

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
3  
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5 TRANSCRIPT OF PROCEEDINGS

6 Presentation of Stipulation & Agreement

7 March 26, 2003  
8 Jefferson City, Missouri  
9 Volume 4

10 In the Matter of the Application of )  
11 Southern Union Company d/b/a )  
Missouri Gas Energy for Authority to )  
12 Acquire Directly or Indirectly, Up )  
to and Including One Hundred Percent ) Case No. GM-2003-0238  
13 (100%) of the Equity Interests of )  
Panhandle Eastern Pipeline Company, )  
14 Including its Subsidiaries, and to )  
Take All Other Actions Reasonably )  
15 Necessary to Effectuate Said )  
Transaction. )  
16

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

19 KELVIN SIMMONS, Chair,  
SHEILA LUMPE,  
20 CONNIE MURRAY,  
STEVE GAW,  
21 BRYAN FORBIS,  
COMMISSIONERS.  
22

23 REPORTED BY:

24 KELLENE K. FEDDERSEN, CSR, RPR, CCR  
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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Good afternoon, everyone.

3 We're here for a case in Case No. GM-2003-0238, and we'll  
4 begin by taking entries of appearance, beginning with  
5 Southern Union Company.

6 MR. SWEARENGEN: Let the record show the  
7 appearance of James C. Swearengen and Rob Hack on behalf of  
8 Southern Union Company, and also Dennis Morgan on behalf of  
9 Southern Union Company.

10 Thank you.

11 JUDGE WOODRUFF: For Staff?

12 MR. FRANSON: Robert Franson, Dan Joyce,  
13 Robert Berlin and Thomas Schwarz, Jr. on behalf of Staff of  
14 the Public Service Commission.

15 JUDGE WOODRUFF: Office of the Public Counsel?

16 MR. MICHEEL: Douglas E. Micheel appearing on  
17 behalf of Office of the Public Counsel and the public.

18 JUDGE WOODRUFF: And for Laclede?

19 MR. ZUCKER: Rick Zucker here on behalf of  
20 Laclede Gas Company.

21 JUDGE WOODRUFF: And for Union Electric? Is  
22 Mr. Byrne here for Union Electric?

23 (No response.)

24 JUDGE WOODRUFF: And for the Attorney General?

25 MR. MOLTENI: Ronald Molteni for the Attorney

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1 General's Office on behalf of State of Missouri.

2 JUDGE WOODRUFF: Thank you for making the  
3 effort to come here. I knew you were in Kansas City this  
4 morning.

5 MR. MOLTENI: Yes, sir.

6 JUDGE WOODRUFF: For Enbridge Pipelines?  
7 Mr. Keevil's not here.

8 And for Midwest Gas Users Association,  
9 Mr. Conrad phoned me this morning and requested leave to not  
10 be here today, and that was granted.

11 For Pace, the union? And for KCP&L?

12 MR. MILLER: Jesse Miller.

13 JUDGE WOODRUFF: And for KCP&L?

14 MR. FISCHER: James M. Fischer.

15 JUDGE WOODRUFF: I believe that's all the  
16 parties at this time. There were a couple motions filed  
17 yesterday, one by Enbridge Pipeline and the other by Pace,  
18 the union, requesting that they be allowed to withdraw as  
19 parties from this case.

20 Do I hear any objections to those motions?

21 (No response.)

22 JUDGE WOODRUFF: Hearing none, the motion will  
23 be granted.

24 All the other parties have filed statements  
25 indicating that they did not oppose the Stipulation &

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1 Agreement, except I don't believe I got anything from

2 Laclede.

3                   Mr. Zucker, is Laclede taking a position on  
4 the Stipulation & Agreement?

5                   MR. ZUCKER: Yes, sir. We neither support nor  
6 oppose the agreement, and we waive our right to a hearing.

7                   JUDGE WOODRUFF: Thank you very much. As I've  
8 already mentioned, the Stipulation & Agreement has been  
9 filed, and all the non-signatory parties have either  
10 indicated that they do not oppose the agreement or have not  
11 requested a hearing, and -- or else they have been dismissed  
12 from the case and, therefore, the Stipulation & Agreement  
13 will be treated as a Unanimous Stipulation & Agreement.

14                   And we'll mark exhibits later, but at the  
15 moment we'll go ahead and allow the Commissioners to ask  
16 questions about the Stipulation & Agreement. And we'll just  
17 start with the Chair and he can ask questions if he likes,  
18 and we'll go on down the list of Commissioners. And if the  
19 attorneys can answer the questions, they can proceed to do  
20 so. If we need to have a witness answer more detailed  
21 questions, we'll bring them up to the stand and have them  
22 sworn in.

23                   Okay. Chair Simmons?

24                   CHAIRMAN SIMMONS: Judge, I'm going to pass at  
25 this time, but I may come back.

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1                   JUDGE WOODRUFF: Commissioner Murray?

2 COMMISSIONER MURRAY: Thank you, Judge.

3 I want to be sure that I understand the  
4 relationship that's being established here. Am I correct in  
5 assuming that Southern Union Panhandle Corporation will be a  
6 separate subsidiary, whereas MGE is remaining a division of  
7 Southern Union; is that correct?

8 MR. SWEARENGEN: That is correct.

9 COMMISSIONER MURRAY: All right.

10 MR. SWEARENGEN: That is correct.

11 COMMISSIONER MURRAY: Then it appears that  
12 this Stip & Agreement is applying a new standard to Southern  
13 Union's other operations and affiliates than is currently in  
14 place. And I'm referring to page 6 where specifically  
15 Southern -- Southern Union will submit reports certifying  
16 its compliance with paragraph 2 on a quarterly basis and --  
17 to Staff, Public Counsel and other interested parties that  
18 are subject to a Commission Protective Order until the  
19 Commission determines that MGE is insulated from Southern  
20 Union's other operations in the activities -- and the  
21 activities of any of its affiliates or that the requirement  
22 is no longer needed.

23 And I guess the question I'm trying to ask  
24 there is, is that a new standard for MGE being insulated  
25 from Southern Union's other operations or any of its

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1 affiliates?

2 MR. FRANSON: Commissioner Murray, Staff

3 doesn't believe that's a new condition. It's part of the  
4 overall structure of the Stipulation & Agreement. One of  
5 the biggest concerns that Staff had in this matter was that  
6 this not have any detrimental effect on MGE.

7                   This is merely one of the conditions that  
8 there be some insulation for MGE and that ultimately the  
9 Commission be satisfied of that condition. But that is a  
10 condition of the overall Stipulation & Agreement. Staff  
11 does not believe it's a different question or a different  
12 standard. It's simply one of the overall conditions that  
13 makes it be not detrimental to the public interest standard.

14                   COMMISSIONER MURRAY: Does any other party  
15 want to comment on that?

16                   MR. HACK: Commissioner, from MGE's  
17 perspective, I -- I wouldn't disagree too much with what  
18 Mr. Franson said. I guess we see it as a refinement or  
19 an extension of the no detriment standard. It is sort of  
20 a -- a new wrinkle on the no detriment standard that we  
21 basically agreed to as a condition of getting the  
22 transaction moved forward, but it's sort of a refinement, I  
23 guess I would say. I don't think it's a new standard.

24                   COMMISSIONER MURRAY: Okay. Thank you. On  
25 page 11, under incentive compensation, could someone please

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1 explain to me the meaning of that long sentence under  
2 subsection A, corporate employees?

3 MR. FRANSON: Your Honor, to answer that, I'd  
4 like to bring up Staff Witness Chuck Hyneman.

5 JUDGE WOODRUFF: Please go up to the witness  
6 stand.

7 (Witness sworn.)

8 JUDGE WOODRUFF: You may be seated. And just  
9 so the record's clear, could you tell us your name.

10 THE WITNESS: It's Charles R. Hyneman.

11 JUDGE WOODRUFF: And where do you work?

12 THE WITNESS: Missouri Public Service  
13 Commission.

14 JUDGE WOODRUFF: And you're testifying on  
15 behalf of the Commission?

16 THE WITNESS: Yes, I am.

17 MR. FRANSON: That would be on behalf of the  
18 Staff of the Commission, your Honor.

19 JUDGE WOODRUFF: Yes. Thank you for that  
20 clarification.

21 CHARLES R. HYNEMAN testified as follows:

22 QUESTIONS BY COMMISSIONER MURRAY:

23 Q. Mr. Hyneman, I have read that sentence and  
24 reread that sentence and I cannot decipher it.

25 A. Which sentence is that again, Commissioner?

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1 Q. It is beginning on page 11 under 5A.

2 A. Okay. The purpose of this condition is that  
3 when this transaction is completed, there is an incentive

4 for -- or there's not incentive for MGE to seek the lowest  
5 cost gas transportation service from Panhandle. That's  
6 because MGE's costs are passed through, through the PGA/ACA  
7 process, dollar for dollar pass-through, while Southern  
8 Union as the parent company will benefit from any increased  
9 charges from Panhandle/MGE. Now, that's an incentive where  
10 there's potential conflict of interest.

11 Q. Do you believe that sentence says that?

12 A. Well, if I may continue, what -- to mitigate  
13 that potential detriment, the condition says that the  
14 individuals who have control over Panhandle Transportation  
15 Services to MGE, their incentive compensation will not  
16 be based on any -- any earnings-based metric or any  
17 earnings-based standard like, you know, operating earnings  
18 or return on equity or any earnings based to mitigate the  
19 potential for the conflict of interest.

20 And the sentence is long and drawn-out because  
21 it encompassed -- other than Panhandle, it encompassed  
22 potential arrangements where Southern Star Central would be  
23 operated by Southern Union. So that's -- language in there  
24 incorporated that also.

25 Q. And you're telling me that people who were not

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1 involved in the drafting of this will at some point later be  
2 able to read that sentence and interpret its meaning, in  
3 your opinion?

4           A.       My opinion, I was, you know, integral in the  
5 construction of the condition, not the sentence itself, but  
6 it's a -- it's a complicated sentence, but I think can be  
7 broken down to that meaning.

8           MR. HACK: Can I take a stab at this,  
9 Commissioner?

10           The concern was raised by the fact that during  
11 this fiscal year, which for Southern Union ends June 30, a  
12 component of incentive compensation throughout the company  
13 is on total corporate financial performance, all divisions,  
14 all subsidiaries. And I think the Staff and Public Counsel  
15 and others have said, gee, if there is common ownership of  
16 MGE and Southern Union Panhandle, there is the potential to  
17 extract revenues on the pipeline side to the detriment of  
18 the LDC side.

19           And what the sentence means at its core is  
20 to begin after this fiscal year, because we already have the  
21 incentive plan in place, so that would be beginning July 1,  
22 for those individuals at Southern Union who have  
23 responsibility, control over the pipeline operations, that  
24 their incentive comp would not include any earnings  
25 measurement based upon Panhandle revenues derived from MGE.

