

COMMONWEALTH OF PENNSYLVANIA

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PUBLIC UTILITY COMMISSION

ORIGINAL

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: Pennsylvania Public Utility Commission,
: et al. v. Equitable Gas Company, a
: Division of Equitable Resources, Inc.

: Docket No.
: R-2008-2029325
: et al.

: Initial Hearing on Petition of
: Hess Corporation for Interim
: Emergency Order

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Pages 113 through 263

Hearing Room 3
Commonwealth Keystone Building
Harrisburg, Pennsylvania

Thursday, October 23, 2008

Met, pursuant to adjournment, at 10:02 a.m.

BEFORE:

JOHN H. CORBETT, JR., Administrative Law Judge

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P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE JOHN J. CORBETT: We're on
3 the record at this time.

4 This is the time and place scheduled for a hearing on
5 the petition of Hess Corporation for an interim emergency
6 order in the case of Pennsylvania Public Utility Commission
7 versus Equitable Gas Company at the lead docket number of
8 R-2008-2029325.

9 I am Administrative Law Judge John Corbett and I have
10 been assigned to hear this case and eventually issue a
11 recommended decision on the base rate case.

12 We'll begin with Pittsburgh and in Pittsburgh we have
13 Charles Thomas, representing Equitable Gas Company, and John
14 Povilaitis, representing Hess Corporation.

15 I think it would be worthwhile if we just took a
16 minute, go around the hearing room in Harrisburg so I have
17 everyone identify themselves. Would you begin, please?

18 MR. TOTINO: Good morning, Your Honor. Matt Totino
19 of Ryan, Russell, Ogden & Seltzer, also on behalf of Hess
20 Corp.

21 JUDGE CORBETT: Good morning.

22 MR. TOTINO: Good morning.

23 MR. MOODY: Good morning, Your Honor. Kevin Moody
24 from Wolf Block on behalf of IOGA.

25 JUDGE CORBETT: Good morning.

1 MR. MOODY: Good morning.

2 MR. KANASKIE: Good morning, Your Honor. Rick
3 Kanaskie with the Office of Trial Staff.

4 JUDGE CORBETT: Good morning.

5 MS. WEBB: Good morning, Your Honor. Sharon Webb on
6 behalf of the Office of Small Business Advocate.

7 JUDGE CORBETT: Good morning.

8 MR. STEWART: Good morning, Your Honor. Todd Stewart
9 from Hawke, McKeon & Sniscak on behalf of Dominion Retail.

10 JUDGE CORBETT: Good morning.

11 MS. KARANDRIKAS: Good morning, Your Honor. Vicki
12 Karandrikas with McNees, Wallace & Nurick on behalf of
13 Equitable Industrial Intervenors.

14 JUDGE CORBETT: Good morning.

15 MR. LAWRENCE: Good morning, Your Honor. Darryl
16 Lawrence, representing the Office of Consumer Advocate.

17 JUDGE CORBETT: Good morning.

18 Anyone else?

19 (No response.)

20 JUDGE CORBETT: Okay. Then we'll turn to -- Mr.
21 Povilaitis, will you be the lead counsel in this matter this
22 morning?

23 MR. POVILAITIS: Yes, Your Honor. As I mentioned
24 before we went on the record, the witnesses will be
25 appearing before you here today. We have Mr. Magnani from

1 Hess Corporation and Mr. Crist as witnesses today, and I
2 guess, since we have learned that the reporter is in the
3 Harrisburg location, I wanted to advise Mr. Totino that
4 hopefully his number of copies will suffice to provide two
5 copies of our materials to the reporter.

6 MR. TOTINO: We have enough.

7 JUDGE CORBETT: Okay, very good. Then Mr.
8 Povilaitis, you may proceed.

9 MR. POVILAITIS: Thank you, Your Honor.

10 Mr. Magnani, would you take the stand?

11 JUDGE CORBETT: Would you raise your right hand,
12 please, and be sworn?

13 Whereupon,

14 ORLANDO "RANDY" MAGNANI

15 having been duly sworn, testified as follows:

16 JUDGE CORBETT: Please have a seat. Try to speak up
17 if you can, as loud as you can, so the court reporter can
18 hear you. Would you begin, please, by giving us your full
19 name and spell your last name for the court reporter,
20 please?

21 THE WITNESS: Orlando "Randy" Magnani, M-A-G-N-A-N-I.

22 JUDGE CORBETT: All right. Mr. Povilaitis?

23 MR. POVILAITIS: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. POVILAITIS:

1 Q. Mr. Magnani, by whom are you employed and in
2 what capacity?

3 A. I'm employed by Hess Corporation as director of
4 natural gas operations.

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

7 A. I've been with Hess since 2001 and have been
8 director of natural gas operations since 2002.

9 Q. Mr. Magnani, could you explain your job
10 responsibilities and your duties in your current position?

11 A. Yes. I'm responsible for scheduling of natural
12 gas -- (inaudible) --

13 THE REPORTER: Excuse me. This is the reporter.
14 There was some noise. Could you please begin your answer
15 again?

16 THE WITNESS: I'm responsible for scheduling natural
17 gas on LDCs in 17 states and on interstate pipeline systems.
18 I'm also responsible for derivation of cost components in
19 transactions.

20 THE REPORTER: Your Honor, excuse me. This is John
21 Kelly. Could we go off the record for just a second,
22 please?

23 JUDGE CORBETT: Sure. We're off the record.

24 (Discussion off the record.)

25 JUDGE CORBETT: We're back on the record.

1 BY MR. POVILAITIS:

2 Q. Mr. Magnani, would you review your job
3 responsibilities and duties in your current position?

4 A. I'm responsible for scheduling natural gas on
5 interstate pipeline systems and on LDC systems in 17 states.
6 I'm also responsible for the derivation of cost components.

7 Q. Could you describe your educational background
8 and your relevant work experience prior to joining Hess?

9 A. Graduated Manhattan College in 1970 with a
10 bachelor of science degree in engineering, in chemical
11 engineering, and I worked for the Public Service Commission
12 in the State of New York for about a year, then went to
13 Brooklyn Union Gas Company which later became Keyspan and
14 worked in several positions for the utility: manager of
15 rates, manager of gas supply, general manager, project
16 development. I also held the position of president of
17 Keyspan Energy Services, their affiliated marketer.

18 I've worked for Navigant Consulting in Massachusetts
19 for about two years, and then since 2001, I've been with
20 Hess Corporation.

21 Q. Are you familiar with the contents of Hess's
22 petition for interim emergency order filed in this matter on
23 October 14, 2008 that's the subject matter of the proceeding
24 today?

25 A. Yes, I am.

1 Q. Are the statements that are set forth in that
2 petition true and correct to the best of your knowledge,
3 information and belief?

4 A. Yes, they are.

5 MR. THOMAS: May it please Your Honor, I'm going to
6 object to that question and having that answer on the
7 record. The regulations for interim emergency relief are
8 very clear that the petition is required to be supported by
9 a verification which must state certain facts. It is
10 inappropriate in this hearing for Mr. Magnani, through
11 cross-examination, to be curing defects in the petition.

12 Mr. Crist took the verification, not Mr. Magnani, and
13 I think it's inappropriate to come in here and raise that
14 type of direct examination for the purpose of curing holes
15 in something that did not meet the Commission's regulations.

16 MR. POVILAITIS: May I respond, Your Honor?

17 JUDGE CORBETT: You may.

18 MR. POVILAITIS: Your Honor, I don't think that
19 regulation, despite counsel's arguments, can be read as
20 narrowing the scope of who may authorize or verify a
21 pleading to only employees of the party.

22 In fact, it would be particularly unfair to interpret
23 the regulation and apply it in that manner in this case when
24 the very terms of the protective order entered in this case
25 and as applied steer a lot of the critical information on

1 subjects in this case to Hess's outside consultant. In
2 fact, I'm not sure how Hess could operate in this case at
3 all if it didn't have an outside consultant.

4 However, Mr. Magnani, to the extent there is any
5 concern on the part of Equitable Gas as to whether or not
6 Hess employees can verify this pleading, is in a position to
7 do so today and I think, in the interests of expediting this
8 matter, that should be permitted.

9 JUDGE CORBETT: The objection is overruled. You may
10 proceed.

11 BY MR. POVILAITIS:

12 Q. Mr. Magnani, my question to you was whether the
13 statements in the petition are true and correct to the best
14 of your knowledge, information and belief.

15 A. Yes.

16 MR. POVILAITIS: Your Honor, at this point, I would
17 like to move that you mark and identify the document which
18 consists of Hess Corporation's petition for interim
19 emergency order, with its attachments, that that be marked
20 as Hess Exhibit 1.

21 JUDGE CORBETT: Yes. It will be so marked and
22 identified.

23 (Whereupon, the document was marked
24 as Hess Exhibit No. 1 for
25 identification.)

1 JUDGE CORBETT: I have a copy. It's the same thing
2 as you provided previously; is that correct, Mr. Povilaitis?

3 MR. POVILAITIS: It is.

4 JUDGE CORBETT: All right. Thank you.

5 And Mr. Totino, you'll submit copies to the court
6 reporter?

7 MR. TOTINO: Already done, Your Honor.

8 JUDGE CORBETT: Thank you.

9 MR. POVILAITIS: Your Honor, although we usually wait
10 for the offer of admission of exhibits and materials at the
11 end of an examination, I would like to actually move the
12 admission of the petition which has been marked as Exhibit
13 No. 1 into evidence at this point, because if that is done,
14 I think we can, in the interests of administrative
15 efficiency, curtail some questioning to Mr. Magnani this
16 morning.

17 JUDGE CORBETT: All right. Objection?

18 MR. THOMAS: My only comment, Your Honor, is that
19 it's being moved into evidence subject to cross-
20 examination --

21 MR. POVILAITIS: Absolutely.

22 MR. THOMAS: And timely motions thereafter --

23 MR. POVILAITIS: Yes.

24 MR. THOMAS: -- during cross-examination.

25 JUDGE CORBETT: Yes. It's so admitted subject to

1 timely motions and subject to cross-examination.

2 (Whereupon, the document marked as
3 Hess Exhibit No. 1 was received in
4 evidence.)

5 BY MR. POVILAITIS:

6 Q. Mr. Magnani, could you briefly describe
7 Equitable's agency program?

8 A. Equitable's agency program is authorized by its
9 tariff and basically it allows Equitable to act as agent for
10 its customers in obtaining upstream capacity and storage
11 services for customer owned gas.

12 Q. Is it your understanding that, as that program
13 operates, supply is involved in that service?

14 A. No, not as written in the tariff. That may be
15 different in reality, but the tariff doesn't apply.

16 Q. How is it different in reality?

17 A. I believe that Equitable, in their responses,
18 they told us that Equitable's affiliate provides all of the
19 supply.

20 Q. What's your understanding of the current status
21 of the agency program?

22 A. It's my understanding that Equitable is planning
23 to terminate the agency program by the end of this year.

24 Q. How did Hess become aware of Equitable's intent
25 to terminate the agency program?

1 A. We first became aware in an objection to one of
2 our interrogatories where I guess Equitable said, "You don't
3 have to be concerned with that because we're getting out of
4 the agency program." Subsequently, we put in a data request
5 to clarify that, and again got that answer.

6 Q. Can you explain for Your Honor's benefit why
7 Hess is seeking emergency relief at this time?

8 A. Yes. We're very concerned with the way
9 Equitable terminates the agency program, primarily whether
10 they're assigning their -- whether it's their plan to assign
11 agency customers to a deregulated marketing affiliate or
12 whether they plan -- also, whether they plan to have
13 expiring contracts be moved over to the deregulated
14 marketing affiliate.

15 Q. Now, what steps has Hess taken in this case to
16 try to resolve its concern about Equitable's wind-down of
17 the agency program?

18 A. Several. We've submitted formal requests and
19 informal requests to try to get a response from Equitable
20 that would confirm that they were not going to simply assign
21 the contracts or allow the expiring contracts to be renewed
22 by Equitable's deregulated affiliate, and we were not
23 successful in getting an answer to those questions.

24 Q. When you refer to formal efforts, are you
25 referring to the discovery that Hess posed to Equitable on

1 that topic?

2 A. Yes.

3 Q. Did that discovery responses provide any
4 assurances that the agency contracts wouldn't be assigned or
5 that customers terminated would not be referred to the
6 affiliate?

7 A. No. Equitable gave no such assurances and
8 refused to give assurances.

9 Q. Do you recall when Hess first contacted
10 Equitable informally to discuss the agency issue?

11 A. I believe that was around September 15th, in a
12 phone call.

13 Q. Do you recall any e-mails involving that
14 subject?

15 A. Yes. We submitted an e-mail on September 29th,
16 laying out what we thought were the problems with an exit
17 from the program that wasn't along certain lines, and we put
18 in the proposals as to what we thought would be the
19 appropriate way to exit the program.

20 Q. At the time of that exchange with Equitable, did
21 any substantive discussions occur on the agency issues as
22 requested by Hess?

23 A. No. Basically, Equitable didn't want to discuss
24 it.

25 Q. Are you aware of any additional attempts to

1 obtain assurances from Equitable regarding the agency issue
2 following that e-mail?

3 A. Yes. I believe there was one more contact on
4 October 3rd where we tried to again get an answer to the
5 question and still haven't gotten an answer.

6 Q. How do you respond, Mr. Magnani, to the argument
7 in Equitable's answer to the petition that agency
8 termination issues, agency program termination issues can be
9 addressed during the normal course of this proceeding?

10 A. I don't see how that could be. Basically, this
11 proceeding is going to end sometime in March. Equitable has
12 said that they're going to terminate the program on December
13 31st. In fact, right now, today, there are probably
14 contracts expiring and for all we know they're being
15 assigned to a deregulated marketer.

16 Those things can't be undone, you know. We need to
17 get clarification now so that -- by the time we get to March
18 31st, there may not be an agency program to talk about.

19 Q. Well, how do you respond to the argument in
20 Equitable's answer to the petition that Hess isn't harmed
21 because of this situation because it's not providing gas
22 supply to agency customers?

23 A. That's the very point of our petition. Hess has
24 no opportunity to provide supply for agency customers if
25 Equitable simply assigns agency customers to its deregulated

1 marketer or allowed the marketer to renew the customers. We
2 want the opportunity to compete. We believe the customers
3 have the right to that benefit.

4 Q. How do you respond to the argument that Hess's
5 overall financial health is relevant to Hess's ability to
6 compete for customers?

7 A. Hess's overall financial health has nothing to
8 do with it, you know. Hess is a global energy company
9 driven by oil prices, driven by amount of oil it finds off
10 the coast of various countries. All of those things have
11 nothing to do with our ability to compete in Pittsburgh and
12 have nothing to do with the right to Pittsburgh customers to
13 reap the benefits of competition.

14 But what is important is that we do serve -- we have
15 three offices in Pennsylvania: one in Philadelphia, one in
16 Wyomissing and in Pittsburgh, and you know, as we look at
17 territories and whether or not we continue to maintain those
18 presence and maintain those offices, it's really a function
19 of, can we compete. If we can't compete, there's nothing to
20 stay for.

21 Q. Well, how do you respond to Equitable's argument
22 in their pleadings that Hess isn't harmed by the fact, due
23 to the fact that the majority of the customers that have
24 left the agency program are now served by non-affiliated
25 marketers?

1 A. That's a statistic that has no meaning. I don't
2 know what to draw from that, you know. One of the things
3 that you know is that one of the benefits that the agency
4 has, it knows everything about the customer and can tell the
5 affiliate what it's getting.

6 But basically, for all we know, Equitable didn't want
7 those customers. They might have let all the no-pay, slow-
8 pay customers go and diverted the prime customers to their
9 affiliate. I mean, the numbers themselves tell us nothing.

10 Q. Are you aware of any indication what vintage the
11 customers referred to as having gone to non-affiliated
12 marketers might be?

13 A. No.

14 MR. POVILAITIS: May I have just a moment, Your
15 Honor?

16 JUDGE CORBETT: Sure.

17 Mr. Povilaitis is taking a moment just to consult.

18 (Pause.)

19 MR. POVILAITIS: May I approach the witness?

20 JUDGE CORBETT: You may.

21 BY MR. POVILAITIS:

22 Q. Mr. Magnani --

23 JUDGE CORBETT: Try to avoid speaking outside the
24 range of the microphone.

25 MR. POVILAITIS: I'll try to be mindful of that, Your

1 Honor.

2 JUDGE CORBETT: All right.

3 BY MR. POVILAITIS:

4 Q. Mr. Magnani, I'd like to show you a document
5 which is marked as Equitable's response to Hess Set I
6 Interrogatory, No. 9. Would you take a look at that? Do
7 you have that available to you?

8 A. I have it.

9 MR. THOMAS: May it please Your Honor, would counsel
10 be kind enough to let us view it as he's showing it to the
11 witness?

12 JUDGE CORBETT: Sure. Show it to Mr. Thomas.

13 (Pause.)

14 BY MR. POVILAITIS:

15 Q. Mr. Magnani, I'd like to draw your attention to
16 the second paragraph of that response. Could you just
17 summarize that response for the record, please?

18 A. The question was whether there were any shared
19 employees or personnel that shared duties, and the response,
20 basically the second paragraph says, "Presently, Equitable
21 is transitioning services provided pursuant to Tariff Rule
22 11.7 to Equitable Energy. The transition will be completed
23 by November 1, 2008." I think that's a clear indication of
24 why we can't wait until the end of March.

25 MR. POVILAITIS: Your Honor, at this point, that

1 concludes the direct examination of Mr. Magnani. We
2 previously identified and moved into evidence the petition
3 which we have verified and Mr. Magnani is available for any
4 questions.

5 JUDGE CORBETT: All right. Before we turn to Mr.
6 Thomas -- I take it, Mr. Thomas, you will be crossing?

7 MR. THOMAS: I will be crossing, but I would prefer,
8 Your Honor, to defer my cross until the conclusion of any
9 other cross.

10 JUDGE CORBETT: I was going to do that. That's why I
11 asked.

12 Does any party in Harrisburg wish to cross-examine
13 the witness?

14 MR. MOODY: No, Your Honor.

15 JUDGE CORBETT: Okay. Hearing none, then Mr. Thomas,
16 you may proceed.

17 MR. THOMAS: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. THOMAS:

20 Q. Mr. Magnani, on whose behalf are you testifying
21 today?

22 A. On whose behalf?

23 Q. Yes.

24 A. Hess Corporation.

25 Q. Is that the parent corporation, or -- I'm a

1 little confused.

2 A. Hess --

3 Q. Because I see different addresses and so forth.

4 A. Hess is a global energy company and has a lot of
5 addresses, but it has basically one corporation. We do not
6 set up affiliates and subsidiaries to do different
7 functions, so, you know, I'm an employee of Hess
8 Corporation. I work in the energy marketing division, which
9 is a division of marketing and refining.

10 Q. So it was the parent -- do you have any
11 subsidiaries?

12 A. We have some subsidiaries for different reasons,
13 but primarily all of the business is performed in Hess
14 Corporation.

15 Q. But was the company that was licensed as a gas
16 marketer in this state the parent company?

17 A. Yes. Originally, it was -- we acquired a
18 company that came into the state, but it's Hess Corporation.
19 It was called Amerada Hess at the time that we --

20 Q. Yes.

21 A. -- (inaudible) -- and in June 1, I guess, about
22 2005, the name was changed from Amerada Hess Corporation to
23 Hess Corporation.

24 Q. So when I go and I'm given FCC reports for
25 discovery requests or go on my own and I see Hess

1 Corporation's 10K or 10Q or --

2 A. Correct.

3 Q. -- policy statement and so on, that's the
4 company that's testifying here today and on whose behalf
5 you're testifying?

6 A. Yes, it is.

7 THE REPORTER: Your Honor, excuse me.

8 JUDGE CORBETT: Yes?

9 THE REPORTER: Could we try and keep the movement of
10 papers near the microphone to a minimum? It's causing a
11 little bit of problem.

