BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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IN THE MATTER OF: The Petition of Desert Power, L.P. for Approval of a Contract for the Sale of Capacity and Energy from its Proposed QF Facilities	)	DOCKET # 04-035-04

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SALT LAKE CITY, UTAH

JULY 29, 2004

9:30 A.M.

BEFORE:

CHAIRMAN RICHARD CAMPBELL
COMMISSIONER CONSTANCE WHITE
COMMISSIONER TED BOYER

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Also Present: Artie Powell
Dan Gimble

Roger Swenson
Phil Hayet

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I N D E X

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E X H I B I T S

EXHIBIT NO.	MARKED	RECEIVED
UP&L-1	8	16
UP&L-2		

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July 29, 2004 9:00 a.m.

P-R-O-C-E-E-D-I-N-G-S

CHAIRMAN CAMPBELL: Let's go on the docket. It's Number 04-035-04, In the Matter of the Petition of Desert Power, LP, for Approval of a Contract for the sell of

Capacity and Energy from its proposed QF facilities. Let's take appearances for the record, please.

MR. HUNTER: Edward Hunter for Pacificorp.

MR. GINSBERG: Michael Ginsberg for the Division of Public Utilities.

MR. PROCTOR: Paul Proctor for the Committee of Consumer Services.

MR. MECHAM: Steve Mecham for Desert Power, LP.

CHAIRMAN CAMPBELL: Thank you, very much. Mr. Hunter.

MR. HUNTER: Mr. Chairman, we've had a flurry of activity over the last couple of days, and as a result we've made non-substantive changes to the contract that's before you. What we propose to do is mark the contract that we filed with you as an exhibit, the file with you by tomorrow and update it, that has the grammatical changes and the

clarification changes. There is one substantive, or may be considered a substantive change to Section 2.1 of the agreement that was proposed by the Committee and the Company has no problem with, and I think you've been provided a copy of that this morning.

CHAIRMAN CAMPBELL: We have.

MR. HUNTER: And Mr. Proctor is available to explain that.

MR. PROCTOR: Thank you. Even though the Docket 02-035-04, the MSP Docket is still pending for a decision before the Commission, in dealing with matters such as this QF contract, the protocol, revised protocol addresses it. And in particular it addresses how the QF contract is to be treated, either as a system wide or a situs, a specific situs resource. And we felt it was important to address the revised protocol. And this particular QF, anticipating that the revised protocol is going to, at least, impact how this Commission may view that in a subsequent rate case.

So the Committee took a draft initially prepared by Pacificorp and refined it to include specific reference to comparable resources, since the cost of comparable resources is the measure under the revised protocol for whether or not a qualifying facility is treated on a system-wide basis, or whether it is allocated to a particular state. And so that is the purpose for Paragraph 2.1, and the Committee's revision to it. It's my understanding that the parties are in agreement with this. It does not change the terms and conditions of the qualifying facility and, the contract I should say, in connection with the qualifying facilities and the rates paid; nor does it in any way, in the Committee's view, interfere with, or change, or impact the avoided cost as determined by Schedule 38 and by this contract.

CHAIRMAN CAMPBELL: All right. Thank you.

MR. HUNTER: We propose to put Mr. Griswald on to give a brief explanation about the contract, and he'd be available for the questions by the Commission.

CHAIRMAN CAMPBELL: That would be great.

MR. HUNTER: Mr. Griswald.

CHAIRMAN CAMPBELL: Let's go ahead and swear you in.

(Whereupon, the witness was sworn in.)

CHAIRMAN CAMPBELL: Thank you. Mr. Hunter.

EXAMINATION

Q.   (BY MR. HUNTER) Would you please state your name and your business address for the record.

A.   Bruce Griswald. Pacificorp, 825 Northeast Montloma, Portland, Oregon, 97232.

Q.   What are your responsibilities in your position?

A.   My responsibilities are negotiations of large wholesale and large retail power supply, and resource acquisition contracts.