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1           Now, as a practical matter, MGE produces on  
2 the order of one percent of the Panhandle business. So it's  
3 not a material amount, but that's what this sentence means,  
4 and it's designed to take away that perceived incentive to,

5 I'll use the phrase gouge the MGE LDC as a result of common  
6 ownership.

7                   MR. MICHEEL: If I could just add, I don't  
8 disagree with what Mr. Hack said, and if you want to see a  
9 copy of the incentive programs that we're talking about, the  
10 incentive compensation programs, they're attached to  
11 Mr. Robertson's rebuttal testimony in a highly confidential  
12 schedule that sets out the earnings matrix that's tied to  
13 those particular items. And that's what this sentence is  
14 designed to do.

15                   I think Mr. Hack accurately described the  
16 purpose of the sentence, and I think the sentence as written  
17 is fairly clear that that's what it does.

18                   COMMISSIONER MURRAY: Okay. I appreciate the  
19 explanation. And I certainly see what it is you're trying  
20 to say there, but it seems like it's -- it seems like it  
21 could have been stated more clearly. But apparently there's  
22 no disagreement as to its meaning amongst the parties.

23                   MR. HACK: No. It's always hard when you have  
24 multiple people drafting the same sentence, and I don't  
25 disagree with you.

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1                   COMMISSIONER MURRAY: On page 15 --

2                   MR. FRANSON: Commissioner, may this witness  
3 be excused?

4                   COMMISSIONER MURRAY: Yes. I'm sorry.

5 MR. FRANSON: Thank you.

6 (Witness excused.)

7 COMMISSIONER MURRAY: I'm looking at  
8 subsection 6D, and I'm wondering there if that is  
9 establishing a requirement that MGE oppose any rate increase  
10 application that SUC makes before the FERC?

11 Is that what this is saying?

12 MR. FRANSON: Commissioner, it doesn't  
13 necessarily mean that MGE has to oppose it, but the idea is  
14 that they have to be as active as they were before Southern  
15 Union Panhandle Corporation became a sister corporation.  
16 And the idea is that this is a monitoring that -- it would  
17 seem logical that MGE would, in most instances, be opposed  
18 to higher rates, but it does not necessarily state that they  
19 have to oppose it.

20 It just merely states they have to show to  
21 Staff, Public Counsel and various other parties that any  
22 documents they file in opposition to it, it also provides as  
23 you read on anything that -- any discussions of settlement  
24 in the case. And if they assert privilege, they have to  
25 provide a privilege log which would list those documents and

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1 generally what's in them. It's more of a monitoring device  
2 to see that MGE is, in fact, protecting its customers and  
3 getting the lowest possible rates.

4 MR. HACK: And if I may add, if you go on to  
5 paragraph 6E, it really describes what MGE's FERC efforts

6 will be in respect to those things, and the standard is  
7 basically to be the same as if we were not affiliated with  
8 the Southern Union Panhandle pipeline.

9                   So that's the standard -- that would be the  
10 standard that we apply today, for example, when we're not --  
11 there is no relationship. So there should be no change in  
12 that going forward. And paragraph 6D is simply a monitoring  
13 condition that allows other entities to determine and assess  
14 for themselves whether -- whether there has been any change.

15                   COMMISSIONER MURRAY: It's imposing no  
16 affirmative obligation on MGE to oppose a rate increase  
17 request?

18                   MR. HACK: No, not -- basically, E, I think,  
19 sets out the standard, and E does not impose an obligation  
20 to oppose anything.

21                   COMMISSIONER MURRAY: Mr. Micheel, did you  
22 have something to add to that?

23                   MR. MICHEEL: I would just say that I hope  
24 that MGE -- and I'm certain that they do -- continues to  
25 scrutinize rate increases with respect to transportation

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1 pipelines and that they've done it since they came into this  
2 state and that they continue to do it. So it's -- it's  
3 really a statement of the obvious, but since they're going  
4 to become sister corporations, we want to make sure that the  
5 obvious is stated and it's clear that they're going to

6 remain active and attempt to, you know, get the lowest cost  
7 transportation for customers.

8 COMMISSIONER MURRAY: And the Public Counsel  
9 and Staff have those documents supplied to them?

10 MR. MICHEEL: I don't -- I mean, I'm certain  
11 that I could request them in discovery. I haven't had any  
12 need to previous to the marriage, if you will, or the entry  
13 into the SUC family of Panhandle Eastern Pipeline, because  
14 their interests were decidedly different.

15 But once the marriage takes place, their  
16 interests aren't decidedly different, and that's where the  
17 issues arises and that's why you have that language.

18 COMMISSIONER MURRAY: Okay. Anybody else want  
19 to comment on that?

20 (No response.)

21 COMMISSIONER MURRAY: On page 16, the last  
22 part of Section 7, under assumption of risks, the statement  
23 that Southern Union understands that there are risks  
24 associated with closing this transaction after it receives  
25 Commission approval and accepts full responsibility of these

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1 risks, that's not stating anything unusual in that  
2 paragraph, is it?

3 I mean, would you explain why that language is  
4 in there?

5 MR. FRANSON: Commissioner, that's in there  
6 because this is a very complicated transaction, and there

7 are various contingencies; for instance, making sure that  
8 all of the financing is in place, making sure that there  
9 aren't suddenly increased costs. Those are just two  
10 examples.

11                   There's various kinds of contingencies that  
12 could have an adverse effect on the customers of Missouri  
13 Gas Energy. And the idea here is that they would be -- that  
14 Southern Union will take that, take on full responsibility  
15 of that.

16                   There's not anything specific that -- and  
17 unknown that isn't in here that -- but there are just --  
18 we could sit here and list them, but there are various  
19 contingencies, and Southern Union is taking full  
20 responsibility for those if there were any unforeseen  
21 consequences.

22                   COMMISSIONER MURRAY: Mr. Hack?

23                   MR. HACK: We don't see this language as  
24 changing anything. That was language that was requested by  
25 other parties, and since it didn't change anything, we

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1 didn't have a problem with the concept.

2                   COMMISSIONER MURRAY: All right. I think  
3 that's all I have. Thank you.

4                   JUDGE WOODRUFF: Commissioner Lumpe?

5                   COMMISSIONER LUMPE: Sort of as a follow-up, I  
6 guess I'll be asking you, Mr. Franson, the conditions that

7 you have laid down -- and there's considerable number of  
8 them there. And is it -- may I assume that these are  
9 conditions that you are putting there to determine that  
10 MGE will try to get the lowest cost and that is part of  
11 something we call not detrimental to the customer?

12                   Is that -- am I reading that correctly?

13                   MR. FRANSON: Yes, Commissioner Lumpe, I think  
14 you are. When we've been referring to the lowest cost,  
15 we're primarily looking at the -- I believe it's been  
16 referred to that gas costs can be passed right through in  
17 the PGA/ACA process, and now that -- if this -- if this  
18 transaction is approved, Southern Union will own the  
19 pipeline, that incentive is gone.

20                   So all of these conditions are in place to  
21 protect MGE's customers and to be sure that they continue --  
22 MGE continues to do everything to provide gas at the lowest  
23 possible rates to its customers.

24                   COMMISSIONER LUMPE: Is part of the protection  
25 also of MGE? In other words, is there a need to protect MGE

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1 from --

2                   MR. FRANSON: Yes, Commissioner, there is.  
3 And as part of that, Conditions 2 and 3 regarding insulation  
4 of MGE are paramount to that because Southern Union would  
5 not only -- there's two things here.

6                   One, Southern Union has an investment, and if  
7 Southern Union Panhandle was suddenly having problems,

8 Southern Union parent corporation would certainly be tempted  
9 to protect its interests there, but also the interests of  
10 their new -- of Southern Union Panhandle are not necessarily  
11 compatible in all regards with the interests of MGE.

12                   These conditions are designed to protect MGE  
13 from other activities of Southern Union and -- and it's also  
14 designed to protect customers and make sure MGE continues to  
15 work to provide gas at the lowest possible cost.

16                   COMMISSIONER LUMPE: Are you confident that  
17 you'll have access to all the documents that you need?  
18 There's a number of conditions that address documents and  
19 access to them. Are you confident that you would have  
20 access to all those documents that are necessary to protect  
21 both MGE and the customers?

22                   MR. FRANSON: Reasonably confident,  
23 Commissioner, that we've worked through a large number of  
24 conditions. We've gotten agreements to provide a lot of  
25 documents, especially in the immediate future, where we will

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1 know everything that -- what kind of effect this has on  
2 Southern Union, the impact on employees, their corporate  
3 structure, cost, their financial structure. There's all  
4 kinds of things in there.

5                   And then certainly there's the insulation of  
6 MGE where we will be getting certified quarterly reports.  
7 It's ongoing documentation, and Staff is reasonably

8 confident that it is sufficient. However, as this goes into  
9 effect, if we discover it's not, we would be back -- we  
10 would certainly contact Southern Union and may be back in  
11 here to advise the Commission if any further enforcement  
12 should be necessary.

13 COMMISSIONER LUMPE: Is there any requirement  
14 that the FERC approve this and, if so, have they approved  
15 it, Mr. Hack?

16 MR. HACK: There is no FERC approval required.

17 COMMISSIONER LUMPE: Okay. So obviously they  
18 haven't approved it?

19 MR. HACK: No.

20 MR. FRANSON: Commissioner, if I may, I don't  
21 believe there's any FERC requirement; however, I don't  
22 believe it's any secret that this issue is before the  
23 Federal Trade Commission and --

24 COMMISSIONER LUMPE: The FTC.

25 MR. FRANSON: Yes, sir. Yes, ma'am. I'm

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1 sorry.

2 COMMISSIONER LUMPE: All right. Thank you. I  
3 had a question here that -- and I know you tried to put a  
4 lot of conditions on and you do that so that it's not  
5 detrimental. And I just sort of wrote down myself, is this  
6 really as tight as you want it? I mean, do you feel very  
7 confident now you've got it as tight as can be?

8 MR. FRANSON: Well, as tight as it can be in a

9 negotiated process. There -- if Staff got together and  
10 brainstormed and thought of tighter conditions, could we  
11 possibly come up with some? Certainly. But would we be  
12 able to negotiate those? Probably not.

13 COMMISSIONER LUMPE: And you're confident that  
14 there's sufficient conditions here to protect both MGE and  
15 the customers?

16 MR. FRANSON: Yes, as much as reasonably can  
17 be ascertained. But also there is a mechanism that if we do  
18 see problems, we will be back to see the Commission about  
19 any problems in that regard.

20 COMMISSIONER LUMPE: Mr. Micheel, do you have  
21 any thoughts on this? Is this as tight as you would like  
22 it?

23 MR. MICHEEL: I think that we support the  
24 agreement, Commissioner. And I think that, by and large,  
25 the vast majority of our concerns that we were able to

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1 identify have been covered in the document, and the  
2 document, the reporting requirement, for example, the  
3 financial protections, we're not concerned that money may  
4 bubble up from Panhandle Eastern pipeline. That doesn't  
5 concern me. That's good and SUC can have that money.

