

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of: The Application)	Docket No:
of Rocky Mountain Power for)	10-035-124
Authority to Increase its Retail)	
Electric Utility Service Rates)	
in Utah and for Approval of its)	
Proposed Electric Service)	
Schedules and Electric Service)	
Regulations.)	

TRANSCRIPT OF HEARING PROCEEDINGS

TAKEN AT:	Public Service Commission 160 East 300 South Salt Lake City, Utah
DATE:	March 24, 2011
TIME:	9:04 a.m.
REPORTED BY:	Kelly L. Wilburn, CSR, RPR

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1 MARCH 24, 2011 9:04 A.M.

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

3 CHAIRMAN BOYER: This is the time and place
4 duly noticed for the hearing on test period in
5 Docket No. 10-035-124.

6 And Kelly, do we need to read the caption of
7 the case into the record?

8 THE REPORTER: That's up to you.

9 CHAIRMAN BOYER: You don't care, huh? You
10 can take it off the -- well, I'll read it in.

11 The caption of the case reads: In the Matter
12 of: The Application of Rocky Mountain Power for
13 Authority to Increase its Retail Electric Utility
14 Service Rates in Utah and for Approval of its Proposed
15 Electric Service Schedules and Electric Service
16 Regulations.

17 And we discussed prior to going on the record
18 that we will hear this matter in the conventional way
19 of letting the Company go first and then hearing from
20 responding parties, starting with the Division of
21 Public Utilities, the Office of Consumer Services, the
22 UAE, and the UIEC. And I guess that is everyone.

23 Okay. With that, let's enter appearances.
24 Mr. Monson, do you want to begin?

25 MR. MONSON: Gregory and Yvonne Hogle for

1 Rocky Mountain Power.

2 CHAIRMAN BOYER: Thank you. Welcome.

3 Ms. Schmid?

4 MS. SCHMID: Patricia Schmid, with the
5 Attorney General's Office, on behalf of the Division
6 of Public Utilities.

7 MR. PROCTOR: Paul Proctor for the Office.

8 CHAIRMAN BOYER: Okay, Mr. Proctor.

9 MR. DODGE: Gary Dodge on behalf of UAE
10 intervention group.

11 MS. BALDWIN: Vicki Baldwin on behalf of the
12 UIEC intervention group.

13 MS. WHITE: Good morning, Commissioners. I'm
14 Karen White, representing Federal Executive Agencies.

15 CHAIRMAN BOYER: Thank you. Would you like
16 to -- are you going to sit up here?

17 MS. WHITE: I'm just gonna sit back here.

18 CHAIRMAN BOYER: Back there? And it's
19 Ms. White, did you say?

20 MS. WHITE: Yes, sir.

21 CHAIRMAN BOYER: Thank you.

22 And I see Ms. Hayes in the audience. Are you
23 going to be observing or participating?

24 MS. HAYES: I'm going to be observing. I'm
25 not aware that we've been granted intervention yet,

1 so.

2 CHAIRMAN BOYER: I don't think you have.
3 You're of course always welcome to observe.

4 MS. HAYES: Thank you.

5 CHAIRMAN BOYER: Okay. With that, let's
6 begin. Mr. Monson?

7 MR. MONSON: Our first witness is David
8 Taylor.

9 (Mr. Taylor was sworn.)

10 CHAIRMAN BOYER: Thank you. Please be
11 seated.

12 DAVID L. TAYLOR,
13 called as a witness, having been duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MONSON:

17 Q. Mr. Taylor, could you please state your name
18 and present position with the Company for the record?

19 A. My name is David L. Taylor. I'm employed by
20 Rocky Mountain Power as the manager of regulatory
21 affairs for the State of Utah.

22 Q. Mr. Taylor, did you cause to be prepared
23 three pieces of testimony: Direct testimony, which I
24 believe was filed on March 9th, rebuttal testimony
25 filed on March 17th, and surrebuttal testimony filed

1 on March 21st?

2 A. Yes, I did.

3 Q. And all that testimony relates to the test
4 period issue we're here for the hearing for today?

5 A. That's correct.

6 Q. Did you have any exhibits to the testimony?

7 A. No. Only my testimony.

8 Q. Okay. And do you have any corrections you
9 wish to make to the testimony?

10 A. I do not.

11 Q. So if I were to ask you these questions today
12 on the record, would your answers be the same as
13 they're set forth in the testimony?

14 A. Yes, they would.

15 MR. MONSON: We would offer Mr. Taylor's
16 direct testimony, rebuttal testimony, and surrebuttal
17 testimony.

18 CHAIRMAN BOYER: Thank you. Are there any
19 objections to the admission of Mr. Taylor's direct,
20 rebuttal, and surrebuttal testimony?

21 Seeing none, they are admitted.

22 (Mr. Taylor's direct, rebuttal, and
23 surrebuttal testimony was admitted.)

24 MR. MONSON: Thank you.

25 Q. (By Mr. Monson) Mr. Taylor, do you have a

1 summary prepared of your testimony?

2 A. I do.

3 Q. Could you please present that?

4 A. Certainly. My testimony supports the test
5 period that is 12-months ending June 30, 2012, as
6 proposed by the Company in this case. I explain why
7 that test period that forecasts costs for the period
8 when new rates are going to be in effect is necessary
9 to set just and reasonable rates.

10 Specifically I explain why the Company
11 proposal is the only test period proposed in this case
12 that can produce customer rates that will, in
13 compliance with the Utah test period statute, best
14 reflect the cost of providing service to our customers
15 during the period rates set in this case will be in
16 effect.

17 I explain why neither the June 2011
18 alternative test period that the Company provided
19 under the filing requirement rules in this case, nor
20 the December 2011 test period that's recommended by
21 UIEC and UAE in their motions relating to test period
22 will satisfy the requirement to align prices with
23 cost.

24 Now, this is not just because the Company's
25 proposed test period lines up with the rate effective

1 period on the calendar better than those other test
2 periods. It's because the costs projected by the
3 Company-proposed test period best reflect the costs
4 expected in the rate effective period. The other two
5 test periods do not do that.

6 There's two primary reasons for this. First,
7 the significant level of capital investment that the
8 Company is making to serve our customers over this
9 time period. And second, the substantial increase in
10 net power costs that we project to experience over
11 this time period.

12 Let me share just a few specifics of why an
13 earlier test period will not meet the statutory
14 objective to best reflect conditions when new rates
15 will be in effect. First, again, I refer to the
16 significant capital investment that the Company is
17 making to serve our customers.

18 If the December 2011 test period is selected
19 there will be over \$800 million of new capital
20 investment placed in service for our customers that
21 will not be reflected in rates. If the June 2011 test
22 period is selected there will be \$1.4 billion of
23 capital investment that will not be reflected in
24 customer rates.

25 The second big primary reason is the

1 substantial increase in net power costs. Net power
2 costs are projected to increase by nearly \$260 million
3 between June 2011 -- between what's reflected in the
4 June 2011 alternative test period and the June 2012
5 test period proposed by the Company.

6 That's an increase of nearly -- of over
7 \$21 million per month, compared to that same month in
8 the alternative test period. One of the drivers or
9 reasons behind this is the expiration of a number of
10 long-term contracts that had very favorable terms to
11 our customers.

12 As addressed by Ms. Crane in her prefiled
13 testimony, there are a number of long-term coal
14 contracts that have been or are expiring and are being
15 replaced.

16 Mr. Duvall talks about a number of power
17 purchase contracts that are expiring. Those contracts
18 had very favorable terms for our customers. And there
19 are some wholesale sales contracts expiring also which
20 provided very favorable terms in relation to our
21 customers.

22 The impact of these expiring contracts is
23 reflected in the Company's filed net power costs. And
24 setting an earlier test period will knowingly
25 understate net power costs by building into those

1 rates costs for contracts that we know will expire,
2 rather than reflecting the costs that are projected to
3 occur when those rates will be in effect.

4 Now, several parties have given reasons why
5 they feel that the Commission should reject the
6 Company's proposed test period and select one closer
7 in time. And let me summarize why I disagree with
8 those arguments.

9 Some parties have argued that the Commission
10 should select a test period closer in time because the
11 forecast for a closer time period will be more
12 accurate. Well, that may or may not be the case.

13 While a case might be made that a one-year
14 forecast would be more accurate than a projection that
15 goes out 5 or 10 years, but there's no good reason to
16 assume that a test period ending 12 months in the
17 future would be any more likely to be accurate than a
18 forecast ending 18 months in the future.

19 Now, even assuming that a forecast for a
20 period closer in time by six months might be slightly
21 more accurate than for a later test period, we need to
22 realize that the objective is not to determine which
23 test period can be most correctly and accurately
24 forecasted, but to determine the test period costs
25 that will most accurately reflect the condition when

1 rates will be in effect.

2 Now, some have argued that unforeseen events
3 may happen if a test period goes out through the rate
4 effective period. Now, that logic suggests that it's
5 better to ignore what we reasonably expect to happen
6 because some unexpected event may happen in the
7 future.

8 And while some unforeseen event may happen,
9 it's just as likely that that unforeseen event will
10 increase costs as opposed to reduce costs beyond the
11 level that are projected for rates today.

12 Parties have argued that the energy balancing
13 account and the ability to use major plant addition
14 cases reduces the need for a test period that would
15 reflect the rate effective period. Neither of these
16 mechanisms remove the need or the statutory
17 requirement to select a test period that will best
18 reflect conditions when rates are gonna be in effect.

19 The EBA, which allows for a recovery or a
20 refund of Utah's share of 70 percent of some of the
21 costs of -- in net power costs as they differ from
22 what's built into base rates doesn't change the
23 obligation to project net power costs as accurately as
24 possible.

25 If a test period earlier than December 2012,

1 as proposed by the Company, is selected, net power
2 costs and base rates will be understated. The
3 difference will not be because the Company or the
4 Commission couldn't forecast accurately, it'll be
5 because the forecast was for the wrong period. It
6 wasn't a forecast for the period covering when rates
7 are gonna be in effect.

8 Now, the opportunity to use a major plant
9 addition case may allow the Company to either skip or
10 delay a general rate case filing, but it certainly
11 doesn't remove the need to select a test period in
12 those general rate cases that best reflect costs.

13 Less than \$300 million of the over \$2 billion
14 in capital investment that's being made from
15 January 2011 through June 2012 qualify for major plant
16 addition treatment.

17 Some witnesses claim that the use of a 2011
18 calendar test period better balances risk between the
19 Company and customers. Risks are not balanced if
20 rates are set lower than the costs that will be
21 incurred to serve customers.

22 The regulatory compact says that the
23 Company's granted a monopoly service territory. And
24 with that, prices will be regulated to cover the cost
25 of providing service.

1 In exchange for that, the Company has an
2 obligation to service. It will provide service to all
3 customers in that service territory, including making
4 the capital investments necessary to provide that
5 service.

6 If a closer-in-time test period is selected,
7 one that assures rates will be set at a level less
8 than the cost of serving customers during the rate
9 effective period, that's not a balancing of risk
10 between Company and customers, that's a violation of
11 the regulatory compact.

12 Finally, there's been a lot of discussion
13 about the legislative intent concerning the selection
14 of the test period. I will admit right up front, I am
15 neither an attorney nor a legislator, so all I can do
16 is read the words that are in the statute.

17 I agree, as others have indicated, that
18 there's no presumption that the Commission select
19 either a historical or a forecast test period.
20 However, the lack of a presumption doesn't alter the
21 objective of the Commission to select a test period --
22 or it doesn't, it doesn't change the objective of the
23 test period statute. The objective is that:

24 "The Commission shall select a test
25 period that, on the basis of evidence,

1 the Commission finds best reflects the
2 conditions that a public utility will
3 encounter during the period when rates
4 determined by the Commission will be in
5 effect."

6 Paragraph (b) then provides three tools that
7 the Commission may use to meet that objective: They
8 may use a forecast test period that goes out as much
9 as 20 months beyond the date of filing. They can use
10 an historical test period with known and measurable
11 adjustments. Or they can use a combination of a
12 forecast and a historical test period.

13 Whichever of those tools the Commission
14 chooses to use, it still must meet the objective
15 that's laid out in paragraph (a.) If an historical
16 test period or a partially historical and partially
17 forecast test period meets that objective, then the
18 Commission is free to use that test period.

19 To meet that objective, however, evidence
20 must be presented that shows that the costs included
21 in either that historical or partially historical and
22 forecast test period is the best projection of costs
23 that the Company will incur when rates are in effect.

24 No party has presented evidence to show that
25 either the June 2011 or the December 2011 test period

1 satisfies that objective. Only the Company's test
2 period that runs from July 2011 through June 2012
3 meets that objective.