Q. Are you familiar with the terms of the power purchase agreement between Pacificorp and Desert Power which has been filed with the Commission?

A. Yes, I have.

Q. Mr. Chairman, we request that that contract be marked as UP&L Exhibit 1.

CHAIRMAN CAMPBELL: All right. We'll so mark it.

(Whereupon, UP&L Exhibit No. 1 was marked for identification.)

Q. (BY MR. HUNTER) Would you please briefly describe the agreement.

A. Sure. This agreement is between Pacificorp and Desert Power. Desert Power has an existing 70 megawatt simple cycle gas generation facility they expect to expand to 125 mega watts as a combined cycle QF with an expected net output of approximately 95 mega watts. The generation plant has been self certified with FERC as a QF. The agreement's structured as a 20 year financial totalling arrangement with scheduled deliveries starting in January 1, 2006. The Company will pay Desert Power a fixed capacity payment, plus a variable energy payment each month. The variable energy payment is based on the Gas Daily Index for the Kern River Opow plant adjusted for Questar transportation costs times the heat rates that were contained in the stipulation and approved by the Commission in docket 03035-41 on June 28th,

'04.

The Company has the right but not the obligation to dispatch the Desert Power resource on a day ahead preschedule basis, and make day ahead changes to the schedule subject to the QF machine limitations and also gas availability. As a QF, and then during non-scheduled hours, Desert Power has the right to put energy, or to deliver energy to Pacificorp as non-firm energy, for which they would receive 93 percent of the hourly Palo Verde Firm energy price. The volume of energy, both as scheduled and the non-scheduled, is grossed up by 4.9 percent to account for avoided transmission losses pursuant to Utah precedent. Desert Power as part of this agreement must meet a monthly availability of 85 percent. Per the stipulation, there's allowances for making contract price adjustments which reflect that specific QF characteristics, three adjustments were put in place.

The power purchase agreement contains an inflation adjustment trigger such that if the OM component or capacity price is changed to account for a high and low inflation years based on CPI. As I said before, transmission line losses adjustments are applied both for the delivered power by Desert Power to us, and any replacement power that we must purchase for non-deliveries by Desert Power. And finally, Desert Power is reimbursed on a per start basis for fuel costs. The other part of the contract Pacificorp will be

reimbursed by Desert Power under three situations for replacement power if Desert Power does not deliver as scheduled to Pacificorp. Desert Power misses the start date of the plant as agreed, and they have a period of where they would pay damages up to 120 days or pay for replacement power for 120 days.

Once the start date is met and Desert Power does not meet scheduled delivery for any scheduled day, there is a cost associated with us buying replacement power. And finally, if Desert Power shuts the QF down in a default situation, they have to pay replacement power for up to 36 months. Replacement power costs to Desert is the difference between the actual cost that the Company reasonably incurs in purchasing that replacement power, minus the cost, the contract cost we paid to Desert. The replacement price includes losses and any additional transmission charges, if there are any. And in the event if we deliver power instead of purchasing replacement power delivered from an existing plant, then the actual cost is the market price derived at the point of delivery as we determined in a reasonably, commercially reasonable manner.

There are two levels of security within the agreement. There is a project development security, this is the first level of collateral that's put in place one year in advance of the start date, it is 500,000. This security is

used to offset any delay beyond the start date of Desert Power up to that 120 day period that I spoke of. Once the start date is achieved, the 500,000, it is rolled over into the default security. The default's the second level of collateral, and it's set at a cap of seven million dollars. It consists of this project's security, project development security with 500,000 rolled over, with another three and a half million to have an initial letter of credit of four million dollars. Then starting January 1st, 2006, the Company will withhold $71,500 per month for the first 42 months of the contract, until that seven million dollars is achieved.

Each year Desert Power will be able to convert that withholding into a larger LC. And once the seven million dollars is reached, the Company will hold the seven million for a thirty month period and then release that, release three and a half million of that back to Desert over the following 42 months. Then the remaining three and a half million, as a letter of credit, will be retained for the remainder of the term.