6 But what we're concerned about is the trickle  
7 down of money from SUC down to Panhandle Eastern. And I  
8 think for the finances, this document takes care of it.

9 We were also concerned about the competitive issues with  
10 respect to the company owning Panhandle Eastern and also  
11 managing Southern Star Central Pipeline. That's been taken  
12 care of.

13                   So with respect to all the things we were able  
14 to identify, I think we've covered it. That's not to say  
15 that there may not be something that we've missed, but I  
16 don't know what that is, and if -- I can't look in the  
17 crystal ball and tell you what's going to happen in the  
18 future, but I can tell you we're satisfied with this  
19 agreement and that it does take care of our concerns that  
20 we've identified.

21                   COMMISSIONER LUMPE: You mentioned Southern  
22 Star. Would you explain to me the relationship to Southern  
23 Star and Energy Works? I read in here that they're supposed  
24 to sell energy. What is the relationship of those two  
25 companies?

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1                   MR. MICHEEL: My understanding is that Energy  
2 Works is a wholly-owned subsidiary of Southern Union  
3 Corporation. Energy Works entered into a five-year -- a  
4 five-year management agreement with Southern Star Pipeline  
5 to manage -- manage the pipeline.

6                   COMMISSIONER LUMPE: It's not an affiliate, or  
7 is it an affiliate?

8                   MR. MICHEEL: It's an affiliate of SUC, I  
9 believe. Is it a division?

10 COMMISSIONER LUMPE: Would you like to explain  
11 that relationship, Mr. Hack?

12 MR. HACK: Yes. Southern -- just to be clear,  
13 Southern Star Central is not an affiliate of Southern -- of  
14 Southern Union, of MGE, of anybody. Southern Union does not  
15 own any piece of Southern Star Central.

16 Energy Works is a wholly-owned separate  
17 subsidiary of Southern Union that has a management services  
18 agreement with Southern Star Central. And there are four  
19 individuals who basically provide management for hire,  
20 contract management for hire to Southern Star Central.

21 And that is a relationship that has caused  
22 concern throughout this -- this process and -- and that the  
23 parties insisted that that relationship go away in the  
24 reasonably foreseeable future. And as a result of those --  
25 those insistences throughout the negotiations, we have

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1 agreed in order to get this transaction moved forward to  
2 make that divestiture by June 30th.

3 COMMISSIONER LUMPE: Okay. So that I'm clear  
4 on this, Energy Works is a subsidiary of Southern Union?

5 MR. HACK: Correct.

6 COMMISSIONER LUMPE: And it has a management  
7 agreement with Southern Star?

8 MR. HACK: Central, right.

9 COMMISSIONER LUMPE: Southern Star Central,

10 which has no relationship to Southern Union; is that  
11 correct?

12 MR. HACK: Correct.

13 COMMISSIONER LUMPE: Okay. There's also a lot  
14 of discussion in here about timing and as long as you own  
15 this pipeline. Is there something in the future where  
16 you're planning to sell this pipeline?

17 MR. HACK: Commissioner, no. We've -- we've  
18 bought the pipeline or want to buy the pipeline as an  
19 ongoing concern. But most of or many -- let's say many of  
20 the concerns or conditions that have been raised are really  
21 only relevant so long as there is ownership of the pipeline.  
22 And because of that it doesn't make any sense for those  
23 kinds of conditions to exist in the event there is no longer  
24 that relationship. So it was just a way to --

25 COMMISSIONER LUMPE: A way to spell it out

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1 that if this -- these conditions exist as long as Southern  
2 Union owns the pipeline. Should Southern Union at some time  
3 divest itself of that pipeline, then these conditions go  
4 away?

5 MR. HACK: Precisely.

6 COMMISSIONER LUMPE: Thank you. That's all I  
7 have.

8 JUDGE WOODRUFF: Commissioner Gaw?

9 COMMISSIONER GAW: Thank you, Judge.  
10 First, just a point of clarification. The

11 term "non-recourse" is used in the documents in regard to  
12 Southern's assumption of the debt of Panhandle Eastern, and  
13 I was trying to I understand the term "non-recourse." I was  
14 trying to understand how it was utilized here.

15 I saw something in the Massachusetts order  
16 defining what it meant, and I'm -- I just want to make sure  
17 whether that is the appropriate def-- the appropriate  
18 explanation of what -- what Southern is doing in regard to  
19 the debt of Panhandle. Or if someone wants to explain that  
20 on the record, that would be fine, too.

21 MR. HACK: Commissioner Gaw, if I may, we have  
22 with us today Rick Marshall, who is our treasurer, and he's  
23 very, very comfortable and familiar with all of the debt  
24 instruments. And I guess I would ask Mr. Marshall to go up  
25 to the stand and maybe have a discussion.

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1 COMMISSIONER GAW: That would be great.

2 Thanks.

3 JUDGE WOODRUFF: Please raise your right hand.

4 (Witness sworn.)

5 JUDGE WOODRUFF: You may be seated. And tell  
6 us your name, please.

7 THE WITNESS: Rick Marshall.

8 JUDGE WOODRUFF: And you're employed by  
9 Southern Union?

10 THE WITNESS: Yes, I am.

11 JUDGE WOODRUFF: And what is your position  
12 with Southern Union?

13 THE WITNESS: I'm the treasurer and director  
14 of investor relations.

15 JUDGE WOODRUFF: Can you answer the  
16 Commissioner's question?

17 COMMISSIONER GAW: I'd be glad to go back and  
18 rephrase, if you'd like.

19 THE WITNESS: If you would.

20 RICK MARSHALL testified as follows:

21 QUESTIONS BY COMMISSIONER GAW:

22 Q. I'm interested in understanding the nature of  
23 Southern's responsibility for the debt of Panhandle Eastern.  
24 If you want to just take it from there, that might be the  
25 easiest way to handle it.

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1 A. I think the statement that you used was that  
2 we were representing that the Panhandle debt is non-recourse  
3 to Southern Union Company. And what that means is that the  
4 debtholders of Southern -- Southern Union Panhandle  
5 debtholders have the security of the assets of Southern  
6 Union Panhandle Corporation, and to the extent there is  
7 nonperformance on -- with regard to the obligations that the  
8 company has with respect to that debt, they cannot take any  
9 actions against Southern Union Company and its assets.

10 Q. All right. You used the name Southern Union  
11 Panhandle together. Is that the -- is that a new name for

12 Panhandle, just for point of clarification?

13           A.       Yes. And I might be using that term  
14 incorrectly. It's really the entity that owns the assets  
15 and has the debt.

16           Q.       If I use it so I can -- just for purposes of  
17 communication here, if I'm talking about Panhandle Eastern,  
18 that is the corporation that Southern is proposing to  
19 acquire; is that right?

20           A.       That is correct.

21           Q.       And the proposal is to acquire the stock of --  
22 or the majority of the stock of Panhandle Eastern --

23           A.       That's correct.

24           Q.       -- the corporation, and the debt of the  
25 Panhandle Eastern Corporation that exists prior to the

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1 acquisition by Southern continues to have -- those creditors  
2 continue to have recourse against the assets of Panhandle  
3 Eastern; is that accurate?

4           A.       That's accurate.

5           Q.       But there is no assumption of any of that debt  
6 of Panhandle Eastern by Southern in this transaction?

7           A.       That's correct.

8           Q.       The acquisition of the stock by Panhandle,  
9 what is the financing arrangement for the acquisition of  
10 that stock? Is there debt being incurred to purchase it or  
11 additional equity being issued to acquire it?

12           A.       Well, as you know, the total acquisition  
13 price was \$1.8 billion. That included the assumption of  
14 \$1,000,167,000 (sic) approximately of debt. The difference  
15 was a -- an investment, anticipated investment by AIG  
16 HighStar of \$150 million. The company will then use the  
17 proceeds from its sale of the -- the Texas assets, which are  
18 approximately \$420 million.

19                   The balance of the acquisition price, then,  
20 will be -- come from the company's other funds, which  
21 would -- on a temporary basis may include borrowings under  
22 its existing lines of credit, access to a bridge financing,  
23 but ultimately it would be -- that portion of the  
24 acquisition would be refinanced with a sale of common  
25 equity.

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1           Q.       All right. Approximately how much is that  
2 chunk if --

3           A.       The total common equity, somewhere in the  
4 neighborhood of \$115 million or so.

5           Q.       All right. The assumption of the debt that  
6 you referred to, so I can understand what we're talking  
7 about there, what debt are we talking about when you're  
8 saying that that debt is being assumed?

9           A.       It's the -- the Southern Union Panhandle  
10 Corporation, the corporation is actually buying the  
11 Panhandle Eastern Pipeline Company.

12          Q.       Right.

13           A.       It is assuming the debt of Panhandle Eastern  
14 Pipeline Company. Southern Union Company is not assuming  
15 the debt in the -- I think what you're --

16           Q.       Yes. I'm just trying to make sure that I'm  
17 following this through. And I apologize for --

18           A.       When you talk about the transaction, the  
19 assumption of debt, I think I'm -- what I'm trying to say  
20 is, as a consolidated entity, the Southern Union Company is  
21 assuming the indebtedness of the Panhandle Eastern Pipeline  
22 Company.

23                   That said, that indebtedness is non-recourse  
24 indebtedness to Southern Union Company, the entity that  
25 holds the operating divisions.

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1           Q.       In other words, in the -- if I'm following  
2 this, the debt that is currently held against the assets of  
3 Panhandle Eastern, it just continues to be debt. It's not  
4 something that gets paid off in this transaction. There's  
5 not any refinancing going on by Panhandle itself for its own  
6 debt?

7           A.       That's correct.

8           Q.       Is there any assumption of a debt that was  
9 owed by Panhandle Eastern's parent in this transaction?

10          A.       No.

11          Q.       All right. In the acquisition, the parent of  
12 Panhandle Eastern before the transaction was CMS; is that

13 correct?

14 A. Yes.

15 Q. And if you could just briefly give me an  
16 explanation of how the stock transfer works in this  
17 transaction, if you can. If not, that's okay.

18 A. I don't think I could -- I could accurately  
19 describe it.

20 Q. That's fine. I can ask someone else. CMS  
21 purchased Panhandle in 1999; is that accurate?

22 A. Yes.

23 Q. At the time of Panhandle's purchase in 1999,  
24 do you know what -- do you know how much debt Panhandle  
25 held?

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1 A. I don't know that. I know that the total  
2 purchase price was in excess -- significantly higher than  
3 the total purchase price of \$1.8 billion. I believe it was  
4 2.4 billion.