4 And that concludes my summary.

5 MR. MONSON: Mr. Taylor is available for
6 cross.

7 CHAIRMAN BOYER: Okay. Thank you,
8 Mr. Taylor.

9 Ms. Schmid, cross examination?

10 MS. SCHMID: Yes, please.

11 CROSS EXAMINATION

12 BY MS. SCHMID:

13 Q. Good morning, Mr. Taylor.

14 A. Good morning.

15 Q. If the Commission ordered the Company to use
16 a different test period and refile, for example if the
17 Commission ordered the Company to use the
18 December 2011 test year, what process would the
19 Company have to go through to make that filing?

20 A. Mr. McDougal will testify after me. He's the
21 person who will actually have to put that filing
22 together. And he can answer that question in much
23 greater detail than I can.

24 Q. I'll save that one for him, then.

25 MS. SCHMID: Thank you, that's all.

1 CHAIRMAN BOYER: Thank you, Ms. Schmid.
2 Mr. Proctor?

3 MR. PROCTOR: Thank you, Mr. Chairman.

4 CROSS EXAMINATION

5 BY MR. PROCTOR:

6 Q. Mr. Taylor, on several occasions you've
7 referred to the statute and its statement that the
8 test period that is to be selected should, on the
9 basis of evidence, best reflect the conditions that a
10 public utility will encounter.

11 How does the Company define the term
12 "conditions"?

13 A. Well, I would define the conditions as the
14 costs and investments that are anticipated to be in
15 place when those rates are serving customers.

16 Q. So those would be the conditions of the
17 Utility, correct?

18 A. The Utility and of the customers receiving
19 that service.

20 Q. Well, what about -- doesn't the term in
21 conditions also include the existing and forecast
22 economic conditions, generally?

23 A. It does. And we take those into account when
24 we prepare the forecast that we use in those test
25 periods.

1 Q. And that would include also the economic
2 conditions that customers may also encounter, would it
3 not?

4 A. It would. And again, we take those economic
5 conditions into account when we put together our load
6 forecasts.

7 Q. But you did describe the conditions for the
8 Utility as primarily the Utility's costs and the
9 Utility investment, correct?

10 A. And I would add to that the Utility's loads
11 during that time period.

12 MR. PROCTOR: Thank you, Mr. Taylor.

13 CHAIRMAN BOYER: Mr. Dodge?

14 CROSS EXAMINATION

15 BY MR. DODGE:

16 Q. Good morning, Mr. Taylor.

17 A. Good morning.

18 Q. Following up on Mr. Proctor's question. As I
19 read your testimony, you're basically defining
20 conditions under the statute with costs. You've added
21 investments and loads?

22 A. That's correct.

23 Q. And in your view basically what the
24 Commission should be doing is making sure that all
25 your costs get reimbursed?

1 A. What we're doing is suggesting that the
2 Commission set rates at the level to reflect the costs
3 that we project to be incurred from that time period.

4 Q. And you, several times in your testimony,
5 talked about expenses that will be made during the
6 time period from the end of 2011 into 2012. You
7 actually don't know what those expenses are gonna be,
8 do you?

9 A. We don't know with absolute surety, but we
10 have the projection of our best, our best estimate and
11 our best forecast for those costs.

12 Q. But isn't it kind of circular to say, Because
13 we project a bunch of costs you ought to pick a test
14 period that includes them, when part of the goal of
15 the Commission is to set a test period that best
16 reflects conditions including all the factors they've
17 identified that go into that?

18 A. No, I don't think that's circular at all. I
19 mean, we have this whole process for both the
20 Commission and all the parties participating in the
21 case to evaluate, and scrutinize, and propose
22 adjustments to those forecasts.

23 Q. Yeah, I understand that. And so we might as
24 well project five years into the future and just leave
25 you, for five years, with cost reimbursement. I mean,

1 there's -- don't you understand there are factors
2 other than just reimbursing the Utility that go into
3 the Commission's consideration of test period?

4 A. Among all those conditions, still the
5 Commission is required to set rates that they believe
6 will reflect costs during that time period.

7 Q. And where do you get that from? You say that
8 several times. It's not in the statute. It says
9 "conditions." So where do you get the notion they've
10 got to set rates that will reflect the costs that you
11 think you'll incur?

12 A. Because costs are part of those conditions.

13 Q. It's one of them, but one of several, right?

14 A. It is, but I think it's a very substantial
15 part of those conditions.

16 Q. I understand it is from the Company's
17 perspective. You understand, do you not, that from
18 customers' perspective one of the factors the
19 Commission looks at that's very important to us is not
20 diminishing the economic incentive of the Company, and
21 not dampening the efficiency incentive of regulatory
22 lag. Do you understand those are factors the
23 Commission has identified?

24 A. I do. And I still don't understand why
25 setting rates on a projection of costs that are fully

1 and thoroughly scrutinized through the rate case
2 process would diminish the Company's incentive to be
3 efficient.

4 Q. And how are they fully and thoroughly
5 scrutinized through the billion-plus dollars in
6 revenue requirement? You're saying that's all
7 thoroughly and carefully scrutinized and it's gonna be
8 exactly right.

9 I mean, is that your view? That that's all
10 it takes is a rate case review, and then customers can
11 relax and be confident their Utility is gonna spend
12 their money wisely?

13 A. Well, I think there's several questions
14 there. As far as is it a complete, is it a complete
15 record or a complete, thorough review? I mean, we
16 have substantial filing requirements that we've
17 complied with in this case that answers mountains and
18 mountains.

19 I think my data sheet was 190 lines long of
20 specific items we had to provide to support our case.
21 Then we go through a very lengthy process with
22 discovery from intervenors where they, again,
23 scrutinize the level of costs.

24 So I think there's a pretty thorough scrutiny
25 that goes on in that process.

1 Q. And that's basically, then, the Company's
2 perspective in the ECAM/EBA docket and this docket, is
3 basically, You don't need to give us any incentives.
4 Trust us, we'll do the right thing. Just review our
5 stuff, give us our money, and trust us.

6 Do you understand why customers may not have
7 that perspective?

8 A. Well, I understand why customers may not have
9 that perspective, but I think the prudence review is a
10 pretty hefty incentive.

11 Q. And that's -- and ultimately the Company
12 believes that all the Commission has to do is
13 reasonably scrutinize your projections and then have
14 the threat of a prudence review and that's enough to
15 keep the Company's incentives alive, correct?

16 A. I think that's correct, yes.

17 Q. Now, you understand the Commission rejected
18 that argument in the 2007 rate case over test period.
19 And they rejected it at least partially in the EBA
20 docket. They see maybe more value in incentives than
21 just an after-the-fact prudence review?

22 A. Well, that would be their view.

23 Q. Since that 2007 case the Company has gotten
24 both the single-item rate case, MPA statute, and now
25 an EBA. Do you not disagree that in direction, at

1 least, those two factors reduce the Company's risk and
2 exposure to non-recovery of costs?

3 A. I believe they provide tools to help ensure
4 that rates reflect costs. Which is, I think, the
5 ultimate objective.

6 Q. You don't agree that directionally those two
7 factors reduce the Company's risk and exposure to
8 unrecovered costs since the 2007 test period order was
9 issued?

10 A. I believe that the Major Plant Addition
11 Statute provides just another alternative for matching
12 costs and investment. Generally they're done in
13 exchange or for a delay of a general rate case. So
14 that by itself I don't think actually reduces the
15 Company's risk of recovering it's costs. It's used as
16 another tool to match prices and costs.

17 The energy balancing account does have some
18 reduction of risk with it, but that reduction of risk
19 doesn't eliminate the need to try to project net power
20 costs as accurately as possible for the period the
21 rates are gonna be in effect.

22 Q. You don't see it as a reduction in the
23 Company's risk or exposure to non-recovery to be able
24 to start recovering for a major plant addition the day
25 it goes into service, versus trying to project it in

1 an annualized test period?

2 A. It matches costs with revenues, and
3 encompasses very clear parameters of when we can and
4 cannot use them.

5 Q. Why are you resisting admitting that it
6 reduces your exposure to non-recovery, and therefore
7 reduces your risk?

8 A. Because I don't believe that particular
9 statute does reduce risk.

10 Q. So you wouldn't object if we were to repeal
11 that statute? If it doesn't reduce your risk, why
12 have it?

13 A. Again, it gives another tool, another
14 alternative to meet that objective of matching
15 revenues with costs.

16 Q. Just so I understand, your view is that using
17 a forecasted test period has the exact same risk
18 profile for the company as using the MPA statute?

19 A. I don't think I said that.

20 Q. You won't admit that there's any risk
21 reduction, so it must have the same risk profile.

22 A. Again, it's just different tools. If you say
23 it reduces risk, that is -- you clearly can have that
24 opinion.

25 Q. But I just want it clear on the record, you

1 don't agree that it reduces your risk?

2 A. I don't believe it eliminates the risk of
3 recovering all of the costs the Company incurs, no.

4 Q. I didn't say "eliminate," I said "reduce."
5 You don't agree it reduces the Company's risk?

6 A. No.

7 Q. Okay. I'm glad to know that.

8 THE REPORTER: Sir, can you turn the
9 microphone towards you? Thank you.

10 THE WITNESS: Sure. I apologize.

11 THE REPORTER: Thank you.

12 Q. (By Mr. Dodge) Let's talk about some of the
13 other considerations the Commission has identified,
14 other than just trying to match the period that rates
15 will be in effect or the costs you project will be in
16 effect at that time.

17 You understand that -- you speak of
18 regulatory lag from the Utility's perspective as a bad
19 thing. You understand that for hundreds of years
20 regulatory lag has been a tool used by Commissions to
21 try and create proper incentives, do you not?

22 A. I believe some have viewed it that way, yes.

23 Q. Another of the factors the Commission
24 identified is how -- the ability of parties to
25 properly analyze forecasts. That's kind of my crystal

1 ball versus yours, right?

2 A. Everybody has their best view of what the
3 future will look like, yes.

4 Q. And nobody can prove it, right? Until after
5 the fact, at least?

6 A. No, I would -- however, I would resist
7 referring to it as a "crystal ball." I think we use
8 sound analytical methods and sound projection methods
9 to determine what those costs are going to be.

10 Q. What about the concept of used and useful,
11 Mr. Taylor? You acknowledge that's a concept that's
12 been included in utility regulatory procedures for a
13 long time, or concept -- is a policy that regulators
14 have considered and used?

15 A. Yes, I agree with that.

16 Q. And further, one -- with a test period that
17 doesn't even begin until the rates go into effect,
18 which is at least theoretically possible with a
19 20-month test period, you acknowledge that the day
20 rates become effective not one dime of new investment
21 in the test period would be used and useful? The
22 incremental growth or the additions projected in the
23 test period, right?

24 A. On that narrow parameter, under those narrow
25 definitions, yes. But that is why you use the average

1 rate base provision to, to average out investment
2 across the test period. So that on average across the
3 test period customers are paying for the investment
4 that's in, in place, serving them.

5 Q. That's projected to be in place serving them,
6 right?

7 A. Yes. As the statute provides you can do.

8 Q. And you have not proposed any kind of process
9 that says, If you project expenditures that don't
10 incur -- that aren't actually incurred, or projects
11 that aren't actually brought into service in time,
12 that there would be some kind of a tracking mechanism,
13 or refund, or anything like that, correct?

14 A. Well, if you're suggesting that would we be
15 supportive of some tool that trues up customer rates
16 to actual costs? I think we'd sign up for that
17 anytime, as long as it includes everything.

18 Q. Well, that is ultimately the Utility's goal,
19 is it not, to have basically a giant reimbursement
20 mechanism? Where everything gets reimbursed?

21 A. I don't see how you can draw that conclusion.

22 Q. From what you just said you don't think I can
23 draw that conclusion?

24 A. No. What I said is if you're proposing we
25 have a mechanism that trues up actuals to costs, I

1 said we would probably agree with that. We'd probably
2 sign up for that. I didn't say that's what we're
3 proposing here or that was our ultimate objective.
4 But if you offered that on the table, we'd probably be
5 agreeable to it.

6 Q. What I'm discussing is the used and useful
7 concept of new plants. And how an extreme test year,
8 a 20-month test year would have none of the new plant
9 projected in that test period used and useful at the
10 time rates go into effect. You don't disagree with
11 that, do you?

12 A. Well, I disagree with your use of the term
13 "extreme" test period. I mean, the 20-month forecast
14 is clearly allowed by statute, so it's not viewed as
15 extreme. I would agree that you would be projecting
16 investment over that future period, yes.

17 Q. If I were project -- if I were proposing to
18 use only an historical test period, as permitted by
19 the statute, would you consider that extreme?