12 JUDGE CORBETT: Sure.

13 THE REPORTER: Thank you.

14 JUDGE CORBETT: Thank you.

15 BY MR. POVILAITIS:

16 Q. Mr. Magnani, what is your address?

17 A. I'm at 1 Hess Plaza, Woodbridge, New Jersey,
18 07095, and that's basically the operating headquarters of
19 the marketing and refining division.

20 Q. You stated earlier under direct examination that
21 you reviewed the petition for interim emergency order filed
22 in this proceeding.

23 A. Yes, I did.

24 Q. When did you review that?

25 A. I guess I saw a couple of drafts before it was

1 filed.

2 Q. Is there any reason why you didn't take the
3 verification?

4 A. I don't think we thought about it. I think we
5 thought that Jim Crist was the witness in the case and it
6 would be fine for him to take the verification also. When
7 it was brought out that it should be an employee of the
8 company, then I'm the guy.

9 Q. Are you familiar with the prerequisites for the
10 grant of interim emergency relief in this jurisdiction?

11 A. I am, but I'm not an expert on the law.

12 Q. You would agree with me, would you not, that
13 Hess's revenues for 2007 were approximately \$2 billion?

14 A. That's correct.

15 Q. Your position that there is irreparable harm to
16 Hess as a consequence of Equitable's agency program --

17 A. The irreparable harm is to Hess as a competitor
18 in this region.

19 Q. How do you measure the irreparable harm?

20 A. That's hard to say. I struggle with that. To
21 me, really, the irreparable harm is to customers because
22 they're deprived of competition, but the problem is that we
23 won't be able to compete in a city that we have an office
24 in, an operations office, a sales office. We employ about
25 15 or so people here, and that's the harm.

1 Q. Is it your testimony that Hess would offer
2 customers lower rates than the Equitable agency program is
3 providing to those customers?

4 A. It's my testimony that if Hess was there
5 competing, then the customer would get the lowest rate
6 available. Whether it was the agency program or not, I
7 don't know, but I do know that there would be competition
8 and that rates would have to be lower.

9 Q. Can you state for the record today that Hess
10 would offer customers lower rates, lower prices?

11 A. No, I --

12 MR. POVILAITIS: Your Honor, I object to that
13 question. I don't think there's any foundation as to what
14 the prices are. I don't know how Mr. Magnani can say
15 whether they're higher, at the same level or lower.

16 THE WITNESS: That's correct.

17 JUDGE CORBETT: The objection is sustained.

18 BY MR. THOMAS:

19 Q. Now, you stated that there were no substantive
20 discussions between Hess and Equitable or Hess's counsel and
21 Equitable's counsel. Do you recall that testimony this
22 morning?

23 A. I'm sorry?

24 Q. Do you recall that testimony this morning?

25 A. Yes.

1 Q. Now, that's the best of your knowledge, is it
2 not?

3 A. Yes.

4 Q. You don't know what discussions may have taken
5 place between Mr. Povilaitis and myself or between Mr.
6 Frutchey and somebody on Hess's behalf, do you?

7 A. I think all discussions would have been through
8 Mr. Povilaitis. I was not present when those discussions
9 were there, but I do know that, you know, I mean, he
10 reported to me what was said, basically.

11 Q. Do you know whether Equitable is presently
12 assigning agency contracts to affiliates?

13 A. I don't, but I suspect that they are. Well, I
14 don't suspect that they're assigning -- I suspect that
15 they're allowing the affiliate to have exclusive rights to
16 renew the customers as the contracts expire.

17 Q. Do you know whether you propounded discovery to
18 Equitable with that question being directly put in the
19 interrogatory?

20 A. I guess we wanted assurances that that was not
21 happening, and we weren't given those assurances. I'm not
22 sure that we actually asked, is it happening. So basically,
23 we said, "Please tell us you're not doing this," and you
24 said, "No, we're not going to tell you that." So, conclude
25 what you want from that answer.

1 Maybe we said, "Please tell us you're not going to do
2 this." That would be more accurate.

3 Q. You aren't aware of what you asked us, are you?

4 A. No, I'm saying, I rephrased it and I may have
5 rephrased it incorrectly.

6 Q. Have you reviewed all of the responses to Hess
7 interrogatories in this case, all of them?

8 A. I have reviewed all of the responses. I can't
9 say that I've committed them to memory. I see a lot of
10 paper.

11 MR. THOMAS: May it please Your Honor, we have no
12 further cross-examination.

13 JUDGE CORBETT: All right. Any redirect, Mr.
14 Povilaitis?

15 MR. POVILAITIS: A moment, Your Honor?

16 JUDGE CORBETT: Sure.

17 (Pause.)

18 MR. POVILAITIS: No redirect, Your Honor.

19 JUDGE CORBETT: Okay. Thank you, Mr. Magnani.

20 THE WITNESS: Thank you, Your Honor.

21 (Witness excused.)

22 JUDGE CORBETT: Next witness, Mr. Povilaitis?

23 MR. POVILAITIS: Yes, Your Honor. We ask that James
24 L. Crist take the stand.

25 JUDGE CORBETT: All right. Would you come forward,

1 sir? Would you raise your right hand, please, and be
2 sworn?

3 Whereupon,

4 JAMES L. CRIST

5 having been duly sworn, testified as follows:

6 JUDGE CORBETT: Please have a seat. Would you begin,
7 please, by giving us your full name and spell your last name
8 for the court reporter, please?

9 THE WITNESS: I'm James L. Crist, C-R-I-S-T.

10 JUDGE CORBETT: Okay. Mr. Povilaitis, you may
11 proceed.

12 DIRECT EXAMINATION

13 BY MR. POVILAITIS:

14 Q. Mr. Crist, would you state your business address
15 for the record?

16 A. Yes. My business address is Suite 101, 4226
17 Yarmouth Drive, Y-A-R-M-O-U-T-H, in Allison Park,
18 Pennsylvania, 15101.

19 Q. Mr. Crist, by whom are you employed and in what
20 capacity?

21 A. I'm the president of Lumen Group, a consulting
22 firm that's focused on regulatory and market issues in the
23 energy business. In this particular proceeding, I'm
24 retained by IOGA, the Independent Oil and Gas Association,
25 and Hess Corporation.

1 JUDGE CORBETT: All right. For the court reporter,
2 would you spell the name of the company, please?

3 THE WITNESS: Yes. Lumen is L-U-M-E-N.

4 JUDGE CORBETT: All right. Thank you.

5 BY MR. POVILAITIS:

6 Q. Mr. Crist, do you have any qualifications or
7 other specialized knowledge that would assist His Honor and
8 the Commission in their deliberation in this matter?

9 A. Yes. My qualifications are stated in my direct
10 testimony which is the Joint Statement No. 1 on pages 1 and
11 2.

12 Q. Are you familiar with the contents of Hess's
13 petition for interim emergency order filed in this matter on
14 October 14, 2008 that's the subject matter of this
15 proceeding?

16 A. Yes, I am. I signed the verification statement.

17 MR. POVILAITIS: Your Honor, at this point, I ask
18 that a document titled direct testimony of James L. Crist on
19 behalf of IOGA and Hess Corporation be marked and identified
20 as Hess Exhibit 2.

21 JUDGE CORBETT: Yes. It will be so marked and
22 identified.

23 (Whereupon, the document was marked
24 as Hess Exhibit No. 2 for
25 identification.)

1 BY MR. POVILAITIS:

2 Q. Mr. Crist, do you have what has been marked as
3 Hess Exhibit 2?

4 A. It's my direct testimony. Yes, I do.

5 MR. THOMAS: May it please Your Honor, just for
6 clarity, is this the testimony Mr. Crist has presented as
7 his direct testimony in the general base rate proceeding?

8 JUDGE CORBETT: Yes, we'll ask for that
9 clarification.

10 MR. POVILAITIS: Yes, Your Honor, this is the
11 testimony that was submitted on October 8th. It's not
12 Hess's intention to simply ask that this be admitted in the
13 record and let it go at that. Mr. Crist is going to address
14 the elements of the standard for granting an emergency order
15 in this case. However, he has addressed this issue on the
16 subject of reviews of the agency program.

17 This has been in Equitable's possession since October
18 8, 2008. It is cited in the petition for interim emergency
19 relief and relied upon. To make the best, most
20 comprehensive record on the agency issues that are before
21 you in this interim order request, we respectfully suggest
22 that it would be appropriately admitted into the record.

23 Now, that's not to deny or limit Equitable's
24 opportunity to cross-examine this subject matter in November
25 as is contemplated in the schedule of this case, so we think

1 that it is offered for purposes of its addressing the agency
2 issues that are relevant to this interim emergency order
3 request.

4 MR. THOMAS: May it please Your Honor, I think that
5 this is totally inappropriate. We have rebuttal testimony
6 due on the 31st of October, and it is inappropriate to
7 advance testimony in the record without us having an
8 opportunity to present our responsive testimony, present our
9 witnesses.

10 The purpose of today's hearing is the petition for
11 interim emergency order, and they can't broaden the scope of
12 the hearing to include their attacks or whatever is in Mr.
13 Crist's testimony on agency that is there.

14 Your Honor scheduled testimony due dates. Your Honor
15 scheduled hearings. They can't advance that schedule. It's
16 highly violative of due process. Mr. Crist needs to stick
17 and Mr. Povilaitis' direct examination needs to stick to the
18 petition that was filed, and they can't -- as I said before,
19 it's really inappropriate to try to shore up holes that
20 should have been addressed in that petition that weren't by
21 putting in testimony with respect to which we haven't
22 submitted our rebuttal testimony.

23 We have outstanding interrogatories. Your Honor has
24 just directed them to respond to a number that they objected
25 to. We need to review those interrogatories. It is highly

1 inappropriate to take things out of the scheduled order.

2 And Your Honor, I respectfully submit, there's no
3 emergency. There's no need for immediate relief. There's
4 no irreparable harm to a company that has \$2 billion in
5 revenues. It's just inappropriate.

6 MR. POVILAITIS: I don't think Your Honor has asked
7 for a general legal argument on the merits of whether the
8 order ought to be issued for Hess or not.

9 If you look at Mr. Crist's statement that was
10 submitted on October 8th, you'll see that he addressed both
11 near-term and long-term concerns about the agency program.
12 It is his testimony on the near-term concerns that fit
13 perfectly with this request by Hess.

14 It is not a surprise of any sort to the company, and
15 it is for that limited and narrower purpose that it is
16 offered here today.

17 MR. THOMAS: It is a surprise. We don't have our
18 witness that may be responding or rebutting Mr. Crist. Your
19 Honor, the purpose of this hearing is a petition that was
20 filed. It's not a hearing to do the rate case out of order.

21 JUDGE CORBETT: All right. Mr. Povilaitis, I take it
22 that in reviewing the testimony, that it would not be
23 possible to separate out that portion of the testimony that
24 you wish to point to to support your petition for interim
25 emergency relief?

1 MR. POVILAITIS: That is absolutely possible, Your
2 Honor. I can make it very specific. We're talking about
3 pages 21 through 33 of Mr. Crist's statement, page --

4 JUDGE CORBETT: Okay, one moment. I'm sorry, one
5 moment, please.

6 (Pause.)

7 JUDGE CORBETT: Twenty-one through 33?

8 MR. POVILAITIS: Twenty-one through 33; 40; and
9 Exhibit JLC-4. I'll point out, Your Honor, that elements of
10 this testimony are already in the evidentiary record because
11 Hess's petition relied on excerpts of this testimony.

12 JUDGE CORBETT: All right.

13 MR. THOMAS: May it please Your Honor, we don't have
14 copies of the testimony.

15 MR. POVILAITIS: I can make them available to you
16 right now. How many do you need?

17 MR. THOMAS: I need at least two here.

18 (Pause.)

19 JUDGE CORBETT: Okay. Let me also ask, Mr.
20 Povilaitis, there were I believe two copies of the testimony
21 that were served prior to today concerning Mr. Crist. One
22 was marked highly confidential and one was marked public.

23 MR. POVILAITIS: This is the public version --

24 JUDGE CORBETT: This is the public version?

25 MR. POVILAITIS: -- that we're offering, Your Honor.

1 JUDGE CORBETT: Okay. So we do not have a
2 confidentiality or a proprietary information problem to deal
3 with on this record?

4 MR. POVILAITIS: Correct, Your Honor. We didn't
5 think you'd appreciate having to evacuate the room.

6 JUDGE CORBETT: Okay. All right. The objection of
7 -- let's make sure that we understand exactly what we have
8 on the record at this point. That is, the offer is made
9 today to present the testimony, the prepared written
10 testimony, prepared direct written testimony of James L.
11 Crist, specifically pages 21 through 33, page four --

12 MR. POVILAITIS: Forty.

13 JUDGE CORBETT: I'm sorry, page 40, and Exhibit
14 JLC-4 in support of Hess's petition for interim emergency
15 order.

16 MR. POVILAITIS: That's correct.

17 JUDGE CORBETT: With that understanding and the
18 limited nature of the offer that's being made today, the
19 objection of Equitable is overruled.

20 BY MR. POVILAITIS:

21 Q. Mr. Crist, can you describe the relief that Hess
22 has requested in its petition?

23 A. Yes. During the extent of this case, Equitable
24 be precluded from automatically assigning the agency account
25 to their affiliate marketer; they also be precluded from

1 assisting or facilitating their affiliate marketer from
2 approaching those accounts to capture their business; that
3 the marketing affiliate be prohibited from contacting agency
4 customers; and that a mutually agreeable notification be
5 prepared to notify agency customers of the winding down of
6 that program.

7 Q. Now, why in your view is the requested emergency
8 relief necessary and appropriate?

9 A. It's appropriate and necessary to ensure that
10 Equitable does not provide any preference to their marketing
11 affiliate as they wind down the agency program, that they do
12 not provide any unlawful or unreasonable benefit to their
13 marketing affiliate, and that their actions do not cause
14 irreparable harm.

15 Q. Now, are you familiar with the four-part test in
16 Section 3.6 of the Commission's regulations regarding the
17 criteria used to determine whether emergency relief should
18 be granted?

19 A. Yes, I am, and I brought the page from the Code
20 with me.

21 Q. Can you describe, what's the first part of that
22 test?

23 A. Yes. The party's right to relief is clear.

24 Q. Now, are there any potential actions by
25 Equitable that you think place Hess's rights at risk?

1 A. Oh, absolutely. The assignment of the contracts
2 of the 1,400 agency customers involving 5.6 billion cubic
3 feet of natural gas annually, and the potential sharing of
4 customer information about those approximately 1,400
5 customers.

6 Q. Is there any issue of confidential information
7 that concerns you?

8 A. Well, that customer information I referenced
9 would be their contact information, their usage information,
10 contract expiration dates. Potential information may exist
11 concerning their creditworthiness.

12 MR. POVILAITIS: Your Honor, at this point, we would
13 ask that you take administrative notice of the Commission's
14 regulation at 52 Pennsylvania Code 69.191(a), which
15 addresses preferential treatment of marketing affiliates, as
16 well as 52 PA Code 62.142(11) which deals with the
17 prohibition against preferential treatment of marketing
18 affiliates, the standard of conduct for LDCs.

19 JUDGE CORBETT: All right. Would you give me those
20 cites again, please?

21 MR. POVILAITIS: Certainly. The policy statement is
22 52 PA Code 69.191(a), and the excerpt from the standard of
23 conduct is 62.142(11).

24 JUDGE CORBETT: All right. I will take such notice.

25 BY MR. POVILAITIS:

1 Q. Mr. Crist, where in the course of this
2 proceeding has Hess discussed the prohibition against
3 preferential treatment towards an LDC supply affiliate?

4 A. I discuss that in my direct testimony in the
5 case, pages 29 through 30. It's also been discussed in the
6 petition for emergency relief, paragraphs 20, 21 and 22.

7 Q. And that statement, the excerpt of that
8 statement that constitutes your direct testimony, that was
9 prepared by you?

10 A. Yes, it was.

11 Q. Mr. Crist, what's your understanding as to
12 Equitable's position on amending its tariff with respect to
13 the agency program?

14 A. That Equitable intends to not change its tariff,
15 which to me appears inconsistent with Commission rules
16 requiring a 60 day notice of such changes.

17 MR. POVILAITIS: Your Honor, at this time, we ask
18 that you also take administrative notice of 52 PA Code
19 Section 53.31, which addresses the utility's 60 day public
20 notice requirement for tariff modifications. That was
21 53.31.

22 JUDGE CORBETT: All right.

23 BY MR. POVILAITIS:

24 Q. Mr. Crist, what are the second and third parts
25 of the four-point test under Section 3.6 of the Commission's

1 regulations?

2 A. The second part is the need for relief is
3 immediate, and the third part is that the injury would be
4 irreparable if relief is not granted

5 Q. In your view, is Hess's need for relief
6 immediate?

7 A. It's absolutely immediate. Equitable has stated
8 that they intend to wind down this program by the end of
9 this calendar year.

10 Q. Are you aware of any assurances that Equitable
11 has provided that during this wind-down program it won't
12 assign agency contracts to its marketing affiliate?

13 A. I am aware that we specifically asked that, and
14 Equitable refused to provide any assurances that they would
15 not do such action.

16 MR. THOMAS: May it please Your Honor, if I might
17 interject, I've observed that the witness appears to be
18 reading from something and checking off things after
19 questions are asked. I was wondering if I might review what
20 he's reading.

21 JUDGE CORBETT: I think you can review that after
22 he's done with his direct testimony.

23 MR. THOMAS: All right.

24 BY MR. POVILAITIS:

25 Q. Did that failure to provide assurances extend to

1 the facilitation of the transfer of customers to the
2 affiliate upon the expiration of the agency contracts?

3 A. Absolutely. Equitable failed to provide any
4 assurances that they would not either transfer agency
5 customers or facilitate the transfer of such customers to
6 the affiliate, to their unregulated affiliate.

7 Q. What would be the result if the immediate relief
8 requested by Hess is not granted in this case?

9 A. There would be irreparable harm suffered by
10 Hess.

11 Q. And how would that irreparable harm manifest
12 itself?

13 A. These 1,400 customers representing 5.6 billion
14 cubic feet of annual gas load, some of them or all of them
15 could be transferred to the unregulated marketing affiliate
16 of Equitable. This would preclude Hess or other marketers
17 from approaching such customers with competitive offers and
18 competing for that business.

19 Once a customer has signed a new contract with the
20 unregulated marketing affiliate, they're basically out of
21 the competitive market for the duration of that contract,
22 which could be multiple years.

23 Q. In your view, will Hess suffer irreparable harm
24 if the request for emergency relief is not granted?

25 A. Oh, absolutely.

1 Q. And how would that manifest itself?

2 A. Well, once these accounts have been transferred
3 over to the affiliate, that's very difficult to unwind.
4 This lost business opportunity cannot be regained. You
5 can't un-ring a bell once it's been rung.

6 Q. Is it fair to say that in your view, that lost
7 business opportunity --

8 MR. THOMAS: Your Honor, I'm going to object to that
9 question, "Is it fair to say in your view," and then Mr.
10 Povilaitis will state what is to be answered yes or no.
11 This man is supposed to be an experienced witness, and I
12 think that he is. I'm not going to challenge that. There
13 should be no need for a leading question of that nature.

14 JUDGE CORBETT: Restate the question, Mr. Povilaitis.

15 BY MR. POVILAITIS:

16 Q. Can that lost business opportunity be reversed,
17 Mr. Crist?

18 A. No, it cannot. Again, once these 1,400
19 customers and 5.6 bcf of annual load of gas have been moved
20 to the affiliate marketer, they're in contract and that
21 opportunity is then lost for an extremely long duration if
22 not forever.

23 Q. Can you identify where in this proceeding Hess
24 has discussed the immediacy of the relief requested and the
25 irreparable harm?

