't know what sort of a case to prepare ourselves.

I have never experienced anything like this before, such secrecy or hesitancy. If the staff hasn't made up its mind what to do, it is their case, it is the Commission's investigation, we didn't start this. We are on the defense. Now, what are we to defend against?

Presiding Examiner: I don't think secrecy is any longer involved. Mr. Goldberg has stated two possible ways, and that the staff hasn't as yet determined whether to use either or both. Isn't that correct, Mr. Goldberg?

Mr. Goldberg: That is quite right.

Presiding Examiner: There is no secrecy. There may be uncertainty, but no secrecy.

Mr. McGee: I said hesitancy, too.

Is Mr. Goldberg standing on the test year of the original case? I haven't got the direct answer to that yet.

Mr. Goldberg: Well, our answer is we are not standing on anything, except all the evidence that has gone in. That is simple enough. It is an investigation, as you said, Mr. McGee, and we present all this testimony for the Commission's consideration, including past experience and the company's estimates for the future.

* * * * * * *

[fol. 218] Presiding Examiner: It seems to me Mr. Goldberg answered the question the Examiner had, and that is the possible interrelation of this material to his other case. The fact he stated in the alternative it may not be as easy to work with, and wouldn't be if I had to work with it right now. Suppose everybody would quit right now and say to the Examiner, "It is your baby to decide and write an initial decision," it wouldn't be easy to work with, but he has told me what I can start working on. I think he

has answered the essentials that relate to the process of carrying the burden of proof. That is what it comes down to, because actually everything you are saying—I didn't take up the question of whether they sustained the burden of proof. I did say it seems to me the Examiner would have to have some indication, or should have—I wouldn't say have to, but should have some indication as to the possible relation of this material to the material in the earlier portion of the direct case, and he has answered that. He has answered, as I understand it, in two ways. You can use it either one way, or the other, which he outlined.

So far as the question the Examiner asked for his own assistance, I think that that is answered, and I think that if you challenge the matter of burden of proof, whether you sustain the burden of proof, that was the basic problem at one time, and always until counsel rests, and then I suppose it becomes a question of whether or not he has, but that is an ultimate question.

* * * * * * *

Presiding Examiner: Well, that only bears on whether or not you need time to study it. You have got all the notice that the facts of the evidence now give you, plus his statement that this new material can be used either to adjust the calculations in the base year, or vice versa, so it really boils down to how much time you think you will require, [fol. 219] first, in connection with cross-examination.

Mr. White: Before we get to that point, Mr. Examiner, I wish to notify the Examiner and all present that we are going to file a written motion in the nature, again, of a demurrer to the evidence, contending that the staff has not met the burden of proof, and as a matter of law has not shown such facts upon which a rate order may be based.

Mr. Goldberg: May I point this out on the record, Mr. Examiner:

Your Honor is aware that this is not a situation where the company has filed for a rate increase, and it has been suspended, or they are collecting increased revenues under bond. This is a Section 5 proceeding, which looks toward

a reduction in rates, and for every day's delay there is a certain amount of excess revenue that is being collected from the ratepayers.

Mr. White: Assuming that is correct.

Mr. Goldberg: There is nothing I can say about stopping counsel from filing motions, but I don't think that the progress of this hearing should be impeded by any motion that counsel may offer to file.

* * * * * * *

Presiding Examiner: We will recess, then, until November 27, subject to further order of the Commission if they should wish to change it.

We will recess, of course, to 1800 Pennsylvania Avenue, N. W. in the main hearing room, on November 27.

Whereupon, at 12:33 o'clock p. m., a recess was taken until 10:00 o'clock a. m., Tuesday, November 27, 1951.

* * * * * * *

[fol. 220] WILLIAM F. SPURRIER was recalled as a witness, and having been previously duly sworn, was examined, and testified further as follows:

Cross-examination.

By Mr. White:

* * * * * * *

Q. Now, what method of costing this natural gasoline plant operation did you use in Exhibit 1, Mr. Spurrier?

A. Primarily the relative market value.

Q. And would you tell me why you selected that method?

A. In selecting a method for the allocation of these joint products, we set up a standard of, first, the results must be reasonable, that whenever the result is obtained on that basis it must make common sense.

The second basis, it must be a generally accepted method for allocation.

A third was that the allocation, or the results of the allocation be realistic in the light of the conditions and the economic conditions that presently exist.

* * * * * * *

Q. Now, do you feel that the relative market method which you used meets all of these results? I think you testified that you did, is that correct?

A. There is no method, Mr. White, that you could use that would give a refined answer to this. It was the method that in my opinion reflected the conditions as they existed, the nearest.

Q. All right, did you feel that it met more nearly than any of the others the test of reasonable results?

A. Yes.

Q. And did you feel that it was a generally accepted method?

A. Yes.

Q. And did you feel that it was realistic in the light of economic conditions?

A. Yes, I did.

* * * * * * *

[fol. 221] Q. Well, now, Mr. Spurrier, by using the averaging process you would never know exactly what costs are attributable to your product on the basis of the selling price at that particular time, would you?

A. Well, it would be impossible, Mr. White, to devise any method that is going to be letter perfect, and it would give you a reasonable answer.

Q. All right, let's find out.

Presiding Examiner: Mr. Spurrier, I don't think that answer was responsive to the question. It may be a good answer, but it wasn't responsive to that question.

The Witness: Well, Mr. White, were you satisfied with it?

Mr. White: Let me decide. May I have the question read back, please?

(Question read.)

By Mr. White:

Q. The answer is no, is it not, Mr. Spurrier?

A. I would say the answer was it would give you a reasonable result.

Q. You stated you examined Exhibit 45 in Docket G—Mr. Houlihan's study in the merger case, which is Item B by reference here?

A. That is right.

Q. Do you recognize, or do you not, that Mr. Houlihan's study was based on an actual analysis of the operations of the gasoline plant, the Bivins gasoline plant of Canadian River Gas Company, with a view to costing it on his volumetric basis?

A. I don't know what Mr. Houlihan actually did. I know generally speaking he used the volumetric basis——

Q. Is your answer that you don't recognize that he did?

A. I don't know what he did.

Q. You say you read his testimony in that case.

A. That is right.

Q. Did he state that he did?

A. He stated—well, I can't recall exactly what he stated. [fol. 222] If I remember correctly, I believe he said he spent some time in Texas, six days, one of which he was marooned, or something like that, but whether that would be sufficient for him to make the study you outlined, I don't know.

Q. Well, can you describe for me, Mr. Spurrier, roughly the method used by Mr. Houlihan?

Mr. Goldberg: I object, Mr. Examiner.

Presiding Examiner: Why?

Mr. Goldberg: Well, Mr. Houlihan is the man to tell us what his method is. I don't believe this witness should be called upon to tell us what Mr. Houlihan did.

Mr. White: I think the witness stated he considered among other things the examination of that material to which I am now referring for his presentation in this case.

Mr. Goldberg: In that case the best thing would be to incorporate in Houlihan's testimony. Then everybody could read it.

But to get this witness to try to tell us what Mr. Houlihan said in another case is far beyond the scope of this or any other witness.

Presiding Examiner: Well, now, let us just get the whole thing in front of us here. This witness is supporting a certain method. He has turned down the other method, he stated so, he didn't like it.

Now, is there any reason why he shouldn't tell us all about it, why he didn't like it, why he thinks one method? I have just sat here for two days and heard experts cross-examined by the staff- They didn't duck any questions. They were willing to meet anybody's methods and study them comparatively and give this Commission the benefit of it. Is there any reason why he shouldn't?

Mr. Goldberg: Quite right. All Mr. White has to ask is why he didn't take the volumetric method. But to get this witness to try to interpret what Mr. Houlihan said is not the way to do it. All he has to do is ask him a straight-[fol. 223] forward direct question, why did you adopt the volumetric method, period.

Mr. White: That has been done, Mr. Examiner, and the witness has set up certain tests which he feels a method must meet, and I think it is perfectly appropriate for me to see if this man comprehends the method, which he says he has studied and considered in preparation of this study of his.

Presiding Examiner: There might be various ways of doing it, but there is no reason why this witness shouldn't tell us what he knows about Mr. Houlihan's method, and why he didn't like it, and all about it. The Commission needs to have the comparative side unless you want to load the dice, and I am sure that isn't in the cards. Do you know what his method was?

The Witness: I read what his method was.

Presiding Examiner: Well, do you know now?

The Witness: I know he used a volumetric method, but I don't know just what mechanics he went about. I know he uses a volumetric method in which he took the various percentages of the methane, butane, propane, and then took the percentage afterward, and I discarded that—that is, I considered it, and I thought it was not representative of

the facts, any more than it is representative of the fact when you buy a ton of ore, and you split the value of the ton of ore between gold and some other metal in there on the basis of weight.

It has no relationship to the basis of weight, and I say the product, the dry gas and the gasoline, the allocation of the cost is nearer the true picture by using the relative market value than it is the volumetric basis.

By Mr. White:

Q. We are just dealing with Mr. Houlihan's study at the moment.

A. I understand Mr. Houlihan's is the volumetric method. I don't know all the details he went through to arrive at that.

[fol. 224] Q. Do I understand you, Mr. Spurrier, recognizing it was the volumetric method, discarded it for that reason?