20 A. I would consider that that, under our current
21 environment with a substantial level of investment,
22 that that would not meet the requirements of the
23 statute. "Extreme" was your word, not mine.

24 Q. No, I understand that. And you resisted.
25 It's the most extreme allowed under the statute,

1 though, isn't it? The 20-month test period?

2 A. It allows you -- it's the furthest out the
3 statute allows, but it is allowed by the statute.

4 Q. As is an historical?

5 A. As is historical, if it can be shown that
6 that best reflects the conditions when rates will be
7 in effect.

8 Q. Right. Not just costs. The conditions, as
9 the Commission has interpreted that term, using the
10 factors. You'll agree with that, right?

11 A. I'll agree with that, yes.

12 Q. One of the other factors that the Commission
13 has identified in -- that goes into this evaluation is
14 balancing customer interest. In the past decade the
15 laws or Commission orders have allowed, A, an
16 extension from 12 to 20-month forecasts as an option,
17 correct?

18 A. That's correct.

19 Q. It's allowed the significant energy resource
20 pre-approval through the, through the pre-approval
21 statute that you're now undergoing with respect to
22 Lakeside II, correct?

23 A. Yes, with a substantial review for that, yes.

24 Q. But nevertheless, that allows pre-approval
25 and some assurance of the Company before it spends

1 money, right? That reduces your risk, does it not?

2 A. It provides that pre-approval, yes.

3 Q. Yes. And in the last decade we've also added
4 the MPA, that you and I disagree on whether it reduces
5 your risk. But I assume the Company still likes it,
6 right?

7 A. It's another tool we can use. And in some
8 cases it's useful, in other cases it's not useful.

9 Q. And then recently the Commission's added an
10 energy balancing account?

11 A. Yes.

12 Q. What's been done in the last decade to
13 counterbalance the customer's interest, in your view?

14 A. Well, we'll work backwards from that. The
15 energy balancing account is put in place to assure
16 that -- to have an equal probability that, if costs
17 exceed the level built in rates, that there's a chance
18 for recovery of that.

19 If costs come in less than those included in
20 the rates, there's an opportunity to refund that to
21 customers. I would say that's a balance.

22 Q. Either way, the Company prefers the EBA
23 because it's risk that you're trying to reduce, right?
24 It's risk you're trying to -- you're not trying to
25 make a buck above what you're authorized. You're

1 trying to not have risk in recovering what you're
2 authorized to recover. Isn't that a fair statement?

3 A. What we're trying to do is align -- is to
4 align revenues with costs. And if you view that --
5 that that reduces risk, that would be your view of
6 that.

7 Q. So other than your view that the EBA is a
8 benefit to the customers, what else has been done in
9 the last decade to balance customer and company risk,
10 in your view?

11 A. Again, all of these are put in place to give
12 the very best projection that rates will match costs.
13 Not exceed or not understate costs. I think that's a
14 balance of risk between both customers and Utility.

15 Q. Well, I'll offer a couple that's been done in
16 the last decade. One is that the Commission agreed to
17 leave the Company partially at risk for net power
18 costs through a 70/30 sharing mechanism. That's
19 probably a balancing in favor of customers, would you
20 not agree?

21 A. Only if you assume that we're always going to
22 understate power costs when we set rates. If you
23 assume we make the very best projection of what net
24 power costs will be, that's an equal risk between
25 customers.

1 Q. And then secondly, in the 2007 rate case the
2 Commission agreed to utilize a 12-month projection
3 rather than an 18-month. Both of those the Company
4 now opposes -- or has opposed, right?

5 A. That's correct.

6 Q. It wants to remove both of them, correct?

7 A. That's right.

8 Q. You criticize Mr. Higgins and others for
9 allegedly not giving any evidence to support that
10 their test period best reflects the costs. When you
11 make that criticism you're talking specifically about
12 whether a test period ending the end of 2011 versus
13 June 2012 is going to be the best guess of costs into
14 the future, right?

15 A. That's correct. They haven't presented any
16 evidence to support why the December '11 test period
17 better reflects costs.

18 Q. And again, we've established, have we not,
19 that that is just one of a myriad of factors that the
20 Commission looks at? That's the one you focus on
21 because we understand that's the one the Utility cares
22 about.

23 The other ones, including inflation, changes
24 in investment, changes in services, availability and
25 accuracy of data, synchronization, cost increase,

1 incentives to efficient management, diminished
2 economic examination and accountability, all these
3 factors the Commission listed, you acknowledge that
4 Mr. Higgins and others present a fair amount of
5 evidence on their view of those factors, do you not?

6 A. I don't disagree with that.

7 Q. It's just you think they haven't proved that
8 their test period best matches costs. Which is,
9 again, one crystal ball versus another?

10 A. Well, again, I would not refer to it as a
11 "crystal ball." May be your crystal ball. It's our
12 best analytical forecast.

13 Q. You also reference the fact that if a 2011
14 calendar test period is used, then the costs already
15 allowed in rates through the MPA No. II would only be
16 partially included. And you use that as an example of
17 why a longer test period should be used. Is that
18 correct?

19 A. Did you say the June 2011 test period, or
20 December?

21 Q. I meant to say December.

22 A. Well, no, that's not our position, the
23 December test period. We refer to specifically the
24 test period ending June 2011.

25 Q. If a calendar year 2011 test period is used

1 with average rate base and no adjustment is made for
2 the facilities that came into service in June of
3 last -- or in December of last year, will that
4 completely cover the MPA No. II costs?

5 A. A December 2011 test period will reflect all
6 of the projects that went in under the last two major
7 plant addition cases.

8 Q. Thank you. So it's only if the June one is
9 adopted that the problem you identify arises, correct?

10 A. That's correct. And I believe that's what we
11 said in our testimony.

12 Q. But in any event you're not arguing, are you,
13 that that hobbles the Commission's ability to look at
14 other test periods and make appropriate adjustments,
15 if necessary, for the MPA ruling?

16 A. Well, the Commission has their discretion to
17 select the test period on the evidence in front of
18 them. But it would seem quite unusual that they would
19 allow something for full recovery and then remove it
20 later, after it's been in service for almost a year at
21 that point in time.

22 Q. The point is, they have the tools to not
23 remove it if it's been approved through the MPA
24 statute, correct?

25 A. Well, they have the tools to not remove it by

1 selecting a test period that fully includes it.

2 Q. Or by selecting a test period and making an
3 adjustment to include those costs? They were able to
4 include it based on 2000 -- the last rate case, the
5 2009 rate case. They can certainly include it based
6 on a 2011 -- or a June 2011 test period?

7 A. Well, I guess -- I suppose they could. I
8 guess I could also make an adjustment to include all
9 of the other investment that's in place that would
10 normally fall outside that average test period.

11 Q. Let's talk for a moment about other states.
12 You chafe a little at Mr. Higgins and others referring
13 to the Wyoming situation, but let's talk just a minute
14 about Wyoming. Wyoming has how many months from
15 filing to a ruling in a rate case?

16 A. I believe it's ten months in Wyoming.

17 Q. Versus eight months in Utah?

18 A. That's correct.

19 Q. Secondly, they have no pre-approval statute,
20 correct?

21 A. Not that I'm aware of.

22 Q. And no MPA statute?

23 A. Not that I'm aware of.

24 Q. And they don't allow you to project 20 months
25 into the future?

1 A. Well, they -- there's no clear direction on
2 what -- I don't think there is any statute giving
3 direction.

4 Q. But they have never allowed you to project
5 20 months into the future, have they?

6 A. That's not been our history in Wyoming, no.

7 Q. In fact, you haven't even asked for it. You
8 asked for a calendar year of roughly 13 months in your
9 last filing, right?

10 A. In the case we just filed, that's correct.

11 Q. And do you argue in Wyoming that that
12 violates the regulatory compact, or is
13 unconstitutional, or otherwise unlawful to have the
14 test period you used in Wyoming?

15 A. Well, I wasn't our witness in Wyoming, but
16 I'm not aware that we argued that.

17 Q. Then you say, in contrast to Wyoming look at
18 Oregon and California, right? They -- that extend
19 more than 20 months in the future; is that right?

20 A. Those states allow that, yes. And that's
21 been the practice.

22 Q. It's true, is it not, that in Oregon that
23 there's an express statute that says that facilities
24 cannot come into rates until they are used and useful,
25 notwithstanding a future test period?

1 A. I understand that Oregon has specific rules.
2 One of those rules that we use, for lack of a better
3 term, beginning rate base. Oregon also has a statute
4 that every year you, you reset the forecasted power
5 costs for the next 12 months.

6 And so, I mean, each state has a lot of
7 different provisions that they use to get to what they
8 believe are just and reasonable rates.

9 Q. But I'm talking specifically about the used
10 and useful concept. There they have a statute and a
11 crediting mechanism through Schedule 80, do they not,
12 that only allows plant to come into rates once it's
13 actually been determined that it's used and useful?

14 A. I spoke to the extent of my understanding of
15 the Oregon statute.

16 Q. Let's talk for a moment about your -- the
17 Company's decision not to seek pre-approval of a test
18 period different from the one that the Commission
19 ordered last time that specific issue was debated.

20 I believe in your filing you said, We
21 concluded it would have taken as much work to do that
22 as to do a rate case, and we didn't want to delay. Is
23 that essentially it?

24 A. Yeah. Our estimation was to, to make a test
25 period filing we would basically have to prepare a

1 whole rate case supporting that test period. And then
2 go through the whole litigation process to determine
3 whether or not that, that test period is selected or
4 something else is selected in its place.

5 And we're not aware that there's any time
6 frame for that process to take place. So rather than
7 go through that delay and actually prepare our case
8 twice, our determination was to seek for the test
9 period as part of this case and comply with all of the
10 filing requirements that comes with that choice.

11 Q. You understood from prior Commission orders
12 that their hope and objective was that if there's
13 going to be controversy over test period it would be
14 resolved before a lawsuit was filed. And they tried
15 to set up rules -- or a rate case was filed. And they
16 tried set up rules to accommodate that?

17 MR. MONSON: Objection, calls for
18 speculation, and also assumes facts not in evidence.

19 MR. DODGE: I'm asking him if he understands
20 that. If he doesn't, he can answer.

21 CHAIRMAN BOYER: Well. All right, I'm going
22 to sustain the objection. Why don't you ask him if he
23 has an understanding of that, and then ask what the
24 understanding is.

25 Q. (By Mr. Dodge) Have you read the

1 Commission's order in Docket 08-035-38 in which the
2 Commission tried to lay out its hope and expectation,
3 if you will, at page 6, for how test period disputes
4 would be resolved in the future?

5 A. Well, I certainly read that order. I don't
6 have perfect recollection of what it says. What I
7 will say is they then provided Commission rules on how
8 filings should be made and what's required to be
9 considered a complete filing. And we followed those
10 rules.

11 Q. And you fought the request of other parties
12 to have you include additional test periods, did you
13 not? In your pre -- in your filing requirements?

14 A. Yes. As my recollection is, parties were
15 suggesting that we file a test period for every
16 six-month period that could possibly conceive between
17 the filing date and when rates went into effect. We
18 fought that pretty strongly. We felt like that the
19 Company should support the test period it proposed.

20 Q. And given that in the last fully-litigated
21 case, the '07 docket over test period, the Commission
22 ordered a shorter-in-time test period, and then in the
23 '08 case expressed a desire and set up a rule to try
24 and resolve in an early manner any test period
25 disputes, you don't think it's at all inconsistent

1 with those orders for you to not seek pre-approval of
2 one that goes back to the 18 months that was rejected
3 before --

4 MR. MONSON: I'm gonna object --

5 Q. (By Mr. Dodge) -- and file one that is
6 just -- that only includes the six months and not also
7 the calendar year that would have been consistent with
8 the '07 case?

9 MR. MONSON: I'm gonna object to the question
10 on the grounds that it assumes -- Mr. Dodge asked him
11 to assume that the '07 case was the last fully-
12 litigated test period case. That's not correct, so I,
13 I object to the question.

14 MR. DODGE: Well, let me ask him to assume
15 that. I assure you it is the case. The '08 case
16 turned on end of period, not on test period -- test
17 year. There was no fight over test period because the
18 Company proposed a short-in-time test period, but
19 within the end-of-period rate base. And the
20 Commission ended up with its order. But it was not
21 litigated over the test period.

22 MR. MONSON: It's --

23 MR. DODGE: So -- but let me ask him to
24 assume it to respond to your question. The Commission
25 can interpret its own order.

1 CHAIRMAN BOYER: Right. I think Mr. Dodge
2 can ask a hypothetical. Whether it's, you know,
3 assumed or fact, we'll just go with a hypothetical.
4 But you might have to restate the question, Mr. Dodge.