1 A. Yes. That's in my direct testimony, pages 28
2 through 30, and in the petition for emergency relief,
3 paragraphs 27 through 34.

4 Q. Now, what's the fourth part of the test that
5 determines whether or not emergency relief should be
6 granted?

7 A. The fourth part is that the relief requested is
8 not injurious to the public interest.

9 Q. In your view, is the relief requested by Hess
10 injurious to the public?

11 A. No, not at all, and in fact, the relief
12 requested is beneficial to the public, for it allows the
13 customers an opportunity to be in play in the competitive
14 market and be approached by others besides the affiliate
15 marketers with competitive offers.

16 MR. POVILAITIS: Your Honor, at this time, we ask
17 that Your Honor also take administrative notice of the
18 portion of the Public Utility Code which constitutes the Gas
19 Competition Act, and that would be 66 PA CS Sections 2201 et
20 seq.

21 JUDGE CORBETT: Yes, I will.

22 BY MR. POVILAITIS:

23 Q. Is there a place in this proceeding where Hess
24 has discussed whether its requested relief harms the public,
25 Mr. Crist?

1 A. Petition for emergency relief, that would be in
2 paragraphs 35, 36 and 37.

3 MR. POVILAITIS: I may be finished, Your Honor.

4 (Pause.)

5 JUDGE CORBETT: Mr. Povilaitis is consulting.

6 MR. POVILAITIS: That concludes our direct
7 examination of Mr. Crist. We ask that what has been
8 identified as Hess Exhibit No. 2 be admitted into evidence
9 subject to cross-examination and any motions.

10 JUDGE CORBETT: Yes, the Hess Exhibit 2, for the
11 limited purposes that we have identified earlier in this
12 proceeding, will be admitted such to cross-examination and
13 any proper motions.

14 (Whereupon, the document marked as
15 Hess Exhibit No. 2 was received in
16 evidence.)

17 JUDGE CORBETT: Is there anyone in Harrisburg who
18 wishes to cross-examine this witness?

19 (No response.)

20 JUDGE CORBETT: Hearing none, then Mr. Thomas, we'll
21 turn to you.

22 MR. THOMAS: May it please Your Honor, I would like
23 to read from at least the summary that Mr. Crist seemed to
24 be reading from and striking off as questions were asked.

25 JUDGE CORBETT: Sure. Mr. Crist, would you show that

1 to Mr. Thomas, please?

2 (Pause.)

3 JUDGE CORBETT: One page document that Mr. Crist is
4 showing Mr. Thomas.

5 MR. POVILAITIS: I'd like to state as well, Your
6 Honor, these are apparently notes that Mr. Crist prepared
7 himself to assist him in testimony.

8 JUDGE CORBETT: All right. Share that with Mr.
9 Povilaitis, also.

10 MR. THOMAS: Certainly look like answers to
11 questions, but --

12 (Pause.)

13 MR. POVILAITIS: I'll let you know what I think, Your
14 Honor, when I get a chance to look at it.

15 (Pause.)

16 MR. POVILAITIS: Your Honor, because Mr. Thomas
17 placed a characterization of the document on the record, my
18 take on this document, it's a one page document, items 1
19 through 18, that appears to largely consist of short-hand
20 paraphrases of the standard for granting emergency relief in
21 this case --

22 MR. THOMAS: May it please Your Honor, why don't we
23 just stick it into the record rather than having Mr.
24 Povilaitis give his view, one, two, three, four, what it is.
25 I think we put it in the record and if one goes to his

1 questions, you'll see -- there's no need for you to
2 characterize --

3 JUDGE CORBETT: Okay. Well, I think --

4 MR. THOMAS: I said they look like answers to
5 questions.

6 MR. POVILAITIS: And I don't think it looks like
7 answers to questions, Your Honor. Most of these references
8 are to specific numbers, number of customers, paragraphs and
9 page numbers, you know. I just dispute that
10 characterization.

11 JUDGE CORBETT: Let's have it marked and identified
12 as Hess Corporation Exhibit 3, and I'll make copies here
13 today for the parties here, and then if you'll make copies,
14 Mr. Povilaitis, and make sure that it gets to the court
15 reporter.

16 MR. POVILAITIS: Certainly, Your Honor.

17 (Whereupon, the document was marked
18 as Hess Exhibit No. 3 for
19 identification.)

20 JUDGE CORBETT: That's John Kelly with Commonwealth.
21 That's Hess Exhibit 3.

22 Is there any objection to the admission of the
23 exhibit?

24 MR. POVILAITIS: No, Your Honor.

25 MR. THOMAS: No, Your Honor.

1 JUDGE CORBETT: Okay. It will be so admitted.

2 (Whereupon, the document marked as
3 Hess Exhibit No. 3 was received in
4 evidence.)

5 JUDGE CORBETT: Mr. Crist, you may need this.

6 THE WITNESS: Thanks, Your Honor.

7 Mr. Thomas, you may cross.

8 MR. THOMAS: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. THOMAS:

11 Q. Now, Mr. Crist, did you ever read the petition
12 for emergency order?

13 A. Yes. I read the petition and I signed the
14 verification.

15 Q. When did you last read the petition?

16 A. I last read the petition yesterday, and I
17 skimmed it this morning.

18 Q. And it's your verification that's attached to
19 the petition?

20 A. Correct.

21 Q. And your verification states, does it not, that
22 the statements in the petition are true and correct?

23 A. That is correct.

24 Q. Do you know who signed the petition for interim
25 emergency order on behalf of Hess?

1 A. I believe Mr. Povilaitis, but I don't have the
2 petition in front of me.

3 Q. You didn't skim that far this morning?

4 A. I'm sure someone can show me the petition.

5 Q. No, I'm just asking the question. So you don't
6 know at the moment?

7 A. Correct.

8 Q. On what date did you take your verification?

9 A. I don't have that document in front of me, so I
10 don't recall that date.

11 Q. I'm going to ask --

12 A. It was on or about the day or day before the
13 petition was filed.

14 Q. I'm going to ask you to look at the document and
15 confirm --

16 MR. POVILAITIS: Do you have a copy with you, Mr.
17 Crist?

18 BY MR. THOMAS:

19 Q. Confirm that you took the verification --

20 A. No, I do not --

21 Q. -- on the 9th of October.

22 (Pause.)

23 MR. THOMAS: Maybe counsel will stipulate that that's
24 the date of the verification.

25 MR. POVILAITIS: Just a moment, Your Honor.

1 (Pause.)

2 MR. POVILAITIS: Yes, that's what the verification
3 indicates.

4 MR. THOMAS: The 9th of October.

5 BY MR. THOMAS:

6 Q. Mr. Crist, can you confirm that the petition was
7 signed and dated when you signed your verification?

8 A. Explain your question again, Mr. Thomas.

9 Q. It's pretty simple. It's pretty simple. Can
10 you confirm that the petition was signed and dated on the
11 date, on the 9th of October when you took your verification?

12 A. I was informed by counsel that that was the
13 intent.

14 Q. So you cannot confirm that the petition was
15 signed and dated on the date you took your verification?

16 A. Again, that's what counsel informed me.

17 Q. No, I didn't ask you what -- you cannot confirm
18 today under oath that that petition was signed and dated on
19 the date you took your verification?

20 A. Again, that's what counsel told me.

21 Q. Yes or no?

22 A. I believe counsel, so yes, that's what I can
23 confirm.

24 Q. So you think it was signed and dated when you
25 took your verification?

1 A. That's what I was informed.

2 Q. Can you explain why the petition was dated
3 October 14th, five days later than the date you signed the
4 verification?

5 A. No, I cannot.

6 Q. Can you testify today under oath that the
7 petition you reviewed prior to signing your verification was
8 the same petition that was signed and filed five days later?

9 A. I did not see any changes from the copy that I
10 reviewed --

11 Q. That's not my question.

12 A. -- compared to the copy I reviewed yesterday and
13 skimmed today.

14 Q. Can you testify today under oath that the
15 petition you reviewed prior to signing your verification was
16 the same petition that was signed and filed five days later?

17 MR. POVILAITIS: Objection, Your Honor. I think it's
18 been asked and answered. Mr. Crist indicated he did not see
19 any differences between what he reviewed on October 9th and
20 what was filed.

21 JUDGE CORBETT: The objection is overruled.

22 (Pause.)

23 JUDGE CORBETT: We're waiting for an answer, Mr.
24 Crist.

25 THE WITNESS: I'm sorry. Repeat your question, Mr.

1 Thomas.

2 BY MR. THOMAS:

3 Q. It's a simple question, yes or no. Can you
4 testify today under oath that the petition you reviewed
5 prior to signing your verification was the same petition
6 that was signed and filed five days later?

7 A. Yes. I believe the content of that petition was
8 the same.

9 Q. Did you compare it word for word?

10 A. I read the petition thoroughly. Had there been
11 any changes, those would have been brought to my attention.
12 I believe that the content was the same.

13 Q. Did you compare what you looked at on the 9th of
14 October with what was served or filed on the 14th of
15 October? Did you compare those two documents and were they
16 absolutely identical?

17 A. The version that I viewed on the 9th I believe
18 is the same version that was filed on the 14th, Mr. Thomas.

19 JUDGE CORBETT: Okay, let's cut to the chase on this.

20 Mr. Crist, you indicated that you read this petition
21 a number of times. You read this petition before you signed
22 it on October 9th?

23 THE WITNESS: Correct.

24 JUDGE CORBETT: And have you read the petition after
25 it was signed by Mr. Povilaitis on October 14, 2008?

1 THE WITNESS: Yes, and it was the same petition.

2 JUDGE CORBETT: All right. I think that's been asked
3 and answered. Let's move on.

4 MR. THOMAS: Thank you, Your Honor. I think it may
5 have been Mr. Totino who signed it. That will speak for
6 itself.

7 JUDGE CORBETT: Sure.

8 BY MR. THOMAS:

9 Q. Mr. Crist, what does clear and present danger to
10 life mean to you?

11 A. Clear and present danger to life?

12 Q. Yes.

13 A. It means that a living being is in a situation
14 that may be risky to their life.

15 Q. You would agree with me, would you not, that
16 one's property is something that one owns or possesses
17 presently, that is something to which one would have a
18 present claim?

19 A. I'm not an expert in property law, Mr. Thomas.

20 Q. What's your definition of property?

21 A. Real property is tangible property, such as a
22 house.

23 Q. If it's somebody's property that somebody has a
24 claim to that property presently, that's implied in the
25 concept of property?

1 A. If someone owns property, they have claim to
2 that property.

3 Q. Presently?

4 A. Yes.

5 Q. What is your definition of public interest?

6 A. The public interest is in the overall beneficial
7 good of the public. As it relates to this particular issue,
8 the public interest I have testified on has to do with the
9 1,400 customers that are in the agency program.

10 Q. You would agree with me, would you not, that the
11 public interest includes more than the interest of the for-
12 profit Hess Corporation?

13 A. Absolutely. The public interest includes the
14 interest of all the marketers in this case and all the
15 customers in this case that need to realize the rights and
16 benefits of the competitive marketplace.

17 Q. You're being paid for your appearance today; are
18 you not?

19 A. I believe that's -- that is true, and I think
20 that's consistent with the way --

21 Q. Your bills are being paid; are they not?

22 A. I have every confidence they will be.

23 Q. Do you know what entity is paying you?

24 A. I have two clients in this case. One is IOGA
25 and the other is Hess.

1 Q. Okay. What do you know about Hess?

2 A. I know what I've read in some of the public
3 documents and I know that they are, in the context of this
4 case, they have a non-affiliated energy marketing company
5 that operates in Equitable's service territory.

6 Q. Did you hear Mr. Magnani's testimony?

7 A. Yes, I did.

8 Q. Didn't he say that it wasn't an affiliate, it
9 was the parent company?

10 A. When I use the term "an unaffiliated marketing
11 company," what I mean is they are not affiliated with a
12 local distribution utility, to contrast that with Equitable
13 Energy, which I would call an affiliated marketing company.

14 Q. You aren't testifying, then, that Hess
15 Corporation is not the one marketing in Pittsburgh,
16 Pennsylvania in the Equitable service territory, are you?

17 A. Mr. Magnani is the witness from Hess. I believe
18 he's addressed that.

19 Q. Well, have you ever reviewed Hess's financials?

20 A. Apart from briefly looking at an on-line web
21 site which contains some financial information, I've never
22 done a diligent or thorough review of Hess Corporation's
23 financials.

24 Q. You aren't intending today to suggest that Hess
25 Corporation is in dire financial straits; are you?

1 A. No. Hess Corporation -- what I'm pointing out,
2 Mr. Thomas, is that with regard to the --

3 MR. THOMAS: May it please Your Honor --

4 THE WITNESS: -- agency program --

5 MR. THOMAS: -- I just asked a simple question.

6 JUDGE CORBETT: We'll let the witness respond.

7 THE WITNESS: Thank you. As it regards to the agency
8 program, I'm testifying that the irreparable harm will be
9 made to Hess and other marketers if the 1,400 customers and
10 the 5.6 bcf, which is a substantial amount of both customers
11 and annual gas volumes, are allowed to simply be transferred
12 to Equitable Energy.

13 BY MR. THOMAS:

14 Q. Have you ever reviewed Hess Corporation's SEC
15 reports?

16 A. No, I have not.

17 Q. I'd like to, if you still have Hess Exhibit No.
18 3 in front of you, I think those were the 18 points.

19 A. Yes.

20 Q. Was it No. 3?

21 A. Correct.

22 Q. I'd like you to look at No. 10, your point No.
23 10, and it talks about a tariff filing on 60 days' notice.

24 A. Correct.

25 Q. Now, are you familiar with the Commission's

1 regulations?

2 A. I've looked at the Commission regulation on that
3 point.

4 Q. If one were not changing a tariff, there would
5 be no need to file anything on 60 days' notice; would there?

6 A. It appears to me when Equitable responded that
7 they are going to wind down the agency program by the end of
8 this year, that that's a substantial change in the tariff
9 provision.

10 Q. Did anybody tell you that Equitable was
11 proposing to take agency out of its tariff?

12 A. Equitable responded that they were going to
13 discontinue the agency program by December 31st of this
14 year.

15 Q. Mr. Crist, that wasn't my question. Did anybody
16 tell you that Equitable intended to take agency out of the
17 tariff?

18 A. Maybe I'm not understanding. They're
19 discontinuing the program, yet they've made no mention at
20 all in this base rate proceeding tariff that they're going
21 to change their service with agency program.

22 Q. I don't want to have to repeat it a third time.
23 It's a simple question. Did anybody tell you that Equitable
24 intended to take agency service out of the tariff?

25 A. No. That's my concern.

1 Q. And if it were not removed from the tariff,
2 there would be no need to file anything on 60 days' notice.

3 A. If it's not removed from the tariff, then
4 Equitable has perfect right perhaps to continue agency
5 service, which is the whole point that I made in my direct
6 testimony, that that shouldn't be permissible.

7 Q. Were you a witness at all or did you participate
8 at all in the Equitable application to acquire Dominion
9 Peoples? I know you did.

10 A. Yes, I was.

11 Q. Do you recall in that case that there were
12 parties that were opposed to removal of agency service from
13 the tariff?

14 A. Mr. Thomas, that case was two years ago. I
15 don't have complete recall of everything that happened in
16 that case.

17 Q. I didn't ask you about that. I just asked you
18 about parties opposing the removal of agency service from
19 the tariff in that case. There were parties, were there
20 not?

21 A. I believe there may have been parties, but I
22 can't really recall who they were or what their testimony
23 was.

24 Q. Now, I don't recall the number in your Exhibit
25 3, but it was toward the end, and you mentioned that former

1 agency customers would be lost forever. Do you recall that?

2 A. No. The former agency customers that are
3 transferred or migrated to Equitable Energy would be lost
4 either forever or for an unduly lengthy period, depending on
5 the nature of the contract.

6 Q. You said "forever," did you not?

7 MR. POVILAITIS: Your Honor, I'll object at this
8 point. I don't have any indication that Mr. Crist said
9 that. We're talking about his notes. We have to check the
10 transcript to see whether that was the case.

11 MR. THOMAS: Disregard the --

12 BY MR. THOMAS:

13 Q. Did you not testify that agency customers could
14 be lost forever?

15 A. I said the business lost opportunity is
16 irreparable and those customers could be lost forever.
17 That's a possibility, yes.

18 Q. How long are gas supply agreements, marketing
19 agreements? Are they for the life of the entity?

20 A. Well, I've not seen the Equitable Energy
21 marketing agreement. They haven't provided that.

22 Q. How long are Hess's?

23 A. I've not reviewed Hess's marketing agreement.

24 Q. Are you aware of any entity that's signed a
25 lifetime supply agreement with a marketer?

1 A. I'm certainly aware of language in marketing
2 agreements which could allow for a rollover of that contract
3 and such language could make it extremely difficult if not
4 impossible for other competitors to actually compete for
5 that customer's business.

6 Q. What's the longest contract of which you are
7 aware, longest term?

8 A. The longest one that I personally am aware is a
9 15 year contract.

10 Q. A 15 year contract?

11 A. Correct.

12 Q. And what contract is that?

13 A. That was a contract which I wrote for the gas
14 supply for the Greater Pittsburgh International Airport.

15 Q. And who were the parties?

16 A. The County of Allegheny and, at the time,
17 Dominion Peoples.

18 Q. Dominion Peoples, a regulated utility?

19 A. Correct.

20 Q. That wasn't a marketer service contract, the
21 contract with the regulated utility -- (inaudible) -- one or
22 two others that I'm aware of, Dominion Peoples is --

23 THE REPORTER: I'm sorry, I'm having trouble hearing.

24 MR. THOMAS: I apologize.

25 BY MR. THOMAS:

1 Q. The question was, that's not a contract with a
2 marketer but rather it's a contract with a regulated utility
3 similar to two or three others of somewhat similar length
4 that I am aware of.

5 A. Well, actually, I believe the contract that I
6 executed at Dominion Peoples, which is the regulated
7 utility, was the transportation delivery contract.

8 Q. So it's a delivery contract?

9 A. Correct.

10 Q. Are you aware of any marketer contracts that
11 lock in a price for 15 years?

12 A. I'm not aware of contracts that lock in a price
13 for 15 years, but again, I am aware of marketer contracts
14 that have language in that contract regarding automatic
15 renewals.

16 Q. Yes, by the choice of the purchasing party; is
17 that not true?

18 A. By --

19 Q. Is that not a correct way to describe it?

20 A. That would be not a complete way to describe it,
21 Mr. Thomas. Sometimes that language is written so that the
22 purchasing party, if they miss a very narrow window to
23 exercise their right, must then roll over the contract for
24 another term of the contract, and sometimes such contracts
25 may contain language allowing the existing provider a last

1 look at competitive pricing offers so that the existing
2 provider may retain the patronage of that customer, once
3 armed with that information.

4 Q. Is it your testimony that purchasers of natural
5 gas miss dates? Is that a common thing?

6 A. That they may miss contract dates? Is that your
7 question?

8 Q. Yeah. Isn't it somewhat similar to a rental
9 agreement, that if notice isn't given, the rental agreement
10 rolls over for another year?

11 A. I think it's quite common that maybe smaller or
12 mid-sized customers, especially customers that would be
13 typical of some of the customers on the agency program, may
14 be unaware of exact termination dates or procedures.

15 Q. Do Hess customers miss dates?

16 A. I can't really testify to that.

17 Q. Does Hess sell gas on the Dominion Peoples
18 distribution system?

19 A. I believe they do.

20 Q. Does Dominion Peoples have an agency agreement?

21 MR. POVILAITIS: Objection, Your Honor, relevance.

22 JUDGE CORBETT: Overruled.

23 THE WITNESS: I'm not aware that Dominion Peoples has
24 an existing agency agreement.

25 BY MR. THOMAS:

1 Q. Do they have an existing agency program?

2 A. I don't believe they have any active agency
3 program.

4 Q. Do you know?

5 A. I don't know that as a fact. That's my current
6 belief.

7 MR. THOMAS: May it please Your Honor, that concludes
8 cross-examination of Mr. Crist.

9 JUDGE CORBETT: All right.

10 Any redirect, Mr. Povilaitis?

11 MR. POVILAITIS: May I have a moment, Your Honor?

12 JUDGE CORBETT: Sure.

13 We're going to take a short recess in place while Mr.
14 Povilaitis consults with his witness and also with other
15 parties.