A. Not for the reason that it was a volumetric method, period, I discarded it. I looked at the volumetric method, not only Mr. Houlihan's but the volumetric method that would apply to a number of things. For instance, in the packing industry——

Q. Now, tell me—I don't mean to interrupt if you are not through with your answer.

A. Go ahead.

Q. Tell me just what analysis you made of Mr. Houlihan's method?

Presiding Examiner: Or of the volumetric method, no matter whose it is. He just happened to use it. It is a standard method, he just happened to use it. The question is whether it is standard in this type of thing or not.

The Witness: My analysis of the volumetric method disclosed there was a relatively small amount on the volumetric method that would be associated against the gasoline, which, while it is a recognized method in some respect, the fact that a small amount of joint costs would be allocated against the gasoline, a product that commands a fairly good price, I felt didn't reflect the facts.

By Mr. White:

Q. Then do I take it that you looked at the result of the volumetric method?

A. No, I looked to see what amount of volume was involved, just like in a ton of ore. When you weigh the gold it is very small amount. You would look at that and say, "I am not going to accept that, because that doesn't square with the facts, although it is a recognized method." When I looked at the volumetric method, I said there is a small amount of volume involved in this for the value of the product, therefore I don't quite like that method. It allocates such a small amount to the 35 million gallons of gasoline that come up there that I said there must be something wrong with the method.

Q. Did you feel that method did not square with the facts?

A. The volumetric method?

[fol. 225] Q. Yes, either the volumetric method generally, or Mr. Houlihan's application of it.

A. I felt that the volumetric method as contrasted with the Btu method, and also the relative market value, that the best results would be obtained by using the relative market value.

* * * * * * *

Q. Now, Mr. Spurrier, after your review of the material that you made on cost accounting, for joint products, could you tell me whether there is any method that would result in higher cost being attributed to natural gasoline than the relative market value method?

A. Oh, I suppose there are other methods——

Q. Do you know of any?

A. Well, I think that there would be variations of the market value, that is it could be gross market value instead of deducting the amount that was cost to make marketable, if you used a basis like that—and it is not without reason—might result in a greater amount being assessed against the gasoline.

Q. Now, wait. If you used—if you deducted from the natural gasoline the cost to make it marketable——

A. That is if you did not deduct it.
Q. Oh, if you did not deduct it.
A. In other words, that would be the ratio——
Q. Did you deduct it here?
A. Yes; in determining the ratio, we deducted from the revenue derived from the sale of the gasoline the cost to make it marketable, in determining the ratio between dry gas, and the gasoline. Now, answering your question more specifically, I suppose if we hadn't deducted that, and had used the gross sales price and related that, and used that figure in determining the percentage, it would have arrived at a higher figure, but the usually accepted method in the allocation of joint products is if your joint products reach a certain point, that cost is allocated between the product. The portion to make it more marketable applies to that specific product, not to the joint product. Although sometimes they do use the gross sales value.
[fol. 226] Q. Aside from that, would there be any method that would result in a greater cost being assessed against the natural gasoline operation that you know of?
A. Oh, I suppose you could——
Q. Now, I ask you do you know, Mr. Spurrier?
A. Do I know specifically of another method?
Q. Yes.
A. Well, I didn't approach it from that angle.

Mr. White: Mr. Examiner, I think my question is susceptible to a yes or no answer, and I ask that the witness be instructed to answer accordingly.

The Witness: I will say yes, but I don't know that there is no other method.

* * * * * * *

Mr. Goldberg: We will supply that information, Mr. Examiner. You can get down off of there, Mr. Spurrier.

Mr. White: Wait, I have some questions on recross.

Presiding Examiner: You did not state that you had completed your examination. The Examiner will excuse the witness when the time comes and he has determined that the witness is no longer required. There are certain amenities that counsel might follow.

Mr. Goldberg: Mr. Examiner, there is $10,000 a day for every day's delay. We are anxious to conclude this hearing, too, remember that, sir.

Presiding Examiner: Is there any recross?

Mr. White: Yes, there is, sir. I have a few questions.

Presiding Examiner: Your may proceed, I hope without further interruption.

* * * * * * *

Further cross-examination.

By Mr. McGee:

* * * * * * *

[fol. 227] Q. In arriving at the reasonableness of your theory, did you test any other theory to ascertain which of the theories would produce the largest excess revenue figure?

A. I considered the volumetric basis, and the Btu basis to determine what percentage of the joint products you might allocate to, as I said yesterday, 35 million gallons of gasoline that was extracted from the Bivins and the Fritch plant, and any basis that allocated an unrealistic amount of those joint costs I would say did not meet the test, number one, nor it did not meet the test number three.

Presiding Examiner: Of course you are begging the question when you say it isn't realistic. I am not at all sure when you stop and sit down and alalyze this and say you are going to test this by reasonableness as to whether or not you haven't begged the whole question to start with.

The Witness: Let me say this: If you sold a product in the market today for several million dollars, and it was a joint product and you allocated against that product an infinitesimal amount of the joint costs, the answer would have to be unrealistic.

Presiding Examiner: Maybe. That may be your——

Mr. Goldberg: That is your opinion, is it not?

The Witness: That is my opinion. They got 35 million gallons——

Presiding Examiner: Aren't you testing your method not by intrinsic accounting principles, but by what result you

get out of it, whether you like it or whether you don't like it?

The Witness: I say there are no refined accounting principles that you can apply to this problem as any writer will say. After he illustrates a method, he is the first man to say there is some criticism that can be made of that. Now, there is no magic formula you are going to apply——

Presiding Examiner: Nobody is talking about magic.

The Witness: You used the word "principles."

[fol. 228] Presiding Examiner: In other words, all I am trying to confront you with, so that you can improve your own testimony, is this: In your answer a minute ago, in answering whether or not it was unrealistic, you used the fact that you already concluded it was unrealistic. Now, I merely pointed out that that raises a question as to whether or not, when you set up one of your three standards as to whether or not it is reasonable, and test as to whether to use this method or that method, by that kind of a standard, as to whether or not you are not begging the question to start with. I am asking you to consider that.

The Witness: I don't think I am begging the question and more than you do when you say we will buy a ton of ore and allocate the cost of the ton of ore between gold and the other metal on the basis of weight, which is the accepted method under some procedures, but certainly wouldn't be in that case. Now, I say any result that you take, it is an accepted procedure to use it on that basis, but the result would be so far out of line that you would dismiss it on the first reason, that was unrealistic.

Presiding Examiner: I didn't mean to interrupt your testimony. I thought you might have an opportunity to correct your own statement there.

The Witness: I don't think that I have any statement to correct. This is the best basis, after considering the volumetric basis, the Btu basis, that I was able to determine, and Mr. McGee, don't think for one minute that we didn't realize that we would be sitting in this chair hours over that situation, and the path looked pretty smooth for us to say, "Let's use some other basis," but you have got a principle here that should be set forth, and that is that the volu-

metric basis, and the Btu basis violate the first principle, that it doesn't give an answer that makes common sense.

* * * * * * *

Q. Is it not a fact that aside from the contract, in order [fol. 229] for the gas to be made marketable that that process has to be done? Now, that is a simple question, isn't that a fact?

A. I would say that whether you use marketable——

Q. Transportable, use that.

A. Transportable. Now, that is an engineering question, and my answer to that is this. As I understand it, they tried from the Hugoton line to transport the gas without that small plant that they have there, and they finally had to put it in. The amount of gasoline that they extract per Mcf is about a quarter of a gallon per thousand Mcf, as I recall it.

Q. You mean per thousand cubic feet, or thousand Mcf, which is it?

A. Per Mcf. Now, when you get to Bivins, they extract about a third of a gallon. At Fritch, nearer a half. Now, if they were unable to transport the gas in Hugoton by only taking a quarter, it was an engineering necessity in the line of efficiency to take it out, then I could assume that they couldn't transport the gas without operating difficulties from Bivins, but I don't know whether from the standpoint of an engineering situation whether they could or whether they couldn't.

Q. That is an awful long answer to a simple question, but I gather from what you say that from the facts at hand, it would at least appear necessary to process the gas in order to make it transportable.

A. From the facts when you consider the gasoline in Bivins and the other, I would say yes.

Q. All right, we have got that.

Presiding Examiner: Let's evaluate that as we go along. This witness is an accounting witness, not an engineer. He doesn't have any opinion, the truth of the matter is, because any opinion he would have would be as an amateur. He is an amateur in the field of engineering. He is an ex-

pert in the field of accounting. Therefore, all he is saying in regard to your questions now as to whether it is necessary or not, is that he has done his work on the engineering assumption handed to him, plus a legal assumption handed to him that the extraction is required, is that right?

The Witness: That is right.

Mr. McGee: And I accept that.

[fol. 230] Presiding Examiner: All right.

* * * * * * *

Presiding Examiner: * * *

Suppose they make a profit? Is that a credit to the ratepayer? Is your accounting that it would be a credit to the ratepayer?