5 Q. (By Mr. Dodge) The question is basically,
6 don't you think it would have been appropriate for you
7 to have come in and let the parties and the Commission
8 know in advance of filing that you're not going to use
9 the shorter end test period that the Commission
10 approved in '07. And you're not gonna -- that you're
11 gonna go back and try to propose the nearly 18-month
12 test period that was rejected in the '07 case?

13 A. No. Because subsequent to that order the
14 Commission submitted and approved rules that -- for
15 filing rate cases. And we complied completely with
16 those rules. So I guess I don't understand why you're
17 saying the Company was -- did something inappropriate.

18 Q. You think you complied with the spirit and
19 intent of the Commission's orders in the '07 and the
20 '08 case, and in the rules?

21 A. We complied with the rules clearly as they're
22 laid out. You know, I -- all I can do is follow the
23 rules as they're given to us.

24 MR. DODGE: I have no further questions.

25 CHAIRMAN BOYER: Thank you, Mr. Dodge.

1 Ms. Baldwin, cross examination?

2 CROSS EXAMINATION

3 BY MS. BALDWIN:

4 Q. Mr. Taylor, you were speaking earlier about
5 the statute and how it talks about conditions. And
6 you -- as far as your -- I believe you said that your
7 idea of what conditions are includes costs, loads, and
8 investments.

9 And in Mr. Brubaker's testimony he discussed
10 the PPA contract, which you also mentioned, that
11 Mr. Duvall talks about in his testimony?

12 A. About which contract?

13 Q. The PPA contract. The purchase power
14 contract?

15 A. Okay. You're not referring, you're not
16 referring to a contract by --

17 Q. No, not --

18 A. Okay.

19 Q. Yeah. Just the purchase power contracts that
20 are expiring.

21 A. Okay.

22 Q. Mr. Duvall never provides any information
23 about how the Company is going to replace its
24 capacity, when it's going to be done, with whom, and
25 what the costs are. So if conditions include costs,

1 could you tell us here what those costs are going to
2 be?

3 MR. MONSON: I'm gonna object to the
4 question. You said what Mr. Duvall did or didn't do.
5 Are you asking him to assume that, or?

6 MS. BALDWIN: No, I'm -- okay. In
7 Mr. Brubaker's testimony he points out that Mr. Duvall
8 had made note of all these contracts. The Company has
9 never responded that prior to Mr. Brubaker's
10 testimony. So I'm asking Mr. Taylor here to, for the
11 Company, tell us what, what are those costs?

12 THE WITNESS: Well, first of all,
13 Mr. Brubaker seems to be operating under the
14 assumption that each one of those contracts are gonna
15 be replaced in kind. That's not the case.

16 The Company did include, in its net power
17 costs, the replacement of all of those contracts.
18 Most of those contracts we have no rights to replace
19 them, so they've just dropped out of our load resource
20 list.

21 And then we've met our load with the
22 resources that are available that are dealt within the
23 grid model. And that -- so the cost of replacing
24 those are included in the Company's filing and in the
25 net power costs included.

1 I think you're operating under a faulty
2 assumption if you think that somehow we're gonna
3 replace each of those contracts in kind. That's not
4 gonna happen. What's been done is the, the resources
5 are removed from what we have available. And the net
6 power cost is calculated using the resources that are
7 available.

8 Q. Okay. You also talk about evidence. And
9 you've mentioned and you and Mr. Dodge discussed a
10 little bit about what some of the other people in the
11 case, whether or not they have provided enough
12 evidence?

13 Are you aware of, under Utah law, that the
14 burden is on the Company to make the filing with
15 substantial evidence to support its position?

16 A. We are, and we have done that. We've
17 provided the evidence that our test period we propose
18 best reflects the conditions when rates are gonna be
19 in effect. My point is, people dispute that. They
20 haven't given any evidence that another test period
21 better meets that objective.

22 Q. So are you suggesting that the other parties
23 have -- the burden has shifted to the other parties to
24 meet that objective?

25 MR. MONSON: Objection, calls for a legal

1 conclusion.

2 CHAIRMAN BOYER: Sustained.

3 Q. (By Ms. Baldwin) Mr. Taylor, can you
4 guarantee that all the capital investments that you've
5 projected in June -- January through June of 2012 will
6 go into service when you've projected it?

7 A. I can't guarantee that. I can't guarantee
8 that the investments might -- will be exactly that.
9 Might be a little bit less, might be a little bit
10 more. I can't give you that specific guarantee.

11 What I can tell you is we used our very best
12 projection of the investments we're gonna make to
13 serve the needs of our customers through that time
14 period.

15 Q. Is there an estimate or a percentage of
16 probability that things that you projected in October
17 are more likely to occur than things that you've
18 projected for June of 2012?

19 A. Are you asking me for -- I don't have any
20 probabilities about the likelihood of something that's
21 projected today will occur. What I can tell you is
22 that's our best projection of what those investments
23 and costs will be.

24 Q. But would you agree that the likelihood of
25 something that you've projected to occur in October or

1 November of this year is more likely to occur than
2 something that you've projected to occur in June of
3 2012?

4 A. Well, let me answer the question this way.
5 We are in March of 2011. I suspect that we can
6 project costs for April of 2011 with somewhat more
7 precision than we can project costs for April 2012.
8 However, rates from this rate case are not going to go
9 into effect -- won't be in effect in April of 2011,
10 they'll be in effect in April of 2012.

11 So just the fact that I might project next
12 month's costs a little more accurately than the costs
13 a year from then is not the overall objective. The
14 objective is to project the costs that will be there
15 when customers' rates are in effect.

16 Q. Do you think that accuracy has anything to do
17 with reliability?

18 A. I believe you make the most accurate forecast
19 you can. But if you're -- an accurate forecast of the
20 wrong period is not gonna meet the standard.

21 Q. Do you think that accuracy has anything to do
22 with reliability?

23 A. I guess I'm not linking accuracy and
24 reliability. Can you explain what you mean by
25 "reliability" in --

1 Q. Reliability? Do you agree that the evidence
2 that you base your test -- your proposal on should be
3 reliable?

4 A. Yes. And I, I believe that our forecast is
5 as accurate as can be made for that time period. And
6 as reliable as data can be provided today for that
7 time period.

8 Is it perfect? Probably not. But I believe
9 it's as reliable as data can be made for that time
10 period. And it's certainly more reliable than a
11 projection of what costs are gonna be tomorrow, when
12 rates won't be in effect.

13 Q. But you agree that the evidence -- or the
14 forecast that you have for tomorrow, or for June of
15 this year, or for October or November of this year
16 would be more accurate and more reliable?

17 A. It would be more accurate for that time
18 period. It would not be more accurate and reliable
19 for the period when rates are gonna be in effect.

20 Q. Rates are going to be in effect in October
21 and November; is that not true?

22 A. All right, so -- but we're not projecting
23 rates -- our test period doesn't go through October of
24 2012.

25 Q. No, I'm sorry, I was referring to October and

1 November of 2011.

2 A. Right. And they're gonna be --

3 Q. So today if you make your projections to
4 October and November of 2011, those rates will be in
5 effect during the rate effective period, correct?

6 A. Yes. And October and November 2011 will be
7 in either the UIE (sic) proposed test period or the
8 Company's proposed test period.

9 Q. But you do admit that those, those that are
10 closer in are more accurate?

11 A. They may be marginally more, more accurate.
12 Again, a forecast of tomorrow is probably somewhat
13 more accurate than a forecast a year from now. But
14 again, the objective is not to forecast what rates are
15 gonna be or what costs are gonna be tomorrow. The
16 objective is to project what costs are gonna be when
17 these rates are in effect.

18 Q. But you agree that that has to be based on
19 evidence, correct?

20 A. Which we have supplied substantial evidence
21 of that.

22 Q. But you agree that the evidence is less
23 accurate the further out you go in your forecast?

24 A. I mean, we're talking about relatively narrow
25 time gaps of more accuracy. Yeah, today versus a year

1 from now, yes. Six months versus 12 months, probably
2 not much difference. Twelve months versus 18 months,
3 not that much difference. Today versus 10 years from
4 now, yeah, probably a little bit of a difference.

5 Q. Are you familiar with Mr. Croft's testimony?

6 A. I am.

7 Q. Are you familiar with how he has shown that
8 even though he was comparing cases that weren't
9 forecasted as far out as this, that he has shown that
10 the Company's forecasting has been over-forecasted in
11 most times?

12 A. I know that Mr. Croft made that
13 representation. And Mr. McDougal has addressed that
14 in his surrebuttal testimony, and you may want to ask
15 those questions of Mr. McDougal.

16 Q. Okay. Mr. Taylor, on page 5 of your rebuttal
17 you have a Q&A talking about the Wyoming case?

18 A. Okay.

19 Q. And then you go to page 7 and you show this
20 graph. And you have suggested -- when other parties
21 have brought up Wyoming you suggested that we were at
22 fault for not also considering Oregon and California.
23 Is that an accurate representation?

24 A. Well, I said if you're gonna compare you
25 ought to compare everything, not just one select piece

1 of information. However, none of those should be the
2 deciding factor here. This Commission ought to make
3 decisions based upon the evidence in this case.

4 Q. Okay. Well, Oregon and California are in the
5 west of your service territory, correct?

6 A. Yes, they are.

7 Q. And Utah and Wyoming are in the east portion
8 of your service territory?

9 A. That's correct.

10 Q. Now, according to your chart and the
11 information you've provided, the filing date for
12 Oregon and California was -- California was over a
13 year ago? Before -- I'm sorry. Over a year before
14 the filing date of the Utah case. It was 14 months, I
15 think?

16 A. That's correct.

17 Q. And the Oregon filing date was 10 1/2 months
18 before the Utah filing date; is that correct?

19 A. Yes.

20 Q. And the Wyoming filing date was two months
21 before the Utah filing date, correct?

22 A. That's correct.

23 Q. Can you see why parties might have thought
24 that Wyoming had some similarity to Utah?

25 A. Well, I can see why they might think that.

1 But again, that's not the driving factor in how
2 decisions are made here in Utah.

3 Q. How are the decisions made here in Utah?

4 A. I mean, this Commission is gonna make
5 decisions based upon the evidence presented before it,
6 and in compliance with the laws and statutes of the
7 State and Utah and the authority they've been given to
8 do that.

9 Q. Okay. Let's go back to the rate effective
10 period. Rate effective period as compared to Oregon
11 and California. Since the rate effective period in
12 California and Oregon was January 1, do you agree it's
13 about 8 1/2 months different from the rate effective
14 period in Utah?

15 A. Yes.

16 Q. And the rate effective period in Wyoming,
17 based on Mr. Dixon's testimony in Wyoming which is
18 attached to Mr. Brubaker's rebuttal, is
19 September 21st; is that correct?

20 A. That's when it will begin. It'll probably be
21 September 21st of 2011.

22 Q. And what's the rate effective date for Utah?

23 A. That's the Utah date. I --

24 Q. Oh, I'm sorry. I thought that the Utah date
25 was the 22nd?

1 A. It could be. It's in that general time
2 frame.

3 Q. Yeah.

4 A. They're very --

5 Q. I think they're one day apart.

6 A. They're very close.

7 Q. Okay. And so can you see why we might think
8 that that would be a similarity to look at?

9 A. I can see why you might consider that, yes.
10 Our point of this graph was to show that in other
11 states it's common practice to have the rate effective
12 period and the test period aligned in time. That's --

13 Q. In California and Oregon?

14 A. That's correct.

15 Q. But has that happened in Utah?

16 A. It hasn't happened yet. We're hoping for it
17 to happen here. We think that's the right thing for
18 it to happen. To get those periods as closely lined
19 as possible.

20 Q. Are the rates in California comparable to
21 Utah?

22 A. I don't know specifically what rates are in
23 California versus Utah.

24 Q. Are you suggesting that maybe we should look
25 at California and Oregon for our ratemaking principles

1 or ratemaking policies?

2 A. I'm just simply showing an example. That if
3 you're gonna select the test period chosen in one
4 state, you should look at the test period in other
5 states. I don't know that you need to draw that
6 example beyond that.

7 Q. Okay. Well, I think that I've shown you --
8 do you agree I've shown you that the parties found a
9 good reason to have more -- find more similarity
10 between the Utah and Wyoming?

11 A. I think you've indicated why you felt that
12 way. You might suggest that if -- if Wyoming is the
13 determining factor perhaps we should have asked for a
14 17 percent rate increase in Utah, as we did in
15 Wyoming.

16 If that's what we're gonna base -- if we're
17 gonna base Utah on Wyoming, perhaps that's what we
18 should have done.

19 Q. Are you going to?

20 A. No. We provided evidence in this case here.
21 I'm just saying if you want to compare to Wyoming you
22 ought to compare to all of that, not just a piece of
23 it.