16 (Recess.)

17 JUDGE CORBETT: We're back on the record.

18 MR. POVILAITIS: Just a couple questions, Your Honor.

19 JUDGE CORBETT: All right.

20 REDIRECT EXAMINATION

21 BY MR. POVILAITIS:

22 Q. Mr. Crist, do you recall Mr. Thomas' examination
23 of you with respect to the relationship of harm to property?

24 A. Yes, I do.

25 Q. In your view, can harm only occur to property

1 that one currently --

2 MR. THOMAS: May it please Your Honor, I'm going to
3 object. Mr. Crist is an experienced witness. I'll
4 stipulate to that. But it's inappropriate for Mr.
5 Povilaitis to say, "In your view, is boom, boom, boom," and
6 then have Mr. Crist answer. This witness can take care of
7 himself and should not be given questions, such leading
8 questions of that nature.

9 JUDGE CORBETT: Mr. Povilaitis, can you restate the
10 question, please?

11 MR. POVILAITIS: Yes.

12 BY MR. POVILAITIS:

13 Q. Mr. Crist, do you recall examination by Mr.
14 Thomas regarding the relationship of property and harm?

15 A. Yes, I do.

16 Q. Can you clarify your answers with respect to the
17 relationship of property to harm?

18 A. Yes. Even if an entity is not in possession of
19 property, they can still be harmed. In the case we're
20 talking about here, there's significant potential harm to
21 Hess or other marketers because they would have an
22 expectation of being able to compete for and reasonably
23 obtain business. So the harm is created not with property
24 they currently own, but with property that they potentially
25 could own.

1 Q. Mr. Crist, would harm occur to Equitable's
2 customers today if the agency program were ended?

3 A. Absolutely not, and indeed a benefit would be
4 realized by the agency customers because those 1,400
5 customers would then have opportunity to have other energy
6 marketers present them with competitive offers. They would
7 still receive their distribution service from Equitable Gas
8 Company and potentially receive gas supply from Hess or any
9 number of other marketers.

10 MR. POVILAITIS: Your Honor, that completes our
11 redirect of Mr. Crist.

12 JUDGE CORBETT: All right. Any recross, Mr. Thomas?

13 MR. THOMAS: Just briefly, Your Honor.

14 RE-CROSS-EXAMINATION

15 BY MR. THOMAS:

16 Q. So, Mr. Crist, I understand you're testifying
17 now that the harm to property is only a potential harm?

18 A. The agency program has created a harm --

19 Q. I'm talking just generally, harm to property.
20 It's a potential harm; isn't that what you just said in
21 response to Mr. Povilaitis?

22 MR. POVILAITIS: Objection, Your Honor. That's a
23 mischaracterization of the witness' testimony.

24 JUDGE CORBETT: He's asking if that's his testimony.
25 I'll overrule the objection.

1 THE WITNESS: Restate the question, please.

2 BY MR. THOMAS:

3 Q. Mr. Crist, I thought I heard you testify that
4 the harm to property in this situation was only a potential
5 harm. Is that not what you just said?

6 A. My testimony is that the harm created by the
7 agency program is -- currently Hess has been harmed because
8 they've been denied that opportunity to compete for those
9 customers, and this harm has the potential of continuing if
10 the agency program customers are transferred or assigned or
11 facilitated to move to Equitable Energy.

12 Q. Hess has had the ability, has it not, to compete
13 for agency service load all along?

14 A. There's not a level playing field or a fair
15 playing field here, Mr. Thomas. All of my testimony in my
16 direct testimony describes a number of conditions that
17 Equitable Energy, benefits that Equitable Energy is
18 realizing by participation in the agency program.

19 Q. The Commission chose to keep agency service part
20 of the tariff; did it not? This subject has been raised in
21 other proceedings and yet, in the end, agency service has
22 stayed in the tariff?

23 A. I'm not familiar with other proceedings where
24 this particular issue has been ventilated to this degree.

25 MR. THOMAS: May it please Your Honor, that concludes

1 our recross.

2 JUDGE CORBETT: All right.

3 Any further redirect?

4 MR. POVILAITIS: No, Your Honor.

5 JUDGE CORBETT: All right. Thank you very much, Mr.
6 Crist. You are excused, sir. Thank you.

7 (Witness excused.)

8 MR. POVILAITIS: That completes Hess's presentation,
9 Your Honor.

10 JUDGE CORBETT: All right. Before we turn to Mr.
11 Thomas, is there anyone in Harrisburg who wishes to be
12 heard?

13 (No response.)

14 JUDGE CORBETT: Hearing none, then Mr. Thomas, we'll
15 turn to you.

16 MR. THOMAS: May it please Your Honor, our intention
17 would be to call John Quinn to the stand.

18 JUDGE CORBETT: All right.

19 MR. THOMAS: We have testimony that we have prepared,
20 but I am not certain, having not been accorded the courtesy
21 of prepared testimony from Hess, that I should give Hess
22 prepared testimony. I am prepared, Your Honor, to have Mr.
23 Quinn just answer my questions and read it into the record,
24 but we have prepared it. I'm not certain what to do. I
25 think, talk about level playing fields as Mr. Crist did, we

1 prepared testimony. Hess did not. I'm not sure what to do,
2 but I do have prepared testimony.

3 JUDGE CORBETT: All right. Mr. Povilaitis?

4 MR. POVILAITIS: I'm not sure what Mr. Thomas means
5 by "prepared testimony." Does he mean that it is written Q-
6 and-A that he intends to have Mr. Quinn read into the
7 record, or are these notes? If he can clarify that, I'd
8 appreciate it.

9 MR. THOMAS: It's written prepared testimony in the
10 form we normally use for Pennsylvania Public Utility
11 Commission rate docketed proceedings. And if I do present
12 it in written form, I don't think that it would be fair to
13 take an hour or two to review it. I didn't have that
14 opportunity for their testimony.

15 JUDGE CORBETT: Okay.

16 MR. THOMAS: I'm not sure what would be the fairest
17 thing to do, Your Honor.

18 JUDGE CORBETT: How long is the testimony that you
19 have there, Mr. Thomas?

20 MR. THOMAS: The testimony is 11 pages. If we mark
21 it and we put it in and we authenticate it and we put it in
22 in normal form, I want it cross-examined on in 10 or 15
23 minutes. I don't think it appropriate to take hours for the
24 other side to read it.

25 MR. POVILAITIS: Your Honor, I would object to that

1 procedure. I mean, Hess has offered nothing today that
2 Equitable has not had a considerable period of time to
3 review and digest.

4 I have no problem whatsoever for a witness being
5 presented and asked questions live, so to speak, and giving
6 answers to the best of his ability. But this is essentially
7 an equivalent in a rate case of getting the testimony the
8 day of hearing and then there's essentially no difference
9 between Mr. Thomas handing the Court a document and saying,
10 put this in the record, which has never been seen by any
11 other party in the case earlier than today, this morning,
12 and simply admitting it into the evidentiary record. That's
13 far different from what Hess has requested today.

14 JUDGE CORBETT: I think we'll cut this short, and
15 what we'll do is, Mr. Thomas, you have a witness to present?

16 MR. THOMAS: I do.

17 JUDGE CORBETT: You can present the witness and ask
18 the Q-and-A, and we'll proceed in that fashion.

19 THE REPORTER: Your Honor, one second, please.

20 (Discussion off the record.)

21 JUDGE CORBETT: We're going to take a short five
22 minute recess. We're going to leave the line open and I
23 would urge the parties not to wander too far from the
24 hearing room.

25 MR. POVILAITIS: Your Honor, may we have copies of

1 this prepared testimony?

2 THE REPORTER: Are we off the record, Your Honor?

3 JUDGE CORBETT: Yes. We're off the record.

4 (Recess.)

5 JUDGE CORBETT: We're back on the record.

6 Mr. Thomas?

7 MR. THOMAS: Thank you, Your Honor. Just at the
8 outset, so that your record is complete, the petition for
9 interim emergency order has been identified as an exhibit.
10 I would like to have marked as an exhibit Equitable Exhibit
11 No. 1-IEOP, for interim emergency order petition,
12 Equitable's answer to that petition.

13 Mr. Kelly, I'll try to get two copies to you in
14 Harrisburg as quickly as I can, but unfortunately we have
15 nobody in the hearing room in Harrisburg to do that, but
16 I'll see that you get two copies.

17 JUDGE CORBETT: That will be so marked and
18 identified.

19 (Whereupon, the document was marked
20 as Equitable Exhibit No. 1-IEOP for
21 identification.)

22 MR. THOMAS: Does Your Honor have a copy?

23 JUDGE CORBETT: Yes, I do. Thank you.

24 All right. Are you presenting Mr. Quinn?

25 MR. THOMAS: Yes, I'm presenting Mr. Quinn. He has

1 not previously been sworn.

2 JUDGE CORBETT: All right. Would you raise your
3 right hand, please, Mr. Quinn, and be sworn?

4 Whereupon,

5 JOHN M. QUINN

6 having been duly sworn, testified as follows:

7 JUDGE CORBETT: Would you begin please by giving us
8 your full name and spelling your last name for the court
9 reporter, please?

10 THE WITNESS: It's John M. Quinn, Q-U-I-N-N.

11 JUDGE CORBETT: All right.

12 Mr. Thomas, you may proceed.

13 DIRECT EXAMINATION

14 BY MR. POVILAITIS:

15 Q. Mr. Quinn, what is your business address?

16 A. My business address is 225 North Shore Drive in
17 Pittsburgh, Pennsylvania, 15212.

18 Q. By whom and in what capacity are you employed?

19 A. I'm employed by Equitable Gas Company as the
20 vice president of LDC rates and gas supply.

21 Q. What are your responsibilities as vice president
22 of LDC rates and gas supply?

23 A. I have overall responsibility for the management
24 and coordination of rate tariff and other strategic
25 regulatory and commercial sales and delivery service

1 activity. I also have overall responsibility for ensuring
2 that Equitable has sufficient natural gas supply and
3 upstream pipeline capacity sufficient to meet the needs of
4 our tariff sales customers consistent with least cost
5 procurement policies and practices for Equitable's
6 distribution operations in Pennsylvania and West Virginia
7 and its farm cap customers in Kentucky.

8 MR. POVILAITIS: I'm not sure that we had on the
9 record that Hess objected to the procedure in which Mr.
10 Quinn would simply read his previously prepared answer into
11 the record.

12 JUDGE CORBETT: Okay. It was not on the record. It
13 was while we were off the record.

14 MR. POVILAITIS: I would renew that objection at this
15 time, Your Honor, and if it is denied, I would ask that
16 Hess's representatives be given a copy of the testimony so
17 we could read along with Mr. Quinn.

18 JUDGE CORBETT: Would you state the objection again,
19 please, so it's on the record, and raise the volume of your
20 voice a little bit so the court reporter can --

21 MR. POVILAITIS: Certainly, Your Honor. Hess objects
22 to the procedure in which, without sharing drafted,
23 essentially testimony with Hess's representative in advance
24 of this hearing, that Mr. Quinn is permitted not to operate
25 from notes or a combination of notes and memory, but

1 literally to read prepared questions and answers into the
2 record.

3 JUDGE CORBETT: All right.

4 MR. THOMAS: In response, Your Honor, as I indicated
5 earlier, we have adopted this policy because I didn't think
6 that it was fair. We were not, we, Equitable, were not
7 presented with any prepared testimony. We heard it orally.
8 We heard Mr. Magnani's testimony orally and Mr. Crist's
9 testimony orally, although Mr. Crist did seem to have an
10 outline, but we did not have that in front of us when he was
11 testifying.

12 And it's just not fair for Equitable to have to
13 provide something in writing when Equitable was not accorded
14 that courtesy, and I thought we were directed to follow this
15 policy of me asking questions and Mr. Quinn answering them.

16 JUDGE CORBETT: Okay. I think the fair thing at this
17 point is for you to ask the questions, Mr. Thomas, and for
18 the witness to respond to the questions without reading
19 them, reading the responses from his prepared testimony. I
20 think that's the fair thing to do at this point.

21 Otherwise, I would ask that you share a copy of the
22 statements with Mr. Povilaitis as the witness is testifying.

23 MR. THOMAS: May it please Your Honor, I have no
24 problem with doing that. Would it speed things up if we
25 simply authenticated the testimony and submitted it in

1 prepared form as we normally do in rate proceedings?

2 MR. POVILAITIS: Your Honor, I think the opportunity
3 to do that has passed. Naturally --

4 JUDGE CORBETT: Okay. What I've offered is either
5 for the witness to respond to the questions of Mr. Thomas
6 orally without reading them, or if he's going to read them,
7 then he supplies the testimony to opposing counsel as we go
8 through the testimony. Those are the options as I see them
9 at this point as being a fair compromise as to how to
10 proceed in this matter.

11 So it's up to you, Mr. Thomas, how you want to
12 proceed. If you want to have -- there you go, you're giving
13 Mr. Povilaitis a copy of the statement, so --

14 MR. THOMAS: Your Honor --

15 JUDGE CORBETT: Yes, I would, thank you.

16 MR. POVILAITIS: May I have two additional --

17 MR. THOMAS: No.

18 MR. POVILAITIS: -- copies, Your Honor? That's my
19 request.

20 MR. THOMAS: No. Mr. Quinn -- it's just not fair,
21 Your Honor.

22 MR. POVILAITIS: Your Honor, we abided on your ruling
23 on -- I believe Mr. Thomas has these copies. He offered to
24 move them into evidence. The copies are here.

25 MR. THOMAS: You objected.

1 MR. POVILAITIS: I objected, that's correct, Mr.
2 Thomas.

3 JUDGE CORBETT: All right. My ruling stands. This
4 is how we're going to proceed. We'll allow Mr. Thomas to
5 ask the question and then to have counsel and myself follow
6 along with the testimony. Okay?

7 BY MR. THOMAS:

8 Q. Mr. Quinn, please describe your professional
9 experience and educational background?

10 A. I was promoted to my current position in January
11 of 2008.

12 JUDGE CORBETT: Let me just interject at this point.
13 If you can slow down a little bit, Mr. Quinn, so the court
14 reporter can get it. You've got to remember that the court
15 reporter is taking this down. The court reporter does not
16 have a copy of this in front of him, so that if you can slow
17 down a little bit so the court reporter gets this, I'd
18 appreciate it, so we get a clear record, all right?

19 (No response.)

20 JUDGE CORBETT: All right. You may start your
21 response again.

22 MR. LAWRENCE: Your Honor, this is Darryl Lawrence
23 from the OCA in Harrisburg. May I ask a question please, at
24 this point?

25 JUDGE CORBETT: Sure.

1 MR. LAWRENCE: I'm not sure that we here in
2 Harrisburg are completely following what just took place in
3 the last minute.

4 JUDGE CORBETT: Okay.

5 MR. LAWRENCE: If Your Honor and Mr. Povilaitis are
6 going to be following along with something that's being
7 provided there in Pittsburgh, obviously we, the parties here
8 in Harrisburg, do not have such documents in front of us.

9 MR. THOMAS: May it please Your Honor, if I might
10 respond, the witness is giving oral answers. It's just that
11 those answers are prepared, and you'll be able to hear the
12 answers.

13 MR. POVILAITIS: Your Honor, it's a fiction that
14 these are oral answers. They simply aren't. I mean, I can
15 understand the position of the parties in Harrisburg. They
16 had all the documents that Hess offered today. They do not
17 have this testimony. It's not oral testimony. It's simply
18 pre-filed testimony that is being read into the record.

19 MR. THOMAS: May it please Your Honor, we offered to
20 submit it as pre-filed testimony and Mr. Povilaitis
21 objected.

22 MR. POVILAITIS: Because it's too late to submit pre-
23 filed testimony.

24 JUDGE CORBETT: Okay.

25 MR. MOODY: Your Honor?

1 JUDGE CORBETT: Yes?

2 MR. MOODY: Your Honor, Kevin Moody for IOGA. I'd
3 also like to comment that it's not prepared testimony in the
4 normal sense in that it's not provided in sufficient time
5 for the counsel to review it and be able to formulate
6 questions, and it's certainly incorrect for Mr. Thomas to
7 assert that Hess did not provide these testimony before
8 because Hess's petition relies upon Mr. Crist's direct
9 testimony that was distributed on October 8th, so Equitable
10 has had the bulk of the testimony for more than two weeks.

11 JUDGE CORBETT: All right. I'm going to reconsider
12 my prior ruling. Quite frankly, even if we had allowed
13 Equitable to submit the testimony as prepared written
14 testimony in the normal fashion this morning, there were not
15 sufficient copies to give to counsel in Harrisburg, so they
16 would have been deprived of the opportunity to review the
17 testimony.

18 So at this point, I'm going to rescind my prior
19 ruling on this, and we're going to return the statements to
20 Mr. Thomas and we'll have the witness testify without the
21 benefit of reading his responses into the record.

22 MR. LAWRENCE: Thank you, Your Honor.

23 JUDGE CORBETT: All right.

24 MR. MOODY: Thank you.

25 JUDGE CORBETT: So at this point, the witness is not

1 going to be afforded the opportunity of reading his
2 responses from the prepared testimony. He'll simply be
3 responding to the questions of counsel. We will proceed in
4 that fashion.

5 MR. THOMAS: Thank you, Your Honor.

6 BY MR. THOMAS:

7 Q. Mr. Quinn, I think we're still on the
8 questioning relating to your professional experience and
9 educational background.

10 JUDGE CORBETT: So my ruling is, so we're clear on
11 this, the witness will not be given the opportunity to read
12 from prepared testimony. He'll be giving it only from his
13 understanding, his memory of events and not from the
14 prepared testimony.

15 MR. POVILAITIS: Just to understand, Your Honor, so
16 that the witness will not be essentially reviewing his
17 testimony that's pre-written?

18 JUDGE CORBETT: Right.

19 MR. POVILAITIS: May it please Your Honor, if Mr.
20 Crist was afforded the ability to look at notes --

21 MR. POVILAITIS: We have no objection to any notes
22 that --

23 MR. THOMAS: This witness is not going to read it
24 verbatim, but --

25 MR. POVILAITIS: That's testimony.

1 JUDGE CORBETT: Just a minute.

2 Mr. Crist was not reading verbatim from notes. We
3 have Hess Exhibit 3 in the record. It is less than one page
4 long. It is, in reviewing the notes, it appears that they
5 are nothing but notes. They are not prepared responses to
6 questions, and it is much different than what you're
7 proposing at this point, Mr. Thomas, to have the witness
8 read into the record the Q-and-A of prepared testimony.

9 So the parties in Harrisburg were not accorded the
10 opportunity to follow along with the prepared written
11 testimony there, the counsel there, and the parties are at a
12 distinct disadvantage. We're not going to follow that
13 procedure at this point.

14 So we're going to have the witness, Mr. Quinn,
15 testify from his memory and his understanding of these
16 matters without the benefit of reading from prepared
17 testimony.

18 MR. THOMAS: Thank you, Your Honor.

19 THE WITNESS: Can I refer to this as notes?

20 MR. POVILAITIS: Your Honor --

21 THE WITNESS: I didn't understand, Your Honor.

22 JUDGE CORBETT: Okay. The testimony that you're
23 referring to, the statements that you're referring to, Mr.
24 Quinn, are not notes, so at this point, Mr. Thomas, you may
25 ask your questions and have the witness respond.