Q. Are the rates, terms, and conditions of the stipulation, excuse me, of the agreement in accordance with the stipulation approved by the Commission on, in docket 0303514 on June 28th, 2004?

A. Yes.

Q. Would you please explain.

A. First, the stipulation provides that we must offer a 20 year contract, up to a 20 year contract for the QF. And this agreement is a 20 year contract. Second, it said the stipulation establishes the prices paid for the power purchased from the QF and any appropriate adjustments. And it provides two options for the QF to be eligible for those prices. Those options are actually called out in Appendix A of the stipulation, but the first one is we have the right to dispatch the QF, then the QF must commit to meet that 85 percent monthly availability factor.

Or if Pacificorp has the right to preschedule on a day ahead basis, the QF delivery of power must be delivered at contract capacity and must meet that 85 percent monthly capacity factor. In this stipulation there is a definition for dispatch, and dispatch simply means that the Company's allowed to day ahead preschedule the desired operating level that we wish for the following day, with the right to make adjustments to those schedules during the actual day of delivery. And those are subject to the machine limitations and also the availability of fuel to deliver the power. Desert chose option one, which allows Pacificorp to dispatch the plan as allowed. And if you look through the agreement, sections four and six provide the specific terms and conditions which are agreed for the controlled dispatch and delivery of power.

Finally, the stipulation also provided two options to the QF for the energy payment. The QF can be paid for the scheduled energy on a fixed price per megawatt hour, or they can be paid based on a fixed heat rate times the daily gas index as identified in the stipulation. And then in addition, in any unscheduled hours they have the right to be compensated on a non-firm basis. Section five of the agreement spells out these details and also provides for the adjustments as allowed in the stipulation.

Q. In your opinion are the prices to be paid for energy and capacity just and reasonable and in the public interest?

A. They are, yes.

Q. That concludes your testimony?

A. Yes.

Q. Thank you.

CHAIRMAN CAMPBELL: Thank you. Before we proceed, Mr. Ginsberg, did you have questions or are we going to hear from Dr. Powell and Mr. Gimble?

MR. GINSBERG: We have no, we can put Dr. Powell on to explain the Division's position and if the Commission has questions, but the Division had participated to some extent in the development of this agreement. There were a number of technical conferences, or at least one, and the Division

supports the adoption of the agreement with all the modifications that were made to it. And we're more than happy to make Dr. Powell available to answer questions or explain his understanding of the agreement if the Commission desires that.

CHAIRMAN CAMPBELL: All right. Mr. Proctor.

MR. PROCTOR: The Committee had one question to ask Mr. Griswald.

MR. HUNTER: I had a few too.

CHAIRMAN CAMPBELL: Go ahead, Mr. Ginsberg.

EXAMINATION

Q. (BY MR. GINSBERG) Mr. Griswald, do you, one of the issues that appeared to occur during this was the operating lease or capital lease, can you describe how that was resolved?

A. Well, there was, in the stipulation one of the things is to address the accounting treatment of these types of transactions where there is some accounting rules. And we went through, and there's some new rules that I don't have the identification of those rules in front of me, but basically it was determined whether it was a capital lease and what the impact, kind of the overriding thing was to look at if there was any impact to the debt on the Company's books. And the, kind of, threshold is first to determine if this was considered a lease.

And then, secondly, to determine if it was considered an operating lease or a capital lease. Capital lease would have an impact on our books. We went through a series of analyses, including information from Desert Power, utilizing our accounting folks, conversations with our accounting, our auditing firm, and we ended up it was a lease but it was designed to be, or designated to be an operating lease and had no impact, a debt impact on the Company's books.

Q. You indicated that you believe these rates are just and reasonable and in the public's interest. The purpose standard is that rate payers are indifferent whether you buy this from a non-QF or generate itself yourself; does it meet that standard also?

A. Yes, it does.

MR. GINSBERG: No more questions.

CHAIRMAN CAMPBELL: Thank you. Mr. Proctor.