The Witness: Of course that is something the Commission would have to decide. As it was handled before, it was credited to any gasoline that was extracted less the cost of extracting it. If it was a profit, it was taken with revenue in determining revenues subject to the Commission's jurisdiction. What they are doing now——

Presiding Examiner: You are using an accounting method. I am trying to find out whether your method, in your own thinking, is one cut and fit to reach particular results, or whether or not it is applicable universally in this set of facts. I have changed one factor only, that is all, and that factor is that instead of making a $295,000 loss, Colorado Interstate, under all the same facts it made the loss on, makes a profit of $295,000.

Now, at the present time the results of your accounting, and therefore your recommendation to this Commission as an expert hired by the Commission to advise it, is that Colorado pocket that loss, and that the stockholders pocket it and have no chance to recoup it, isn't that right?

The Witness: That is my understanding of what the Commission said——

Presiding Examiner: All right, now, let's take the converse. If they make a $295,000 profit instead of a loss, is it the application of your mode of accounting, now, does that mean they can put the $295,000 profit in their pocket and keep it?

The Witness: Well, my handling of it here would be ex-
[fol. 231] actly the same. The revenue would go in, and the loss would go in. The revenue—whereas before the merger——

Presiding Examiner: Is that jurisdictional revenue?

The Witness: I would put it in as jurisdictional revenue——

Presiding Examiner: You would put the loss is as jurisdictional revenue?

The Witness: It took the loss in and did not consider it a cost of service, because as I read the order, that is what the Commission said. When the 50 percent no longer processes the whole, that can't be considered as an item in the cost of service.

Presiding Examiner: All I am trying to ask you is what would your advice be to the Commission if the reverse facts were true, that is all. Would it be jurisdictional revenue, or not?

The Witness: Considering the entire situation with respect to Colorado Interstate, and Canadian River, if that was a $295,000 profit, it would be in the revenue along with the gas revenue.

Presiding Examiner: In other words, if it is a loss, they pocket it, but if it is a profit, they have got to account to the ratepayers for it?

The Witness: That is exactly right, Your Honor, because at one time before the merger they had 100 per cent of the profit. Southwestern got none of it. It was on this basis that they said, "We are going to merge these properties," and the Commission says, "Give up 50 per cent of this revenue, give it up, but in giving it up if it results in a loss to you, you can't add it back to the consumer."

By Mr. McGee:

Q. And didn't the Commission say that because the company offered that as a stipulation?

Presiding Examiner: I want to see if this accounting carries through straight line, or, as I say, it is good if you get certain results, and not good if you don't. That

is all I want to know. I think that is of some vital importance in evaluating the method in comparison with other [fol. 232] methods that might be available.

The Witness: Have I answered when I say the $295,000 would be taken in as revenue along with the other gas revenue, if it was a profit, the same as it was when it was a profit as it existed, and as it exists today without the merger being consummated.

Presiding Examiner: And thereby they would have that much more excess revenue.

The Witness: Yes, sir. It is a jurisdictional revenue that the Commission has decided before, as I recall it, and has taken it in. Now, I would put the item in exactly the way it was. I wouldn't vary my method of allocating cost on a relative market value merely because it has been suggested that it went to a profit instead of a loss. That would have no bearing so long as the other standards were there, the three other standards.

Presiding Examiner: Now, don't in any of these situations, don't imagine I am trying to reach any results here. I am trying to anticipate the position I might be in if you didn't answer some of these things, and I had to guess the answers, because this is a very good illustration. I would never have guessed your answer.

Mr. Goldberg: May I ask a clarifying question, Mr. Examiner?

Mr. McGee: May I proceed?

Mr. Goldberg: Oh, go ahead, I don't care.

Mr. McGee: Ask your question.

Mr. Goldberg: In order to arrive at $295,000 profit on these gasoline operations as the Examiner suggests there might be a profit, you would in the beginning have to allocate the joint costs according to the relative market value precisely in the same manner as you did it here.

[fol. 233] The Witness: Exactly. The fact that it went to a profit or a loss would not change my method of allocation.

Mr. Goldberg: All right, thank you, Mr. McGee.

* * * * * * *

Presiding Examiner: Let's answer what I have got now. You are trying still to answer his question. Just answer my question.

The Witness: Read that back, will you?

Presiding Examiner: It is a simple thing. They process a certain amount in order to make the product salable.

The Witness: Yes, but there is where we have difficulty.

Presiding Examiner: And they don't sell it.

The Witness: If they just have to take it out to make it transportable, they don't have to incur all the extraction costs that are in here.

Presiding Examiner: I am not talking about the book figures, I am talking about one simple example. This is certainly not a case of a confusing question.

The Witness: As I understand it there, you are coming out with a natural gasoline of 26-70. That is what you are saying——

Presiding Examiner: I don't give a damn what the gasoline content is. I don't care what kind of gasoline it is, because in my assumption they throw it in the ditch. They don't sell it.

The Witness: My answer to you is that they would never incur the cost to make marketable. They would—all of those costs which are shown on Schedule 6——

Presiding Examiner: You are not answering my question at all, you are just arguing the case now. I am trying to get this thing so we can get somewhere instead of just a lot of confused answers.

[fol. 234] It is a very simple proposition. It boils down just as simple as this. You have got to take the hides off of beef to sell the beef, if you are going to cut it up and store it and sell it through marketable channels.

The Witness: That is right.

Presiding Examiner: And there is no market for hides.

The Witness: Yes, your Honor, I am with you there.

Presiding Examiner: Now, the cost of taking a hide off is a part of the cost of producing the beef.

The Witness: Yes, sir.

Presiding Examiner: That is all I am talking about here, that is the first illustration.

The Witness: All I wanted to be sure was that you weren't taking into consideration the cost to tan that hide and found no market.

Presiding Examiner: I am going to throw it in a ditch.

The Witness: But you used the term "natural gasoline." At that point, there would be no market value for the gasoline, because you didn't sell any, and all of your costs would be associated against the gas.

Presiding Examiner: All right, let's take the next step.

Mr. McGee: May I have that answer read?

(Answer read.)

Presiding Examiner: Mr. Spurrier, we want to take this step by step to see how your method operates, what your conception is.

The Witness: I appreciate that, but after it is in the record, it speaks for just exactly what it says, and if in the confusion I answered a question which involved the processing of the gasoline within the gasoline plant, which wasn't necessary, to dump it, then I am stuck with that part [fol. 235] of it, and all I want to say is your best example was the hides, if you strip the hide off, throw it away, that is it. But if you tan it and then throw it away, that is a horse of a different color.

Presiding Examiner: Actually, the example I gave you is exactly the converse of what is happening in Colorado right now, at Rangely Field. The State Commission has just put out some conservation orders to say that they can't produce oil with more than a certain amount of gas in it, and flare that gas.

Certainly the cost of processing the oil out of the well so as to make the heavy oil transportable is a cost of producing the heavy oil, isn't it, and they flare the gas?

Now, the converse is the case of where the gas coming from the field is so wet, it has such a degree of heavy hydrocarbons, that some of it has got to be taken out, and if you don't do anything with those, then there is certainly no problem here but that that is a cost of service of the residue gas.

The Witness: Just like taking sulphur out.

Presiding Examiner: That is right, exactly. I started to use the sulphur illustration, but I figured sulphur was so blamed valuable you couldn't hardly assume you couldn't sell it since there is a world shortage on it right now.

Now, the next step is—and this begins to give you an opportunity to explain the difference, which was bound up in Mr. McGee's question.

In fact, they process more than is essential to transport the residue natural gas to markets, and they sell it. Now, how much of the total cost of the extraction of both that which is necessary and that which is unnecessary, is properly chargeable to cost of service.

The Witness: What I would do is take the total amount of gasoline that was extracted, regardless of whether it was necessary, plus the amount that you took out, the total revenue that was derived from that, from that I would deduct the cost to make marketable, I would determine a relative market value on that basis. It doesn't make any [fol. 236] difference whether the gasoline that you sold this month you had to take out, under your example to make it marketable, or whether you took it out because the gas was high Btu, and you could put it in the line at a lower Btu. It wouldn't make any difference with the relative market value theory, and if I may say one thing more. If you throw it in the river, as you say it, and you are using——

Presiding Examiner: In the second illustration, I didn't throw anything away. I sold it all.

The Witness: In the first illustration, where you said you dumped it in the river, if you take the Btu basis, or the volumetric basis, regardless of what you did with it, you had to allocate a cost against it, but the relative market value, if you dump it in the river, assesses all of the cost against the dry gas. The other two methods fall down in this phase, but it is so difficult——

Presiding Examiner: Well, now, I think we have got fairly clearly two steps of this. In the first illustration they didn't sell any of it, and they only processed that which was necessary, so naturally the gas went to cost of service.

The Witness: Under the relative market value, it went to the cost of service.

Presiding Examiner: Now, in the second illustration, they processed more than was necessary, and sold it all. In that case you say you would apply your method, and you would not count any part of that as cost of service.

Mr. McGee: Except dehydration.

Presiding Examiner: I am not talking about dehydration now. Let's don't get into that. That is really just a necessary element. The only reason it is treated the way it is here as far as I can figure out is that it is admitted by everybody that it is necessary to do some dehydration, and you don't sell the water you get out, so that is the first illustration.