24 Q. If the Company was to file a new rate case on
25 the day after rates -- the rate order came out in this

1 case and you proposed a rate effective period of --
2 I'm sorry, and you proposed a test period of calendar
3 2012, how would that affect your recovery of your
4 costs?

5 A. If we filed a rate case when?

6 Q. The day after the order in this case came
7 out.

8 A. Okay. So if we filed a test period in Sep --
9 the end of September of 2011. And we selected a?

10 Q. Test period of 2012.

11 A. Okay.

12 Q. Calendar year 2012. How would that affect
13 your recovery of your costs?

14 A. Well, we would be say -- we would be
15 projecting costs for a new test period. And we would
16 build -- under that hypothetical we would, we would
17 build our rate case on the projection of costs for
18 that time frame.

19 Q. And if you had been limited to the 2011
20 calendar year in this case, would that help ameliorate
21 the costs that you feel that you're going to miss out
22 for a 2011 case?

23 A. No. Not at all.

24 Q. Is it true that the Company can file a rate
25 case pretty much when it wants, within some

1 limitations?

2 A. Well, certainly within limitations, as I
3 covered in my testimony. But we, we can file test
4 periods as allowed by statute. We can file test
5 periods when we want to project our costs. But
6 clearly the past experiences are we can't just file it
7 whenever we want.

8 Q. No, but if you waited until a final order was
9 issued you could file for a rate case. And you could
10 select a test period that was closer in time, but yet
11 a calendar year of 2012, and still collect most of the
12 costs that you're concerned about by using the 2011
13 case in this case; isn't that correct?

14 A. No, I disagree with that. I mean, let's just
15 put this in perspective. If through massive effort we
16 filed a rate case within a couple weeks of when this
17 one ends, so we file it the first of October? That
18 case would not put rates into effect for another eight
19 months, which I think is May of 2012. Which is
20 roughly very close to the end of the test period we
21 projected for this case.

22 So I don't see how that would change the need
23 to use the test period we projected here. Just
24 because you file cases more frequently doesn't change
25 the need for having the test periods in those cases

1 reflect the costs that look out to when those rates
2 are in effect.

3 MS. BALDWIN: I have no other questions.

4 CHAIRMAN BOYER: Okay. Thank you,
5 Ms. Baldwin.

6 Let's turn now to Commissioner questions.
7 Commissioner Allen?

8 COMMISSIONER ALLEN: I have a question.
9 Previously, and I believe in this case also, the
10 Company's asserted that they've been under-earning
11 relative to their allowed rate of return. And I just
12 don't know if, in my mind, if I had this question
13 answered in reading and reviewing.

14 In the past the test year that we've
15 selected, has that been -- has that had material
16 impact on your ability to recover, or is it all the
17 other issues that have cropped up regardless of that
18 test period? How important, how material is the test
19 period?

20 THE WITNESS: Well, clearly if costs are
21 projected to increase over time, then when you pick a
22 test period that starts and ends earlier that's gonna
23 have an impact on the ability to recover those costs
24 that will actually be there. So it's had a
25 significant impact.

1 COMMISSIONER ALLEN: And I'm relating -- I'm
2 discussing specifically the past cases. That's an
3 issue the Company has reviewed, and that's the test
4 year? Was a material contributor; is that what you're
5 saying?

6 THE WITNESS: Yes.

7 COMMISSIONER ALLEN: Okay.

8 THE WITNESS: Certainly not the only
9 contributor, but it has been a material contributor.

10 COMMISSIONER ALLEN: Thank you.

11 CHAIRMAN BOYER: Commissioner Campbell?

12 COMMISSIONER CAMPBELL: I think there's a
13 little beating around the bush as far as what "rate
14 effective period" means. And maybe it's because
15 people have different definitions of that.

16 Would you please -- I -- as far as I'm aware,
17 I don't think the statute defines "rate effective
18 period." Are you aware if the statute does that?

19 THE WITNESS: It doesn't. We generally, we
20 generally use the one year after rates go into effect
21 as what we determine the rate effective period.

22 A strict definition I guess would be for the
23 whole period of time those rates are in effect. And
24 that could be for, you know, on some cases somewhat
25 less than a year, but pretty unlikely. And it could

1 be for more than a year.

2 COMMISSIONER CAMPBELL: So --

3 THE WITNESS: We generally use the one year
4 after rates change as our definition of that period.

5 COMMISSIONER CAMPBELL: And so why do you do
6 that? What's your basis for that?

7 THE WITNESS: I think it's because you also
8 use a test period concept when you set rates. I think
9 that's why we use that as our default definition.

10 COMMISSIONER CAMPBELL: You were asked a lot
11 of questions about used and useful, and I'm trying to
12 reconcile in my mind how forecasts and used and useful
13 work in tandem. But let me ask it this way.

14 I think some of the parties are suggesting a
15 December 2011 test period, so then we would have
16 average rate base at June 30. Is it your testimony,
17 then, that investments between June 30 and
18 September -- whenever rates are put into effect, then
19 that you would under-recover those systemically?

20 THE WITNESS: I think if you use a
21 December 2011 test period with an average rate base
22 that yes, you would under-collect for the investment
23 that has been in place during that time period. When
24 rates are in effect certainly.

25 COMMISSIONER CAMPBELL: So from your point of

1 view you have capital that's used and useful that
2 you're not getting full recovery from?

3 THE WITNESS: We have capital that's in the
4 ground up until mid-September 2011, and that will only
5 partially be recovered.

6 COMMISSIONER CAMPBELL: I understand.

7 CHAIRMAN BOYER: A couple of questions,
8 Mr. Taylor. How confident is the Company that the
9 projected capital investments will be in place and
10 used and useful during the rate effective period? And
11 in terms of permitting, and engineering, and
12 financing, and all that sort of thing.

13 THE WITNESS: We're -- that's the best
14 projection we can make. But we make that with the
15 confidence that that's what we intend to do.

16 CHAIRMAN BOYER: Can you give us any detail
17 as to what efforts have been undertaken to assure that
18 those things do actually take place and are
19 constructed and installed?

20 THE WITNESS: Well, the Company goes through
21 a very substantial budgeting process every year. And
22 these investments are part of that budgeting process.
23 The capital investment plan is part of that process.
24 So that's what this is built on, is what the Company
25 is projecting to spend and customers' needs through

1 that time period.

2 CHAIRMAN BOYER: Okay. And if they're not in
3 place and in service during the rate effective period
4 and if we were to approve the rather longer forecast
5 test period, what's the effect on customers?

6 THE WITNESS: Well, clearly any investment or
7 cost that proves to be different from what's reflected
8 in rates will have an impact on customers, whether
9 that be higher or lower. So yes, if the investment
10 falls somewhat behind -- or below that, then there
11 will be some recovery of investment that's not there.

12 Likewise, if --

13 CHAIRMAN BOYER: Or said another way,
14 customers will over-pay for that period of time?

15 THE WITNESS: For those particular
16 investments.

17 CHAIRMAN BOYER: For those particular?

18 THE WITNESS: At the same time there may be
19 other things that more than compensate for that where
20 costs are more than were projected. So overall you
21 need to look at what are the total costs and
22 investments in place when customers are taking
23 service.

24 The best comparison for that is when we file
25 our semiannual reports. If one of those reports were

1 to show that we were over-earning during some time
2 period, that would be evidence that perhaps customers
3 were being overcharged.

4 But I don't believe that has ever been the
5 case, and I don't suspect that ever will be the case.

6 CHAIRMAN BOYER: I had questions about the
7 Wyoming law with respect to forecasting, and I think
8 you've answered it but I want to make sure that I
9 understand.

10 Is it your testimony that your understanding
11 of Wyoming law is that there's no, there's no cap.
12 There's no limit on how far they can forecast into the
13 future. But in practice the Wyoming Commission has
14 never approved a forecast test period farther out than
15 12 or 13 months?

16 THE WITNESS: I don't know there's any
17 specific guidance in Wyoming law as to what test
18 period you can use. But practice it has been case
19 they have not allowed you to go out that far.

20 CHAIRMAN BOYER: And did that influence your
21 decision to at least accede to a shorter forecast
22 period in Wyoming, or --

23 THE WITNESS: Yeah, I think Mr. Dickman's
24 testimony says that we looked at those type of things.

25 CHAIRMAN BOYER: If the Company were to

1 prevail in this test period hearing today would it be
2 useful or do you think it would be essential,
3 helpful -- I don't know how you characterize it -- if
4 a class cost of service study was performed for some
5 base period, I guess, which to, to test?

6 For example, calendar year 2011 or something
7 like that. Is that something that would be, do you
8 think, essential to the interested parties --

9 THE WITNESS: Well, I --

10 CHAIRMAN BOYER: -- or useful, or not useful?

11 THE WITNESS: I'm not quite sure I'm tracking
12 what you're asking. Are you saying that once rates
13 are in effect if we file these periodically to just
14 check? Is that your question?

15 CHAIRMAN BOYER: No. I'm saying --

16 THE WITNESS: Or is it something different?

17 CHAIRMAN BOYER: -- should there be a
18 baseline?

19 THE WITNESS: I still am not sure what you
20 mean by "baseline." I want to be as helpful as I can,
21 but I'm not quite sure I understand your question.

22 CHAIRMAN BOYER: Well say, for example, we
23 were to approve, just hypothetically, we approved your
24 requested forecast test period. And at the same time
25 we require you to complete a class cost of service

1 study for some base period. Say 2011 or 2010.

2 THE WITNESS: Okay.

3 CHAIRMAN BOYER: 2010. Against which parties
4 can contest and so on. During -- you know, in the
5 process of this case and in the future would that be
6 useful or not useful?

7 THE WITNESS: If you believe it would be
8 useful, we would provide it.

9 CHAIRMAN BOYER: Will the test period we
10 approve influence the timing of your next rate case?
11 Mr. Walje has been quoted in the process saying that
12 you're going to be filing annual rate cases for the
13 foreseeable future.

14 THE WITNESS: Rate cases will be filed based
15 upon projected investment and expenses compared with
16 projected revenues. So the selection of a test period
17 that looks out -- this, this period I'm sure will have
18 some impact upon when the next rate case is filed.

19 If you select an earlier-in test period it's
20 more likely that we will file sooner and more
21 frequently. I can't assure, however -- I cannot
22 assure that if you pick this test period that doesn't
23 mean we'll file again in a year.

24 CHAIRMAN BOYER: Yeah, I'm not asking you to.
25 But it would seem to me that if you had a longer

1 forecast past period it would obviate the need for,
2 you know, a sooner rate case filing.

3 THE WITNESS: You're less likely to file
4 again as soon, that's correct.

5 CHAIRMAN BOYER: Okay, that's all the
6 questions I had.

7 Redirect, Mr. Monson?

8 MR. MONSON: Thank you.

9 REDIRECT EXAMINATION

10 BY MR. MONSON:

11 Q. Mr. Taylor, I think this has become clear in
12 the discussion, but Mr. Dodge asked you about why not
13 just project five years out. Would that be allowed in
14 Utah?

15 A. Well, it's not allowed by statute, and it
16 wouldn't align with when rates are gonna be in effect.

17 Q. Mr. Dodge also asked you some questions about
18 incentives. And I took from his question he was
19 saying that the Commission should provide the Company
20 an incentive to do -- to be more efficient by setting
21 rates lower than the costs expected. Is that your
22 understanding --

23 MR. PROCTOR: Objection.

24 Q. (By Mr. Monson) -- of how that incentive
25 should work?

1 MR. PROCTOR: Objection, it's leading.
2 Objection, it assumes Mr. Monson's interpretation of a
3 question.

4 CHAIRMAN BOYER: I sustain the leading
5 portion of that objection.

6 Q. (By Mr. Monson) Mr. Taylor, do you believe
7 that setting rates lower than the costs that are
8 anticipated is an appropriate incentive to the
9 Company?

10 A. No, I don't. And I think I made that clear
11 in my testimony.

12 Q. And does the Company still have incentives
13 during the course of a rate case, even if, even if
14 costs -- even if rates are set based upon projected
15 costs, doesn't it still have an incentive to try to
16 reduce costs so that it can earn a higher return?

17 A. We're always going to operate this Company as
18 efficiently and effectively as we can.

19 Q. You were asked some questions about the Major
20 Plant Addition Statute and whether it reduced risk. I
21 want to ask you, first of all, what portion of your
22 investment is covered by the Major Plant Addition
23 Statute? Your projected investment?

24 A. Well, we show that, again, between June 2010
25 and June 2012 there's about \$3.6 billion of

1 investment. Of that, 800 million has already been
2 reflected in a major plant addition filing. Of the
3 remaining investment there's only two projects
4 totaling less than 300 million that would qualify for
5 that.