MR. PROCTOR: Mr. Ginsberg asked the one I was interested in so I have no questions.

MR. GINSBERG: If I might, Chairman, the Committee too had participated in, to some extent in a contract and its discussions and negotiations; and Mr. Phil Hayet has assisted us and he's available on the phone if the Commission has questions.

CHAIRMAN CAMPBELL: All right. Thank you. Mr.

Mecham, do you have any questions?

MR. MECHAM: Mr. Chairman, my focus is really on section 2.1. And, Mr. Griswald, I'm not sure if you want to defer to your counsel or if we should have a subsequent,

maybe at the conclusion of the witnesses we can just talk for
a minute about 2.1. As you know, we weren't party to the MSP
case, we don't have objection to it being in the contract,
nor do we have any objection to the changes that were made.
But it was a provision that Pacificorp wanted, and it was
amended by the Division and the Committee, and we just want
to make sure that there's agreement on this interpretation.
CHAIRMAN CAMPBELL: All right. Thank you. Mr.
Griswald, we're going to invite you to go down and sit by
your counsel then we're going to swear in Dr. Powell, Mr.
Gimble, and I guess Mr. Hayet.
MR. MECHAM: We'd also like Mr. Swenson, in fact,
Mr. Swenson could be available now if you like.
CHAIRMAN CAMPBELL: That would be great. Mr.
Swenson, why don't you come up as well and we'd just like to
ask our questions in the form of a panel. Before we do that,
Mr. Hunter, I take it should we move the admission of UP&L
Exhibit 1 with the understanding that this will be updated?
MR. HUNTER: Thank you.
CHAIRMAN CAMPBELL: Are there any objections to the
admission of UP&L Exhibit 1? All right, we'll admit it.

Okay. We have Mr. Swenson, Dr. Powell, Mr. Gimble and I guess Mr. Hayet, let's go ahead and swear you in.

(Whereupon, the witnesses were sworn in.)

CHAIRMAN CAMPBELL: Thank you. Commissioner White.

COMMISSIONER WHITE: Is this the time to ask about Paragraph 2.1? Mr. Mecham, you indicated that you'd like to get agreement on its interpretation; is it in danger of being interpreted differently by different parties?

MR. MECHAM: I think there is agreement on interpretation. I just wanted to make sure it was clear on the record, and clear to the Commission exactly, frankly what with we need from this section. If you take a look at it, this, the effective date doesn't come into effect until the Commission is determined that the prices under this contract for energy and capacity are just and reasonable and in the public interest. We need that finding. You'll also note that below, if there is any sort of adverse condition imposed, either party within thirty days of the Commission's issuance of the order can basically withdraw and there is no contract. So we're concerned about that.

And as well, we want to make sure that as soon as that time passes, this provision, at least in so far as we're concerned, is no longer impactful. It may be insofar as how costs are recovered, but it's not going to effect the contract going forward.

COMMISSIONER WHITE: Well, now that last sentence, I'm not sure I understand your concern. The last sentence says that the Commission order approving this agreement changes any material conditions, then either party can withdraw. And that's a pretty common feature in all of the contracts we work on around here.

MR. MECHAM: Right.

COMMISSIONER WHITE: So it seems to me that that isn't necessarily tied to the interjurisdictional allocation issue, is not.

MR. MECHAM: That could be, it's true. But my point is, is that the next step after this, time indeed is of the essence for us. The next step for us is going out and getting financing in order to change the plant out there, and then be in place in time under the terms of this contract and not incur any sort of delay damages. So as quickly as we can get this moved ahead, that's what we need to do. I think that everyone agrees, I think counsel agrees with that. I just want that on the record.

COMMISSIONER WHITE: So it looks like what could happen is if the Commission approved the agreement, there would still be some possible uncertainties in the sense that we have not approved of the interjurisdictional cost allocation case yet. So it seems to me that we could approve the agreement as it stands now, and then the way it's treated

under the interjurisdictional cost allocation case, or in fact in any rate case, would be left to the future. Which is pretty typical in these kinds of contracts, isn't it?