5 Q. Is that -- has there been a decrease in the --  
6 in the value of assets since 1999, or has there been an  
7 increase in the amount of debt held by Panhandle Eastern  
8 during that time frame to cause that distinction in market  
9 value, stock?

10 A. From an enterprise value or market value, I  
11 would say there's been a decrease from -- in the amount that  
12 someone's willing to pay for it. You know, that's one of  
13 the reasons why we felt that this acquisition made perfect

14 sense, because these time-tested assets were on the market  
15 at prices that were far below their previous market price.

16 Q. Is it -- if you know, is it true that there  
17 was a significant increase in the amount of debt from 1999  
18 to the present by Panhandle Eastern on its assets?

19 A. I don't know that to be true.

20 COMMISSIONER GAW: Would somebody be able to  
21 answer that? I thought I saw that in testimony somewhere.  
22 Nobody seems to be able to respond. Maybe I can pull that.

23 If I'm not mistaken, one of Staff's witnesses  
24 addressed something about the amount of debt held by  
25 Panhandle in 1999 as opposed to the last few months.

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1 MR. FRANSON: Commissioner Gaw, Mr. --  
2 Staff -- Commissioner Gaw, Staff Witness Murray may be able  
3 to give you an estimate, but we're not thinking that exact  
4 number was in his testimony. It could have been in  
5 Mr. Murray's testimony you were referring to.

6 COMMISSIONER GAW: It may have been something  
7 discussed in the Massachusetts order. I'm not sure.

8 MR. MURRAY: I can give you a rough estimate.  
9 I want to say --

10 JUDGE WOODRUFF: You have to be sworn.

11 COMMISSIONER GAW: Hold on just a second  
12 before I get everybody confused here. Let me see if there's  
13 something else I can ask you while you're up here, and then

14 we'll come back to that real quick.

15 I'll just stop with you right there, if it's  
16 all right. And I may come back later, but if I can get over  
17 to this other question.

18 JUDGE WOODRUFF: You can go ahead and step  
19 down.

20 MR. MARSHALL: Can we go off the record for a  
21 minute?

22 JUDGE WOODRUFF: Why?

23 MR. MARSHALL: I just want to ask a point of  
24 clarification.

25 JUDGE WOODRUFF: You can do it on the record.

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1 MR. MARSHALL: Okay. Well, I don't know  
2 exactly where you're going with the question, but I do know  
3 that -- that the 1.167 billion in indebtedness includes  
4 approximately 284 million that relates to an LNG facility or  
5 one of the subsidiaries of the Panhandle group that we're  
6 purchasing that was previously off balance sheet. And that  
7 could be one of the reasons why you're seeing an increase in  
8 total indebtedness from '99 to -- to current.

9 COMMISSIONER GAW: Yeah. That's what I'm  
10 kind of looking for, is if there has been a significant  
11 change in the amount of debt, what's the cause of it, and  
12 that kind of a thing would -- might be a piece to this  
13 puzzle, if I'm -- if there's a puzzle there to begin with.

14 MR. MARSHALL: Other than that difference, I

15 couldn't speak to the differences between the 1999 level of  
16 debt and the current level of debt.

17 COMMISSIONER GAW: Thank you very much.

18 JUDGE WOODRUFF: You can step down.

19 (Witness excused.)

20 JUDGE WOODRUFF: Did you want to ask your  
21 question of Mr. Murray?

22 COMMISSIONER GAW: That would be fine.

23 JUDGE WOODRUFF: If you'd come forward, sir.

24 (Witness sworn.)

25 JUDGE WOODRUFF: You may be seated.

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1 DAVID MURRAY testified as follows:

2 THE WITNESS: This will be subject to check,  
3 but I do recall --

4 JUDGE WOODRUFF: You said the magic word, and  
5 we can't allow you to say subject to check. If you know,  
6 you know; if you don't, you don't know. But go ahead.

7 THE WITNESS: It's just from a general reading  
8 that I read from a Standard & Poor's writeup. I believe  
9 when CMS Energy -- when they bought it in 1999, there was  
10 about 300 million on the books at that time of debt.

11 QUESTIONS BY COMMISSIONER GAW:

12 Q. 300 million in 1999?

13 A. In 1999.

14 Q. And how much is there currently?

15 A. 1.16 billion.

16 Q. And do you know the reason for the increase in  
17 debt from '99 to the current time frame?

18 A. From general understanding, I would -- CMS  
19 Energy owned Panhandle, and as of -- I can't recall the  
20 exact -- exact date, but there was -- CMS took out some debt  
21 and pledged Panhandle's equity as collateral. And I'm not  
22 sure if that's the reason why it's gone up, but it has  
23 been -- it has gone up since CMS had it in 1999 or at least  
24 acquired -- excuse me -- acquired it in 1999.

25 Q. But you don't know if that's as a result of --

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1 this is Panhandle Eastern debt --

2 A. Yes.

3 Q. -- we're talking about.

4 You don't know the reason for the increase in  
5 the debt either?

6 A. No, not specifically.

7 Q. Part of the reason I'm asking is whether or  
8 not this is a result of acquisitions or whether it's as a  
9 result of there not being sufficient net revenue in to cover  
10 the operations and whether or not that causes there to be  
11 other questions about whether -- the viability of this line  
12 with current pricing arrangements. So I'd just like to have  
13 a little bit of input.

14 Mr. Hack?

15 MR. HACK: Your Honor, what we can do is find

16 the answers to those questions. We don't have the answers  
17 right now.

18 COMMISSIONER GAW: I apologize for going in --  
19 and I think I'm seeing now kind of where I -- where I saw  
20 this in this testimony. Is it Mr. C -- K-v-a --

21 MR. HACK: Kvapil.

22 COMMISSIONER GAW: Thank you. At pages 4 and  
23 6.

24 MR. HACK: His direct testimony.

25 COMMISSIONER GAW: That's where I saw the

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1 numbers on the difference between amount of debt.

2 THE WITNESS: I'm curious, was I correct in  
3 that testimony?

4 COMMISSIONER GAW: Well, '99, 1.9 billion in  
5 cash, there was a purchase of it from Duke Energy for  
6 1.9 billion in cash and an assumption of 300 million in debt  
7 shown on page 6.

8 THE WITNESS: So I was accurate. Thank you.  
9 So it wasn't subject to check.

10 MR. HACK: I see those there, and I think --  
11 I'm not familiar with the details of the transfer from Duke  
12 to CMS, and I think we need to go back and make sure we can  
13 give you an explanation of that.

14 COMMISSIONER GAW: I'm sure this has all been  
15 thoroughly studied, and it wouldn't be an acquisition going

16 on by Southern if they didn't believe this was in Southern's  
17 best interests, but from the standpoint of having the  
18 potential of impacting Panhandle Eastern rates and just the  
19 possibility of that is the reason I'm asking the question.

20                   MR. HACK: I can answer more broadly your --  
21 the concern I think that you're getting at, and I think we  
22 can state unequivocally that the Panhandle property will be  
23 accretive to earnings. In other words, it will be  
24 incremental. There are positive earnings flowing out of  
25 Panhandle property and it will be accretive to cash flow.

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1 So it's a well performing -- I think Mr. Marsh used  
2 time-tested assets. It's a good property. It's a  
3 financially solid property.

4                   That's why it was for sale by CMS, which is a  
5 troubled property, and they need to generate cash and they  
6 needed to get a solid asset on the market to generate that  
7 cash. And this is what they did.

8                   COMMISSIONER GAW: All of that makes sense in  
9 your explanation. I just -- it would just be nice to  
10 understand why that number changed.

11                   MR. HACK: We will get that information to  
12 you. We may be able to get it to you this afternoon, after  
13 this meeting.

14                   COMMISSIONER GAW: That would be fine.

15                   MR. HACK: And we'll get it to the record.

16                   COMMISSIONER GAW: Okay. Thank you, Mr. Hack.

17 Now, if I could go on just a little bit, as far as --

18 MR. FRANSON: Commissioner Gaw, I'm sorry.

19 May this witness be excused?

20 COMMISSIONER GAW: I don't know yet. He may  
21 be able to answer my next question.

22 BY COMMISSIONER GAW:

23 Q. In regard to -- and I think this has already  
24 been discussed. In regard to the market value of this  
25 company between 1999 as compared to today, is it fair to

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1 assume that market value of the company is within a close  
2 range of the amount that's been reported as being paid for  
3 the company in both of those instances? That's a fair  
4 assumption to make, is it not?

5 A. Well, they paid less than CMS Energy paid. So  
6 the market value has come down.

7 Q. I'm not asking you to -- I'm not asking  
8 whether or not it's come down or gone up. I'm just asking  
9 whether or not it's fair to assume that the amount paid in  
10 both of those instances is close to the market value of the  
11 company at the time that it was paid?

12 A. I think I'd better defer to the company on  
13 that.

14 COMMISSIONER GAW: Mr. Hack?

15 MR. HACK: We would say yes. There are  
16 transactions, arm's length transactions between willing

17 buyers and sellers for value.

18 COMMISSIONER GAW: Sure.

19 And if you want to step down, I'll get back to  
20 you in a little bit.

21 JUDGE WOODRUFF: You can step down.

22 (Witness excused.)

23 COMMISSIONER GAW: Thank you, Judge.

24 I noticed in that that there were several --  
25 there were some requirements in the Massachusetts order. My

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1 question to Staff is whether or not the requirements of  
2 filings and reports in this stipulation include all of those  
3 things that Massachusetts has requested?

4 MR. FRANSON: Commissioner, I apologize. I  
5 don't believe that I know the exact answer to that question.  
6 I'm hoping Mr. Schallenberg or Mr. Hyneman might know the  
7 answer to that.

8 JUDGE WOODRUFF: And if you'd please raise  
9 your right hand.

10 (Witness sworn.)

11 JUDGE WOODRUFF: You may be seated.

12 And can you answer the question, or if you  
13 need to have it repeated, let us know.

14 ROBERT SCHALLENBERG testified as follows:

15 THE WITNESS: Commissioner, we reviewed the  
16 Massachusetts order after it was issued, and in  
17 Massachusetts they have a more quantitative test than we do.

18 QUESTIONS BY COMMISSIONER GAW:

19 Q. Yes.

20 A. And they have reports they require in  
21 Massachusetts, and so we reviewed those. We were aware of  
22 those in negotiations, and we used as much of what we saw  
23 was relevant to Missouri, but we didn't ask for anything  
24 that we didn't see relevance here, just because it was in  
25 Massachusetts, but we would still -- excuse me -- we would

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1 still have access through your normal discovery if we found  
2 out there was something that's available in Massachusetts  
3 that's provided that we don't have. But we did that review.

4 Q. There was one thing in particular I noticed,  
5 and you may have it in the stip. I just want to understand  
6 whether it's there or not.