[fol. 237] Mr. McGee: This dehydration we have been talking about is not the same type of dehydration that we think of in connection with the operation of a big dehydration plant.

Presiding Examiner: I don't want to get into complexing details. I want the straight line series of questions to illustrate his use of this method.

The third illustration modifies the second only to this extent, and it is very simple, it seems to me. They again process a little more, or some more than is necessary, and they sell not all of it—they haven't got a market for all of it. They sell only that part—it just happens that they are able to sell that which it was necessary to extract, and they have to throw the rest away. Now, how does your method apply?

The Witness: Exactly the same way. I say the market value is determined from what you actually sold, deducting the cost to make it marketable, as related to the total value of the dry gas, and the total of both of them determines the relative market value, and I wouldn't change the basis because I think it reflects the facts as they exist.

Presiding Examiner: Now, in the third illustration it wouldn't make any difference whether you used a 20 million total, with 10 necessary, and 10 unnecessary, to be extracted, and sold 10 and didn't sell 10. In other words, you can put those figures in there, and you have got your answer now to the question he asked you, haven't you?

The Witness: That is right. I have my total revenue regardless of the number of gallons sold. I have got my cost to make marketable which gives me a figure which is the actual revenue from the gasoline sales—no, that is the net, that in relation to the total revenue is the percentage that applies to the joint products.

Presiding Examiner: I think that brings us up now to get your answer, in a form that I can begin to understand what he says.

* * * * * * *

[fol. 238] FRANK S. FRENCH was recalled as a witness, and having been previously duly sworn, was examined and testified further as follows:

Cross-examination.

By Mr. White:

* * * * * * *

Q. Now, I think you already have stated that you are the same Mr. French who testified in Docket G-462, which was the subject of that review, aren't you?

A. Yes, sir.

Q. And you also are familiar, are you not, with the opinion of the Commission which we referred to this morning involving the Mississippi River Fuel Corporation in Docket G-462; is that correct, sir?

A. With certain modifications.

Q. You mean you aren't familiar with it—I am only asking if you are familiar with it.

A. Oh, yes.

Q. Mr. French, would you say that your cost classification in this case is similar to and consistent with your testimony and evidence in Docket G-462 in the Mississippi River Fuel case?

Mr. Goldberg: I object, Mr. Examiner.

Mr. White: If your Honor please, I think that prior inconsistent statements is one of the orthodox ways of probing a witness on cross-examination, and I am only asking

him to say whether they are or are not. He has a recollection of the case.

Mr. Goldberg: Mr. Examiner, he asked him what prior inconsistent statements he made. I think it is up to counsel to direct his attention to prior inconsistent statements. I don't think it is up to counsel to ask this witness what prior inconsistent statements he made.

Presiding Examiner: Read the question. It wasn't phrased in quite that way.

[fol. 239] (Question read.)

Presiding Examiner: I can't see any possible basis for objection. There is nobody in the world knows any better than he does, and he might have very deliberately made it slightly inconsistent and have good reasons for it. He has lived some years and had some cumulative experience.

I think the witness certainly has the competence to answer the question, and it certainly is a relevant question.

Mr. White: I think so, too.

The Witness: The cost classification as set out here is not similar to the cost classification as ordered by the Commission in the Mississippi River Fuel, Docket G-462.

By Mr. White:

Q. Would you say that your cost classification in this case follows the principles enunciated by Judge Prettyman in the opinion to which we referred, which is reported at 163 Fed. Secd.?

A. I don't wish to interpret Judge Prettyman's decision.

Q. Would you say that your cost classification in this case is similar to and consistent with the classification of cost used by the Commission in its opinion in Docket G-462?

A. Very closely, with minor exceptions which, for the reason of consistency, I have made the change.

Q. Would you also say that your cost classification in this case is similar to and consistent with your evidence on cost allocation in the presently pending proceeding involving the Mississippi River Fuel Corporation, Docket G-1641?

A. With the exception, I believe, of a little different treatment on the spreading of customer costs, but it is very minor, and it certainly is the same in the Hope case which was recently put out by the Commission.

Q. Now, in the Hope case, was there any difference between the company and you, any fundamental difference on the question of cost allocation?

A. Apparently not, because they didn't ask me any questions. They put depreciation 50 per cent to commodity and 50 per cent to demand, and compressor station labor was 100 per cent to commodity, and maintenance to com-
[fol. 240] pressor station equipment as 100 per cent to commodity.

* * * * * * *

Q. I refer you now, Mr. French, to Table IX of your Exhibit No. 10, sheet 5 of that table, where there is shown the detail for the total administrative and general expenses which you have referred to before, will you explain what relationship there is between the amount shown for special legal services of $44,690, the amount shown of $13,460 as regulatory commission expense, or the amount shown for maintenance of communication equipment, of $75,118.61.

A. Was your question what——

Q. What relationship is there between those amounts?

A. I don't know what you mean, special legal service is one thing——

Mr. White: May I have my question read. I think maybe I fouled it up.

(Question read.)

Mr. White: I think I had better rephrase that.

By Mr. White:

Q. Will you please explain the relationship between the amount shown for special legal services of $44,690.47, the amount of $13,460.83 as regulatory commission expense, or the amount shown for maintenance of communication equipment of $75,118—the relationship of those—to labor, materials and supplies of transmission.

A. I made no individual account studies of administrative and general expenses.

Q. Now, did you not in the Mississippi River Fuel case, Mr. French, give recognition to the fact that administrative

and general expenses are not only related to labor and materials, but also to return, depreciation, taxes, and in fact to all cost of service, exclusive of administrative and general expenses?

A. I didn't state that in the Mississippi River Fuel case.

[fol. 241] Q. Was that the effect of your treatment to the Mississippi Fiver Fuel case?

A. It is not.

Q. Was that the effect of your treatment in the old Mississippi River Fuel case in Docket G-462?

A. It is not.

Q. Do you have a copy of Exhibit No. 10 in Docket G-462, Mr. French, with you?

A. No.

Q. Would you recognize it if I showed it to you?

A. Yes, sir.

Q. I ask you if this isn't that document?

A. That is correct.

Q. That was an allocation study of yours in that docket, was it not, Mr. French?

A. That is right.

Q. Now, will you turn to sheet 2 of Schedule 4 therein, Mr. French?

A. All right.

Q. And I will ask you to state whether or not you didn't classify administrative and general expenses in accordance with all cost of service, or only in accordance with transmission labor and supplies?

A. You mentioned something about depreciation, taxes, and all that. I have not used any different method in the original Mississippi case than I am proposing in Exhibit 10 of this case. There might have been some items of expenditures appearing in one case that might not have appeared in the other, but I have been entirely consistent. I might correct that to one extent there. It doesn't appear in that case—and I can't give you the reason why—we don't seem to have allocated general and administrative expense to its cost classified as "other." It appears we only allocated that to demand and commodity, and dropped out the other.

Q. Was that done on the basis of total cost, or just on transmission cost?

A. Of course in the case of Mississippi, they didn't have anything but transmission. They had no production.

Q. Well, you had total costs which included return and depreciation.

A. Oh, no, just total transmission cost. Everything else was so-called below the line. The way I would classify it, [fols. 242-248] maybe not an accountant—in other words, not the direct transmission costs, and when I speak of that, I don't mean the items such as depreciation and taxes and return. The allocation of administrative and general was made prior to the determination of the cost classification of that type of item.

* * * * * * *

[fol. 249] ALEXANDER E. WISKUP was recalled as a witness, and having been previously duly sworn was examined and testified further as follows:

Direct examination.

By Mr. Goldberg:

* * * * * * *

Q. Mr. Wiskup, will you please turn to Schedule A-1 of Exhibit No. 26 for identification, and tell us what that is, please, sir?

Mr. White: If your Honor please, before the witness proceeds to answer, I ask from staff counsel an offer of what he intends to prove in this rebuttal case from Exhibit 26 for identification?

Mr. Goldberg: Mr. Examiner, this exhibit is an exhibit based on the cost of service study introduced by Mr. Jones for the company, which is Exhibit 21, and it shows the adjustments which the staff has made to the cost of service study introduced by the company.

[fol. 250] Mr. White: May I inquire of counsel if that is all it shows, and is that all it is offered to show?

Mr. Goldberg: Well, considering the adjustments, of course, it shows that the excess revenues are larger than the excess revenues shown by Mr. Jones.

Mr. White: And with that addition, sir, is that all it is offered to show?

Mr. Goldberg: I am not going to be bound——

Mr. White: I am curious, sir. I submit to the Examiner that we are now engaged in the rebuttal case by which the staff is, I assume, to rebut the case in chief put in by the respondent, Colorado Interstate Gas Company.

I submit that on the fact of it, the exhibit appears to be the start of the third case in chief of the staff, and not a case limited to the rebuttal of the case put in by the respondent, Colorado Interstate Gas Company. In view of that fact, I submit it is improper rebuttal evidence.