MR. MECHAM: Well, that's for cost allocation purposes, correct.

COMMISSIONER WHITE: Yes.

MR. MECHAM: We're indifferent as to how the costs are recovered. But, again, the definition of effective date is when this contract is no longer subject to judicial review. And that, of course, assumes that the Commission has made the findings stated at the beginning of the paragraph that the just and reasonable and public interest findings and that no adverse, well, hopefully no adverse conditions would be imposed.

CHAIRMAN CAMPBELL: Aren't those finding made on approval of the contract, do we have to make some sort of --

MR. MECHAM: If you approve of the contract, you would make those findings. I'm not trying to make this, perhaps this is getting more complicated than it needs to be. It's just that thirty days from the date of issuance of the order either party can withdraw from it if those findings aren't made, or if there's an adverse condition imposed. We need finality to do this so we can go get financing from banks.

COMMISSIONER WHITE: So you're asking us to approve

it quickly and without any new conditions?

MR. MECHAM: Yes. And I want to make sure that there isn't an ongoing possibility of withdrawal. And I think counsel agrees with me, there is not --

MR. HUNTER: Maybe I can --

COMMISSIONER WHITE: Maybe putting the

interjurisdictional allocation issues in this paragraph is what's confusing me a bit, it makes it more complicated than it is.

MR. GINSBERG: Or the last sentence in this paragraph.

COMMISSIONER WHITE: But again, that seems like it's pretty typical in all.

MR. GINSBERG: The last sentence in my mind applies to the entire contract.

MR. HUNTER: Maybe we do need to get a clarify. This is a contract between Pacificorp and Desert Power. Pacificorp interprets this provision as becoming effective once the Commission makes the findings that are in the first part. After that if you impose additional conditions, we have thirty days in which to determine whether or not to withdraw. The middle part, as you accurately identified, is an interjurisdictional allocation statement. It simply says here's how life is treated under revised protocol. And it does not either atoll our ability to get out of this contract

later, nor does it impose an additional risk going forward.

It simply does not effect either your decision as effective, or our right to get out within thirty day.

COMMISSIONER WHITE: It's not typical for the Commission to put in decisions on cost allocations issues into a contract, is it?

MR. HUNTER: Believe it or not, when this provision started out, it looked just like the provisions that have been incorporated in QF contracts for the last twenty years. But as a result of conditions and changes suggested by other parties, this is what we ended up with. But prior to that, you would have recognized it. Now it's completely new and different, that's true.

COMMISSIONER WHITE: Well, if the Commission changed the cost allocation methodology, or didn't approve it, or there were some changes, is it the Company's position that that would change your obligations under this contract?

MR. HUNTER: It is not.

COMMISSIONER WHITE: Okay. I have a question about the heat rate option where the energy price is calculated with respect to the heat rate and the OPAL index. I don't think this Commission has ever approved a contract with this calculation in before, has it? What I'm getting at, is it would appear that it's imposing a risk on other rate payers in case the cost of energy goes really high. I don't know if anyone could comment on that, whether this is a departure from our usual practice or not?

MR. SWENSON: I think I could take a shot at that, if I could. In a sense it feels like there is a risk associated with this, but it's like any other Pacificorp gas fired power plant in its resource mix. Each of those facilities also has gas price risk associated with it as they purchase fuel for that facility. And Pacificorp can do what it wants in terms of hedging that specific price risk based on the tools it has available to it. A disfactible (sic) plant is a little hard to hedge because you don't know how much fuel you're going to use in any given circumstance, but they can take measures that they do with any other facilities that they own in their resource.

COMMISSIONER WHITE: It's my question that if gas prices get so high that the Company would prefer not to run that plant, don't they still have to make some payments under the contract?

MR. SWENSON: Yes, just as they would as a plant in rate base gets paid it's rate of return. It's exactly how we set the numbers.