7 Regarding quarterly reports, showing an  
8 improvement in capital structure debt to equity ratios of  
9 Southern, are we requiring that and is there any pledge of  
10 improvement of the capital structure of Southern in this  
11 stip?

12 A. One is, we're not requiring it in the stip,  
13 but Southern Union or MGE is under our surveillance program.  
14 So we get that data. As to their balance sheet, I believe  
15 they're monthly. I know we get it at least quarterly. So  
16 we -- we get that through another vehicle.

17 The answer to your other question is, there is

18 nothing in this agreement that requires Southern Union to  
19 improve its balance sheet.

20 Q. All right. Can you help me to understand  
21 why -- I know you can't read Massachusetts Service  
22 Commission, whatever they're called out there, you can't  
23 read their mind. Why are they requiring that or believe  
24 that's important and why is it that we're not?

25 A. I would only be -- Southern Union in terms of

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1 its debt rating?

2 Q. Yes, I think so.

3 A. It has a -- it is still investment grade, and  
4 it has different ratings from the credit agencies, but in  
5 terms of I believe it's Moody's, there's not a lot of room  
6 there for -- I mean, if it's not the next downgrade,  
7 there's -- they could go below investment grade.

8 Q. In particular, I think they were discussing  
9 the debt-to-equity ratio of the company. Do you know what  
10 that is after the acquisition is completed here, what  
11 that's -- what that is projected to be?

12 A. I know the Staff has that, and unfortunately  
13 I've been seeing so much Aquila stuff at the same time, I'm  
14 not sure that I can -- I can remember. They have a  
15 significant debt-to-equity ratio, but I can't recall just  
16 off the top of my head. I know it's --

17 Q. It may be easier just to ask them,  
18 Mr. Schallenberg, instead of asking you to give something

19 that they probably have the information on.

20 COMMISSIONER GAW: Mr. Hack, how -- is there  
21 somebody that could give me a little more detail about these  
22 requirements that Massachusetts has set, and especially in  
23 regard to changes in capital structure?

24 MR. HACK: And I'll just -- we'll ask Rick  
25 Marshall to come to the stand if Mr. Schallenberg will --

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1 COMMISSIONER GAW: I don't know if he'll give  
2 up his seat.

3 JUDGE WOODRUFF: You may step down,  
4 Mr. Schallenberg.

5 (Witness excused.)

6 MR. HACK: It looks to me like what the  
7 Massachusetts order does is require reporting to confirm  
8 what appears to be a company desire or goal or objective to  
9 get to a different capital structure of 60 to 65 percent  
10 debt or 30 to 45 percent equity. Doesn't look like a  
11 requirement to actually get there.

12 COMMISSIONER GAW: I couldn't quite get my  
13 finger on whether it was deemed a requirement or not, but I  
14 was interested in knowing what the objective was.

15 MR. HACK: I think Mr. Marshall can help out  
16 there.

17 JUDGE WOODRUFF: Mr. Marshall, you're still  
18 under oath. Go ahead and ask your question, or you can

19 answer if you know what the question is.

20 RICK MARSHALL testified as follows:

21                   THE WITNESS: Let me start, I was not the  
22 witness in this proceeding, but I have been involved with  
23 Massachusetts in other proceedings and in discussions that  
24 involved the total capitalization of the company, and  
25 specifically the debt to total cap ratio. They recognize

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1 the fact that we do have investment grade rating and the  
2 importance of maintaining that investment grade rating.

3                   And our current debt to total capitalization  
4 ratios fall within that 60 to 65 percent band, depending on  
5 what calendar quarter you're looking at, because of seasonal  
6 requirements. They wanted to -- it appears to me by this  
7 ordering paragraph is that they wanted to ensure that we  
8 were taking the steps necessary to continue to fall within  
9 that range and to report on it on a periodic basis.

10                   I think one of their concerns may have been  
11 the fact that, in order to accomplish the acquisition in a  
12 timely fashion, there may have been a -- a debt financing  
13 associated with that, a bridge loan if you will, and that  
14 they wanted to make sure that we took the necessary steps to  
15 issue equity in order to take out that bridge loan and to  
16 restore our capital structure to something that looked like  
17 investment grade.

18                   COMMISSIONER GAW: Okay.

19                   MR. HACK: Commissioner, if I can just jump in

20 briefly, one of the things that differentiates Southern  
21 Union from other companies in this arena is the fact that we  
22 do not pay a cash dividend. We pay a stock dividend, and  
23 historically we have been a transaction-oriented company and  
24 have, on occasion, been more leveraged than, quote, normal.

25 And we have shown over the past eight or nine

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1 years anyway a demonstrable ability because of cash  
2 management and the fact that we don't pay a cash dividend to  
3 bring that cap structure back into line very quickly.

4 COMMISSIONER GAW: And I -- do you know  
5 whether these -- these things -- the Massachusetts order,  
6 was it as a result of a stip as well?

7 MR. HACK: It was the approval of an  
8 application, so it was -- it was not an agreement. It  
9 was -- basically we filed an application, the Staff  
10 recommended approval and then the Order issued.

11 COMMISSIONER GAW: The recommendations for  
12 these things that are in the order as sort of conditions,  
13 reporting conditions, et cetera, et cetera, was that --  
14 would that have occurred as a result of Staff  
15 recommendations or as a result of the Commission just doing  
16 that as a matter of entering the Order?

17 MR. HACK: It's my belief that it's -- that  
18 it's the Staff recommendation.

19 COMMISSIONER GAW: Yeah. Okay. It wasn't a

20 hearing on this that was contested?

21 MR. HACK: No.

22 MR. FRANSON: Commissioner Gaw?

23 COMMISSIONER GAW: Yes. Sorry, Mr. Franson.

24 MR. FRANSON: I would like to send your

25 attention to particular parts of the testimony of Staff

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1 Witness Murray, and also pub-- Office of the Public Counsel

2 Witness Burdette.

3 Mr. Murray's testimony, pages 5 and 6, and

4 Mr. Burdette's testimony beginning at page 4, there is

5 discussion about Standard & Poor's also being concerned

6 about the capital structure of Southern Union, and that is

7 discussed in some detail in the testimony.

8 COMMISSIONER GAW: I looked at that as well,

9 and was just a little bit different approach than what's

10 done in the other order. But the recommendation in regard

11 to this stip regarding the future credit ratings of Southern

12 are contained in what portion of the stip?

13 MR. FRANSON: In Massachusetts?

14 COMMISSIONER GAW: No. Here.

15 MR. FRANSON: There is not any provision in

16 the stip regarding specific capital structure numbers of

17 the -- of Southern Union.

18 COMMISSIONER GAW: Okay.

19 MR. HACK: Commissioner, it's addressed more

20 broadly. Commissioner --

21 COMMISSIONER GAW: Okay. Thanks.

22 MR. HACK: -- in paragraph 3. Let me get to  
23 it.

24 COMMISSIONER GAW: Give me a page number.

25 MR. HACK: Once I get there, I'll --

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1 paragraph 3E, page 9, addresses cost of capital generally,  
2 and basically that obligates the company to show and to  
3 maintain that there's no detrimental impact of this  
4 transaction on its overall cost of capital. And those would  
5 be encompassed -- those concerns I think would be  
6 encompassed in this condition.

7 COMMISSIONER GAW: And if for some reason  
8 there is a determination made that it does cause some sort  
9 of a problem in regard to credit ratings and other things,  
10 is the -- is the cure for that in any kind of a rate case  
11 that would try to include that in a determination of what  
12 appropriate rates are?

13 MR. HACK: Yes.

14 MR. FRANSON: And Staff would agree, that  
15 would be the appropriate time for this Commission to  
16 consider that.

17 COMMISSIONER GAW: So this is sort of a --  
18 this is an agreement that if a rate case -- in any future  
19 rate case, that if -- if there was a lowering of credit,  
20 there would be some -- if it could be determined that it was

21 as a result of this particular transaction, that that would  
22 be something that wouldn't be allowed to be considered in  
23 the calculation of the rates?

24 MR. HACK: Right. It's consistent with the no  
25 detriment standard.

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1 COMMISSIONER GAW: I can see how that could be  
2 a fun hearing to be in trying to determine, but I --

3 MR. HACK: It's like arguing about cost of  
4 capital on --

5 COMMISSIONER GAW: Yes. At least I understand  
6 where you're coming from on it. I'll ask Staff, there is  
7 a -- in the testimony you had about conditions regarding  
8 the -- let me see if I can get to that. You might help me  
9 out if you would, Mr. Franson. There was a list of  
10 conditions that you recommended prior to entering into the  
11 stip in one of the --

12 MR. FRANSON: That would be --

13 COMMISSIONER GAW: Somebody's testimony.

14 MR. FRANSON: That would Mr. Hyneman's.

15 COMMISSIONER GAW: Yeah. Probably I won't  
16 find it. In any event, one of the things -- one of the  
17 paragraphs had to do with -- with the protection of MGE from  
18 any potential bankruptcy or something, if I recall. Do you  
19 know what I'm talking about?

20 MR. FRANSON: Yes, I do. I believe you're  
21 referring to the insulation of MGE from Panhandle starting

22 at -- in Mr. Hyneman's rebuttal testimony, starting at  
23 Schedule 2-2.

24 COMMISSIONER GAW: That's subdivision 2 there?

25 MR. FRANSON: Yes.

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1 COMMISSIONER GAW: I was trying to -- and that  
2 is not the same language that's in the stip?

3 MR. FRANSON: No, it is not.

4 COMMISSIONER GAW: The language in the stip  
5 is -- a lot of the other conditions are pretty much the  
6 same?

7 MR. FRANSON: There are substantial  
8 similarities.

9 COMMISSIONER GAW: Just for purposes of my  
10 understanding, it is not really relevant to the stip, but  
11 how is it that MGE could have been protected from a  
12 potential bankruptcy by Southern as a division of Southern  
13 and not a separate subsidiary?

14 MR. FRANSON: As a separate division -- and I  
15 may need to ask Mr. Murray -- but in my understanding, the  
16 way that they are currently set up, they really could not be  
17 completely protected.

18 There are some -- certainly some conditions in  
19 the Stipulation & Agreement that go a long ways toward doing  
20 that, and hopefully will be successful. However, the  
21 Staff's initial position was that they needed to be

22 insulated in the sense that they would establish their own  
23 credit rating and would be truly separate, maybe more toward  
24 a subsidiary.

25                   However, Staff would have been looking to

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1 Southern Union primarily to establish that and establish  
2 that the true insulation had, in fact, occurred.

3                   COMMISSIONER GAW: Am I -- if you-all could  
4 just enlighten me, is it -- is it not accurate, it would be  
5 very difficult to do that as a division unless it was just  
6 spun off as a separate subsidiary to protect the company in  
7 that fashion. Mr. Hack?