Now, the witness purportedly is now going to talk about the exhibit as a whole, particularly on Schedule A-1 he is going to talk about the effect of the exhibit as a whole, because it is quite clear that that is the summary of all the schedules lying behind Schedule A-1. I believe it definitely goes beyond the scope of a rebuttal case, and I think for that reason we are entitled to know what we are proceeding into, because if the staff again is putting in a case in chief upon which they substantively intend to rely as supporting their own contentions, as countervailing proof against the case in chief put in by Colorado Interstate, we have a very neat procedural question, and I would object to them going ahead on that basis.

It is quite clear that this exhibit is not rebuttal, but this exhibit is the first part of a new case in chief, and lays the groundwork for a subsequent case in chief as is evident from other exhibits which have been served upon the respondent, and this is the fundamental exhibit for that purpose. Consequently, sir, I object to any testimony upon this exhibit.

[fol. 251] Presiding Examiner: I will be glad to hear you, Mr. Goldberg.

Mr. Goldberg: Well, I will tell you, Mr. Examiner, if we were practicing in the 18th Century where we had all this strict pleading that Mr. White is expounding here, I think an answer might be required. This is fundamentally

a rate inqu-ry investigating the company's rates. The Commission is entitled to all the information it can get, including the adjustments which the staff thinks are warranted by Mr. Jones' cost of service study, and that is all that we are proposing to do in this rebuttal testimony.

Presiding Examiner: Now, could I ask you to just interpret that for me? I don't know what the 18th Century has to do with it. I would just like to have that interpreted so I can understand it. His basis of objection is that this testimoney proposed to be put in is not rebuttal, but is a new case-in-chief. Will you please plead to that now, and let me get the benefit of your advice. The procedural law requires, as I understand the law—and I will be glad to have you advice me on that—that rebuttal be rebuttal. That is your place in this case no-, just as their rebuttal had to be rebuttal. Now, what is this exhibit in relation to their case? That is the question. On the basis of your device, I will try to make my ruling, but let's keep it to what is involved.

Mr. Goldberg: Well, maybe I don't know. They say black is black. I can't say that black is white. I have just got to show that black is not black, not to show what they say is black is white. That, according to your theory is what this situation means.

I say when they come in and show a cost of service study, we can rebut that by showing how that cost of service study would look, considering the Staff adjustments.

Mr. White: Your Honor, that is exactly what the exhibit does not show. It goes much beyond that. It has every iota in here that would be required in a case-in-chief, and rather than meet the case-in-chief of the respondent in this [fol. 252] case, I submit that the apparent purpose of it is to make up certain deficiencies in the second Staff case-in-chief, because I think we might as well note on the record, because it was noted yesterday that exhibits have been served, there is also a cost of service allocation served upon counsel for the respondent. Now, we assume from that they are going to introduce that also, and this Exhibit No. 26 for identification contains that breakdown of material which is necessary to make a cost of service allocation.

Now, it is quite evident that they have not just made their adjustments to the total over-all cost of service put in the case-in-chief of the respondent, but they have gone much beyond that. That was the reason for my inquiry of counsel in the beginning. I wanted to be sure I understood it, because the limited scope of rebuttal certainly doesn't seem to be applicable in this exhibit if it is to go in for the simple reason that it doesn't stay within the scope of the case-in-chief put in by the respondent.

If they are going to attempt to cure what they might think are defects in their own case, that should have been done on redirect examination of their own witnesses, not under the guise of a rebuttal case.

Presiding Examiner: What is the relation of Exhibit 26 to Exhibit 13, Mr. Goldberg, the exhibit put in by Mr. Wiskup before?

Mr. Goldberg: Exhibit 13 was an exhibit on cost of service for three years based on information submitted by Colorado Interstate Gas Company in a certificate application and this exhibit is based on Mr. Jones' exhibit.

Presiding Examiner: Well, does 26 replace 13?

Mr. Goldberg: I don't think the Staff is called upon at this time to make a determination, because we think all this material is relevant, and when we have an opportunity to evaluate the whole record, at that time we will determine what our recommendation will be to the Commission.

[fol. 253] Mr. White: If that is the case, Your Honor, I dare say we would be automatically deprived of due process of law, if they are still putting it in under the guise of a rebuttal case. If it is to be substantively used as evidence in a case-in-chief, we should have the opportunity therefore to put in a case-in-chief in turn. That means we would go on here ad infinitum and never finish.

Presiding Examiner: That is the situation. It boils down, gentlemen, to that very simple thing called due process. If this is a case-in-chief, they have a right to rebut this case-in-chief. Now, do you expect them to have that right? Maybe that will help us. I don't know how many rounds this thing is supposed to take. I am here to serve the needs of justice.

Mr. Goldberg: Well, the point is of course that this is not a case-in-chief. This is just rebuttal, what we say it is.

Presiding Examiner: You say it could substitute for Exhibit 13, yet you leave yourself the alternative.

Mr. Goldberg: According to your view, no rebuttal is testimony, just because it is rebuttal, it is not to be used.

Presiding Examiner: Mr. Goldberg, I am asking questions to try to find out the facts. I am not trying to argue anything. I am asking questions.

Mr. Goldberg: I don't think counsel, or any party should be limited by an- particular type of evidence. The whole record is evidence, and they use whatever part of the record they want, but to limit a party to either case-in-chief evidence, or rebuttal evidence, I think is contrary to due process, to-.

Presiding Examiner: You want me to rule that you can put in another case-in-chief?

Mr. Goldberg: I don't say this is another case-in-chief. I say this is a case in rebuttal.

Presiding Examiner: Do you take the position now that this is solely rebuttal?

Mr. Goldberg: Absolutely.

[fol. 254] Presiding Examiner: And that is does not go beyond the scope of the case put in by Colorado?

Mr. Goldberg: Well, I don't know what you mean by that. All I say is we have taken their exhibit, and made Staff adjustments.

Presiding Examiner: I am trying to find what it is. I don't know a thing about it. I haven't read the exhibits. They weren't served on me. I don't mean to suggest they should have been. Therefore I have got to be governed by the statements you gentlemen make.

On that basis, Mr. White, his representation that this is limited to rebuttal, I think I will have to allow him to proceed. If it shows otherwise, you have remedies.

Mr. White: Very well, sir.

By Mr. Goldberg:

Q. Mr. Wiskup, will you please turn to Schedule A-1 of Exhibit 26?

Mr. White: I understand the testimony will be given here subject to the continuing objection as to no proper rebuttal evidence. I appreciate the fact that Mr. Goldberg has said that it is going to be rebuttal, but my point is that on the face it is not proper rebuttal evidence, and in order to save objection to every question on it, I would like the matter understood.

* * * * * * *

By Mr. Goldberg:

Q. Mr. Wiskup, what did Mr. Jones do as to operating expenses in his Exhibit 21?

A. He listed them in certain groups, as shown in the column entitled "Per Schedule No. 1 of Exhibit 21."

Q. And by reclassifying them, you have just broken them down into other subdivisions, but came out with the same total; is that it, as shown on your reclassification?

A. Mainly the reclassification was bringing together certain groups, that come out to the same total, of course.

Q. He broke them down and you brought them together; is that it?

A. That is the main point involved.

[fol. 255] Mr. White: If your Honor please, I submit that the objection still hasn't been answered, because there is no showing as to the necessity for reclassification as rebuttal of Mr. Jones' Exhibit 21.

Presiding Examiner: We will recess for five minutes at this time.

(Whereupon, at 11:00 o'clock a. m., a recess was taken until 11:25 o'clock a. m.)

Presiding Examiner: Gentlemen, we will recess at this time until 2 o'clock this afternoon, in this room.

(Whereupon, at 11:27 o'clock a. m., a recess was taken until 2:00 o'clock p. m.)

Afternoon Session

(Whereupon, at 2 o'clock p. m., the hearing was resumed, pursuant to the taking of the luncheon recess.)

Presiding Examiner: The hearing is reconvened.

The Examiner called a recess at 11:30 today, after talking with the Chief Examiner by telephone, and with his approval, to permit time for study of the group of proposed exhibits, excepting one—I believe you said there was one more, Mr. Goldberg?

Mr. Goldberg: No, I am afraid not. If I said one more, I gave it to you subsequently.

Presiding Examiner: The last one would be the rates designed by the Staff, is that right?

Mr. Goldberg: Yes, we may not introduce that one. I will have to see as time goes on.

Presiding Examiner: In order that we may avoid, if possible, the necessity of a number of rulings, it seems to me it would be advantageous if we would identify the Staff exhibits at this time so we may refer to them by identification number. Would that be agreeable?

Mr. Goldberg: Exhibit No. 26 has been identified already. [fol. 256] Of course this witness is not going to testify to all these exhibits.

Presiding Examiner: You can still identify the documents.

Mr. Goldberg: The next is a document entitled, "Colorado Interstate Gas Company, Estimated Normal Peak Day, Winter Season 1951-1952 and Estimated 1952 Sales Volumes and Revenues," May that be marked as Exhibit No. 27?

Presiding Examiner: It may be so marked.

(The Document Above Referred to was Marked for Identification as Exhibit No. 27.)