MR. GIMBLE: Commissioner White, the other thing is the other symmetry here in terms of, I guess the alternative is locking in a gas price. If you lock it in at $6, it ends up being 450, the rate payers are stuck with that.

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CHAIRMAN CAMPBELL: Let me ask my question since it's along these lines, and that is with this contract based on the, energy price based on the OPAL index, is the Division or the Committee saying anything about the prudence of gas purchasing strategies as it relates to Current Creek and possibly Lakeside, that it's okay for the Company to use spot prices for their gas and that's an okay purchasing strategy? Are you in any way locking yourselves into exploring what an appropriate gas purchasing strategy is for those plants?

MR. POWELL: I would say no, we're not making any comments about this. We would expect Pacificorp to take into consideration on a going forward basis that they do have this contract and make the appropriate hedging decisions. Going back to the idea that if there is an additional risk, this will go into the resource stack and will be evaluated as part of the IRP, and so that gas risk will be taken into account as Pacificorp develops its new IRP and makes its forecast about its resource needs into the future.

CHAIRMAN CAMPBELL: I just want to make sure that there's not a precedent set that we automatically assume that it's a prudent strategy just to use spot market, whatever it is, as our gas purchasing strategy for all these gas plants that are coming on line.

MR. GIMBLE: Speaking for the Committee, we would endorse that strategy that we think that the Company should

pursue the diversify.

CHAIRMAN CAMPBELL: Do you know what this contract does, though? Does this contract do that with the way this is set up and using the index in Wyoming?

MR. MECHAM: Well, I mean, basically we have the option to call on them. And as Dr. Powell said, we would look at adding them in the resource stack and determine if the price of gas for the following day it was prudent to run that plant as opposed to another resource. So we have the optionality of running that plant based on the prudencey of using the gas for the following day.

CHAIRMAN CAMPBELL: But with your own plants you actually have a greater flexibility, don't you, as far as your gas hedging strategies?

MR. MECHAM: That's correct because we have a much bigger portfolio of plants that we can look at bulk supply of gas for.

CHAIRMAN CAMPBELL: All right, thank you.

COMMISSIONER WHITE: I'm not sure I understand the CPI adjustments. If the standard here is rate payer indifference and the, Pacificorp's avoided costs, what's the relation between those notions and that CPI adjustment? I mean, Pacificorp in their own plants doesn't have automatic adjustments for operation and maintenance costs, does it? So are we, well, and furthermore it's my understanding that

Schedule 37 and 38 do not have these CPI adjustments in it. Are we violating a precedent here? I'd like to hear comments on whether the CPI is going to present a problem or not.

MR. SWENSON: Commissioner White, if I could start again. I think I want to make sure that we understand one thing very clearly is that the only thing that's getting adjusted here is the O and M factors, the costs of keeping people in the plants, and the things that you have to buy to keep the plants running. It's not associated with capital or investment or anything like that. But in the case of Pacificorp's own facilities, it does catch any kind of price increases because they come in for rate increases based on their costs of doing business. And if they see inflationary periods, they will be in here asking for rate increases. And that was the intent of this, was to keep us attuned to that same rate payer indifference standard in that the utility will come in for rate increases if we move into inflationary periods based on its costs going up.

COMMISSIONER WHITE: But is it going to be different if it's an automatic O and M adjustment periodically, as opposed to many items in a rate case; do the parties have a feel for that?

MR. SWENSON: Part of what we built into this is quite a bit of lag. This inflation catch only occurs if we're out of this bound that we're not likely to get out of very often, two years in a row. It doesn't kick in until the third year after it's really occurred. So what we built into this was essentially a normal regulatory lag sort of process and proceeding where it takes time to get these kinds of cost increases built into this.

MR. POWELL: Just going along with what Mr. Swenson has said, you're right, Commissioner White, Schedule 37 doesn't explicitly contemplate adjustments of this nature, but Schedule 37 is redone on a periodic basis. And then in that sense it would capture changes in inflation or other costs. The way Schedule 37 was ordered this last time too, there's actually a cap on the amount of megawatts that can come in under Schedule 37. I think it was a ten megawatt cap.