8                   MR. HACK: Commissioner, if I can jump in, the  
9 discussions -- and I don't want to violate any  
10 confidences --

11                   COMMISSIONER GAW: Okay.

12                   MR. HACK: -- but I do want to answer your  
13 question. The -- in essence, what we were interpreting this  
14 language as meaning or requiring was to create a legally  
15 separate subsidiary for MGE, which would have brought with  
16 it a host of difficulties, including triggering PUCHA  
17 requirements, which -- and I'm not a PUCHA expert, but  
18 there's an integration requirement in order to be exempt  
19 under PUCHA, and because our LDC assets are not integrated  
20 -- they're in Pennsylvania, Rhode Island, Massachusetts and  
21 Missouri -- we don't have any good faith belief that we  
22 would qualify for those integration requirements.

23 In addition, I think we ran some numbers --  
24 and Mr. Marshall can correct me if I'm wrong -- that -- that  
25 doing that would have required what's known as a defeasance

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1 of certain senior debt to the tune of about \$100 million,  
2 because it's debt that we entered into with the purchase of  
3 Missouri that carries with it an early payment penalty.

4 COMMISSIONER GAW: Uh-huh.

5 MR. HACK: There are also a host of  
6 administrative requirements associated with PUCHA, it's my  
7 long-winded answer to say you're -- you're right. It's  
8 virtually impossible to do under a divisional structure and,  
9 frankly, MGE has benefited from the divisional structure  
10 over time because of our safety line replacement program,  
11 because we've been drawing cash into MGE.

12 COMMISSIONER GAW: Well, you sort of antic--  
13 your long-winded answer is good because you anticipated my  
14 next question. And that was, what was the reason why there  
15 wasn't a recommendation that it actually be separated as a  
16 subsidiary? And I think you -- you gave the company's  
17 position in that regard just now.

18 MR. HACK: Right. Yes.

19 COMMISSIONER GAW: And I might ask if there's  
20 any disagreement with that from other -- from others here?

21 MR. FRANSON: Commissioner Gaw, Staff would  
22 certainly agree those were the positions articulated by the

23 company and, again, not wanting to go any further for any  
24 negotiations.

25                   However, Staff's, I'll call it our litigation

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1 position, was not necessarily that that was the only option,  
2 all of the, shall we say, rather extreme options presented  
3 by Mr. Hack. Those certainly would have been something that  
4 Staff would have had to assess and would have recommended  
5 that the Commission assess.

6                   Our position was that had this matter gone to  
7 hearing, that MGE would be protected and Southern Union  
8 would pursue that all options and would become fully  
9 informed and would inform Staff, and staff would have been  
10 working with them in that regard.

11                   We -- Staff does not necessarily agree that  
12 those were the only options. The way our condition is set  
13 out here, it is that it not be -- that it would not be  
14 likely that MGE would be pulled into bankruptcy. That --  
15 there would have hopefully been less drastic steps, and  
16 Staff believes there would have been, but those -- we didn't  
17 actually go down that road.

18                   COMMISSIONER GAW: Staff -- Staff isn't  
19 suggesting that anything about this transaction is likely to  
20 lead to a bankruptcy of Southern, is it?

21                   MR. FRANSON: Staff is not suggesting that it  
22 is likely, but given the realities that we've seen with  
23 other companies and things, you certainly have to consider

24 that unlikely event and you have to do everything you can to  
25 protect against it. Staff is not suggesting that it is

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1 likely as a result of this.

2 COMMISSIONER GAW: All right. I understand  
3 what -- what you're saying, if I can rephrase it and you  
4 tell me if this wrong, is that you were just trying to  
5 prepare for any contingencies in protecting Missouri's  
6 interests in MGE's activities here?

7 MR. FRANSON: Yes, Commissioner, that is true.

8 COMMISSIONER GAW: You're not making  
9 insinuation or prediction that this is likely to lead to  
10 bankruptcy or increases the likelihood of any bankruptcy by  
11 settlement?

12 MR. FRANSON: We are not suggesting that it is  
13 likely to happen, but nobody can predict the future.

14 COMMISSIONER GAW: Mr. Hack, I'm sorry, you  
15 haven't -- I'm sorry for even going down this road at all.

16 MR. HACK: I'll be brief, or I'll try to be  
17 brief. We're buying a regulated property. There are no  
18 energy trading components of the assets we're buying, and  
19 we're maintaining our regulated position, just expanding our  
20 business segment. And we think it's very safe, and very,  
21 very consistent with the risk of our -- of our existing  
22 business.

23 So, no, we don't see any likelihood at all of

24 this transaction having those kind of dire consequences.

25 COMMISSIONER GAW: Public Counsel, just if you

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1 want to --

2 MR. MICHEEL: We're not concerned,  
3 Commissioner, about bankruptcy.

4 COMMISSIONER GAW: Thank you.

5 There was a -- let's see if I can pull that  
6 real quick. I don't want to go into this in very much  
7 detail at all, but just on page 4 of Mr. Sommerer's rebuttal  
8 testimony, he's referring to -- somebody may help me on the  
9 pronunciation of it -- O-N-E-O-K.

10 MR. HACK: ONEOK.

11 COMMISSIONER GAW: ONEOK. Thank you. Is --  
12 is there any relevance to this stip in that testimony on  
13 page 4 and, if so, what is it?

14 MR. FRANSON: Yes, Commissioner, I believe  
15 there is.

16 COMMISSIONER GAW: Go ahead and explain.

17 MR. FRANSON: This is Mr. Sommerer's testimony  
18 about -- the basic question is, are there concerns about the  
19 effect of this transaction on the gas supply department?  
20 The answer is yes, and I'd like to ask Mr. Sommerer to come  
21 up to explain that.

22 COMMISSIONER GAW: I'm sorry. I didn't even  
23 realize you were still up there.

24 JUDGE WOODRUFF: You can step down,

25 Mr. Marshall. I hope it's a comfortable chair up there.

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1 MR. MARSHALL: It is quite comfortable.

2 JUDGE WOODRUFF: Okay.

3 COMMISSIONER GAW: All I'm interested in is  
4 relevance to this stipulation. I'm not interested in  
5 something outside of that.

6 MR. HACK: Our position is no, that it's not.

7 MR. FRANSON: Well, I think Staff has a  
8 different perspective.

9 COMMISSIONER GAW: I don't want to get into  
10 anything else that's out there pending. I'm not interested  
11 in doing that at this point. Go ahead.

12 (Witness sworn.)

13 JUDGE WOODRUFF: You may be seated, and can  
14 you tell us your name?

15 DAVID SOMMERER testified as follows:

16 THE WITNESS: My name is David Sommerer.

17 JUDGE WOODRUFF: And you're an employee of the  
18 Commission?

19 THE WITNESS: Of the Commission Staff, yes.

20 JUDGE WOODRUFF: And what is your position?

21 THE WITNESS: I'm the manager of the  
22 procurement analysis department.

23 JUDGE WOODRUFF: All right. Thank you. And  
24 can you answer the question?

25

THE WITNESS: Yes. I believe Staff's concern

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1 has been addressed in terms of the Stipulation & Agreement,  
2 and Commissioner, I do think that the Staff's concern goes  
3 beyond the Stipulation & Agreement and the things that were  
4 addressed to other filings.

5 QUESTIONS BY COMMISSIONER GAW:

6 Q. And I don't want to get into other filings.  
7 What I'm interested in is the tie of this testimony to this  
8 stipulation, and I'm only referring to the testimony about  
9 ONEOK.

10 A. In that regard, I don't believe that it is  
11 relevant to the stipulation.

12 COMMISSIONER GAW: All right. That's all I  
13 needed to know about. Thank you.

14 Mr. Hack, the proposed relationship between  
15 Southern and Panhandle is to be a parent/subsidiary  
16 relationship; is that accurate?

17 MR. HACK: Yes.

18 COMMISSIONER GAW: And there's not any  
19 contemplation of that changing?

20 MR. HACK: No. In fact, I believe the --  
21 paragraph 2 confirms that that won't happen.

22 COMMISSIONER GAW: All right. And in regard  
23 to the analysis that FERC might do regarding transactions  
24 that occur in the future between MGE or Southern and  
25 Panhandle, I'm interested in knowing just, first of all, a

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1 little bit of an overview of what, if anything, FERC has to  
2 do with those -- with the sales between those entities,  
3 assuming that this goes through.

4           MR. HACK: Right now, Commissioner, the FERC  
5 does not have any affiliate transaction rules that apply to  
6 relationships between interstate pipelines and their LDC  
7 affiliates, and there are those relationships across the  
8 country. I don't know how many, but there are some.

9           They do -- the FERC does have what are called  
10 marketing affiliate transaction rules that do govern  
11 relationships between interstate pipelines and the marketing  
12 affiliates.

13           The FERC is, it's my understanding,  
14 presently considering extending those marketing affiliate  
15 rules or some version thereof to interstate pipeline LDC  
16 relationships. I don't think it's been decided. I think it  
17 may have been contested. But I don't know the status of  
18 that.

19           COMMISSIONER GAW: Can you give me a general  
20 idea about what that potentially contemplates?

21           MR. HACK: Those are -- those are --  
22 basically, in a nutshell, they're more specifically  
23 described versions of the general non-discrimination  
24 requirements and information-sharing restrictions that are  
25 even in the Commission's own marketing affiliate transaction

1 rules.

2           It's my further understanding, of course, that  
3 as an interstate pipeline and common carrier subject to the  
4 federal law and FERC regulation, that Panhandle will be, of  
5 course, subject to the standard non-discrimination  
6 provisions under the law. And I would assume that any  
7 transactions between MGE and Southern Union Panhandle would  
8 have to comply with any of those requirements.

9           I also assume that to the extent that  
10 Panhandle, Southern Union Panhandle has a FERC rate case,  
11 that MGE's contracts, revenues, sales would be encompassed  
12 in the analysis of that rate case and the rate design and  
13 all that stuff. Just -- I think I made this point earlier,  
14 but MGE as a component of the Panhandle business is about 1,  
15 1 1/3 percent. We're not a significant shipper on the  
16 Panhandle system.

17           COMMISSIONER GAW: And I want to follow that  
18 up real quickly, because I'll probably forget if I don't.  
19 Is there -- is it practical to -- to anticipate the  
20 possibility of that volume shifting --

21           MR. HACK: No, it's not.

22           COMMISSIONER GAW: -- from Southern to  
23 Panhandle?

24           MR. HACK: The Panhandle system serves the  
25 eastern part of the MGE service territory, basically from

1 Warrensburg east.

2 COMMISSIONER GAW: Okay.

3 MR. HACK: And there is -- Warrensburg has, I  
4 think, a little bit of Williams service, but east of there  
5 the only towns -- the only service to those towns is  
6 available via Panhandle, Tipton, Fayette, those towns. So  
7 there is -- there's no -- there's no alternative to that.