1 MR. THOMAS: May I give the witness a copy of
2 Equitable's answer that has been marked for identification
3 as Equitable Exhibit No. 1?

4 JUDGE CORBETT: Yes, you may.

5 MR. THOMAS: IEOP?

6 JUDGE CORBETT: Yes.

7 BY MR. THOMAS:

8 Q. Do you have a copy?

9 A. I do.

10 MR. THOMAS: I'll withdraw whatever question may have
11 been on the record, Your Honor.

12 JUDGE CORBETT: All right.

13 BY MR. THOMAS:

14 Q. And ask again, please describe your professional
15 experience and educational background, Mr. Quinn.

16 JUDGE CORBETT: Okay. Well, that part went in.
17 That's been asked and answered, so we'll allow that into the
18 record. I don't think there's any dispute as to that part
19 of his testimony. The objection was raised after that was
20 in the record, so we're going to proceed from that point
21 forward.

22 MR. THOMAS: Thank you, Your Honor. I thought I had
23 asked it three or four times, but I didn't think it was
24 answered. I didn't recall the witness explaining where he
25 went to school, his master's from Carnegie Mellon and his

1 work experience at both Equitable and NiSource.

2 JUDGE CORBETT: Okay. We'll allow him to testify.
3 We'll allow him to testify on his experience.

4 BY MR. THOMAS:

5 Q. Mr. Quinn, please describe your professional
6 experience and educational background.

7 A. I've been with Equitable since 2005 in different
8 positions, basically in regulatory rates and most recently
9 in C&I sales and marketing, and now my current position is
10 the vice president of LDC rates and gas supply.

11 Prior to that, for 13 years, I worked with Columbia
12 Gas, Columbia Energy Group, which was acquired by NiSource,
13 worked in various positions in Ohio, Virginia, Maryland,
14 Pennsylvania. Prior to that, after graduating from the
15 University of Northern Iowa with a bachelor of arts degree
16 majoring in accounting, I was employed by the Iowa Utilities
17 Board which is the equivalent of the Public Utility
18 Commission in Pennsylvania.

19 As I said earlier, I graduated from the University of
20 Northern Iowa, accounting degree, and I went on and
21 completed my master's degree in public management from
22 Carnegie Mellon University.

23 Q. Are you active in any natural gas trade
24 associations?

25 A. Yes, I am. I participate in AGA committees as

1 well as the Pennsylvania Gas Association, Pennsylvania
2 Energy Association.

3 Q. Have you previously testified before the
4 Pennsylvania Public Utility Commission or any other utility
5 commission?

6 A. Yes, I have. I have submitted testimony in a
7 variety of other state jurisdictions as well as in
8 Pennsylvania.

9 Q. What states were those?

10 A. Iowa, Ohio, as I said Pennsylvania, Maryland and
11 Virginia.

12 Q. West Virginia?

13 A. And West Virginia.

14 Q. Have you prepared direct testimony in this
15 general base rate proceeding?

16 A. I have.

17 Q. Was that pre-marked as Equitable Statement No.
18 1?

19 A. Yes.

20 Q. Was it submitted with the company's general base
21 rate filing?

22 A. Yes, it was.

23 Q. Are you anticipating presenting other testimony
24 in this proceeding?

25 A. Yes, I am.

1 Q. What testimony would that be?

2 A. I'll be submitting rebuttal testimony on October
3 31st.

4 Q. What is the purpose of your testimony this
5 morning?

6 A. The purpose of my testimony is to essentially
7 address and/or rebut the allegations made in Hess's petition
8 for interim emergency order.

9 Q. Mr. Quinn, are you familiar with the standards
10 for issuance of an interim emergency order?

11 A. I've reviewed them.

12 Q. I'm going to show you 52 PA Code, Section 3.6 et
13 seq. Are those the standards that you're referring to?

14 A. Yes.

15 Q. Mr. Quinn, just quite simply, is there an
16 emergency?

17 A. I don't believe there is an emergency.

18 Q. Would you please explain why, in your view,
19 there is not an emergency?

20 A. Well, first and foremost, the matter is before
21 the Commission and direct testimony has been submitted by
22 various intervenors including Hess in the base rate case.
23 We are preparing our response to that testimony that will be
24 submitted on October 31st.

25 The matter will be addressed, and it seems to me the

1 issue kind of boils down to whether Equitable Gas has
2 assigned contracts. And the clear answer to that is,
3 Equitable Gas has not assigned agency contracts. And so if
4 that is the issue, one of the issues of concern, it's simply
5 not founded. We have not assigned any contracts.

6 Q. Is that agency contracts?

7 A. That's correct.

8 Q. Are you aware of any danger, clear and present
9 danger to life or property as a consequence of Equitable's
10 agency service and what it is doing with respect to agency
11 service today?

12 A. Absolutely not. Customers are provided natural
13 gas delivery service and they're buying a commodity from
14 either Equitable Gas Company, EE, Hess or any other licensed
15 natural gas supplier that's participating on our system.
16 Therefore, the issue with regard to the threat, I assume,
17 has to do with essential human need customers who require
18 natural gas service to heat their homes. That is simply not
19 the case.

20 Q. You referenced in an earlier answer that
21 Equitable is not assigning agency service contracts. Just
22 what is Equitable considering for its agency service? What
23 are its plans for agency service?

24 A. Well, as we said, we do intend to wind the
25 program down. And when I say wind the program down, if you

1 look at our tariff, Section 11.7 which I believe was
2 attached to the petition submitted by Hess, the first
3 sentence says, "If requested by the customer and agreed to
4 by the company." We view that as, we must have mutual
5 consent. If we do not consent to extend an agency
6 arrangement, we will not do so.

7 Therefore, when I say we're going to wind it down,
8 we're going to be using that provision of that section that
9 we don't agree to continue to extend agency agreements.
10 However, I think the important point is, that hasn't been
11 brought up yet is, the competition between natural gas
12 utilities in the City of Pittsburgh, it is a significant
13 issue in this case and it will be brought up later.

14 But one of the tools we, Equitable Gas, utilizes to
15 combat gas-on-gas competition and to retain load on our
16 system is this particular provision in our tariff which
17 allows us to provide our customers a service that they have
18 requested.

19 So at the end of the day, if we wind this down and a
20 customer comes to us, which they often do, and say, "I have
21 an offer for delivery service and a natural gas supply
22 service, but it's on Dominion Peoples, not on Equitable," we
23 would like to utilize this provision in the tariff to combat
24 that loss of load, to attempt to compete and to keep that
25 load on our system.

1 Q. Use of agency for that purpose is not being
2 wound down?

3 A. No. That's why we would like to keep this in
4 our tariff, 11.7 in our tariff, for that purpose, to retain
5 load on our distribution system.

6 Q. Mr. Quinn, do the facts support a need for
7 immediate resolution of agency program issues?

8 A. I don't think so. I find it interesting that an
9 arrangement, settlement was made between Hess, Constellation
10 and Equitable in the acquisition, the failed acquisition of
11 Dominion --

12 MR. POVILAITIS: Objection, Your Honor. It appears
13 as though the witness is attempting to use a settlement
14 position by Hess in another proceeding to essentially
15 impeach Hess's position in this case.

16 It is patently clear that a company's position, a
17 party's position in settlement may not be used to contradict
18 a litigation position. That's standard, it's classic, and
19 we object to the company's witness essentially attempting to
20 do that.

21 MR. THOMAS: Your Honor, that position was part of
22 public documents in the acquisition proceeding. I think
23 Your Honor approved that as part of your recommended
24 decision in that proceeding and our Commission approved the
25 application. It wasn't as a consequence of the PA PUC

1 proceeding that the application and acquisition of Dominion
2 Peoples did not go forward, and that is public knowledge.

3 MR. POVILAITIS: Your Honor, the document is public,
4 but the parties are hardly ever going to settle any matter
5 if in a subsequent case they are essentially impeached
6 relative to their then-current position, with a settlement
7 position they took in a prior case. I think it's a simple
8 issue.

9 MR. THOMAS: Your Honor, it goes to the heart of
10 whether there's any irreparable harm, whether there's any
11 need for immediate relief. It goes to the public interest
12 question. What was acceptable a short time ago, the fact
13 that it was acceptable and approved by the Commission and
14 recommended by Your Honor should indicate that there's no
15 urgency, that there's no threat to human life or property,
16 there's no need for immediate relief and so forth, right
17 down the prerequisites for the grant of an interim emergency
18 order.

19 MR. POVILAITIS: Your Honor, there's no way for Your
20 Honor or the Commission to evaluate what trade-offs factored
21 into Hess's assessment that that was a reasonable position
22 to take in settlement in that other case, which we would
23 point out is vastly different from this proceeding. It was
24 a merger proceeding. There were issues as to whether or not
25 some unfavored practices from Equitable would actually be

1 instituted by Dominion Peoples.

2 We're not saying we are making public something that
3 previously was confidential, but it is clearly an attempt to
4 impeach Hess's position on the issue of this interim
5 emergency order with a settlement position that it took in a
6 prior case. We don't think that's the policy road for Your
7 Honor or the Commission to head down.

8 JUDGE CORBETT: The objection is sustained.

9 MR. THOMAS: Mr. Quinn --

10 THE WITNESS: What I was going to say --

11 MR. POVILAITIS: Your Honor.

12 THE WITNESS: -- related to --

13 MR. POVILAITIS: Objection.

14 THE WITNESS: -- the agreement --

15 JUDGE CORBETT: Yes, I'm sorry. The objection has
16 been sustained. Let counsel ask the next question.

17 MR. THOMAS: May it please Your Honor, could I have
18 the question read back that was the subject of the objection
19 so I don't tread in that water again?

20 JUDGE CORBETT: John, can you read it back?

21 (Whereupon, the reporter read from the record as
22 requested.)

23 MR. THOMAS: Thank you, Your Honor.

24 BY MR. THOMAS:

25 Q. Mr. Quinn, one of the prerequisites for the

1 grant of interim emergency relief is irreparable harm. Will
2 Hess be irreparably harmed in any fashion as a consequence
3 of Equitable's plans for its agency service?

4 A. No, I don't believe so. I believe that they're
5 attempting to suggest that there would be economic harm in
6 the short term potentially, which I don't agree with either.

7 Currently, the general delivery service program that
8 Equitable has in its tariff and operates allows for
9 competition.

10 (Whereupon, the following page 198 was sealed and
11 bound separately at the direction of Judge Corbett. See
12 transcript page 207.)

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1 So I don't think that there's irreparable harm
2 related to 1,400 customers whose contracts will expire based
3 on their own terms over a period of time.

4 Q. Mr. Quinn, does Hess serve existing agency
5 service customers?

6 A. I don't believe so.

7 Q. Is it possible for Hess to suffer monetary
8 losses or an injury from failure to compete for business
9 which it does not have in the first place?

10 A. Not in my opinion. If you don't have -- you're
11 not serving customers currently and you're making an
12 argument that you have some economic harm related to not
13 serving certain customers and charging them for service, I
14 don't understand the concept. I don't follow the logic.

15 Q. Is there any threat to Hess's existing base of
16 customers or its business as a consequence of Equitable's
17 plans for agency service?

18 A. I don't think so.

19 Q. Hess claims in its interim petition that the
20 margin Equitable realizes from operation of the agency
21 program is \$9,146,179, suggesting that Equitable might lose
22 that margin if Hess or another supplier aside from Equitable
23 Energy would provide the gas to the agency program.

24 Does Equitable realize a profit margin of \$9,146,179
25 from agency service?

1 A. No. The context of the question has been taken
2 and our response to the interrogatory has been taken out of
3 context or misunderstood. The \$9 million that you reference
4 relates to delivery service margin.

5 The question asked us to provide total margin
6 revenue. Well, part of -- the only margin revenue that
7 Equitable Gas Company realizes is delivery service margin
8 revenue, and that is the \$9.1 million you referred to.

9 And quite frankly, based on information that I have
10 read, whether Hess was serving the customer or any other
11 licensed natural gas supplier was serving the customer,
12 Equitable will still be charging the delivery rate to
13 generate that \$9.1 million.

14 Q. Now, you refer to the \$9,146,179 as delivery
15 service margin. Does margin in that context mean profit?

16 A. No. It's before tax.

17 Q. Excuse me?

18 A. That's a before-tax number.

19 Q. Is it just the revenue from --

20 A. Delivery service.

21 Q. -- delivering the gas?

22 A. That's correct. It's our delivery service rate.

23 Q. Would that same revenue be received whether the
24 gas is being supplied by Equitable Energy, Hess or some
25 other marketer?

1 A. Yes, only if the customers who are currently
2 provided the service stay on Equitable's distribution
3 system. If they left, then we would lose the delivery
4 service margin.

5 Q. Would the relief requested by Hess be injurious
6 to other customers and the public interest, in your view?

7 A. No. I think their focus is on themselves in
8 that regard. Customers are, even agency customers are given
9 an offer of a price and they typically do shop around, call
10 other marketers.

11 If through our agency program we provide a price,
12 they certainly can go and ask Hess to provide a comparable
13 price, and they do. And I think one of the responses that
14 we have given them shows that the agency customers have gone
15 down, so to say that customers are being harmed if they
16 choose not to shop around, I think that's the issue.

17 It's the customer's choice to accept a commodity
18 offer or to shop around and ask for another one, and that's
19 why I see happening.

20 Q. Let me ask the question again, because maybe you
21 didn't hear it. Is the relief requested by Hess injurious
22 to other customers?

23 A. No.

24 Q. And I heard you say -- is relief -- I thought I
25 heard you say no. Is the status quo injurious to other

1 customers?

2 A. No. I think customers are benefitting with the
3 continuation of the program, and if we decide to wind it
4 down, there would be other marketers who would obviously
5 make offers to serve the same load.

6 Q. Has Equitable engaged in any preferential
7 treatment towards its affiliate at the expense or harm of
8 competitive suppliers like Hess?

9 A. Not that I'm aware of.

10 Q. Has the number of agency customers been
11 decreasing?

12 A. Yes, it has. We've seen a decline in agency
13 customers over the last three years.

14 Q. From the 2005 figures to today, has the amount
15 of or the number of agency customers decreased by
16 approximately 40 percent?

17 A. I know it's gone down. I haven't made a
18 calculation, but from 2005, we had 2,298 customers. At the
19 end of 2007, there were 1,940. And the volumes associated
20 with those have gone down about 1.1 bcf.

21 Q. Do you know how many customers there are today?

22 A. Yes. There are even less than that. We
23 provided that in an interrogatory response.

24 Q. Is that number 1,377?

25 A. Yes, that's correct.

1 Q. And if I were to compare 1,377 to the 2,298
2 agency customers at 2005, would that indicate a decrease of
3 more than 40 percent?

4 A. I think so, yes.

5 MR. THOMAS: May I have a moment, Your Honor?

6 JUDGE CORBETT: Sure.

7 (Pause.)

8 MR. THOMAS: Thank you, Your Honor.

9 BY MR. THOMAS:

10 Q. Mr. Quinn, I think during earlier examination
11 today, either direct or cross from one of the Hess witnesses
12 if not both, there was a reference to Equitable's response
13 to Hess Interrogatory Set I, No. 9.

14 A. Yes.

15 Q. Do you have that interrogatory response in front
16 of you?

17 A. Yes.

18 Q. Is there a date of November 1 in that response?

19 A. Yes.

20 Q. And is that November 1 date still a good date?

21 A. No, it's not. This response was provided before
22 another response that was also put in the record. The date
23 has been changed to the end of the year.

24 Q. And just for clarity, what did that date
25 reference?

1 A. I believe it's December 31st.

2 Q. No, I'm sorry. What does that date represent?

3 What is going to happen --

4 A. Well, we no longer --

5 Q. -- on that date?

6 A. We no longer intend to renew agency agreements
7 for customers that are expiring unless there's a situation,
8 as I said earlier, that a customer is attempting to leave or
9 negotiating to leave our distribution system.

10 MR. THOMAS: May it please Your Honor, that concludes
11 our direct examination.

12 JUDGE CORBETT: All right. Let me first of all ask
13 whether any party in Harrisburg has any cross-examination of
14 this witness.

15 MR. MOODY: Yes, Your Honor. Kevin Moody for IOGA.
16 I would, but I would defer to Hess's counsel initially,
17 since it's their petition.

18 JUDGE CORBETT: All right. Anyone else?

19 (No response.)

20 JUDGE CORBETT: All right. Mr. Povilaitis, do you
21 have any cross?

22 MR. POVILAITIS: Your Honor, I was actually going to
23 ask for Your Honor's indulgence for about a 15 minute recess
24 to consider how tight we can make this cross, to expedite
25 things.

1 I also have a preliminary matter, regardless of how
2 Your Honor considers that request, with respect to Mr.
3 Quinn's placement on the record of information relative to
4 Hess's current number of customers.

5 JUDGE CORBETT: All right. Do you need 15 minutes?

6 MR. POVILAITIS: Yes, Your Honor, although I can deal
7 with this other issue, if that's your preference, and just
8 get it out of the way.

9 JUDGE CORBETT: Yes, let's deal with the other issue
10 first.

11 MR. POVILAITIS: Your Honor, I'd like to make a
12 request of counsel of Equitable for an offer as to the
13 source of Mr. Quinn's information as to Hess's current
14 customer count and its volumes and whether or not that is
15 public information.

16 MR. THOMAS: May it please Your Honor, I would need
17 to confer with the witness.

18 JUDGE CORBETT: All right. Well, we're going to take
19 a short recess. It is now --

20 MR. POVILAITIS: It's 12:25, Your Honor.

21 JUDGE CORBETT: Okay. Let's try -- I have about
22 12:22 or so. Let's reconvene at 12:35. And at this point,
23 we're off the record.

24 (Recess.)

25 JUDGE CORBETT: We're back on the record.

1 I believe Mr. Povilaitis had made a data request.

2 MR. POVILAITIS: A request for an offer as to the
3 source of that information and whether it was --

4 JUDGE CORBETT: All right. Can you supply that, Mr.
5 Thomas?

6 MR. THOMAS: Yes, Your Honor. The source of the
7 information is Equitable's records. I don't know if it's
8 non-public information or not. I think that it's very
9 relevant to the purpose of the proceeding, and if the
10 information is non-public or if there's any unease at Hess
11 regarding that number, we would be prepared to remove it
12 from the public record and go into a proprietary, non-public
13 record, but we think the number of customers indicates the
14 success of Hess in providing marketing service and also
15 impeaches, to some extent, their claim for irreparable harm,
16 the need for immediate relief, injury to life and property,
17 and so on.

18 I think it's relevant. Again, we were not aware, I'm
19 certain Mr. Quinn was not aware that there were concerns
20 that it may not be public. It came right out of our
21 records, but we're prepared to ask that that portion of the
22 transcript either have the amount deleted or be deemed a
23 proprietary transcript on the transcript.

24 JUDGE CORBETT: What is your position on that, Mr.
25 Povilaitis?

1 MR. POVILAITIS: Your Honor, I am frankly astonished
2 that Mr. Quinn, given his position, would even for a moment
3 think that this kind of information as to any suppliers,
4 customer count and volumes was public information.

5 This is highly improper. This is not only non-public
6 information, it's highly confidential information. It has
7 now been placed on the public record, and the only remedy
8 Hess can consider about this situation is to ask that it be
9 stricken, and if it is not stricken -- and even if it's
10 stricken, that Your Honor consider sanctions for purposes of
11 this disclosure.

12 And if it is not stricken, it is necessary to present
13 a rebuttal witness on this subject, because in addition to
14 it being highly inappropriate to have made this information
15 public -- and I don't even know who is sitting in the
16 audience in the hearing room in Harrisburg at this point --
17 but it is inaccurate, to boot.