And so, and then the schedule has to be redone automatically. So going along with what Mr. Swenson says, there is kind of this automatic with the lag and where these adjustments are made. As originally proposed in the contract, the Division was extremely uncomfortable with this inflationary adjustment. Mr. Swenson and myself did some analysis, if you will, on past inflation based on the CPI and made the modifications that appear in the contract now. And the Division is fairly comfortable with the way it is, this band between the one and a quarter and four percent.

If you look historically, there's about an equal

probability that inflation will be greater than four percent, as there is it will be less than one and a quarter percent. And that's based on removing the 1970s basically from the data, that's kind of an unusually high inflation period.

COMMISSIONER WHITE: Does the Committee have any comment on this issue?

MR. PROCTOR: Yes, Mr. Hayet had considered some of the issues between what this contract poses such as the inflation adjustor as opposed to a typical QF, which I believe is what Commissioner White is speaking about. So he, I think, can help.

CHAIRMAN CAMPBELL: Go ahead, Mr. Hayet.

MR. HAYET: There was an analysis that was presented at one point that suggested that the CPI being above four percent occurs for something on the order of less than twelve percent of the time over the last twenty years, and we were comfortable of that because there was a lower, much higher probability of remaining within the band below four percent, between one and a quarter and four percent.

That that was a sufficient band and a sufficient probability that we were comfortable with allowing for this adjustor. So remember for most of the time when the inflation is between that band, it will remain at two and a half percent. And then for a small percentage of the time there's a chance that it will be above the four percent, or

below the one and a quarter percent. So we were comfortable with that band being implemented.

COMMISSIONER WHITE: Thank you. That's all I have, thanks.

COMMISSIONER BOYER: I have just a couple of questions. Commissioner White asked, I think by way of analogy on this CPI, I guess our concern or discomfort is that the Company's costs, which are being avoided through the purchase of this contract, may or may not, you know, go up or down with the cost of living. And the example I had in mind was cost, the cost of living over the last two or three years I think has gone up between one and two percent a year and, yet, state salaries only increased by one percent, but that's an aside.

CHAIRMAN CAMPBELL: I was going to say get over it.

COMMISSIONER BOYER: You chose to work for the state so. The context of this case, this case was filed at a point in time when the parties to the agreement couldn't reach agreement on some of the terms and conditions. Now that the parties have, is it necessary or desirable that the Commission approve the contract, I guess is a question for the lawyers.

MR. GINSBERG: The position that we've taken consistently over the years and the Commission's adopted previously, is that QF contracts this large should be

approved by the Commission. And the rationale is simply it's the Commission that has both the authority and the responsibility to determine what avoided costs mean to this utility. And so, at least in our view, we think it's appropriate for the Commission to make that determination by approving the contract.

COMMISSIONER BOYER: Mr. Mecham.

MR. MECHAM: I concur with that. There's continuing jurisdiction as well into the contract, the mediation section. So we don't want to start out with something the Commission hasn't approved.

COMMISSIONER BOYER: Any comment?

MR. GINSBERG: We have no problem with large QF contracts being submitted for approval. And over the course of time others have been submitted for approval, and disputes that have occurred in those contracts that come back to the Commission, and revisions of those contracts have come back to the Commission.

COMMISSIONER BOYER: Okay, thank you. My last questions relate to Paragraph 5.5 of the contract on avoided transmission losses. And I assume this is there because the generation decided adjacent to the load, or at least for the most part, isn't most of this power going to U.S. Mag; is that a correct understanding?

MR. SWENSON: Fair amount of it is.

COMMISSIONER BOYER: How is the 4.92 percent figure derived?

MR. SWENSON: There's actually an example of it in the appendix, one of the exhibits in the back. But basically we looked at for the avoided losses that are occurred by this plant delivering power as opposed to when a proxy plant would from using our average system losses. And then there are some offsets for the actual retail load that it does not, that it offsets also. So when you combine those together you come up with the average 4.92.