6 So I think that's about, what, 20 -- between
7 20 and 25 percent of the total capital investment over
8 that time period. But, you know, of the remaining
9 investment it's in the high 90 percent that would --
10 that would not. So it's a very small percentage.

11 Q. And so if you, if you can reduce the risk of
12 recovering your costs with regard to major plant
13 additions, does that reduce your risk of recovering
14 costs with regard to all the other aspects of your
15 revenue requirement?

16 A. It would only apply to that specific
17 investment.

18 Q. You were also asked questions about customer
19 risk. If the Company fails to provide service in a
20 reliable manner is that a customer risk?

21 A. I believe that would be a customer risk, yes.

22 Q. If the Company fails to make investments
23 needed for facilities to provide service, is that a
24 customer risk?

25 A. I believe that would be a customer risk too,

1 yes.

2 Q. Ms. Baldwin asked you some questions about
3 your projections for assets that are gonna be
4 constructed during the test period you propose. Are
5 there significant assets that are projected during
6 that test period that are already in construction?

7 A. Yeah. Many of these projects have very long
8 lead times and very long construction times, so many
9 of those projects are already underway.

10 Q. So if it's a question of putting in a new
11 distribution line or something, that might be
12 something that you don't know for sure is gonna
13 happen; is that right?

14 A. Yeah. If it's a very small localized
15 project, the timing on those could shift a little bit.
16 Or priorities could change and something else could be
17 done in its place. But if you're talking about a
18 major investment, a power plant or a major
19 transmission line investment, those things are well
20 underway.

21 Q. You were also asked questions by Commissioner
22 Campbell about, about the rate base that would be in
23 effect using different test periods. Have you
24 provided evidence in your direct testimony regarding
25 that question?

1 A. Yes. I walked through a number of scenarios
2 about the portion of rate base that would be recovered
3 in rates if we use those periods.

4 Q. And you're referring to Table 3 on page 7 of
5 your direct testimony?

6 A. That would be one place, yes.

7 Q. You were also asked questions about
8 forecasting and projections. And I think you said in
9 response to those questions -- you were asked a
10 question about whether a projection for October would
11 be -- of this year would be a little bit, you know,
12 less accurate than one currently; is that right?

13 A. Yeah. I made some representations that I
14 might could project next month better than a year from
15 now.

16 Q. Okay. And what is your understanding of what
17 we're trying to project for this case?

18 A. We're trying to project as best we can the
19 investments and costs and, in other people's words,
20 "other conditions" that will be there when the rates
21 at the end of this case will be in effect.

22 So I'm not trying to project costs for next
23 week or next month. I'm trying to project costs for
24 the period when rates are gonna be in effect.

25 MR. MONSON: Thank you. That's all I have.

1 CHAIRMAN BOYER: I assume Mr. McDougal will
2 be the next witness, Mr. Monson?

3 MR. MONSON: Yes.

4 CHAIRMAN BOYER: All right. Let's excuse
5 Mr. Taylor. Thank you.

6 And let's take a ten-minute recess and then
7 we'll begin with Mr. McDougal.

8 (A recess was taken from 10:18 to 10:32 a.m.)

9 CHAIRMAN BOYER: Mr. Monson, want to call
10 your next witness, please?

11 MR. MONSON: Yeah. Mr. McDougal, please.

12 (Mr. McDougal was sworn.)

13 CHAIRMAN BOYER: Thank you. Please be
14 seated.

15 STEVEN R. McDOUGAL,
16 called as a witness, having been duly sworn,
17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MONSON:

20 Q. Please state your name for the record.

21 A. Yes. My name is Steven R. McDougal.

22 Q. And what is your position with, and who is
23 your employer?

24 A. I'm employed by Rocky Mountain Power as the
25 director of revenue requirements.

1 Q. Did you prepare and file in this case direct
2 testimony dated January 24, 2011, rebuttal testimony
3 dated March 17, 2011, and surrebuttal testimony dated
4 March 21, 2011?

5 A. Yes, I did.

6 Q. And do you have any corrections you wish to
7 make to that testimony?

8 A. There is one correction I would like to make,
9 and that's to a table in my rebuttal testimony on
10 page 4. The numbers in the first column on -- well,
11 it's the second column over. That 97 should really be
12 96. And the 24 should be 23.

13 Which would make those two rows the same in
14 both the second and the fourth column.

15 Q. Any other corrections?

16 A. No, there is not.

17 Q. And if I were to ask you the questions set
18 forth in your testimony today would your answers be
19 the same?

20 A. Yes, they would.

21 MR. MONSON: We would offer Mr. McDougal's
22 direct, rebuttal and surrebuttal testimony on test
23 period issues.

24 CHAIRMAN BOYER: Are there objections to the
25 admission of Mr. McDougal's testimony? Prefiled

1 testimony?

2 They are admitted, then. Both the direct,
3 rebuttal, and surrebuttal are admitted.

4 (Mr. McDougal's direct, rebuttal, and
5 surrebuttal testimony was admitted.)

6 MR. MONSON: Thank you.

7 Q. (By Mr. Monson) Mr. McDougal, have you
8 prepared a summary of your testimony?

9 A. Yes, I have.

10 Q. Would you present that?

11 A. Yes. I filed three pieces of testimony, as
12 has already been noted. One, I filed my direct
13 testimony, which covered the revenue requirement in
14 this case, including the amount the Company was
15 requesting. And as part of that I did address test
16 period issues. I have also filed rebuttal and
17 surrebuttal on test period issues alone.

18 If we look at the three pieces of testimony,
19 my first one, the direct testimony, as I said, it
20 covers the revenue requirement in the case. It also
21 covers the need for the July 1, 2011, through the
22 June 30, 2012, test period.

23 And I discuss the results for that test
24 period, along with how they are calculated. Basically
25 we started with the June 30, 2010, results. Walked it

1 forward, using adjustments, to the period ending
2 June 30, 2012.

3 I also describe that the Company's objective
4 in determining the test period is to really come up
5 with those costs that we believe give us an
6 opportunity to recover our prudently-incurred costs.
7 And in looking at that we determined that the June 30,
8 2012, test period was the period that gave us that
9 opportunity.

10 We also looked at the filing requirements and
11 filed the alternative test period of June 30, 2011, as
12 dictated by the filing requirements.

13 Beyond satisfying the fundamental principle,
14 the Company also considered the Utah statute, as
15 described by Mr. Taylor, which states:

16 "If in the Commission's
17 determination of just and reasonable
18 rates the Commission use -- the
19 Commission uses a test period the
20 Commission shall select a test period
21 that, on the basis of evidence, best
22 reflects the conditions the public
23 utility will encounter during the period
24 when the rates determined by the
25 Commission will be in effect."

1 And that was the underlying principle in
2 determining the test period starting July 1, 2011.

3 We also, as part of my direct testimony,
4 addressed the eight factors that this Commission
5 identified in the 2004 case to address future test
6 periods. I won't go into all of those, but that is in
7 my direct testimony.

8 On my test period rebuttal testimony I
9 explained why, again, the test period from July 1,
10 2011, to June 30, 2012, better reflects the conditions
11 the Company will experience during the rate effective
12 period. And why that is a better rate reflection than
13 the calendar year 2011.

14 I address the adoption of the EBA and the MPA
15 statutes and how they do not eliminate the need for
16 our test period. I also address why using a calendar
17 year is not necessarily better or more favorable than
18 using a test period ending in June, as proposed by
19 some parties.

20 On surrebuttal I explained our positions
21 regarding Mr. Croft's analysis. We believe that his
22 analysis supports the DPU's conclusion that there are
23 adjustments that other parties can propose to our test
24 period, but the test period itself is the correct test
25 period to use.

1 In summary, the Company believes that the
2 projected results for the period from July 1, 2011,
3 through June 30, 2012, is the test period which best
4 reflects the conditions that we anticipate during the
5 period that rates from this case will be in effect.
6 Thank you.

7 Q. Does that conclude your summary?

8 A. Yes, it does.

9 MR. MONSON: Mr. McDougal is available for
10 cross examination.

11 CHAIRMAN BOYER: Thank you, Mr. McDougal.
12 Ms. Schmid?

13 MS. SCHMID: Thank you.

14 CROSS EXAMINATION

15 BY MS. SCHMID:

16 Q. Mr. McDougal, if the Commission ordered the
17 Company to use a different test period, for example
18 the calendar year 2011 test period, what steps would
19 the Company have to do to refile?

20 A. Well, first off if we were to use that period
21 we would start with the same base period, which would
22 be the 12 months ended June 30, 2010. So we would use
23 that same base period.

24 We would then have to start to re-forecast
25 all of the costs using Utah-specific adjustments and

1 the Utah rules. So we would have to look at all of
2 those. Recompute net power costs. Recalculate all of
3 our rate base and taxes. And basically redo the
4 adjustments as filed.

5 Q. Do you have an estimate of how long that
6 would take?

7 A. Where we aren't updating the base, two weeks
8 would be a really hard push. And would give very
9 little time for review or testimony. In looking at it
10 we might be able to do the two weeks. Our biggest
11 problem will be redoing the cost of service and
12 pricing schedules within that time period.

13 Q. Thank you. Do you have Division witness Doug
14 Wheelwright's testimony with you?

15 A. I do.

16 Q. Could you please turn to Exhibit 3.1, which
17 is the PacifiCorp Net Power Cost Summary attached to
18 his direct testimony?

19 MS. SCHMID: I do have copies if anyone needs
20 the specific page.

21 THE WITNESS: Okay.

22 Q. (By Ms. Schmid) Mr. McDougal, if we look at
23 the historical information, both short-term and
24 long-term sales have been decreasing. Why is this
25 occurring?

1 A. I would have to talk to Mr. Duvall to find
2 out the exact reason why it's happening. I know that
3 what we do is in doing the net power cost run they
4 look at the long-term and the short-term sales. And
5 basically the short-term have to fill the gaps.

6 I would venture a guess that part of the
7 reason is the recent acquisitions of new power plants.
8 I'm sure that has added to it. But as far as a full
9 description, I do not know all of the other reasons.

10 Q. Can you state whether or not you expect this
11 trend to continue, or is that a question better for
12 Mr. Duvall?

13 A. I think that's the kind of question that
14 would be better addressing the revenue requirement
15 phase with Mr. Duvall.

16 Q. Next turning to the QF contracts. The
17 Company's proposed test year excluded some of the QF
18 contracts in the last six months of the period because
19 the contracts expire in December 2011. Are you
20 familiar with those contracts?

21 A. Briefly, yes.

22 Q. Do you anticipate that some or all of these
23 contracts will be renewed and extended until 2012?

24 A. What we do know about the contracts is that
25 they are expiring. There is no contractual right we

1 have where parties are going to have to sign us new
2 deals or going to have to give us a set price. So if
3 those new deals do occur, they will likely be at
4 market prices. Which, as I understand the grid run,
5 it balances based upon market prices.

6 Q. Do you know if this same quartet of
7 contracts, which assume with me expired in 2002, were
8 renewed in 2003?

9 A. I would -- I do not know. But again, those
10 are all issues that I think can be addressed and
11 should be addressed in the revenue requirement phase
12 of the case because Mr. Duvall has the experience, he
13 knows his net power costs, he knows what he's assuming
14 in the grid run.

15 Q. I'll save that -- those for him.

16 A. Okay.

17 Q. Turning to short-term and balancing
18 purchases -- and please let me know if I should have
19 saved this one for him as well. In the short-term
20 purchase revenue forecast are electric swaps -- what
21 is included?

22 A. I am not sure exactly what categories have
23 been summarized here to come up with that short-term
24 firm purchase line.

25 Q. Do you know if electric swaps are included?

1 A. I do not. I know they're included in the net
2 power cost run. I'm just not sure which of these
3 categories they are summarized in.

4 Q. If we turn to DPU Exhibit 3.3, which is
5 attached to Mr. Wheelwright's direct testimony, there
6 is a negative 61.7 million listed for electric swap
7 transactions. Can you explain how you could get a
8 negative amount in this purchase category, or is that
9 another one for Mr. Duvall?

10 A. It would be another one for Mr. Duvall.

11 Q. Okay.

12 A. I know it occurs when you buy swaps then the
13 value of the swaps can go either direction. But he
14 would know the details on those.

15 Q. Thank you very much, I will revisit this with
16 him.

17 A. Okay.

18 CHAIRMAN BOYER: Mr. Proctor, cross
19 examination?

20 MR. PROCTOR: Thank you, Mr. Chairman.

21 CROSS EXAMINATION

22 BY MR. PROCTOR:

23 Q. Mr. McDougal, you were asked questions about
24 if you were to refile on a calendar year 2011 test
25 period. Would you summarize your testimony on the

1 basis that it would be difficult?