18 MR. THOMAS: May it please Your Honor, we're willing
19 to strike it, but we think it's relevant information.

20 JUDGE CORBETT: Okay. Mr. Totino, are you in
21 Harrisburg?

22 MR. TOTINO: Yes, I am, Your Honor.

23 JUDGE CORBETT: Are the same people in the hearing
24 room as were in the hearing room previously?

25 MR. TOTINO: Yes, Your Honor.

1 JUDGE CORBETT: And are any of the people in the
2 hearing room in Harrisburg, are any of those parties -- are
3 any of the people in the hearing room present there, are
4 they, to your knowledge, parties to the protective order?

5 MR. TOTINO: When you say "parties," do you mean
6 anybody besides counsel?

7 JUDGE CORBETT: Yes.

8 MR. TOTINO: No. The only people that are in this
9 room besides the court reporter are counsel for the parties.

10 JUDGE CORBETT: Okay.

11 MR. TOTINO: Which would include Mr. Stewart on
12 behalf of Dominion Retail.

13 JUDGE CORBETT: Okay. All right.

14 John, we're going to ask you to, when you prepare the
15 testimony, to place the numbers that were given previously
16 in response to that question concerning the number of
17 customers and the quantity served by Hess on the Equitable
18 system, we're going to ask you to place that as proprietary
19 information, and separately bound and sealed under
20 protective order.

21 MR. POVILAITIS: Your Honor, if I may, we would
22 request that it be treated as highly confidential
23 information, beyond proprietary. And in addition, I believe
24 there was a reference to not just the number of customers
25 and the volumes, but the fact that, in Mr. Quinn's view,

1 [REDACTED PER JUDGE CORBETT]. We would ask that that be
2 similarly treated.

3 JUDGE CORBETT: Any objection?

4 MR. THOMAS: May it please Your Honor, I don't
5 understand why that would have to be treated in that
6 fashion, but may I confer with Mr. Quinn a moment?

7 JUDGE CORBETT: Sure. Yes.

8 MR. POVILAITIS: Your Honor?

9 JUDGE CORBETT: Yes.

10 MR. POVILAITIS: I think there's a difference under
11 the protective order between who has access to highly
12 confidential information versus merely proprietary. It is
13 that higher level protection that Hess is seeking.

14 JUDGE CORBETT: All right.

15 MR. THOMAS: May it please Your Honor, I know that
16 Mr. Povilaitis and Hess -- I don't want to just accuse Mr.
17 Povilaitis -- but Hess has asked for the volumes, customers
18 and so on served by Equitable Energy, the affiliate, the
19 same identical information, and as Mr. Quinn just explained
20 to me, since that had been provided, we thought it was not
21 inappropriate to have the same information for Hess.

22 JUDGE CORBETT: All right. Well, I'm not going to
23 consider sanctions at this point. I'm going to place the
24 information I requested under protective order and it will
25 be considered highly confidential information, that also

1 with the fact that [REDACTED PER JUDGE CORBETT]. We'll have
2 that also placed under protective order.

3 John, do you understand the instructions that I've
4 just given?

5 THE REPORTER: Your Honor, may we go off the record?

6 JUDGE CORBETT: Sure.

7 (Discussion off the record.)

8 JUDGE CORBETT: We're back on the record.

9 And at this point, we've discussed what needed to
10 removed from the record and placed under protective order,
11 and we're going to direct the court reporter to redact any
12 comments that I have made that inadvertently mentioned any
13 of the confidential information.

14 So with that, I think we're back to where we need to
15 be, and Mr. Povilaitis, I think at this point we're ready
16 for your cross-examination.

17 MR. POVILAITIS: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. POVILAITIS:

20 Q. Good afternoon, Mr. Quinn.

21 A. Good afternoon.

22 Q. Mr. Quinn, am I correct that if we're looking
23 for a definition Equitable's agency program, we should look
24 to Rule 11.7 of its current tariff? Is that correct?

25 A. Yes. In addition, there's information contained

1 in the agency agreements as well.

2 Q. Those would be the actual contracts that
3 customers agree to to participate in the agency program?

4 A. Yes.

5 Q. Now, based on your understanding, who actually
6 supplies the gas, commodity supply to customers that are
7 participating in Equitable's agency program?

8 A. It could be any licensed natural gas supplier.

9 Q. Are you aware that the company has indicated to
10 the parties in this case that only Equitable Energy supplies
11 gas supply under the agency program to its customers?

12 A. Currently? You're referring to an
13 interrogatory?

14 Q. Do you need your recollection refreshed on that?

15 A. Sure.

16 Q. I'm sorry, it was not -- I'm looking at Hess one
17 dash --

18 (Pause.)

19 THE REPORTER: One dash --

20 MS. REDNIK: Sixteen.

21 MR. POVILAITIS: Sixteen, I'm sorry.

22 May I approach?

23 JUDGE CORBETT: Yes, you may.

24 BY MR. POVILAITIS:

25 Q. Am I correct, Mr. --

1 JUDGE CORBETT: Wait. We want to get you within
2 microphone range.

3 BY MR. POVILAITIS:

4 Q. Am I correct, Mr. Quinn, that Interrogatory
5 Response Hess-I-16 indicates that for the years 2005, 2006
6 and 2007, and with respect to all the customers under the
7 agency program, the sole source of gas was Equitable Energy,
8 Equitable Gas Company's affiliate competitive supplier?

9 A. Based on the response to this interrogatory for
10 2005, 2006 and 2007, I would agree. However, I would need
11 to verify this, because my recollection is, prior to 2005,
12 another supplier also was supplying gas to the agency
13 program.

14 Q. But you don't have any reason to believe that
15 the information in that interrogatory response is
16 inaccurate, do you?

17 A. Not related to 2005, 2006 and 2007.

18 Q. Are the customers that are obtaining service
19 under the Equitable agency program aware that Equitable
20 Energy, LLC is the gas supplier?

21 A. It's difficult for me to know what customers are
22 thinking, are aware of. I'm not sure I can answer that
23 question.

24 Q. Is there any material that Equitable Gas Company
25 gives them as part of its agency program relationship that

1 indicates that the actual supplier of commodity under the
2 agency program is Equitable's competitive affiliate?

3 A. I'm not sure.

4 Q. Are you familiar with the contracts --

5 A. Uh-huh.

6 Q. -- the customer considers and accepts when they
7 join the agency program?

8 A. I'm familiar, yes.

9 Q. Does that indicate that the provider of the
10 supply is Equitable Energy, the competitive supplier
11 affiliated with Equitable.

12 A. I'd have to refresh, subject to check. I
13 believe it may.

14 MR. POVILAITIS: We'd like to make a data request,
15 Your Honor, if we could, that if Mr. Quinn has any contracts
16 which identify Equitable Energy as the provider of
17 commodity, that that be supplied to Hess.

18 MR. THOMAS: May it please Your Honor, for clarity,
19 what is being requested, information or -- I'm not sure I
20 understood the request.

21 MR. POVILAITIS: I'm requesting any communications
22 from Equitable Gas Company to a potential or existing agency
23 program customer that reveals to that customer that the
24 provider of the supply in the agency program is Equitable
25 Energy.

1 MR. THOMAS: May it please Your Honor, we can provide
2 a response relating to communications. We will not provide
3 the contracts themselves. They would seem to be highly
4 confidential.

5 MR. POVILAITIS: We can protect the information, Your
6 Honor.

7 MR. THOMAS: For just the same reasons we've just
8 gone through.

9 MR. POVILAITIS: We can protect the information.
10 There's no problem with that. We simply want to know
11 whether the customers participating in this problem are
12 aware that it is not Equitable Gas Company but Equitable
13 Energy that is supplying the gas.

14 MR. THOMAS: May it please Your Honor, we can review
15 the contracts and indicate whether they state that, but as
16 far as giving Hess specific contracts with customers
17 identified and so on, I just don't think that's appropriate.

18 JUDGE CORBETT: Okay. I'm going to agree with Mr.
19 Thomas on this one. I think we'll allow them to review the
20 contracts and give you the summary of what they've
21 discovered.

22 BY MR. POVILAITIS:

23 Q. Can you point me to anything, Mr. Quinn, in the
24 text of Rule 11.7 of Equitable's tariff that restricts
25 Equitable Gas Company to using its affiliated supplier as

1 the provider of gas under the agency program?

2 A. No.

3 Q. Do you have any reason to believe, Mr. Quinn,
4 that when Equitable Energy supplies that gas supply under
5 the agency program, it does it at below cost?

6 A. Do I have any reason to believe? No.

7 Q. Is that a fair inference, that there is at least
8 some degree of profit?

9 A. I don't know.

10 Q. But you do think it's a possibility that
11 Equitable Energy is selling gas through the agency program
12 at below its cost?

13 A. I don't think that makes any economic sense.

14 Q. Would you agree with me, Mr. Quinn, that under
15 the text of Rule 11.7, customers using the agency program
16 would obtain a benefit by Equitable Gas Company obtaining
17 upstream capacity and storage services for a customer
18 without supply being involved at all?

19 A. It may. They may. I'm not sure I --

20 Q. Possibility?

21 A. Possibility, yes.

22 Q. Is there anything really in the text of this
23 rule that identifies supply as being part of the agency
24 program service, commodity?

25 A. Only the provision that says it's the customer's

1 gas. I mean, Equitable Gas Company takes no title to the
2 gas, so it's the customer's gas.

3 Q. Is there a contractual relationship between the
4 customer and Equitable Gas Company under the program?

5 A. There is a contractual relationship between the
6 customer and Equitable Gas Company that states what the
7 commodity price of gas will be.

8 Q. But there's no direct commercial relationship
9 between the customer and Equitable Energy, is there?

10 A. I'd have to review the contracts.

11 Q. That's part of your responsibility, isn't it, at
12 Equitable, to be familiar with the program and to
13 essentially supervise that program?

14 A. It's part of my responsibility. I just can't
15 commit to memory four pages or so of the contract. I guess
16 before I answer you, I'd like to check my recollection.

17 MR. POVILAITIS: We would make that an additional
18 data request as well, Your Honor.

19 JUDGE CORBETT: Any response, Mr. Thomas?

20 MR. THOMAS: Would you repeat the data request just
21 so I make absolutely certain that I have it?

22 MR. POVILAITIS: Is there any indication in the
23 contract between Equitable Gas Company and the customer
24 using the agency service that indicates any commercial
25 relationship between the customer and Equitable Energy?

1 MR. THOMAS: I understand it. We'll provide a
2 response.

3 BY MR. POVILAITIS:

4 Q. I'd like to discuss with you, Mr. Quinn, this
5 issue of just exactly what the company's plans are relative
6 to the agency program. Am I correct that you have qualified
7 the statement the company made in its objections to Hess's
8 interrogatories to the effect that it was exiting the agency
9 program at the end of the calendar year?

10 A. Can I ask for the objections?

11 (Pause.)

12 JUDGE CORBETT: All right. Mr. Povilaitis is showing
13 the witness the document.

14 (Pause.)

15 BY MR. POVILAITIS:

16 Q. Your Honor, I'm showing the witness the last
17 sentence on page two of Equitable's objections to Hess's
18 interrogatories, paragraph -- (inaudible) --

19 THE REPORTER: Interrogatory what?

20 MR. POVILAITIS: It's the paragraph six, page two of
21 Equitable's objections to Hess's interrogatories.

22 BY MR. POVILAITIS:

23 Q. Am I correct, Mr. Quinn, that those objections
24 state that it's Equitable's intention to exit the program by
25 the end of the calendar year?

1 A. That's what it says, yes.

2 Q. There's no qualification here about using the
3 agency program for some purposes but not others, is there?

4 A. I did not see a qualification.

5 Q. The qualification you suggested as operative in
6 your testimony today is that Equitable has plans to continue
7 using the agency program under Rule 11.7, but only in those
8 situations where the customer represents to Equitable that
9 it is considering taking its delivery service to another
10 LDC; is that correct?

11 A. That's correct.

12 Q. So you would agree with me that it is probably
13 an incorrect generalization to say that you are exiting the
14 agency program at the end of the year?

15 MR. THOMAS: May it please Your Honor, I think we
16 need to know what interrogatory is being address in those
17 objections. I'm not seeing any inconsistency of position,
18 but we never identified the interrogatory.

19 JUDGE CORBETT: All right. Let's backtrack and
20 identify the interrogatory, Mr. Povilaitis, and we'll get
21 that on the record.

22 BY MR. POVILAITIS:

23 Q. It's Hess Set I Interrogatories Nos. 1, 3, 6, 7,
24 11 and 16.

25 MR. THOMAS: Any chance I might review the

1 interrogatories --

2 THE REPORTER: I'm sorry, I'm having trouble hearing
3 with the papers.

4 MR. THOMAS: I simply asked for an opportunity to
5 review the interrogatories that were the subject of the
6 objections.

7 (Pause.)

8 MR. POVILAITIS: It appears as though the context --
9 Interrogatory No. 1.

10 MR. THOMAS: Sixteen?

11 MS. REDNIK: And 16.

12 MR. THOMAS: And 16, okay. Could we have a moment,
13 Your Honor?

14 JUDGE CORBETT: Yes. Counsel is reviewing a
15 document. We'll give them a minute to do that.

16 (Discussion off the record.)

17 JUDGE CORBETT: We're back on the record.

18 BY MR. POVILAITIS:

19 Q. I think my question to Mr. Quinn was that
20 there's no qualification in Equitable's response in the form
21 of his objections here that some element of the agency
22 program will continue beyond the end of the year, is there?

23 A. I did not read a qualification.

24 MR. THOMAS: We'll stipulate, Your Honor, the exiting
25 that was contemplated and set forth in that objection did

1 not cover a situation where agency service would be used to
2 keep a customer on the Equitable distribution system in
3 competition with another gas utility.

4 BY MR. POVILAITIS:

5 Q. You cannot point to any information that
6 Equitable provided to Hess, Mr. Quinn, can you, that made
7 that clarification apparent prior to today?

8 MR. THOMAS: May it please Your Honor, that very same
9 statement was furnished in response to other interrogatories
10 and in a lot of discussions prior to today.

11 BY MR. POVILAITIS:

12 Q. Let me put it another way. Mr. Quinn, did
13 Equitable ever clarify to Hess that there were some elements
14 of the agency program that would continue and that it would
15 not be a complete exit by the end of the calendar year?

16 MR. THOMAS: May it please Your Honor, Mr. Quinn is
17 on the stand but there were others involved and I can recall
18 Mr. Frutchey making that clarification.

19 JUDGE CORBETT: All right. If Mr. Quinn can answer
20 the question, we'll allow him to answer it.

21 THE WITNESS: I can't answer the question about all
22 conversations, was not privy to all conversations.

23 BY MR. POVILAITIS:

24 Q. Mr. Quinn, that's fine. Let's talk about
25 interrogatory responses that you provided specifically. Do

1 you have in front of you your response to Hess Set II, No.
2 3?

3 A. Yes.

4 Q. Do you see the question, subpart (c), which I'll
5 read for you as you refresh yourself? "Please describe any
6 other plans or details regarding termination of the agency
7 program. Provide any documentation supporting your answer."

8 Do you see any qualification in Equitable's answer to
9 that question that reveals to Hess that not the entire
10 program would be terminated but the element of the program
11 that related to customers possibly switching to an LDC would
12 be continued?

13 A. Only the last statement, "This plan could
14 change, and if so, it will supplant this response."

15 Q. Was that supplement of the response provided?

16 A. No. We sent -- it was our present thinking and
17 our current plan, and we've had further discussions since
18 this interrogatory has been sent and we intended to
19 certainly supplant our comments in our rebuttal testimony in
20 the rate case.

21 Q. You were going to supplement this new position
22 of the company by sharing it with Hess in your rebuttal
23 testimony?

24 A. That was one place. We haven't discussed it.

25 Q. Did you even consider supplementing your

1 interrogatory response?

2 A. There are so many interrogatory responses that I
3 am still reviewing all of the ones that we sent. I think
4 we've answered close to 800, so I have not gone back to look
5 at this response in light of this proceeding other than this
6 morning, and so that's our current plan. It was our current
7 plan when we responded to the interrogatory.

8 MR. THOMAS: May it please Your Honor, there also may
9 have been other vehicles in which that explanation was
10 provided and that clarification was provided rather than in
11 a formal supplement to the interrogatory response.

12 MR. POVILAITIS: Can you point me to those, Mr.
13 Thomas?

14 MR. THOMAS: Not this afternoon. I'm in Pittsburgh
15 without my records in front of me, and Mr. Quinn said 800.
16 We've counted over a thousand interrogatory responses
17 counting subparts and all sorts of informal submissions that
18 never rose to the status of being a formal interrogatory.

19 MR. POVILAITIS: I don't want to belabor the point,
20 Your Honor.

21 BY MR. POVILAITIS:

22 Q. But Mr. Quinn, I take it that in your prior
23 answer, you didn't really consider actually supplementing
24 this interrogatory?

25 A. I haven't considered it yet.

1 Q. Mr. Quinn, could I direct your attention to
2 another of your interrogatory responses to Hess? This one
3 is Set I -- (inaudible) --

4 A. Yes.

5 Q. I invite you to look at the second paragraph of
6 that response, which states as follows: "Presently,
7 Equitable is transitioning services provided pursuant to
8 Tariff Rule 11.7 to Equitable Energy."

9 A. Uh-huh.

10 THE REPORTER: Mr. Povilaitis, I'm sorry. All I
11 heard was "Set I." What was the number of that
12 interrogatory?

13 MR. POVILAITIS: That was Hess Set I-9, Mr. Kelly.

14 THE REPORTER: Thank you.

15 MR. POVILAITIS: You're welcome.

16 BY MR. POVILAITIS:

17 Q. Mr. Quinn, what did you mean when you used the
18 phrase, transitioning services under 11.7?

19 A. When I wrote this, my view was services such as
20 customer related type services like, there needs to be, you
21 know, some explanation to our customers what we're going to
22 do, there needs to be a number of issues that need to be
23 explained, and essentially the transitioning to EE also has,
24 you know, billing, customer service related issues that they
25 will be responsible for that we will no longer be

1 responsible for.

2 Q. Can you basically explain, what is the
3 transitioning?

4 A. Quite frankly, I guess, looking at the response
5 now, there's not a lot of transitioning services that will
6 be undertaken. It's really a kind of a wind-down of our
7 responsibility and that pursuant to 11.7, reaching some kind
8 of an agreement within the company on how we're going to
9 accomplish that.

10 Q. But would you agree with me that just looking at
11 the text of this response, it was reasonable for Hess to
12 form the view that something is transferring from Equitable
13 Gas Company to Equitable Energy?

14 A. I think it's a poor choice of words. I would
15 agree. It was certainly not our intent.

16 Q. And what services exactly -- are you saying you
17 can't identify what these services are today that will be
18 transitioned to Equitable Energy?

19 A. Well, I mean, I think, quite frankly, it's more
20 customer service related issues related to the
21 communications with customers. We're not going to be
22 obviously supplying commodity related offers anymore, things
23 of that sort, and there's systems that will be I think
24 created to accomplish that, and no specific services, I
25 mean.

1 Q. Have you made any communications to customers
2 about this transitioning at this point?

3 A. No, we have not.

4 Q. What are the company's plans with respect to
5 making that communication?

6 A. As we said in some of the other ones, we have
7 not finalized a plan.

8 Q. So it could happen tomorrow or at any point
9 between now and the end of this case; is that correct?

10 A. Quite frankly, we felt that this issue would be
11 resolved within this case.

12 Q. So your answer is yes, it could occur anywhere
13 between now and --

14 A. We have no plans to transition to assign
15 contracts during this case. I mean, we haven't, and we
16 think that there's going to be some -- our hope was that we
17 have some kind of reasonable discussion and try to reach a
18 resolution either through our testimony and in settlement
19 discussions with Hess and/or ultimately with the Commission
20 in its final order.

21 Q. You're aware that Hess asked Equitable to state
22 that it would not transfer agency contracts or refer agency
23 customers to its affiliate during the pendency of this case;
24 are you not?

25 A. I'm aware that there's been communications

1 through legal counsel. I don't have copies of the e-mail.