COMMISSIONER BOYER: Thank you. Those are all the questions I have.

CHAIRMAN CAMPBELL: Along these questions related to CPI, what inflater is in there now? Is there an inflater currently in the contract, and what is that percent on a year in year out basis?

MR. SWENSON: Two and a half percent per year.

CHAIRMAN CAMPBELL: So as it stands now it's two and a half percent per year. And then by putting in this CPI in this range, that number can either be adjusted downward or upward if there were unexpected movements in inflation; is that how the contract works?

MR. SWENSON: Correct.

CHAIRMAN CAMPBELL: Any additional comments that any of the parties want to make?

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MR. GINSBERG: I just have one additional question.

CHAIRMAN CAMPBELL: Go ahead, Mr. Ginsberg.

MR. GINSBERG: I think that Pacificorp could explain in maybe a little more detail what modifications were made in order to create this as an operating versus a capital lease.

MR. HUNTER: And I actually don't think there were any modifications. As Mr. Ginsberg probably remembers, the bulk of the process was providing information that was requested by the auditors. And Desert Power helped in that process providing their projections, what their steam production was going to be, what the projected cost of that steam would be. All that was provided to the auditor who finally decided reluctantly that it was going to reach a decision. And the decision was not recognized, but we didn't change the deal in order to reach that approval.

CHAIRMAN CAMPBELL: All right. We look forward to the updated submission, and we'll take the matter under advisement.

MR. MECHAM: Chairman, would it help if you had a draft order, or would you prefer to write your own? I'm just trying to be helpful.

CHAIRMAN CAMPBELL: Thank you for that offer and as they say, we'll get back to you. Thank you.

MR. HAYET: Commissioner Campbell?

CHAIRMAN CAMPBELL: Yes.

MR. HAYET: Can I be permitted to ask one question back on Section 5.5 regarding the losses of Pacificorp?

CHAIRMAN CAMPBELL: Of course, go ahead.

MR. HAYET: I was wondering with regard to the sale to, in the case where Pacificorp will be making sales and paying the market price of .93 times the market price for the energy for which Desert Power wants to make, will Pacificorp be expected to pay losses under that situation?

MR. MECHAM: I guess, Phil, are you asking if we're going to include the non-scheduled deliveries, is that what you're asking?

MR. HAYET: Right. In 5.5 it says one plus losses times the volume of energy of scheduled deliveries and non-scheduled deliveries. Now, I'm having a difficult time interpreting the non-scheduled deliveries. Is that the case of where you're going to be making sales to the market for which you're paying .93 times the market prices to Desert Power?

MR. MECHAM: Those are the, where they basically have the right to, as a QF, to sell to us in the unscheduled hours, and we were purchasing them at 93 percent of the Palo Verde firm price. And that volume of energy that's delivered will be grossed up for losses.

MR. HAYET: But assuming then you turn around and

make it, is it to be interpreted that you turn around and make those sales to the market at that point, or is it to be interpreted that you serve your own customer load with that energy, but yet you're paying just simply a market price times .93?

MR. MECHAM: It's the latter, our assumption is

that we'll use that energy to serve our own retail load. And
we use the market index as reflexion of non-firm prices.

MR. HAYET: Therefore that justifies the paying of losses in that case as well?

MR. MECHAM: Correct.

MR. HAYET: Okay, that was my question.

CHAIRMAN CAMPBELL: Thank you. All right, let's adjourn.

(Whereupon, the proceeding was concluded at 10:48 a.m.)

C E R T I F I C A T E

STATE OF UTAH)
COUNTY OF DAVIS)

THIS IS TO CERTIFY that the statements made in the foregoing proceeding, was taken before me, JODI SUDWEEKS, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, residing at Centerville, Utah.

That the testimony of said witnesses was reported by me in Stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true and correct transcription of said testimony so taken and transcribed, is set forth in the foregoing pages.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

WITNESS MY HAND and official seal at Centerville, Utah, this 29th day of July, 2004.