8 Now there is a -- it's my understanding -- and  
9 I'm rattling numbers off the top of my head. I think  
10 there's a little bit of volumes from the Panhandle into the  
11 Kansas City market area at 85th and Holmes, but that's maxed  
12 out and will stay maxed out. And so, again, long-winded way  
13 of saying, no.

14 COMMISSIONER GAW: Okay. So the potential of  
15 there being any -- looking at the movement of volumes from  
16 Southern Star over to -- to Panhandle is probably not there?

17 MR. HACK: Not to any material degree.

18 COMMISSIONER GAW: Okay. The -- here's where  
19 I was going with my initial inquiry. Is there any  
20 possibility of getting into a scenario where FERC would be  
21 scrutinizing a deal -- and I premise this with this. I  
22 understand that there's an understanding in the stip that  
23 the current discounts that are there will stay in place.  
24 I'm not clear, I can't recall if there was a -- how long  
25 that is intended to go on or is anticipated to go on.

1                   MR. HACK: Well, let me just clarify that.  
2 It's intended to go as long -- it's intended to run as long  
3 as there is a relationship, an affiliate relationship  
4 between MGE and Southern Union Panhandle. What it -- what  
5 the provision actually says is that for purposes of  
6 calculating MGE's PGA rates, that discount will be used.

7                   Our contracts with Panhandle run -- again, I'm  
8 running from the top of my head -- through I'm going to say  
9 October or August of '05. So there will be no change in the  
10 contract between now and then.

11                   To the extent there is a change in the  
12 contract thereafter, it will be whatever we're able to  
13 negotiate with the Panhandle. But for purposes of our PGA  
14 rates, we will -- we will continue to use that discount  
15 percentage.

16                   So Panhandle will be able to comply with its  
17 non-discrimination standard at the FERC level by charging us  
18 what they're able to negotiate. We will try to protect our  
19 interests in those negotiations as best we can, but for  
20 purposes of PGA setting, that's what we've agreed to.

21                   COMMISSIONER GAW: I may catch you coming and  
22 going here. I apologize for that. I'm just trying to  
23 understand both sides of this.

24                   MR. HACK: That's fair.

25                   COMMISSIONER GAW: If you get to that point

1 where the contracts are renegotiated, if it -- if it were  
2 feasible or if it were possible to get a lower rate,  
3 discount rate --

4 MR. HACK: Right.

5 COMMISSIONER GAW: -- would the PGA then  
6 reflect that?

7 MR. HACK: Absolutely.

8 COMMISSIONER GAW: But if there is a higher  
9 rate, you can't negotiate the same rate, the PGA would still  
10 reflect the current, the current discount?

11 MR. HACK: Correct.

12 COMMISSIONER GAW: Here's the other side that  
13 I want to understand. Is it foreseeable that the FERC could  
14 suggest if, for instance, discounts given to other LDCs were  
15 not as good, that the FERC could say, you cut a special deal  
16 here and we're not going to allow that discount? Is it  
17 possible that that could occur with the rules contemplated  
18 on affiliate transactions that are out there?

19 MR. HACK: Well, I don't think that the  
20 affiliate rules would change the result one way or the  
21 other.

22 COMMISSIONER GAW: All right.

23 MR. HACK: If there's a special deal that  
24 can't be justified as, quote, due discrimination, then there  
25 is that kind of possibility, but -- and that's why we

1 structured the condition here the way we did, to be in  
2 agreement to MGE not to pass on any more than the discount  
3 level. Whatever the negotiations are going to be, they're  
4 going to be based upon the Panhandle's need to comply with  
5 the law.

6 COMMISSIONER GAW: Yeah. Okay. So if they --  
7 if Panhandle has to raise its rates because of that  
8 scenario -- and I realize what may be very farfetched -- but  
9 in that event, the PGA would actually reflect the change  
10 under this agreement or not?

11 MR. HACK: It would not. We would pay the  
12 rate, but the PGA rate wouldn't reflect it. They would  
13 charge whatever they charge.

14 COMMISSIONER GAW: Okay. Mr. Micheel?

15 MR. MICHEEL: The obligation is MGE's  
16 obligation. The obligation in the stipulation has nothing  
17 to do with Panhandle Eastern.

18 COMMISSIONER GAW: I understand that concept.  
19 I wanted to make sure that I was tracking it, and I -- I  
20 appreciate the explanation, because that clears it up for me  
21 a lot.

22 The current -- and, again, that's -- that goes  
23 on indefinitely as long -- as long as this affiliation  
24 exists?

25 MR. HACK: I can tell you that's not something

1 we were real wild about, but --

2 COMMISSIONER GAW: I understand.

3 MR. FRANSON: But they did, of course, agree  
4 to that.

5 COMMISSIONER GAW: I understand. I think  
6 that's all, except I might just ask Mr. Hack, would the  
7 company object to providing the same kind of material to the  
8 Commission that they're providing to Massachusetts?

9 MR. HACK: I think we'd be happy to provide it  
10 to you-all contemporaneously. I don't have a problem with  
11 that. I don't -- I mean, I don't see any reason why.

12 COMMISSIONER GAW: You may need to check with  
13 others.

14 MR. HACK: Yeah, but I don't see any reason  
15 why not.

16 COMMISSIONER GAW: I think that's all I have,  
17 Judge. Thank you. I apologize for taking so much time.

18 JUDGE WOODRUFF: Commissioner Forbis?

19 COMMISSIONER FORBIS: Thank you. I --

20 JUDGE WOODRUFF: Before -- Mr. Sommerer, you  
21 can step down.

22 MR. SOMMERER: Thank you.

23 COMMISSIONER FORBIS: I just had -- I have one  
24 question left that didn't get covered yet, and it's just  
25 sort of a -- in the stipulation on page 10 -- I guess that's

1 addressed to Staff -- where we talk about all this  
2 information that would be provided within six months, could  
3 you -- I guess Mr. Franson, could you just let me know what  
4 the array of outcomes might be after the receipt of that  
5 information? What could that be used for? What might  
6 happen when all this stuff arrives?

7 MR. FRANSON: Are you -- Commissioner Forbis,  
8 are you looking on page 10?

9 COMMISSIONER FORBIS: Page 10, letter G. It  
10 says, Southern Union agrees that it will share with all  
11 interested parties, study the impact of this and will  
12 address impact of operation, and there's a whole page that  
13 goes over and ends up on the top of 11. And I'm just  
14 curious what all that might lead to.

15 MR. FRANSON: Well, I think it's primarily  
16 geared toward looking at MGE and making sure there's no  
17 increased cost, no -- nothing that Staff would deem  
18 inappropriate or to the detriment of MGE.

19 And if things like that were coming up, there  
20 would -- the first time that may come up would be another  
21 MGE rate case, or Staff would certainly have the opportunity  
22 bring that to the attention of the Commission for either an  
23 investigation or possibly even a complaint, if there was  
24 something that Staff thought was detrimental to MGE or  
25 perhaps even a violation of the Stipulation & Agreement.

1 I think primarily it's geared toward a rate  
2 case and avoiding any increased cost as a result of this  
3 transaction.

4 COMMISSIONER FORBIS: But it could result in a  
5 complaint, depending on the severity -- if that's the right  
6 word -- of what's identified in Staff's perspective?

7 MR. FRANSON: If Staff received information  
8 that troubled it and thought that they -- either there was a  
9 violation of the Stipulation & Agreement or something that  
10 was, in fact, being detrimental to MGE, certainly the Staff  
11 could consider bringing it to the Commission's attention and  
12 either in the form of an investigation request, open a  
13 docket or even a complaint if that need was there.

14 COMMISSIONER FORBIS: Okay. Mr. Hack, it  
15 looks like you're ready to jump in, too.

16 MR. HACK: I'm sorry. I never shut up at  
17 these things.

18 The genesis of this paragraph, Commissioner,  
19 really goes back to some transactions that Southern Union  
20 entered into in the '99-2000 time period, one to purchase  
21 Pennsylvania Enterprises in '99, and then two or three more  
22 to buy some assets, LDC assets in Rhode Island,  
23 Massachusetts in 2000.

24 And the concern is addressed to joint and  
25 common costs, those corporate service, corporate support

1 functions and how they're spread across -- across the  
2 various divisions and operating units of the company.

3                   And it's a -- you've probably never had the  
4 pleasure of looking at a joint and common cost model, but  
5 it's a stack of paper about six inches thick that goes  
6 through cost causation for various accounting, financial,  
7 legal functions that provide support throughout the company.  
8 And this -- I would term it very unlikely that there would  
9 be a result from the provision of this information of a  
10 complaint.

11                   This is really designed to provide information  
12 about the workings of the company and the way it distributes  
13 its administrative and general costs throughout its various  
14 divisions and subsidiaries and basically to bring the Staff  
15 and other interested parties up to speed prior to a rate  
16 filing.

17                   COMMISSIONER FORBIS: Your use of the word  
18 pleasure and mine are very different.

19                   MR. HACK: You're right. You're right.

20                   COMMISSIONER FORBIS: So you think that's --  
21 it's courtesy is the wrong -- providing the information that  
22 is important to the parties, just for -- more or less for  
23 future consideration when a rate case comes around?

24                   MR. HACK: Right, information.

25                   COMMISSIONER FORBIS: Okay. All right. Thank

1 you.

2 That's all I have. Thank you.

3 JUDGE WOODRUFF: I have one question, then  
4 we'll give the Commissioners a chance.

5 There was mention that the FTC has to approve  
6 this transaction as well, and I don't think anybody  
7 mentioned, what is the status of the FTC application?

8 MR. HACK: I will tell you what I can. If  
9 there's anything more, I may have to ask somebody else, but  
10 it's currently under discussion with the FTC. It's our hope  
11 that the discussions with the FTC will be resolved promptly,  
12 but I do not have a date to give you for that. We cannot --  
13 I mean, we can't close absent consent of the FTC.

14 JUDGE WOODRUFF: Okay. There's also been a  
15 request in -- I believe in the Stipulation & Agreement, as  
16 well as some testimony or some previous filings that the  
17 company wants to have this -- this Commission's approval  
18 effective by April 1st. Is that still the case?

19 MR. HACK: Judge, given where we are, I think  
20 that we would like to get an Order out as soon as possible,  
21 but -- and we hold out hopes that early April will be --  
22 will be a closing date for us, but if we could -- if it  
23 would be possible to get an Order out Thursday with a  
24 ten-day effective date, that would be perfectly fine.

25 JUDGE WOODRUFF: That's my question. If an

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1 Order is issued tomorrow at agenda, April 1st would only be

2 a four-day effective date.