2 A. It would be somewhat time consuming, yes.
3 But, you know --

4 Q. Anyway --

5 A. -- time -- difficult -- it will take time,
6 but it's not going to be something that's, you know,
7 technically challenging.

8 Q. Okay. Now, within the statute that defines
9 what a test period or test is to be, and that is one
10 which best reflects the conditions in the rate
11 effective period, is there anything within that
12 statute that says that having to refile is also an
13 issue for this Commission?

14 And if you -- if they feel it's difficult or
15 time consuming they don't have to -- they can't make
16 you do it?

17 A. There is nothing I'm aware of. I do know
18 that we have the Commission rule stating what we have
19 to file with it, but I'm not aware of anything that
20 would preclude this Commission from deciding something
21 else.

22 Q. And the fact that you would have to refile in
23 fact is not a consideration at all as to whether one
24 test period best reflects the conditions during the
25 rate effective period or another best reflects; isn't

1 that true?

2 A. Correct. Having to refile is not part of the
3 definition of "best reflects."

4 Q. So to that extent your concerns for the time
5 being -- that would be used to refile and just the
6 necessity of having to redo cost of service studies,
7 those are irrelevant to the decision that the
8 Commission is being asked to make here today, aren't
9 they?

10 A. Right. The Commission should determine based
11 upon what's going to best reflect the conditions
12 during the period that rates are in effect.

13 Q. Right. And Company's need to refile is
14 irrelevant to that question, isn't it?

15 A. I would think so.

16 MR. PROCTOR: Thank you, Mr. McDougal.

17 CHAIRMAN BOYER: Thank you, Mr. Proctor.
18 Mr. Dodge?

19 MR. DODGE: Thank you, Mr. Chairman.

20 CROSS EXAMINATION

21 BY MR. DODGE:

22 Q. Mr. McDougal, I'd just like to focus for a
23 moment on the definition that you've testified to for
24 determining test period. Your testimony focuses
25 primarily on the costs and expenses that you expect

1 the Company to expend during the period beginning in
2 September 2011, correct?

3 A. Correct.

4 Q. The definition talks about the test period
5 that best reflects conditions that a public utility
6 will encounter. Encounter suggests more than just --
7 conditions that you will encounter suggests much more
8 than simply how much money you're going to spend, do
9 they not?

10 A. I think there's a variety of things that can
11 be part of the conditions, such as the DPU has asked
12 about expiring contracts. We know they will expire.
13 We know that the condition in the rate effective
14 period is they won't be there.

15 So there is a whole variety of conditions,
16 yes, that need to be reflected.

17 Q. And foreseeable and unforeseeable conditions
18 that will be encountered? That's part of it, right?
19 We're trying to pick the test period that will give us
20 the best shot at guessing at what conditions you're
21 going to encounter. As opposed to just costs you're
22 going to project to spend, right?

23 A. I would agree. We're trying to look at the
24 conditions. So what we're trying to really do is say,
25 Okay, when are rates going to be in effect? What

1 period of time will that be? And what do we
2 anticipate during that period of time?

3 So I think you've got to look at those
4 conditions. What changes do you know are going to
5 occur? What changes will likely occur? You know,
6 much as you plan for any future event, you've gotta
7 look at what is anticipated and what you have to plan
8 for so that you can be prepared for that period of
9 time.

10 MR. DODGE: Thank you. I have no further
11 questions.

12 CHAIRMAN BOYER: Ms. Baldwin?

13 CROSS EXAMINATION

14 BY MS. BALDWIN:

15 Q. Mr. McDougal, if you were asked to redo the
16 forecast for 2011 calendar year, since that's the one
17 you used in Wyoming would you be updating any of the
18 forecast?

19 A. Yeah, there would be -- definitely be changes
20 as compared to Wyoming. Because there are certain
21 things ordered by this Commission, such as the
22 averaging of bad debts or the way we look at other
23 costs, and certain averaging and certain conditions
24 which are different from state to state.

25 So we would have to update what we did in

1 Wyoming for the Utah-specific policies, Utah-specific
2 amortizations, and for any known changes since that
3 case was filed.

4 Q. With respect to -- are you familiar with the
5 Naughton scrubbers? Is that how you pronounce that?

6 A. Yes, I am.

7 Q. And I was wondering, how are they going to be
8 dealt with in the Wyoming case? This idea that
9 there's only partial recovery if you have a 2011
10 calendar test year?

11 A. Correct. They are only partially, you know,
12 included in that case.

13 Q. And have you raised that as an issue for
14 Wyoming?

15 A. In the Wyoming case?

16 Q. Right.

17 A. No.

18 Q. And is there any concern about not being able
19 to recover from Wyoming ratepayers about the Wyoming
20 Naughton scrubbers?

21 A. Yes, there is. There, there's always
22 concern. In all states we would like to use test
23 periods that completely align with the rate effective
24 period. If you look at that exhibit that I just
25 corrected, it's the best example of the Naughton

1 scrubbers.

2 If you look at that exhibit, what I try
3 showing there in that table on page 4 of my rebuttal
4 testimony, Naughton Unit 2 flue gas is scheduled to go
5 into service in November.

6 If we included it for the time it's actually
7 in service, which would require an MPA, and if we
8 could file it for that date it went in service,
9 looking at the 12 months after that it's really going
10 to be in at 157 million part of the year, which is
11 about 131 million average.

12 Using the test period proposed by the Company
13 we would get recovery or include in rate base
14 approximately 96 million. You know, which is probably
15 about 75 percent of the total. If we were to go back
16 to the test period proposed for calendar year 2011 we
17 would only include 23 million for that scrubber.

18 So even though the scrubber were to go in
19 service in November and the customers would get
20 benefits of that, they're gonna be paying very little
21 for it. And the Company's going to under-recover in
22 the year that the rates are in effect.

23 Q. Could you -- isn't it true you could file for
24 an MPA case at the end of September?

25 A. We could file for an MPA case. There's, you

1 know, differing things. If we filed for an MPA case
2 in the end of September we could file for this
3 specific unit and get it in service. It would take
4 several months. I think Dr. Zenger actually has a
5 table where she's shown what it would take.

6 But at the same time if we file for that
7 major plant addition in September, does that mean we
8 have to delay the next rate case? And so even though
9 an MPA case might reduce the risks associated with
10 Naughton's, you know, Unit 2 flue gas, it might
11 increase the under-recovery associated with other
12 assets.

13 So there are trade offs that we would have to
14 look at if we did that.

15 Q. So I misunderstood your question then, I
16 guess, in the surrebuttal. I thought that your
17 question was that if this case were outstanding and
18 had not received an order, I thought you were asking
19 whether you could file an MPA case?

20 A. That is one of the questions we have, is can
21 we file an MPA and have -- can we have an MPA case
22 outstanding at the same time as a rate case is
23 outstanding. And that's -- from the Company's
24 perspective we believe it's allowed under statute, but
25 we believe it's something that should be clarified.

1 Q. But that -- is that different from filing an
2 MPA case after a rate case is done, but while the MPA
3 case is ongoing filing another rate case?

4 A. I think both. Because, you know, one of the
5 questions is, could we take this Naughton scrubber,
6 could we remove it from the test period in this case
7 and elect to file that separately as a major plant
8 addition, or where it is in the test period do we have
9 to include it in this case?

10 That's a decision that I really don't know
11 the answer to.

12 MS. BALDWIN: I have no further questions.

13 CHAIRMAN BOYER: Thank you, Ms. Baldwin.

14 Commissioner Allen, any questions?

15 COMMISSIONER ALLEN: Yes, I have a question.
16 Thank you, Mr. Chair.

17 On page 3 of your surrebuttal testimony,
18 Mr. McDougal, you have a table that talks -- that
19 displays the Company's actual return on equity. And
20 I'm just curious, since we're missing the calendar
21 year 2010 do you have -- I realize you only filed this
22 a few days ago.

23 THE WITNESS: Correct.

24 COMMISSIONER ALLEN: But what's the current
25 trend of your actual return on equity? You must have

1 some quarterly reports, some internal -- maybe you've
2 had an update in your accounting system since you last
3 visited this. Can you characterize where you're at
4 with your ROE these days?

5 THE WITNESS: I think we're probably -- and
6 this is mostly a guess -- we currently, just to let
7 you know, for our 2010 data we now have the total
8 company results. We're right now developing the
9 factors, because we just got our normalized factors in
10 for the December test period.

11 So I have not ran any numbers. I really
12 think it's probably gonna be comparable to what the
13 prior year was. I think because of some of the
14 deferrals it might go up. It might be in the upper
15 eights, it might be in the nines. But that's a
16 preliminary guess on my part.

17 COMMISSIONER ALLEN: I understand.

18 THE WITNESS: If you will.

19 COMMISSIONER ALLEN: I understand. Just
20 wanted to know what you had. Thank you.

21 CHAIRMAN BOYER: Commissioner Campbell?

22 COMMISSIONER CAMPBELL: Let's go back to the
23 table that you were talking about on page 4 of your
24 testimony. And I guess my question is, in a period of
25 growing rate base how will you ever earn your return?

1 THE WITNESS: I think in a period of growing
2 rate base if you have a test period that completely
3 aligns with a rate effective period -- so if we were
4 to use the 12 months ending September 22nd or 21st,
5 2012 -- and the projections turned out to be
6 completely correct, you could recover it.

7 The only other way I could think of that you
8 could do it is if you were to change rates every month
9 for changes in rate base. And that would be
10 burdensome on us and very confusing to customers.

11 CHAIRMAN BOYER: Okay. Well, Commissioner
12 Campbell asked my question.

13 Redirect, Mr. Monson?

14 MR. MONSON: Yes, I just have one question.

15 REDIRECT EXAMINATION

16 BY MR. MONSON:

17 Q. It's about this relationship between -- maybe
18 you've already explained everything you want to say
19 about the MPA case versus the rate case. Is there --
20 what is it the Company doesn't understand? And if
21 you've already explained it, you can say that.

22 A. I think I've already explained it. It's just
23 we are not sure, in talking with all parties, can we
24 pull an asset from a rate case and file it separately.
25 And can we file at the same time using a major plant

1 addition for part of the assets. And we're just a
2 little unclear on that issue.

3 Q. And that lack of clarity is based upon, I
4 think you said discussions with other parties and
5 their positions; is that right?

6 A. Yeah. We've had discussions, and I don't
7 think there's one consensus.

8 MR. MONSON: That's all.

9 CHAIRMAN BOYER: Okay. Thank you,
10 Mr. McDougal. You are excused.

11 Mr. Monson, do you have other witnesses?

12 MR. MONSON: We don't.

13 CHAIRMAN BOYER: Okay. Ms. Schmid?

14 MS. SCHMID: Thank you. The Division would
15 like to call Dr. Joni Zenger as its witness. As its
16 first witness.

17 (Dr. Zenger was sworn.)

18 CHAIRMAN BOYER: Thank you, please be seated.

19 JONI S. ZENGER, Ph.D.,

20 called as a witness, having been duly sworn,

21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. SCHMID:

24 Q. Good morning. Could you please state your
25 name, employer, title, and business address for the

1 record?

2 A. Joni S. Zenger, technical consultant for the
3 Utah Division of Public Utilities. The address is 160
4 East 300 South, in Salt Lake City, 84114.

5 Q. On behalf of the Division have you
6 participated in this docket?

7 A. Yes, I have.

8 Q. And did that participation include not only
9 the preparation of your own testimony, but reviewing
10 and working with the other two Division witnesses:
11 Mr. Wheelwright and Mr. Croft?

12 A. Yes.

13 Q. Do you have any changes or corrections to
14 your testimony?

15 A. No.

16 Q. If you were asked the same questions today
17 would your answers as set forth in your prefiled
18 testimony be the same?

19 A. Yes.

20 MS. SCHMID: With that, the Division would
21 like to move the admission of DPU Exhibit No. 1.0, the
22 direct testimony of Dr. Zenger, DPU Exhibit No. 1R,
23 the rebuttal prefiled test period testimony that was
24 filed on March 17th of this year, and then finally the
25 surrebuttal testimony of Dr. Zenger, DPU Exhibit

1 No. 1.OSR, that was filed on March 21st of this year.

2 CHAIRMAN BOYER: Are there any objections to
3 the admission of Dr. Zenger's direct, rebuttal, and
4 surrebuttal prefiled testimony?

5 Seeing none, they are admitted.

6 (Dr. Zenger's direct, rebuttal, and
7 surrebuttal testimony was admitted.)