Mr. Goldberg: Next is an exhibit entitled, "Allocation of Cost of Service Based On Estimated Normal Peak Day Winter Season 1951-1952 And Estimated 1952 Sales Volumes and Revenues."

Presiding Examiner: That will be identified as Exhibit No. 28.

(The Document above Referred to Was Marked for Identification as Exhibit No. 28.)

Mr. Goldberg: At this time those are all the exhibits I wish to identify, Mr. Examiner.

Presiding Examiner: I have already mentioned the matter of attempting to expedite the orderly conduct and disposition of this proceeding by avoidance, if possible, of a number of rulings of a similar nature, at least presented by similar type of problem.

I believe that that can further be accomplished if we consider ourselves, at the moment, on the basis of a conference between counsel, and with counsel, and I will ask the witness to step down until we have completed this conference, as we will not be taking testimony during this period.

I will also ask the reporter to make an indexing in the [fol. 257] record that this particular number of pages relates to a conference with counsel.

Gentlemen, what I want to do in talking with you is to find the greatest possible mutual understanding so that we may operate as widely as possible on an agreed basis in getting this hearing expeditiously completed.

Suppose I just sort of put before you these facts from the record.

As I understand it, you have Exhibits 1 to 18, inclusive, as representing the Staff's case until this session begins.

Mr. Goldberg: Yes, sir.

Presiding Examiner: You then have Exhibits 19 through 23 as being the company's rebuttal case?

Mr. White: That is correct, sir.

Presiding Examiner: That means, then, that the exhibits beginning with 24, to the end of those that have been identified plus another, if there be another later added, represent the Staff's rebuttal case. Is that correct?

Mr. Goldberg: Yes, sir.

Presiding Examiner: I am sure you gentlemen understand and agree that the Examiner has not had an opportunity in the hour's recess, with some time during the lunch period, to make any exhaustive comparison of this material with that which is already of record. The Examiner is quite familiar with the exhibits that precede

Exhibit 24 by reason of the fact that that has been on the record now since some time in December.

I believe that both of you gentlemen will agree with the Examiner's finding from this brief analysis, by no means exhaustive, that the exhibits that *the* proposed to be presented now by the Staff represent in certain respects, at least, that which would be technically referred to as rebuttal testimony. I believe you would both agree to that.

Mr. White: Portions of it, sir, yes.

[fol. 258] Presiding Examiner: I think you would also both agree with the Examiner that in some respects these exhibits contain material which in fact represents a revision of data previously presented by the Staff as their case.

Mr. White: I agree that that is so.

Mr. Goldberg: Well, I would have to check the results of these exhibits with the result of the other exhibits, and frankly I have not done so, because my contention has been that it all goes in one pot, it is all evidence.

Presiding Examiner: I am not talking about one pot, I am talking about the nature. I want to see if you gentlemen agree.

For example, I assume, although it hasn't been stated, that Exhibit 28 would be Mr. French's exhibit, that he would sponsor this exhibit which has been identified as Exhibit No. 28?

Mr. Goldberg: That is quite right, Mr. Examiner.

Presiding Examiner: And I assume that anyone looking at Exhibit 18, and comparing Exhibit 28 to 18 would agree that Exhibit 28 represents a substantial revision of Exhibit 18. It seems to me that one would have to reach that conclusion. Now, that is due not only to difference of treatment, but also to difference of results.

Now, wouldn't you also join us in that general appraisal of that particular matter? All I am trying to do here is to see if you agree with the Examiner that there are both of these elements to a certain extent involved.

Mr. Goldberg: Quite right, but you have also got to include Exhibit 10 of Mr. French.

Presiding Examiner: Yes, I will agree to that, that Exhibit 28 represents a revision of Exhibit 10 and Exhibit 18.

Mr. Goldberg: It doesn't represent a revision, Mr. Ex-

aminer. It is done on the same theory as Exhibit 10, exactly the same theory, but he used different basic figures because of course the cost of service in Exhibit 26 is dif-
[fol. 259] ferent than the cost of service in Exhibit 1.

Presiding Examiner: Well, I had hoped that we could get this much before us. At any rate, that is what I find.

Now, as I say, I don't find all the rest of it, I don't say exactly what part is which, because that is impossible at this stage for anybody to make such a detailed study as to be able to say that page so-and-so, line so-and-so, represents either rebuttal or revision.

Now, let's go one step further, gentlemen. If it had been the Staff's desire at a stage prior to the submission of the company's rebuttal case, it could have been possible that the Staff might have seen fit to revise any one of its exhibits, 1 to 18, as a part of their case, a part of their direct case. That would be true, wouldn't it?

Mr. Goldberg: Not revised according to the way they have done it now.

Presiding Examiner: I am not saying that, I am simply saying it could have been done. I find that there are some things that look like revision and I find some things that look like rebuttal. I find both things present. The matter of degree is another matter. We will have to find that as we go along.

Now, the reason I mention the matter of there being some revision, if that revision had taken place before the company put in its rebuttal case, it would have had an opportunity at that time to have rebutted that showing. Is that not correct?

Mr. White: That is correct, sir.

Presiding Examiner: And if there be elements now that represent revision, that they have not in the past been confronted with, would it not be the necessity of fairness that the company have an opportunity to rebut them?

Mr. White: That is absolutely true.

[fol. 260] Mr. Goldberg: What your Honor says is true, if those revisions are any different in principle, but the revisions are not different in principle, and to that extent I don't see what the company has to rebut, because all the revision here has already been testified to by the staff wit-

nesses, or the principles, I will say. All the principles have already been testified to.

Mr. White: That, your Honor, is something that we aren't in a position at this time to say is true or not true. It appears not to be true from the analysis we have been able to make in the short time we have had possession of the exhibits.

I can mention one principle that certainly doesn't seem to be the same, the utilization of a so-called normal peak day.

Presiding Examiner: Of course, as you have already said, it is impossible to determine the minute details. It would seem to me that insofar as the further study of these exhibits make clear upon the record that there is involved, and that these does come about a revision of the staff's showing, which the company has not had an opportunity to meet that fairness requires that they be permitted such an opporthnity. I think we can agree in the abstract on that principle.

Mr. White: That is certainly true, sir. The one thing that disturbs me is the gentleman expressed the attitude that that is not the case, and it seems to me that if the staff is putting forth something here as a direct case to which we can't rebut, possibly there is inherent error in admitting it right from the beginning. That is the theory upon which they are offering it, sir. That is my point.

Presiding Examiner: I am going to do this much to alleviate that situation. I am going to say that insofar as it is shown to me on this record that there represents in these exhibits that are pending or will be pending before us—that [fol. 261] is the additional exhibits proposed by the staff—such data as represents an amendment or a revision of the staff's case which the company has not heretofore had an opportunity to rebut that the Examiner will provide that opportunity.

Mr. White: Very well, sir.

Presiding Examiner: I don't think the staff will object to the principles involved, and I hope that the record will be sufficiently clear that the staff will not object to the specific application of it when the time comes. That is done because of basic fairness.

Now, that still leaves the question, gentlemen, for the Examiner, as to the admissibility of that which is both rebuttal and revision.

I would like to state as a tentative thought for the moment, and that which seems to be impelling, and ask that you gentlemen allow me to confront you with it as a tentative thought, that this is an investigation by the Commission, having undertaken the investigation pursuant to statutory powers and duties conceived by the Commission itself to be their duty, it seems to me to be underlying a very fundamental characteristic of such a problem that the Commission deserves—and that is why we have these hearings, and that is the ultimate end of these hearings, the purpose of these hearings—that it deserves the very best evidence that it can get. The staff comes forward at this time with these exhibits, and is in effect saying this is our best thinking up to the moment. That is true not only when it is presented in the form of rebuttal, but also should it be in the form of revision of some earlier testimony.

Now, the importance of the Commission's doing justice to both the company and to the public the company serves in the matter of rates is so overriding that my tentative thought is that these exhibits should be accepted upon the basis that in such fashion as they become more than technical rebuttal, they then present the opportunity to the company to rebut the additional testimony, and I have stated that I will give you that opportunity.

[fols. 262-264] Now, that means that in an investigation it appears to me that the overriding importance of the Commision's getting the very best is sufficiently vital that where there is some rebuttal involved, we all admit that, even though there be some revision involved, it must be accepted, and unless we could possibly screen it out, which is impossible to do, then I must admit the whole, and allow you the opportunity to rebut that which is new. Does that seem to you gentlemen wholly fair.

* * * * * * *

[fol. 265] WILLIAM F. SPURRIER was recalled as a witness, and having been previously duly sworn, was examined and testified further as follows:

Direct examination.

By Mr. Goldberg:

* * * * * * *

Mr. White: Mr. Spurrier, I believe you have previously testified, have you not, that you are the supervising accounting examiner, or however you may term your capacity, in this G-1115 case?

[fol. 266] The Witness: Yes, sir.

Mr. White: In your discussion of your allocation of costs to gasoline operations, I note that you stated that in reference to what you have called a comparable schedule in Exhibit 1 that Exhibit 1 related to the test year figures whereas your allocation of costs are contained in Exhibit 26 based on the period selected by the company. Do you remember so testifying?

The Witness: Just now, you mean?