2 Q. Would your recollection be refreshed by looking
3 at that communication?

4 A. It would help.

5 (Pause.)

6 MR. POVILAITIS: I think I'm going to ask that this
7 be marked.

8 JUDGE CORBETT: All right. Thank you.

9 MR. THOMAS: May it please Your Honor, I just scanned
10 it and I know Hess was most uncomfortable talking about
11 settlement agreements, public, from two years ago. This
12 appears to me to be an offer to counsel for Equitable as to
13 a possible resolution, and now I understand they want to
14 make it an exhibit in this case. Some of the discussions we
15 had I thought were in the context of settlement discussions
16 and were privileged between counsel.

17 MR. POVILAITIS: Your Honor, if I may, there was
18 nothing to settle at this point. This was a communication,
19 which, as almost every ALJ I've ever appeared before is
20 quick to point out, is not a settlement.

21 MR. THOMAS: I'm just saying, I look at this as a
22 proposed resolution between the parties. Sometimes we
23 actually don't use electronic communications. We discuss.
24 And it looks to me like they're opening the door to things
25 that they objected to previously that were actually public.

1 This is not a public communication. It's a private e-mail
2 from one lawyer to another lawyer.

3 MR. POVILAITIS: Your Honor, Mr. Quinn has already
4 indicated that he is aware of Hess's interest in the
5 company's position on what it was going to do relative to
6 these agency contracts between itself and its affiliate
7 during the pendency of this case.

8 He already indicated that he intended to clarify that
9 situation and possibly reach agreement with Hess through his
10 rebuttal testimony, which of course puts this on track to
11 being resolved in March and not now, as is Hess's request.

12 The witness is fully aware of this. He's put
13 testimony to that effect on the record, and I think it's
14 fair to ask him questions about this communication because
15 he seems to be aware of it already. It is not a
16 confidential communication, so it is not a settlement of any
17 sort.

18 MR. THOMAS: And it was responded to orally by
19 Equitable's lawyers.

20 JUDGE CORBETT: All right. The objection is
21 overruled.

22 BY MR. POVILAITIS:

23 Q. Would you take a moment, Mr. Quinn, if you
24 haven't already?

25 (Pause.)

1 JUDGE CORBETT: Your question?

2 MR. POVILAITIS: Your Honor, at this point, just to
3 make the record clear, I ask that this e-mail communication
4 from myself to counsel for Equitable dated September 29,
5 2008 be marked as Hess Exhibit 4.

6 JUDGE CORBETT: Yes. It will be so marked and
7 identified.

8 (Whereupon, the document was marked
9 as Hess Exhibit No. 4 for
10 identification.)

11 JUDGE CORBETT: And you'll supply the necessary
12 copies to other parties?

13 MR. POVILAITIS: Certainly, Your Honor.

14 JUDGE CORBETT: As well as the court reporter.

15 BY MR. POVILAITIS:

16 Q. Mr. Quinn, does this e-mail refresh your
17 recollection as to Hess's interest in reaching an agreement
18 with Equitable as to how the agency contracts would be
19 treated during the pendency of this rate case?

20 A. Yes, but I seem to recall there were other e-
21 mails as well, and if I was to -- I was not involved in the
22 back-and-forth between the attorneys. You see I'm not
23 copied on this. But I know that there were other
24 communications as well. I don't know what those say.

25 Q. I understand you may not know about other

1 communication, but you did indicate, and correct me if I'm
2 wrong, that you were familiar with Hess's interest in
3 gaining an understanding with the company about how the
4 agency contracts would be treated during the pendency of the
5 rate case?

6 A. Correct.

7 Q. Are you prepared to stipulate today that
8 contracts will not be transferred to Equitable Energy during
9 the pendency of the case?

10 A. What do you mean by "transferred"?

11 Q. That essentially Equitable Energy will stand in
12 the shoes of Equitable Gas Company to continue the service.

13 A. I'm not prepared to stipulate today anything. I
14 think, my view was that there was going to be an ongoing
15 settlement discussion and back-and-forth, like I said.

16 MR. THOMAS: May it please Your Honor, we can take
17 that stipulation under advisement? Unfortunately, Mr.
18 Frutchey is not in the hearing room, and I can tell you as
19 an officer of the Court, we responded to this, we submitted
20 a counterproposal which we considered to be a proposed
21 settlement of the matter, and I think it's highly -- it's
22 just not right to have the back-and-forth between the
23 lawyers trying to resolve things put into the record of this
24 nature.

25 And I don't think it indicates any support for the

1 requirements for interim emergency relief. And if we're
2 going to start seeing these things -- what about our
3 response? We sent them a proposal last Thursday or
4 whatever. But I know Mr. Frutchey rejected this.

5 MR. POVILAITIS: Your Honor, if I may, what Mr.
6 Thomas is referring to is an offer of settlement, and I
7 agree it was an offer of settlement to terminate this
8 litigation, which did not exist on September 29th. This is
9 obviously Hess's vigorous effort to try to informally
10 resolve this point of contention between itself and
11 Equitable. It's not an offer of settling any litigation,
12 and I think it highlights the frustration that Hess is
13 experiencing and in fact why we're here before you today.

14 Even to this day, Equitable will not blanketly assure
15 Hess that it will not essentially switch this agency program
16 business over to Equitable Energy, against the backdrop of
17 an interrogatory response that says something is being
18 transitioned to Equitable Energy, initially by November 1st.
19 Today we've learned it's not till the end of the year.

20 MR. THOMAS: Your Honor, the attempts to resolve
21 agency issues weren't triggered by the filing of the
22 petition for interim emergency order. Mr. Crist addressed
23 those things in his testimony way back when it was submitted
24 at the beginning of October, sometime around this date, and
25 we have been trying to resolve them.

1 correct?

2 A. Yes.

3 Q. Didn't you indicate a little earlier in your
4 testimony that you're not sure that the customer is aware
5 that the gas supply is coming from Equitable Energy?

6 A. You asked me if the contract said something, and
7 we're going to go back and check the contract. I said I'd
8 like to refresh my memory before I respond.

9 Q. Well, do you know of any other source of
10 information to the customer that indicates to them that the
11 supplier of gas under the agency program is in fact
12 Equitable Energy?

13 A. Any other source of information? I'm not at
14 meetings. I'm not, you know, privy to the discussions that
15 go back and forth, so I can't comment or confirm or deny
16 exactly what takes place.

17 Q. But isn't the reality that when a customer is
18 considering accepting an Equitable Gas Company offer to use
19 the agency program, it's essentially a competition between
20 Equitable Energy and any other supplier that may get their
21 business?

22 A. Yes.

23 Q. Am I correct, Mr. Quinn, that you've indicated
24 in your testimony that continuing the agency program beyond
25 December 31, 2008 is a way that Equitable Gas Company can

1 essentially keep customers on its system? Correct?

2 A. We think it's a tool that we could utilize to
3 attempt to do that.

4 Q. Would it still be a useful tool even if
5 Equitable Energy were not supplying the gas?

6 A. As in another supplier providing supply behind
7 our agency program?

8 Q. Yes.

9 A. I think it would still be an effective tool.

10 Q. Is another way to keep the customer on the
11 Equitable system to find a way to reduce your delivery rate?

12 A. Most of the customers that we're talking about
13 have negotiated delivery rates because they have competitive
14 options, another issue in this rate case. We have costs of
15 providing service, safe and reliable service that must be
16 considered, and obviously we'd like to earn a return on the
17 investment that we're making to provide that service, so
18 certainly that impacts the delivery rate.

19 Q. But you're saying, in these circumstances where
20 a customer is considering the agency program, you would
21 discount your delivery service, right?

22 A. Depends on what their competitive options are.

23 Q. Assuming the customer has -- we were talking
24 overlapping service territory customers, they could go to
25 Peoples, say, try to get delivery service?

1 A. Who also has an agreement agency program.

2 Q. The answer is yes?

3 A. (Inaudible) -- question.

4 THE REPORTER: I'm sorry, what was that answer?

5 MR. POVILAITIS: Let me restate it, Mr. Kelly.

6 BY MR. POVILAITIS:

7 Q. The question is, are you saying, Mr. Quinn, that
8 the circumstances under which you would consider discounting
9 your general delivery service rate would be for those
10 customers who have another LDC as a delivery service option?

11 A. (Inaudible.)

12 THE REPORTER: I didn't hear the answer.

13 THE WITNESS: Correct.

14 BY MR. POVILAITIS:

15 Q. Well, is there anything in Rule 11.7, Mr. Quinn,
16 that establishes Equitable's opportunity to discount its
17 delivery service rate?

18 A. No. That would be in our tariff under the GDS
19 rate.

20 Q. So this discounting of service to retain
21 customers under the agency program really doesn't need any
22 of the language of 11.7 to allow you to do that, does it?

23 MR. THOMAS: May I have that question read back,
24 please?

25 JUDGE CORBETT: Would it be easier to repeat the

1 question?

2 MR. POVILAITIS: Sure.

3 JUDGE CORBETT: Why don't you repeat the question?

4 BY MR. POVILAITIS:

5 Q. Is it correct that there's nothing in Rule 11.7
6 that provides Equitable Gas Company the opportunity or the
7 authorization, let's say, to discount your delivery service
8 rate? Is that correct?

9 A. There's nothing in here that would prohibit us
10 from discounting or negotiating our delivery service rate.

11 Q. Does it authorize discounting the delivery
12 service?

13 A. Doesn't discuss it.

14 Q. I want to make sure I understand the company's
15 position as articulated by yourself about how it intends to,
16 at this point in time, use Rule 11.7. Am I correct in
17 saying that outside of these situations where a customer has
18 another LDC option, the uniform answer to a customer that
19 wanted agency service would be, "No, we're not providing
20 it"?

21 A. What date are you talking about?

22 Q. Why don't we take today, first.

23 A. What we've been doing today is, agreements that
24 are expiring, we will make a proposal to attempt to renew
25 the agreements.

1 Q. For what period of time?

2 A. It just depends on what they're interested in.
3 I think prices, the volatility in prices and what we've seen
4 in the last few months have people interested in one year,
5 two year deals.

6 Q. So those are the rough parameters, one to two
7 years?

8 A. Uh-huh.

9 Q. Okay. Now, after December 31, 2008, is it fair
10 to say that a customer that wants the kind of agency program
11 service you're providing currently would essentially be
12 informed, no, the company is not agreeing to that service?

13 A. That's our plan at December 31st, that we will
14 no longer be offering the agency service. And you know, to
15 clarify the position with regard to the, except for
16 competitive reasons to retain load, recently we have seen an
17 uptick in the number of offers from other utilities to take
18 customers from our distribution company, so as I said to you
19 earlier about our plan to exit, this up-tick that we've seen
20 in the last three or so months has obviously caused us to
21 evaluate what all of our competitive options are and should
22 be going forward.

23 Q. But there's nothing in the letter of Rule 11.7
24 that authorizes Equitable to narrow the situations in which
25 it will provide this service to just those competitive LDC

1 situations; is there?

2 A. I would say this "and agreed to by the company"
3 knows that we won't -- we have the option to continue to
4 provide it or not.

5 Q. So, as a person familiar with tariffs, and I
6 assume you are generally familiar with tariffs?

7 A. Yes.

8 Q. You would not see, as part of this tariff
9 language, that refusing a customer's request for service
10 under agency would not unreasonably be declined? It's at
11 the sole and complete discretion of Equitable whether anyone
12 gets service under this tariff provision or not?

13 A. As it states, if requested by the customer and
14 agreed to by the company, it will act as the agent.

15 Q. Can you tell me what the difference would be
16 between a company that had a tariff provision that outlined
17 some criteria for what a service would be for a customer and
18 they never agree to provide service under that tariff
19 provision, could you contrast that with a company that
20 doesn't have the rule at all? Is there any difference
21 between those situations?

22 A. I'm not following your question.

23 Q. Okay. Say I'm a customer that wants gas supply
24 as part of my agency service. That's our example. Would
25 you agree with me that if there was no agency program in the

1 company's tariff, the LDC couldn't really offer that service
2 to the customer, could it?

3 A. Correct.

4 Q. Now, if the company has a tariff provision that
5 would permit it but it always says no to customer requests,
6 is that any different from not having the program at all?

7 A. I guess your example, you know, is a
8 hypothetical that assumes all else being equal, and I guess
9 all else being equal, if they had a provision and didn't
10 utilize it, I guess that was a business decision that they
11 made, so I'm not sure how to answer your question.

12 Q. Well, the customer couldn't get service if the
13 answer was always no; is that correct?

14 A. The customer couldn't get service if the answer
15 was no.

16 JUDGE CORBETT: We'll take a short five minute recess
17 at this point.

18 (Recess.)

19 JUDGE CORBETT: We're back on the record.

20 MR. POVILAITIS: Thank you, Your Honor.

21 BY MR. POVILAITIS:

22 Q. Mr. Quinn, I just want to harken back for a
23 moment to our discussion about calendar years 2005, six and
24 seven where I think you confirmed that Equitable Energy for
25 those years was the sole source of commodity supply to the

1 agency program. Do you recall that?

2 A. Uh-huh.

3 JUDGE CORBETT: You'll have to say yes or no for the
4 court reporter, sir.

5 THE WITNESS: Yes.

6 MR. POVILAITIS: Thank you.

7 BY MR. POVILAITIS:

8 Q. Mr. Quinn, are you aware of any reason why a
9 competitive supplier other than Equitable Energy couldn't
10 fulfill that role?

11 A. Am I aware of any reason why they couldn't? No.
12 I will say this. It's an issue about the customer, too.
13 The customer requested the information, so again, I think if
14 the customer is desiring a service and asks for a service in
15 this particular instance, that should factor into
16 consideration as well.

17 Q. Are you suggesting the customer would ask for a
18 different supplier?

19 A. They certainly could and they certainly do with
20 asking for competitive options, so in other words --

21 Q. Through Equitable Gas Company?

22 A. Not through Equitable Gas, no.

23 Q. Okay. So I'm talking about, as Equitable
24 implements, Equitable Gas Company implements the agency
25 program, you don't use any competitive supplier other than

1 Equitable Energy?

2 A. We have not been, no.

3 Q. And you're going to check on whether the
4 customers are even aware that its commodity is being
5 supplied by Equitable Energy, not Equitable Gas Company?

6 A. I want to make sure in the contract, exactly
7 what it states.

8 MR. POVILAITIS: That concludes cross-examination of
9 Mr. Quinn. Thank you very much.

10 JUDGE CORBETT: All right. Mr. Moody, do you have
11 any cross-examination?

12 MR. MOODY: Yes. Mr. Povilaitis covered most of the
13 areas, but I just have a few questions.

14 JUDGE CORBETT: You may proceed.

15 MR. MOODY: All right.

16 CROSS-EXAMINATION

17 BY MR. MOODY:

18 Q. Mr. Quinn, you mentioned, in the context of
19 questions about whether there was any other source of
20 information provided to customers as to who is the source of
21 the agency supply, that you aren't present at meetings.
22 What meetings are you talking about?

23 A. Meetings between Equitable Gas sales
24 representatives and customers.

25 Q. And who else is present at those meetings? Is

1 Equitable Energy representatives ever there?

2 A. No, they're not.

3 Q. And you also testified that you thought the
4 agency service issues being discussed here today would be
5 resolved in the context of the base rate case; is that
6 correct?

7 A. That's what I was thinking.

8 Q. And when did you formulate that thought?

9 A. I think it's our desire always to try to settle
10 all the issues in these types of proceedings as we proceed.
11 I think at this point in time, the compressed time schedule
12 has precluded a lot of ability to set up meetings and sit
13 down and talk to people, although I will say that I've
14 mentioned it to our counsel and we are attempting to
15 schedule meetings after our rebuttal is submitted.

16 Q. Well, thank you for that response, but it really
17 didn't answer my question. I'm asking, when did you
18 formulate the thought that you stated today that you thought
19 that these issues, agency service issues would be resolved
20 during this case? When did you first have that thought?

21 A. Possibly after reviewing testimony and some of
22 the interrogatories. I mean, quite frankly, I don't think
23 this is a new issue, and I don't want to harken back, but I
24 think that going back in January when we abandoned our
25 acquisition, we were certainly aware that the agency program

1 was an issue with other parties. We were optimistic that a
2 settlement could be reached, again.

3 Q. Isn't it fair to say that you did not have that
4 thought prior to the base rate filing or even before, as you
5 stated, testimony that raised the issue?

6 A. No one called myself or anyone else to talk
7 about our agency program or filed a petition or indicated
8 they would be filing a petition or any type of an emergency
9 request for immediate relief --

10 Q. Right, so --

11 A. -- from January through up until September.

12 Q. So before you received the testimony in this
13 case raising an agency service issue, you didn't think there
14 were any agency service issues that were to be resolved in
15 this case?

16 A. That's not what I said. I said that we were
17 aware that the agency program was an issue with specifically
18 Hess and some other marketers and that we anticipated that
19 it would be raised in the base rate case.

20 Q. But not raised by Equitable, correct?

21 A. We did not raise it our base rate case. We did
22 not propose a change to the tariff. We knew that it would
23 be raised.

24 Q. All right. Now, with the qualification you
25 state on the record today, is Equitable willing to propose

1 amending its Rule 11.7 tariff to reflect this limitation of
2 using agency service only for gas-on-gas, only to address
3 gas-on-gas competition?

4 A. I think there are other issues that need to be
5 addressed as well, and I think they need to be taken in
6 total, not one by one.

7 Q. And these other issues would be relating to
8 something other than gas-on-gas competition?

9 A. No. They would be relating to the plan to exit,
10 how it would be accomplished.

11 Q. Well, forgive me, I don't understand your
12 response to my question. I'm asking, you had stated on the
13 record that after December 31st of this year, your
14 intention, Equitable's intention is to use agency service
15 only to address gas-on-gas competition.

16 A. Correct.

17 Q. And so is Equitable willing to, in the context
18 of this case, be it through rebuttal testimony or whatever,
19 to propose amending Rule 11.7 to reflect Equitable's current
20 position on this matter?

21 A. Are you referring to the base rate case?

22 Q. Yes.

23 A. We're contemplating filing rebuttal testimony
24 that will address certain issues related to the agency
25 program.

1 Q. And is Equitable willing, are you willing to
2 state right now that that rebuttal testimony will propose
3 amending Rule 11.7 to be consistent with your testimony
4 today?

5 MR. THOMAS: May it please Your Honor, I object to
6 that question. However, I will tell Mr. Moody that if he
7 would like to discuss it in settlement discussions, we would
8 be happy to discuss it.

9 MR. MOODY: Your Honor, I'm not sure what the basis
10 of the objection to the question is.

11 MR. THOMAS: You're asking if our rebuttal --

12 MR. MOODY: Mr. Quinn has testified --

13 MR. THOMAS: Our rebuttal testimony is not due until
14 the 31st of October, and it's --

15 JUDGE CORBETT: I'm going to overrule the objection.
16 He's asking whether he's contemplating filing that type,
17 that response in his rebuttal testimony. We'll allow it at
18 this point.

19 THE WITNESS: We're contemplating a number of
20 different issues related to the agency. We haven't
21 completed or finalized our rebuttal testimony, our proposal
22 at this time.

23 BY MR. MOODY:

24 Q. Well, again, I hate to belabor this point, but I
25 think your response just is continuing the uncertainty

1 that's engendered by your discovery responses. It seems to
2 me I'm asking a simple question. A yes-or-no answer would
3 suffice. And that is, are you willing to amend your tariff
4 to state explicitly the limitation on the agency service
5 which you testified today is your intention for this service
6 going forward from January 1 of 2009? Could you answer yes
7 or no and then explain?

8 A. No, because there are other issues that we would
9 like to have addressed related to it as well.

10 Q. But you did state earlier that those issues
11 relate to transitioning out of the service.

12 A. That's correct.

13 Q. All right. You also mentioned that these agency
14 service contracts expire by their own terms. Could you tell
15 me over what time period these agency contracts are
16 expiring, you know, this year, next year, 2010?