3 MR. HACK: And what I'm trying to say is,  
4 please use the ten-day effective date if you would issue it  
5 tomorrow.

6 JUDGE WOODRUFF: Okay. Thank you for that  
7 clarification.

8 All right. Commissioners, any other  
9 questions?

10 Commissioner Murray?

11 COMMISSIONER MURRAY: Commissioner Forbis, his  
12 question reminded me of something that I had that had  
13 puzzled me when I read the Stip & Agreement, and that was  
14 back on page 10, that Southern Union agrees that the types  
15 and availability of the raw data necessary to perform  
16 allocations of corporate overhead costs shall be discussed  
17 at the meeting to occur within six months from the close of  
18 the transaction.

19 And I was wondering if any of the parties  
20 believe that there will be a significant disagreement as to  
21 the types and availability of raw data necessary at that  
22 time and, if so, what would that disagreement lead to?

23 MR. HACK: I can tell you, based on our  
24 experience with this language after the Pennsylvania and  
25 what we call New England acquisitions, there was no dispute,

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1 and I don't believe that there would be a dispute about

2 that.

3                   You know, I think that sometimes there's a  
4 desire for more or more precise data, and I think we're able  
5 to usually work through those things. And I don't  
6 anticipate that we wouldn't be able to in this instance.

7                   COMMISSIONER MURRAY: And you don't know what  
8 those -- the types of data or the availability of the --  
9 that data will be at this time, beyond those that were  
10 spelled out in the agreement?

11                  MR. HACK: No, I don't. I don't know that  
12 there might not be something else, but this is typically the  
13 kind of information that is used in joint and common cost  
14 allocation models, and it is the kind of information that we  
15 maintain and use for those purposes and have used for those  
16 purposes for a number of years.

17                  COMMISSIONER MURRAY: Mr. Franson, were you  
18 going to say something?

19                  MR. FRANSON: Commissioner, the -- this is  
20 left open the way it is worded. It should -- should be  
21 discussed should include but not be limited to, it's  
22 relatively open-ended, and it would seem rather -- it would  
23 seem possible that but quite unlikely we'd have to bring  
24 such a dispute to the Commission, but if we had to, we would  
25 certainly do that. But I would think that would be rare.

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1                   COMMISSIONER MURRAY: All right. Thank you.

2                   JUDGE WOODRUFF: Anything else from any other

3 Commissioner?

4 Commissioner Lumpe?

5 COMMISSIONER LUMPE: Were there penalties  
6 involved -- that triggered something to me. You talked  
7 about getting it done by April or needing it done by  
8 April 1st. Is that just with this Commission and there  
9 would be penalties, or do you have to get it with the FTC  
10 also or there's penalty?

11 MR. HACK: The agreement -- the agreement  
12 speaks to not having all required regulatory approvals or  
13 being able to close as a result of that by April 1. So it's  
14 not limited to --

15 COMMISSIONER LUMPE: It's not limited to us?

16 MR. HACK: No.

17 COMMISSIONER LUMPE: And do you have any idea  
18 of when the FTC might make a decision? Are you anticipating  
19 penalties, then?

20 MR. HACK: Well, I don't -- we don't -- based  
21 upon your discussion related to the ten-day issue, we don't  
22 believe that we're going to be able to close April 1st, but  
23 it's our hope that we can get things resolved with the FTC  
24 in time to close the transaction very shortly thereafter.

25 COMMISSIONER LUMPE: And would that avoid

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1 penalties then?

2 MR. HACK: Right now the penalties would kick

3 in April 1, and so that agreement's in effect.

4 COMMISSIONER LUMPE: Thank you.

5 JUDGE WOODRUFF: Commissioner Gaw?

6 COMMISSIONER GAW: Just a couple of quick  
7 things. I hope they're quick.

8 On page 6 of the stip in -- I guess it's in  
9 paragraph -- I'm assuming it's 2, it says, Southern Union  
10 will exercise its best efforts to insulate MGE from any  
11 adverse consequences. Is there an understanding in some  
12 place that is objectively measurable about what the term  
13 "best efforts" means?

14 MR. HACK: Not in this document. Judge, I  
15 think it's our representation that we -- I think there may  
16 be other places here that we intend to take no actions  
17 whatsoever that would be detrimental to the Missouri  
18 operation, and we will -- we will use our -- frankly, we'll  
19 use our best efforts to make sure that doesn't happen, and  
20 we have no basis to believe that it could happen.

21 COMMISSIONER GAW: Okay. Is this just a  
22 phrase that's put in here? Anybody else want to --

23 MR. FRANSON: Staff views that as certainly a  
24 welcome statement, but we look more toward all of the other  
25 protections that are in here. But certainly it's a

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1 statement of their intent and their duty to do so.

2 COMMISSIONER GAW: And one final thing. And,  
3 Mr. Hack, you might be able to help me with this. When

4 you're providing additional information about the amount of  
5 debt and the amount paid in '99 versus today, and this is  
6 probably so general as to be meaningless, but I'm curious  
7 about those figures that -- in looking again, this is off of  
8 the testimony of Mr. Kvapil.

9 MR. HACK: Yes, sir.

10 COMMISSIONER GAW: Thank heavens. Okay. It  
11 appears to me that there may not be a significant difference  
12 in the amount that's paid after you consider the debt that  
13 is acquired with the company between '99 and now. And if  
14 that's -- if there could be some explanation of that, if  
15 that's true, or if it's not accurate, maybe you can just  
16 give me a little enlightenment.

17 It's not a huge thing, and I don't want a lot  
18 of detail.

19 MR. HACK: What we would do in response to  
20 your request is try and look at pages 4 and 6, get -- get  
21 the numbers, explain the rationale for the differences, and  
22 I think what you're asking is maybe to take it one step  
23 further and make some comment about market value  
24 distinctions between the two time periods.

25 COMMISSIONER GAW: Yeah. If I add those --

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1 this is, again, probably too general to be meaningful, but  
2 if I add those numbers in together the debt and the amount  
3 that's paid for it in an appropriate way to net it out, it

4 doesn't appear to be too much difference. There doesn't  
5 appear to be too much difference in the nets of it, so --  
6 and it may not be a right approach. I'm just going to  
7 leave it with you, because it's not a huge thing, but an  
8 explanation to satisfy my curiosity.

9 MR. HACK: As a lawyer, I'll tell you total  
10 capitalization is total capitalization, whether it's equity  
11 or debt. But that's as a lawyer.

12 COMMISSIONER GAW: And this is -- this is not  
13 really as much about that question as it is about the amount  
14 paid for it and the value of it after you net out the debt  
15 that the company had at both times.

16 MR. HACK: Okay.

17 COMMISSIONER GAW: And that's a more specific  
18 question that probably doesn't require much.

19 MR. HACK: We had intended to submit that  
20 information just by letter. We'll send it to the parties  
21 and send it to the Commission's records department.

22 COMMISSIONER GAW: Okay. Thank you. Can we  
23 have it before we do our --

24 MR. HACK: It's our hope that we can get that  
25 to you today.

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1 COMMISSIONER GAW: Thanks.

2 MR. HACK: I may be making commitments I can't  
3 live up to.

4 COMMISSIONER GAW: I understand that concept.

5 JUDGE WOODRUFF: Commissioner Lumpe?

6 COMMISSIONER LUMPE: On page 9, the paragraph  
7 that starts on the other page, the last sentence there is  
8 confusing to me.

9 Would you tell me how I'm supposed to read  
10 that? It says, Southern Union will submit to the  
11 Commission's accounting department and Public Counsel  
12 verified journal entries reflecting the recording of the  
13 transaction and all other merger acquisitions since  
14 January 1, 2002 of Southern Union's books and records.

15 Is there something missing there?

16 MR. HACK: I'll tell you what the meaning is.  
17 There may be -- there may be a word "activity" missing after  
18 acquisition.

19 COMMISSIONER LUMPE: Okay.

20 MR. HACK: Beginning in around 2000 and -- I  
21 want to say 1, 2002 maybe it was, that the company embarked  
22 on a cash flow improvement plan and divested itself of  
23 non-core LDC assets and -- and that's the activity that I  
24 think we're talking about.

25 COMMISSIONER LUMPE: Okay. I just kept

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1 reading that over, and I couldn't make sense of it.

2 MR. HACK: I think there might be a word  
3 missing.

4 COMMISSIONER LUMPE: Okay. Thank you.

5 JUDGE WOODRUFF: Public Counsel and Staff  
6 agree with that?  
7 MR. MICHEEL: I think there's a word missing  
8 and the word is "activity."  
9 JUDGE WOODRUFF: Staff, you agree with that  
10 also?  
11 MR. FRANSON: Yes, we do.  
12 COMMISSIONER GAW: Is that after the word  
13 "acquisition."  
14 JUDGE WOODRUFF: That would be merger and  
15 acquisition activity, then; is that correct?  
16 MR. HACK: Yes.  
17 JUDGE WOODRUFF: As long as everyone agrees, I  
18 don't think you need to amend your Stipulation & Agreement  
19 on it.  
20 All right. Anything else from the  
21 Commissioners?  
22 (No response.)  
23 JUDGE WOODRUFF: All right. While we're still  
24 on the record, let me state that we do have one other thing  
25 to take care of, and that's marking exhibits, because I

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1 believe there was a Stipulation & Agreement indicating that  
2 the exhibits would be brought into evidence.

3 So we'll go off the record so that the court  
4 reporter can do that.

5 Mr. Franson?

6 MR. FRANSON: Judge, before we do that, I do  
7 need to make one correction in the Staff's suggestions in  
8 support. On page 12 under the part of divesting Energy  
9 Works, it is stated that as a result of this Stipulation &  
10 Agreement, Southern Union and its affiliate and subsidiaries  
11 won't be able to invest in any other pipelines. That is --  
12 that needs to be narrowed down to any that provide service  
13 to MGE. And I apologize for that error.

14 JUDGE WOODRUFF: And that's just a correction,  
15 your comments, not in the Stipulation & Agreement?

16 MR. FRANSON: Correct, your Honor.

17 JUDGE WOODRUFF: All right. At this time,  
18 then, we'll -- in a moment we'll go off the record. I'll  
19 state we'll leave the Internet broadcasting while we're  
20 doing this, but we'll let the court reporter go off the  
21 record so that she can mark exhibits.

22 We're off the record.

23 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

24 (EXHIBIT NOS. 1 THROUGH 12 WERE MARKED FOR  
25 IDENTIFICATION BY THE REPORTER.)

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1 JUDGE WOODRUFF: All right. Let's go back on  
2 the record now.

3 While we were off we had marked Exhibits 1  
4 through 12, and several of those have HC and NP versions.  
5 And I believe by the Stipulation & Agreement there was no

6 objections to those, so they will be admitted into evidence.

7 (EXHIBIT NOS. 1 THROUGH 12 WERE RECEIVED INTO  
8 EVIDENCE.)

9 JUDGE WOODRUFF: Any other matters we need to  
10 bring up while we're on the record?

11 MR. FRANSON: No, your Honor.

12 JUDGE WOODRUFF: With that, then, we are  
13 adjourned.

14 WHEREUPON, the hearing of this case was  
15 concluded.

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