Mr. White: Yes, just now.

The Witness: Yes, sir.

Mr. White: As the Staff expert in this case, Mr. Spurrier, would you tell me which period of the various periods that have been shown in this docket you would recommend to the Commission as the test period upon which you would fix rates for the future?

The Witness: Oh, I would recommend that the Commission take the entire situation, that is the results of 1951, June 30, are actual figures. Now, when you move into 1952, as the company did, estimating it for 1952, the only thing the Staff could do was take the same figures that the company did, and apply the same principles that we did in Exhibit 1. Now, I would recommend that the Commission consider both items.

Mr. White: Well, do I understand from that that you would not recommend that the Commission use any specific 12-month period? Was that what you meant to say, sir?

The Witness: Well, I would recommend to the Commission that they use whatever in their opinion they think rep-

resents the best estimate of what the company is going to experience for 1952.

Mr. White: Well, then, do I understand that you are not going to recommend any particular period of time?

[fols. 267-282] The Witness: We, personally?

Mr. White: You, as a Staff member and expert in this case.

The Witness: All I am going to recommend is that the Commission consider the results of the actual figures for the test year, June 30, 1951, and the results of the allocation on the basis that we used there, to consider the allocation resulting from using the company's estimates, which fall or stand upon the reliability of the company's own estimates. Now, if they are convinced that those estimates are all wet, then the allocation falls.

Mr. White: I think you are getting beyond the point of making a recommendation. I am asking you what you recommend. Please answer the question. Would you like to have it read again sir?

The Witness: No, I know what you asked. I would recommend that the Commission consider both of them. I am not going to say, "You consider the company's estimate, I think they are the best that there is." I am going to say the results of actual operations, which nobody refutes, would be June 30, 1951, so much. It could very well be that the figures, if they were worked up for the year ended 1951, would show a decidedly different figure. I am going to say to the Commission, "Here is what we did, here is all the information we had to work with." I can't say, I have no crystal ball to say you take this one.

Mr. White: Then I understand you are not recommending or will not recommend to the Commission any specific period of time, is that correct?

The Witness: As a Staff man, as an individual, I am just going to present the information to the Commission.

* * * * * * *

[fol. 283] By Mr. White:

Q. You recall your unfinished business, Mr. French?

A. Yes, sir.

Q. I had questioned you, as I recall it, in respect to

whether or not you hadn't recognized that administrative and general expenses are not only related to labor and materials, but also to return, depreciation, taxes, and in fact to all costs of service exclusive of administrative and general expenses, and as illustrative of that, I believe I referred you to your Exhibit No. 10 in FPC Docket G-462. Do you recall that sir?

A. I do.

Q. And subsequent to that time, we provided to you a work paper on which we had made a calculation, and which we felt confirmed the fact that you had so treated those items of cost in Exhibit 10 in Docket G-462, isn't that correct, sir?

A. Will you read that question back?

(Question read.)

The Witness: That is correct.

By Mr. White:

Q. Now, are you prepared to answer now, Mr. French, and if so will you please answer, whether or not you [fol. 284] haven't in Exhibit 10, in Docket G-462, recognized the fact that administrative and general expenses are not only related to labor and materials, but also to return, depreciation, taxes and to costs of service exclusive of administrative and general?

Mr. Goldberg: I object, Mr. Examiner. He can ask the witness—if Mr. White wants to ask the witness what he did in that exhibit, that is all right, but to try to get this witness to draw the conclusion is something else, again.

Mr. White: I think it amounts to the same thing.

Presiding Examiner: You mean to say it is wrong to draw a conclusion, why is it wrong? That doesn't give me any basis.

Mr. Goldberg: We don't know what Mr. French did in that exhibit, that is the point.

Presiding Examiner: We are trying to find out.

Mr. Goldberg: He is asking what the conclusion is. I want to find out first what he did. I think the record ought to show what he did. Maybe somebody else would draw a different conclusion.

Mr. White: We asked Mr. French, Your Honor, as to what he had done in that particular document, Exhibit 10 in Docket G-462, and we have not had the answer yet, through no fault of anyone. It is just the fact that Mr. French didn't have the opportunity to check back. He has been given that opportunity, and all I am asking now is an answer to that question.

Presiding Examiner: You may answer.

The Witness: In the original Mississippi case, Docket G-462, I erroneously spread the administrative and general expenses on the basis of all other costs except administrative and general, taking that out, plus some miscellaneous costs classified as "Other."

The Commission in their order caught this error, and in their order this was rectified.

[fol. 285] By Mr. White:

Q. When did you discover this error, Mr. French?

A. Frankly, I didn't know it was in there until you caught it.

Q. Didn't any one of the Commission correct it or call your attention to the fact that you made such an error?

A. I don't remember any discussion on it. I have tried hard to think, but at least I checked the order and opinion as against the exhibit, and find that the order brings it back on the orthodox method.

Mr. White: That is all, your Honor.

Mr. Goldberg: I have redirect on that point, Mr. Examiner.

Redirect examination.

By Mr. Goldberg:

Q. What you are trying to say then, Mr. French, is that that was merely an error in computation, but was not intended to be a method that you recommended at the time.

A. That was 10 years ago. I am positive it was not my feeling of the matter at that time.

Mr. Goldberg: That is all I have.

* * * * * * *

Presiding Examiner: How much time do you think they need?

Mr. Goldberg: I think they need one week. One week is the most they need to prepare for cross-examination. After all, you want to remember that we are looking for a rate reduction, without a bond being filed, and every day's delay is to the benefit of the company.

Presiding Examiner: Maybe; that depends on the ultimate conclusion.

Mr. Goldberg: Quite right, but that is what we are here for, looking for a rate reduction. Don't think we are here to just decide some academic issue.

[fol. 286] Now, I am not accusing counsel of deliberately delaying, but at the same time we can't be naive enough not to know it is to their advantage to get as much delay as they can.

Presiding Examiner: I am not interested in your comments on their motives.

* * * * * * *

Presiding Examiner: All right, we will settle on the 8th of April. We will recess until the 8th of April, 1952, in the main hearing room, 1800 Pennsylvania Avenue, N. W., Washington, D. C., at 10 a. m.

* * * * * * *

ALEXANDER E. WISKUP was recalled as a witness and, having been previously duly sworn, was examined and testified further as follows:

Cross-examination.

By Mr. White:

* * * * * * *

Q. Is not your justification, set forth on Schedule A-3 of Exhibit 26 for disallowing this particular expense, the fact that you deem it to be non-recurring? Is that correct?

A. That is correct.

Q. Now, would you tell me, Mr. Wiskup, what principle or standard do you apply in determining whether this item is non-recurring or not?

A. It is a cost involved in obtaining approval of the merger before the FPC, and my contention is that once they have the merger approved and do merge that they are not going to have to com- forth for another merger.

Q. Then is it your point, Mr. Wiskup, that the merger is non-recurring?

A. Well, certainly, I believe the merger is non-recurring.

Q. Is it your point also that testimony on the subject of gasoline costing operations is non-recurring?

A. I wouldn't say it is not recurring, but any costs for [fol. 287] such testimony I would say are presumably included in the company estimates for the cost of this G-1115 case.

Q. I am not referring to G-1115 alone, Mr. Wiskup.

A. Well, the cost of that *are* presumably included in the cost of any rate case you estimate the cost for.

Q. Are you sure that is the fact?

A. Do you mean am I sure you included it in the cost of estimates?

Q. That is right.

A. I am sure that the representatives of the company gave a work sheet upon which they purported that all their costs for this case are listed.

Q. I am not talking about this case alone. I am talking about the Commission regulatory expense. That goes beyond this case, does it not, Mr. Wiskup?

A. Do you mean do I think they will have some Commission regulatory expenses beyond this case? My answer is yes.

Q. And are you familiar with the condition of the Commission's order in Docket G-1326 relating to the cost of operating the gasoline plants?

A. I am familiar with a condition in the order, I think it is Opinion 209, regarding the loss in gasoline operations.

Q. Don't you feel in view of that that it might be necessary from time to time for the company to show what is happening with respect to this gasoline plant operation from a cost accounting standpoint?

A. It may be necessary and if it is, the cost of doing that should be included in the estimates of that particular case, where it comes up. That is the estimated cost, if it is an estimate case.

Q. You have sought to make an adjustment here now. I am trying to determine upon what basis you have proceeded. Now, isn't it true that what you did was aside from the fact that the testimony of the gasoline plant costing would not be required in a merger case again, is that right?

A. What I said is that this money applies to the cost of the merger case. They will not have presumably any more merger cases, so they won't have this merger expense in their regulatory commission expense.

[fol. 288] Q. Is there one dollar of merger case expense in the regulatory commission expense claimed by the company, other than this $10,000 paid to Mr. Houlihan?

A. Do you mean on the books?

Q. In the claim of the company in Exhibit 21, and what lies behind it; the company work papers?

A. I don't think the company's work papers identified any as such.

Q. Do you recognize that Mr. Houlihan was an expert witness in the merger case? I assume you do. You testified that he gave testimony on the subject of cost accounting.