17 A. There are various dates. They're not all tied
18 to one particular period of time.

19 Q. And I understand that, but could some of them be
20 expiring in 2009?

21 A. Yes.

22 Q. In 2010?

23 A. Yes.

24 Q. In 2011?

25 A. Possibly.

1 Q. 2012?

2 A. That I don't know.

3 Q. Would you be able to check and confirm -- in
4 fact, I guess I'd like to make a data request here then, and
5 that is for Equitable to at least disclose to us what is the
6 longest expiration, or what is the date, let's say the month
7 and the year, at which the currently effective agency
8 service contract expires. In other words, what's the
9 longest existing agency service contract right now.

10 A. You want to know what the longest --

11 Q. Yes. How long is the, you know, when is the
12 last date, month and year, that any of the agency service
13 contracts expire.

14 MR. THOMAS: We can provide that, Your Honor. He's
15 not asking for 1,377 contract --

16 MR. MOODY: No, not at all.

17 MR. THOMAS: Okay. You want the ones that will
18 expire furthest into the future?

19 MR. MOODY: Yes.

20 (Pause.)

21 MR. MOODY: I believe that's all the questions I
22 have.

23 JUDGE CORBETT: All right. Does anyone else have any
24 cross-examination?

25 (No response.)

1 JUDGE CORBETT: Then, Mr. Thomas, do you have any
2 redirect?

3 MR. THOMAS: May it please Your Honor, could I confer
4 with Mr. Quinn for five minutes?

5 JUDGE CORBETT: All right. Five minutes.

6 (Recess.)

7 JUDGE CORBETT: We're back on the record at this
8 point.

9 MR. THOMAS: May it please Your Honor, we have no
10 redirect examination for Mr. Quinn.

11 JUDGE CORBETT: All right. Thank you, Mr. Quinn.
12 You may step down, sir. Thank you.

13 (Witness excused.)

14 JUDGE CORBETT: Anything further then, Mr. Thomas?

15 MR. THOMAS: Yes. I'd like to move into the record
16 our answer to the Hess petition.

17 JUDGE CORBETT: Okay. I believe that's Equitable
18 Exhibit 1, Equitable dash --

19 MR. THOMAS: I -- whatever we put, whatever the
20 designation was.

21 JUDGE CORBETT: Right.

22 MR. THOMAS: IEOP.

23 JUDGE CORBETT: I think that's what you --

24 MR. POVILAITIS: What is that designation again?

25 MR. THOMAS: Interim emergency order petition. And

1 the reason for putting that designation on there is, I'm
2 worried that when we get into the case in chief, we will
3 have all sorts of exhibit numbers, and just putting John
4 Quinn's initials I didn't think would be appropriate because
5 it's a pleading.

6 MR. POVILAITIS: Before Your Honor rules, may I pose
7 a question?

8 JUDGE CORBETT: Sure.

9 MR. POVILAITIS: Mr. Thomas, I don't see a
10 verification on the copy I have. Do you have that?

11 MR. THOMAS: No, we don't have that verification. We
12 had Mr. Quinn on the stand. I'll ask him the same questions
13 about authenticating it. We had planned to do that in
14 portions of the testimony that -- (inaudible) -- placed into
15 the record.

16 With Your Honor's indulgence, may I ask Mr. Quinn
17 whether the information --

18 MR. POVILAITIS: You're saying there is no
19 verification? On my copy --

20 MR. THOMAS: (Inaudible.)

21 MR. POVILAITIS: -- there was no verification
22 provided?

23 MR. THOMAS: No.

24 MR. POVILAITIS: At all?

25 MR. THOMAS: No. It was a pleading filed by

1 lawyers --

2 MR. POVILAITIS: Well, Your Honor --

3 THE REPORTER: I'm sorry. I'm having trouble
4 hearing.

5 JUDGE CORBETT: Yes. I'm sorry, was that Mr. Kelly?

6 THE REPORTER: Yes, Your Honor.

7 JUDGE CORBETT: Okay. Was it a problem hearing? I'm
8 sorry, I thought I heard someone on that side say something.

9 THE REPORTER: I did, Your Honor. I'm sorry. The
10 voices are just dropping a little, that's all.

11 JUDGE CORBETT: They were -- I think it's getting a
12 little later and people are getting a little tired and
13 they're starting to move away from the microphones and that
14 sort of thing.

15 At this point, we're back and forth on the
16 verification and we're at the point where Mr. Thomas has
17 indicated that there's no verification attached to his
18 answer, and he has offered to have Mr. Quinn verify the
19 answer from his testimony.

20 MR. POVILAITIS: Your Honor, I can cut this short.
21 If Mr. Quinn would be willing to state on the record that
22 all the facts and statements in the answer are true and
23 correct to the best of his knowledge, information and belief
24 and that he has in fact reviewed this, I'd be satisfied.

25 JUDGE CORBETT: All right. Is that satisfactory, Mr.

1 Quinn?

2 MR. QUINN: Yes. I have reviewed it. They are.

3 JUDGE CORBETT: Okay. All right. So, that's been
4 taken care of.

5 Any other objection to the admission of Equitable
6 Exhibit 1-IEOP?

7 (No response.)

8 JUDGE CORBETT: All right. Hearing none, it will be
9 so admitted.

10 (Whereupon, the document marked as
11 Equitable Hess Exhibit No. 1-IEOP
12 was received in evidence.)

13 JUDGE CORBETT: All right. Anything else then, Mr.
14 Thomas?

15 MR. THOMAS: May it please Your Honor, I don't know
16 what the next step would be in connection with Hess's
17 petition.

18 MR. POVILAITIS: Your Honor --

19 MR. THOMAS: I don't know if we have argument. I
20 don't know if we submit a brief. I don't know.

21 JUDGE CORBETT: Okay. Well, I'm not sure if Mr.
22 Povilaitis or one of the other parties wants to present any
23 witness in rebuttal.

24 MR. POVILAITIS: We do, Your Honor. Because of the
25 ruling that admitted, albeit under protection, the

1 information about Hess's customer count and volumes and
2 status relative to other competitive suppliers, we would
3 like to recall Mr. Magnani briefly to address that subject.

4 JUDGE CORBETT: Come forward, sir, please.

5 Mr. Magnani, you're still under oath, sir. You're
6 still under oath.

7 MR. MAGNANI: Yes, sir.

8 Whereupon,

9 ORLANDO "RANDY" MAGNANI

10 having previously been duly sworn, testified further as
11 follows:

12 JUDGE CORBETT: You may have a seat.

13 Are we going to get into anything that is proprietary
14 at this point?

15 MR. POVILAITIS: No. Your Honor, we're going to
16 strive mightily to do this in a way that doesn't require you
17 to invoke the need to seal the record.

18 JUDGE CORBETT: All right.

19 MR. POVILAITIS: We'll attempt that.

20 JUDGE CORBETT: Okay, see what we can do to
21 circumvent that problem.

22 MR. POVILAITIS: May I proceed?

23 JUDGE CORBETT: You may.

24 DIRECT EXAMINATION

25 BY MR. POVILAITIS:

1 Q. Mr. Magnani, do you recall Mr. Quinn's testimony
2 earlier today relative to the number of customers that he
3 believes Hess had on the Equitable Gas system, its volumes
4 and Hess's status in terms of number of customers relative
5 to other competitive suppliers?

6 A. Yes, I do.

7 Q. Did you find his statements with respect to that
8 information accurate?

9 A. No. First, let me say --

10 Q. Why, if it's not?

11 A. I was shocked at the statement to begin with,
12 but it's also very incorrect. I don't know where the
13 numbers come from. I know they're not Hess's numbers, but
14 it's possible that number of customers reflects something
15 that's not really customers. It could be reflecting meters,
16 which in our business sometimes people use, but even that
17 appears to me to be too high. So, our number of customers
18 is significantly below the number that was stated, and I
19 think was intentionally misleading.

20 Q. To clarify your answer, Mr. Magnani, can you
21 explain, what is the difference between doing a customer
22 count and counting meters?

23 A. Well, meters simply counts -- you could have
24 several meters into one single location. You could have
25 meters for purposes of different processes. You could have

1 redundant meters, to the extent of what they call bypass
2 meters. You put meters in, in case one has to be tested,
3 then you switch to the other meter. So, you read the number
4 of meters on the system. That's very common, but that's
5 not, by any stretch of the imagination, customers.

6 MR. POVILAITIS: That completes our rebuttal, Your
7 Honor.

8 JUDGE CORBETT: All right. Anybody in Harrisburg
9 have cross?

10 (No response.)

11 JUDGE CORBETT: All right. Mr. Thomas, do you have
12 any cross?

13 MR. THOMAS: I have an on-the-record data request for
14 the number of customers Hess thinks it is serving on the
15 Equitable system, and I'm asking it as a highly
16 confidential, I'm expecting the highly confidential label to
17 be placed upon it, but I would like to know what Hess thinks
18 that number is.

19 MR. POVILAITIS: Your Honor, I think Hess has, I'm
20 advised that Hess has already provided that information.

21 JUDGE CORBETT: If it has, refer to it. If not, then
22 supply it. Okay?

23 CROSS-EXAMINATION

24 BY MR. THOMAS:

25 Q. Mr. Magnani, did you review -- you told us you

1 reviewed the petition.

2 A. Yes.

3 Q. Did you note in there that there were customer
4 counts listed for agency service?

5 A. The agency can do whatever it --

6 Q. Numbers of customers.

7 A. Yeah.

8 Q. Do you know whether the number Equitable used
9 today was computed on the same basis as the number of agency
10 customers listed in your petition and Equitable's answer and
11 in Mr. Quinn's responses to this?

12 A. I have no --

13 MR. POVILAITIS: Your Honor, could I have a reference
14 to where in Hess's petition it provided a customer count?

15 MR. THOMAS: Sure.

16 MR. POVILAITIS: I'm not recalling that.

17 (Pause.)

18 MR. THOMAS: Not to belabor, I'll stand corrected and
19 withdraw the question and ask it again.

20 BY MR. THOMAS:

21 Q. Mr. Magnani, did you review Equitable's answer?

22 A. Yes.

23 Q. Did you notice the number of agency customers
24 being served for 2005, 2006, 2007 -- (inaudible) -- there
25 were numbers that -- (inaudible) --

1 A. Yes, I saw that.

2 Q. Do you know whether those numbers were computed
3 on the same basis as the numbers Mr. Quinn used on the stand
4 today?

5 A. I have no idea. All I know is that the number
6 of customers reported for Hess is significantly incorrect.

7 Q. So you don't know if there's any inconsistency?

8 A. No, I don't.

9 MR. THOMAS: Thank you, Your Honor. No further
10 cross.

11 JUDGE CORBETT: Any redirect?

12 MR. POVILAITIS: No.

13 JUDGE CORBETT: Thank you, Mr. Magnani.

14 THE WITNESS: Thank you, Your Honor.

15 (Witness excused.)

16 JUDGE CORBETT: Anything further then, Mr. Thomas?

17 (No response.)

18 JUDGE CORBETT: I'm sorry. Anything further then,
19 Mr. Povilaitis?

20 MR. POVILAITIS: No, Your Honor.

21 MR. THOMAS: May it please Your Honor, just for
22 clarity, I think -- (inaudible) --

23 THE REPORTER: I'm sorry. I'm hearing a lot of paper
24 rustling.

25 JUDGE CORBETT: Yes, there is a lot of paper moving.

1 MR. THOMAS: And I'll get a little closer. This is
2 Charles Thomas speaking again. I think that the reference
3 to numbers of agency customers that came from the Hess side
4 today is not in the petition for emergency order. It may
5 have come during the cross-examination in reference to
6 responses to interrogatories. Hess Set I, No. 16 I thought
7 was referred to today.

8 MR. MOODY: Your Honor?

9 MR. THOMAS: And that has customer numbers in it, and
10 that was the point of whether those customer numbers were
11 computed on the same basis as the number Mr. Quinn used in
12 response to questions.

13 MR. MOODY: Your Honor, Kevin Moody in Harrisburg.

14 JUDGE CORBETT: Yes?

15 MR. MOODY: I may be able to clear this up. Attached
16 to Equitable's answer to the Hess petition is Equitable's
17 response to Hess Set II, No. 1, and (a) lists number of
18 customers.

19 MR. THOMAS: May it please Your Honor, and Mr. Moody,
20 that's what our point is. We don't know if that customer
21 count was computed on the same basis as the customer count
22 used by Mr. Quinn in his testimony. Perhaps if it were
23 computed on a basis similar to what Mr. Magnani has in mind,
24 those customer numbers may be even lower.

25 MR. MOODY: Okay. I just wanted to point out, I

1 thought there was a problem with finding the source of the
2 number, and there it is.

3 JUDGE CORBETT: Okay. All right. Anything else,
4 then?

5 MR. POVILAITIS: No, Your Honor.

6 JUDGE CORBETT: Do the parties want to give a closing
7 statement before we adjourn for the day?

8 MR. POVILAITIS: We could do that.

9 JUDGE CORBETT: I think I understand the positions of
10 the parties from the petitions and the answers. I'm just
11 asking the parties at this point if they want one last
12 opportunity to clarify anything that they believe might need
13 clarified.

14 (Pause.)

15 MR. POVILAITIS: Your Honor, if the standard is, does
16 anything need to be clarified, Hess does not believe there
17 are matters that require further clarification.

18 JUDGE CORBETT: All right.

19 MR. THOMAS: May it please Your Honor, I'll be very
20 brief. I think that you need to focus on the regulations in
21 52 PA Code. Emergency is defined, and it's defined as a
22 situation that presents a clear and present danger to life
23 or property. I do not think -- (inaudible) -- demonstrated
24 today. Also --

25 JUDGE CORBETT: Try not to move paper around.

1 MR. THOMAS: Four prerequisites are required, at
2 least four criteria, and they aren't in the disjunctive.
3 They all have to be shown. I don't think petitioner has
4 shown that its right to relief is clear. I don't think that
5 it's shown that its need for relief is immediate. I don't
6 think that it's shown that there would be irreparable
7 injury, and I don't think that they have demonstrated that
8 the relief requested would be in the public interest.

9 I think there's plenty of time in this rate
10 proceeding, with the schedule that we have now, to resolve
11 agency service issues, and I think it would be premature and
12 just not supported by the facts for you to grant the interim
13 order relief that's been requested. It's as simple as that.

14 JUDGE CORBETT: Okay.

15 MR. POVILAITIS: Your Honor, I didn't read your
16 request as asking for a summation of our position. I took
17 you literally at your word, that you're interested in record
18 clarification.

19 JUDGE CORBETT: I will let you have the last word,
20 anyway. But before we do that, let me ask, does anyone else
21 in Harrisburg wish to be heard?

22 MR. MOODY: Yes, Your Honor, Kevin Moody for IOGA, a
23 clarification. You mentioned that the agency service
24 contract would be treated as highly confidential
25 information, and of course under the protective order that

1 information is not, you know, provided in hard copy to
2 parties who have even executed the acknowledgement, but it
3 is available for review by counsel.

4 And so I am unsure as to whether these agency service
5 contracts will be available under the terms of the
6 protective order as highly confidential information that
7 counsel can review.

8 JUDGE CORBETT: Okay.

9 MR. THOMAS: May it please Your Honor, I don't think
10 there was an outstanding request for the contracts
11 themselves.

12 JUDGE CORBETT: I think it was --

13 MR. THOMAS: Just the information based upon those
14 contracts.

15 MR. MOODY: My recollection was there was a request
16 for the contracts, and you objected and wanted them treated
17 as highly confidential and didn't want to provide them, and
18 wanted to review them yourself, and I believe Judge Corbett
19 said you can review them and provide the information as to
20 whether the contracts indicate that customers are informed
21 that Equitable Energy is the supplier.

22 But under the protective order, those materials are
23 available for review, not copied, unless requested in
24 writing from you and you agree.

25 MR. THOMAS: I am not recollecting a request for the

1 contracts. Was there a request for a form of the --

2 MR. QUINN: (Inaudible) -- the request, it was for a
3 sample.

4 MR. THOMAS: A sample. We will provide the sample.

5 MR. QUINN: It has been provided.

6 MR. THOMAS: Or it has been provided.

7 JUDGE CORBETT: Okay. If the sample has been
8 provided, reference where it has been provided.

9 MR. POVILAITIS: Where is it available --

10 MS. REDNIK: We have not --

11 JUDGE CORBETT: Was it objected to?

12 MS. REDNIK: You objected, and it was on
13 confidentiality. The Judge overruled our objection, that it
14 be provided under confidentiality. We have not been given
15 an opportunity to -- (inaudible) --

16 JUDGE CORBETT: Okay. For the benefit of the court
17 reporter, could you identify yourself, please?

18 MS. REDNIK: I'm sorry. I'm Debbie Rednik, director
19 of regulatory affairs.

20 THE REPORTER: I'm sorry, the name again?

21 MS. REDNIK: Deborah, D-E-B-R-A, Rednik, R-E-D-N-I-K.

22 JUDGE CORBETT: Okay.

23 MR. THOMAS: We will make a redacted copy available
24 for Mr. Crist. We'll strike the name of the customer.

25 JUDGE CORBETT: Okay. All right.

1 Does that clarify it for you, Mr. Moody?

2 MR. MOODY: Yes. Thank you.

3 JUDGE CORBETT: All right. Any closing statement
4 from anyone in Harrisburg?

5 (No response.)

6 JUDGE CORBETT: All right. Then we'll turn to you,
7 Mr. Povilaitis. You have the last word.

8 MR. POVILAITIS: Thank you, Your Honor.

9 I would summarize the events of today as confirming
10 that the justification for the order that Hess is seeking
11 from you in this case is overwhelming.

12 We have confirmed today that, first of all, Equitable
13 Gas Company cannot articulate exactly what it is
14 transitioning to Equitable Energy, although something is
15 being transitioned.

16 It continues to refuse to provide assurances to Hess
17 and other competitive suppliers that, as soon as tomorrow,
18 it will not either facilitate or attempt to transfer the
19 business arrangement it has under the Equitable agency
20 program to its competitive affiliate. We continue to not be
21 able to get that assurance.

22 Hess, on the other hand, has articulated why, given
23 how competitive suppliers obtain customers and the
24 opportunities and the points in time when that customer can
25 be gained, it would be seriously competitively disadvantaged

1 if that kind of transfer of the business arrangement
2 occurred to Equitable Energy.

3 That is where we were going into this hearing today.
4 That is where we are today, and we think that it is well
5 supported that Hess has legitimate, serious concerns about
6 not being able to un-ring the bell if this issue is deferred
7 until March when the Commission in its ordinary course of
8 business would be grappling with it, and whether business
9 opportunities that could influence whether or not Hess
10 continues to be an active competitive supplier in
11 Pennsylvania will still be there when the dust settles in
12 March on this proceeding.

13 The program is suspect. It apparently, even though
14 the company's witnesses confirmed that there's no real
15 reason why non-affiliated suppliers couldn't be involved in
16 the agency program, doesn't appear as though any are or have
17 been for the last three years.

18 Hess's concerns about an undue preference being
19 provided to an affiliate are entirely valid, and the request
20 for the interim emergency order in our view is well
21 supported and should be granted. Thank you.

22 JUDGE CORBETT: All right. Thank you all. So you
23 understand the procedure, I will take this matter under
24 advisement and I will be issuing a ruling on this matter
25 sometime next week.

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I thank the parties for their participation and cooperation, and the hearing is now adjourned. Thank you very much.

(Whereupon, at 2:15 p.m., the proceedings were concluded.)

C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me and thereafter reduced to typewriting by me or under my direction, and that this transcript is a true and accurate record to the best of my ability.

COMMONWEALTH REPORTING COMPANY, INC.

By: John A. Kelly

John A. Kelly,
Certified Verbatim Reporter

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