A. I know of no record in that case that disqualified him as an expert.

Q. Your purpose in eliminating Mr. Houlihan's fee and expenses wouldn't be because you felt that the elimination was justified because no further testimony of that nature given by Mr. Houlihan would be ever required again, would you?

A. Would you please repeat that?

(The question was read by the reporter.)

The Witness: No, sir.

By Mr. White:

Q. Do you mean that isn't the reason you eliminated it? In other words, you didn't think Mr. Houlihan settled the question for all times?

A. No, I felt that he might be called upon to testify in other proceedings, in which the cost of his testifying and so forth would be included with those proceedings.

Q. Would it have to necessarily be Mr. Houlihan? Couldn't it be another expert witness on that subject who would testify again? Your recognize that, that the company can choose its experts, I hope?

A. Yes, sir.

Q. And is it not a fact, therefore, that you don't know whether or not this particular type of cost may be recurring or not then?

A. I would say it is a merger type of cost and certainly on that basis a merger wouldn't be recurring.

Presiding Examiner: Is the answer really responsive? He is not talking about the merger. He asked you about a type of testimony.

[fol. 289] He has already established that it is a type of testimony that relates to the costing of gasoline in any regulatory matter. After all, a merger case is a regulatory matter too, is it not?

The Witness: Yes, sir.

Presiding Examiner: Then your answer, going back to the merger case, saying that the merger is not going to be repeated, really isn't responsive, is it?

The Commission has a right to your opinion on it. Let us answer these questions.

* * * * * * *

Q. Did you make any study which might enable you to judge whether there is this occurrence of non-recurring items of which we speak, in order that you might determine whether or not an allowance should be made for that?

A. (No response.)

Q. Surely you know, Mr. Wiskup, whether you made such a study, do you not?

A. I studied all the companies' estimates that were submitted to me and all the work papers.

Q. I asked you if you made a study as to the occurrence of non-recurring items. Now did you or did you not?

A. Do you mean as applies specifically to this company for a given period on the books?

Q. Yes. No, it can't be a given period for anything on the books because you have presumed to adjust something because it is non-recurring so you must be projecting your judgment into the future.

Now I am asking you if you have made any study as to the inclusion of an allowance because there is an occurrence or incidence shall we say, year after year, of non-recurring items. Did you make any such study?

A. We studied what had happened on the books in that regard. We studied what the company included in its estimates in that regard.

Q. That is historical, is it not? You were looking at what [fol. 290] happened in the past.

A. I also studied what the company put in its estimates in that regard.

Q. That is what you told me before. I asked you one specific question as to whether you made the type of study to which I refer. I think it is capable of a yes or no answer. If you made it, that is a fact. If you didn't make it, then I want to know about it.

A. I think that in studying the past history on the books, and the projects included in the company estimates, that that study could be defined as a study of the type that you are referring to.

Q. Did you conclude from such a study that there would not be an incidence of non-recurring items in the future?

A. No, I concluded they were amply provided for in the company's estimates.

Q. All right, now let us go to the company's estimates to which you are now referring and you point out to me where there is ample provision therein for the occurrence of Mr. Houlihan or a fee like that of Mr. Houlihan, to testify on the subject of costing gasoline plant operation.

A. I did not eliminate that fee because I felt that testifying on gasoline operations would be non-recurring. I eliminated it because I thought that testifying in the merger would be non-recurring.

Q. That was your sole standard for determining that this was a non-recurring item, is that correct?

A. (No response.)

Q. I think you can tell me what the standard for your elimination was, Mr. Wiskup, without referring to your work papers, can't you? Isn't that possible?

A. It may be possible, Mr. White.

Q. Just a moment. Answer my question, first. Isn't it possible? Don't you know the standards that you applied in determining that this was non-recurring, without referring to your work papers?

A. Yes, sir.

Q. Was that the only standard that you applied?

A. That was the principal standard.

Q. What other subsidiary standards did you apply then, [fol. 291] Mr. Wiskup, and may I ask if you can tell me what they are without referring to your work papers?

A. I considered the historical experience of the company.

Q. Just tell me how the historical experience of the company affected you, so that you decided that this was non-recurring.

Mr. Goldberg: If you want to, you can look at your work papers to determine how the historical experience of the company affected this standard. I think the witness is entitled to look at his work papers on a specific question as to what the facts were in this case.

Mr. White: I am not asking about data or figures, I am asking about principles. Now if his principles are set forth in his work papers, I would be very interested in having him tell us where.

He has told us now that there was a historical experience of the company. He may well have to refer to his work papers. I have no objection to the witness referring to his work papers. I do want an answer to my question and that is why I asked it the way I did.

Presiding Examiner: The witness has the question.

The Witness: May I please have his question.

Presiding Examiner: That is what I meant, did you have it clearly in mind?

The Witness: Oh, no, sir.

(The last question of Mr. White was read.)

The Witness: (No response.)

By Mr. White:

Q. Let me put it this way: Did the fact that the company never had that type of experience before influence you, so far as this subsidiary standard was concerned, as to whether or not this item of expense would be recurring or non-recurring?

A. No, sir.

Q. What, historically, does affect you on this subsidiary standard, in making your determination?

A. The history of the company, with respect to the [fol. 292] amount of regulatory expenses it has had.

Q. How far back did you investigate that regulatory expense, Mr. Wiskup?

A. Without looking at my work papers——

Q. I have no objection to your looking at your work papers with regard to that question.

A. Oh, I am allowed to? Thank you.

Q. You are welcome.

A. I think we went back about three years.

Q. What is the first year you have, Mr. Wiskup?

A. I don't have those particular work papers here.

Q. What type of regulatory expense did the company have of that first year, this three-year period that you went back through?

A. This subsidiary reason, as you call it, was not based on the type of expense.

Q. Was it based on the total dollar amount of expense?

A. Yes, sir.

Q. Well, I think it would be important to determine whether it is recurring or non-recurring, to determine what made up that dollar amount, the specific type of expenditures, don't you, Mr. Wiskup?

A. That was embodied in my first and principal reason, that this was the expense of a merger case.

Q. All right. I want to know what kind of expenses they had back there. You don't know? Is that the answer? Three years ago.

A. I don't recall offhand, sir.

Q. Do you recall what it was two years ago?

A. Not offhand, sir.

Q. One year ago?

A. I don't have those papers, sir.

Q. Is the effect of your testimony, Mr. Wiskup, that what you have attempted to do is to determine what should be normal expenditure, based on the company's experience for regulatory purposes?

A. The subsidiary reason, as you call it, was that the expenses without these merger expenses that the company estimate, were in line with the amount of expenses they had, say on the average, for the period.

[fol. 293] Q. Now, do you recall my question, Mr. Wiskup? Would you like to have it read again? I don't think your answer was responsive.

Presiding Examiner: Read the question.

(The last question of Mr. White was read.)

The Witness: I think I answered the question, Mr. White.

Mr. White: Will you read the answer, Mr. Reporter.

(The answer to the last question of Mr. White was read.)

Mr. White: I submit it isn't responsive. I was trying to establish normalcy from the prior expenditures.

Presiding Examiner: When you don't know what the figures are for the last three years, how do you know whether it is a normal average when you don't know what the figures are? You just said you didn't know.

The Witness: I said I didn't recall offhand. I had those figures at the time.

Presiding Examiner: I don't think you have answered the question. The question is susceptible to a yes or no answer. It doesn't have to be limited with that but it certainly should start with that.

That has been true of about 70 per cent of these questions, lately.

We have been having an interval of about one minute between question and answer. I think the record probably should show that.

I don't think the questions are of such subtlety that they cannot be answered yes or no, and then if you wish to explain, you may, but I do not think we need to have quite the interval between question and answer.

I think we will recess at this time for five minutes.

(Whereupon, at 11:35 a. m. a recess was taken, the hearing reconvening at 11:45 a. m.)

[fol. 294] Presiding Examiner: The hearing will be in order. Before we proceed with the case, I would like to ask the witness to be a little less reluctant.

One of the fundamental bases of the Anglo-American law is that the person presiding evaluate the testimony by reason of the fact that the presiding officer observes the conduct of the witness and the demeanor of the witness. The testimony of Mr. Wiskup during the cross-examination has been characterized by great reluctance. Being a staff witness it seems to me that that is not the attitude that one should take and I would appreciate it if he would perhaps try to be a little less reluctant and answer a little more promptly to obviously possible questions that do not involve long analyses of document.

You may proceed.

* * * * * * *

Q. Is it the effect of your answer that you count on one side those that did go up to court review and on the other side the ones who did not? Is that how you determined it?

A. I think that is the general sense of it.

Q. And what cases did you have in mind when you counted up that didn't go up to court review?

A. (No response.)

* * * * * * *

Q. Now, in making your adjustment to regulatory Commission expense, Mr. Wiskup, the net effect of your adjustment is to reduce the amount which the company claims is proper, isn't that correct, sir?

A. Yes, sir.

Q. And you have not added back in it any items of cost which the company might have made, have you?

A. No, sir.

Q. Did you make any investigation or did you think that there might be some justification for adding in an extra allowance because of estimated expenses the company did not include in its estimate?

A. No, sir.