8 MS. SCHMID: Thank you.

9 Q. (By Ms. Schmid) Dr. Zenger, do you have a
10 summary?

11 A. Yes, I do.

12 Q. Please proceed.

13 A. Good morning. As you read in Mr. Croft,
14 Mr. Wheelwright, and my respective testimonies, the
15 Division considered many factors in making a test
16 period determination in this case. The Division put
17 forth empirical evidence to support its position.

18 The Division's primary objective was to meet
19 the statutory requirement of selecting the test period
20 that best mirrors the conditions the Utility will
21 encounter in the rate effective period.

22 The Division did not oppose the Company's
23 proposed July 1, 2011, through June 30, 2012, test
24 period, because when appropriate adjustments are made
25 throughout the course of this rate case process the

1 Division believes the Company's proposed test period
2 satisfies the statutory requirement. Further, the
3 test period filed by the Company complies with the
4 Commission's order.

5 The Division's preliminary estimates indicate
6 the proposed test period capital additions include
7 significant environmental pollution control equipment
8 for scrubbers, that were briefly mentioned here, the
9 Naughton Unit 1 and Unit 2.

10 If the Commission chooses to use a calendar
11 year 2011 test period in this case rather than the
12 Company's June 2012 test period, then approximately
13 \$217 million of this equipment on a total company
14 basis and 94 million on a Utah company basis would not
15 be included in rates.

16 Again, these are preliminary findings. But
17 the Division believes that there may be potentially
18 additional plant included in this case that is
19 required to meet reliability and environmental
20 standards, much of which the Company may not have
21 discretion as to whether or when to put that plant
22 into service.

23 To date the Division has identified the only
24 two Naughton scrubbers as qualifying for alternative
25 cost recovery and during the MPA statute.

1 Additionally, the Company may face stiff penalty
2 payments if it is unable to meet these compliance
3 requirements that have been put in place.

4 At this stage of our due diligence review we
5 believe that many of these pollution control and other
6 investments -- that these were just shown in Dave
7 Taylor's testimony on Table 6 -- that these may be
8 required for the safe and reliable operation of the
9 Company's bulk electric power system.

10 On the one hand, if the Company has little or
11 no discretion in the timing of these plant additions
12 in order to meet system reliability or other
13 standards, the Company could incur these costs without
14 a reasonable chance for recovery if a closer-in test
15 period were used for the case.

16 On the other hand, if, because a closer-in
17 test period is used, the Company postpones these
18 investments, this could be to the detriment of
19 reliability or other factors, or even public health
20 concerns, and customers may well not be served.

21 In either case, the public interest may not
22 be met with the closer-in test period. Again, the
23 Division believes that eliminating these plants by
24 choosing a closer-in test year without first
25 completing the due diligence would not be in the long

1 run public interest of Utah citizens.

2 While the MPA statute allows the Company to
3 potentially recover major plant additions outside of a
4 general rate case, it does nothing to mitigate
5 regulatory lag for the myriad of small distribution,
6 transmission, and generation projects, which in the
7 aggregate add up to large sums but do not individually
8 meet the \$100 million threshold required to file under
9 the MPA statute.

10 Furthermore, as I just mentioned, the
11 Division believes it would not be in the public
12 interest to dismiss these plant additions out of hand
13 by choosing a closer test period.

14 The Division suggested customer safeguards,
15 such as adjustments to rate base, adjustments to
16 forecasts, adjustments to assumptions, and trackers,
17 to demonstrate that there are means to address the
18 risks both to the Company and to ratepayers other than
19 simply eliminating potentially needed plant, over
20 which the Company may have little discretion. And we
21 would want to complete a thorough review.

22 In this case the Division recommends the
23 Commission consider the best evidence available for
24 this particular case, keeping in mind the legislative
25 intent of the statute's purpose: Determine the test

1 period that best reflects the rate effective period,
2 and, through the regulatory process, that will result
3 in just and reasonable rates.

4 That concludes my summary.

5 MS. SCHMID: Thank you. Dr. Zenger is now
6 available for cross examination and questions from the
7 Commission.

8 CHAIRMAN BOYER: Thank you, Dr. Zenger.

9 Mr. Monson or Ms. Hogle, cross examination?

10 MR. MONSON: No questions.

11 CHAIRMAN BOYER: Mr. Proctor?

12 MR. PROCTOR: Thank you, Mr. Chairman.

13 CROSS EXAMINATION

14 BY MR. PROCTOR:

15 Q. Dr. Zenger, in your summary you referred to
16 the empirical evidence that the Division considered.
17 Did I hear you correctly?

18 A. Yes.

19 Q. Would you please identify specifically the
20 empirical evidence that the Division believes
21 demonstrates that the test period of July 11 -- 2011
22 to June 2012 best reflects conditions, as compared to
23 the same empirical evidence that you have gathered
24 with respect to the 2011 calendar year test period?

25 A. Yes. The empirical evidence comes in many

1 forms. And Mr. Croft and Mr. Wheelwright will testify
2 specifically to some of, some of that empirical
3 evidence.

4 But we looked specifically at certain capital
5 additions in plant that was forecasted to come on line
6 during those certain months of the June 2012 test
7 period versus the alternate test period. We looked at
8 those.

9 We looked at the current, you know, clean air
10 rules and the new rule from the EPA regarding mercury
11 control. And we looked at the cost-benefit to
12 ratepayers as a whole. Then we looked at some of the
13 distribution plant that also came in service during
14 the months of the 2012 test period versus the 2011.

15 And we deemed that some of -- without further
16 due diligence, but preliminary we felt that some of
17 those may be, in fact, needed for reliable electric
18 operation of our bulk electric system for allowing for
19 contingencies.

20 Things such as meeting mandatory NERC
21 reliability standards. Avoiding substantial
22 penalties, which in fact now NERC imposes.
23 Maintaining the public health of Utah citizens. And
24 the safe and reliable operation and service to
25 ratepayers.

1 And we also looked at the Company's ability
2 to forecast. We look at different forecasts through
3 different periods and through the past rate cases and
4 made some projected trend lines, which Mr. Crawford
5 will present.

6 We looked at economic factors. You know,
7 where Utah stands in relation to the economy. The
8 inflation rate, the GDP, the population growth in Utah
9 that is expected to continue. And the -- all signs
10 point that we are slowly pulling out of the recession.

11 Let's see.

12 Q. Well, Ms. Zenger -- Dr. Zenger, pardon me.

13 A. Okay.

14 Q. Let me just ask some questions about this
15 empirical evidence that you've just described. Where
16 within your testimony is the empirical evidence where
17 you identify a cost-benefit ratio to ratepayers from
18 compliance with the EPA's mercury rules?

19 A. I believe -- give me a second.

20 And again let me just stress, as I have
21 throughout my testimony, these are preliminary
22 estimates. But the EPA estimates that for every
23 dollar spent to reduce pollution from power plants the
24 American public and American businesses will see up to
25 \$13 in health and economic benefits.

1 And I cited that from an EPA study that had
2 been going on for some time. And --

3 Q. Did you -- pardon me, Dr. Zenger. Did you
4 apply that particular study to an examination of
5 complying with the EPA mercury rules for Rocky
6 Mountain Power's power plants?

7 A. No, we -- no. This is a preliminary
8 estimate.

9 Q. So you have no -- within your testimony no
10 empirical evidence developed by the Division with
11 respect to that issue, do you not?

12 A. I guess the answer would be no, because I
13 didn't get into all the particulars of the -- which
14 standards were required, which NERC standards, you
15 know.

16 Q. You stated also that you considered the
17 inflation rate. Did you compare the inflation rate in
18 the past years and the current inflation rate?

19 A. Just in general terms.

20 Q. Did you apply that to Rocky Mountain Power's
21 costs as it might be affected by those inflation
22 rates?

23 A. We applied it in the sense that we determined
24 that any adjustments to Rocky Mountain Power's
25 inflation rates -- which are provided by a third

1 party, Global Insights -- that any adjustments to
2 those could be made during the revenue requirement
3 phase of the case.

4 Q. So the answer to my question is no, you
5 didn't apply those inflation rates in determining
6 which test period best reflects the conditions during
7 the rate effective period?

8 A. We -- no, we haven't done a detailed
9 analysis.

10 Q. You referenced also that you anticipated
11 certain costs in 2012 for distribution plant in order
12 to comply with NERC standards. Did I hear you
13 correctly?

14 A. Yes.

15 Q. But you had done that without due diligence,
16 correct?

17 A. Not entirely, because I've been tracking
18 these NERC reliability standards, inasmuch as I am on
19 conference calls weekly and work with the NARUC
20 electricity subcommittee staff.

21 Q. Within your testimony, Dr. Zenger, did you
22 apply those particular studies to the effect of NERC
23 standards on Rocky Mountain Power in the 2012 test
24 period?

25 A. I went to where they were sourced in Darrell

1 Gerrard's testimony and actually went and looked up
2 each of the standards. I haven't sent out further
3 data requests to, you know, apply them and document
4 them as we would in the revenue requirement phase of
5 the case.

6 Q. Now, within your testimony, all three phases,
7 you mentioned several times that the Division believes
8 it can make adjustments to the general rate request by
9 Rocky Mountain Power, and therefore you don't object
10 to the particular test period that they selected,
11 correct?

12 A. Correct.

13 Q. So is it reasonable to state that, as filed,
14 the Division could not determine whether or not Rocky
15 Mountain Power's requested test period did, in fact,
16 best reflect conditions that would exist in the rate
17 effective period?

18 A. I think the full determination comes, as it
19 states in the statute, when adjust -- when adjustments
20 are made. But the Division believes that when
21 adjustments are made to this test period it will be
22 the test period that best reflects the conditions.

23 Q. But as filed you could not make that
24 conclusion, could you?

25 A. No.

1 Q. Did you apply that same analysis to the
2 calendar year 2011 test period that has been proposed
3 by other parties?

4 A. The same analysis in regards to what -- the
5 conditions we consider, or what do you mean?

6 Q. Yes.

7 A. Yes, we would -- yes. We, we did. We
8 looked -- we had a little more time and looked at some
9 other items in prior rate cases.

10 Q. What other items?

11 A. For instance, I had a chance to look at
12 variance reports, and pull out demand in energy tabs
13 and cite the variances. And ask further data
14 requests, you know, to -- the Division, with respect
15 to the test period, has only asked about five or so.

16 Q. Five or so questions?

17 A. On -- yeah.

18 Q. Is that the total?

19 A. No, on the test period.

20 Q. So your total examination of the test period
21 consisted of five data requests to Rocky Mountain
22 Power?

23 A. No, that, that -- the total when -- well,
24 first of all, we have all the master data requests
25 under the filing requirements. So Matt, and Doug, and

1 our auditors have all been going through that and
2 asking questions to verify the caps, and the
3 assumptions, and the capital additions that are noted.

4 Q. I noted in your rebuttal testimony, it's
5 lines 32, 33, and 34, you mentioned -- and this was
6 filed I believe mid-March, if I'm correct. You
7 mentioned that:

8 "The Division is in the early stages
9 of analyzing discovery responses, but
10 believes that the information and
11 calculations can be used to make
12 appropriate adjustments to the Company's
13 test year to be reflective of the rate
14 effective period."

15 May this Commission take from that statement
16 that as of this date you cannot state that, indeed,
17 the Company's test year is best reflected?

18 A. No. Because I can say based on the evidence,
19 based on the evidence the Company's proposed test
20 period does, with the proper adjustments made, does
21 represent the best test period in this case.

22 Q. But only if those adjustments to their test
23 period are made?

24 A. Yes. I think any test period will not be
25 reflective unless adjustments are made.

1 Q. And that would be true of the calendar year
2 2011. You could make adjustments to that one as well
3 so that it would best reflect the rate effective
4 period, could you not?

5 A. You could not. You could make adjustments,
6 but you couldn't make it best reflect the conditions
7 during the rate effective period. Primarily because
8 I -- what I noted in my testimony is because during
9 those last six months a lot of the distribution plant,
10 the environmental pollution controls, would be
11 eliminated.

12 Q. Well, we'll talk about the pollution controls
13 in particular later.

14 A. Okay.

15 Q. But --

16 A. Well, but to answer your question, no.

17 Q. You've also recommended, however, that there
18 must be conditions placed on the test period. And you
19 describe some of them as being certain assumptions,
20 changes to rate base. What were the other conditions
21 that you were going to apply to the test period?

22 A. Well, I don't, I don't think I could give you
23 the exhaustive list. But we start, it could be
24 adjustments to Global Indic -- indices -- Insights'
25 indices that we receive. It could be adjustments to

1 labor costs. It could be O&M costs. It could be a
2 forecasting assumption. It could be --

3 I mean, inasmuch as we haven't gone through
4 the entire details of the case -- it would -- the
5 adjustments would be very similar to the past cases.

6 Q. On that same page of your rebuttal testimony,
7 further down on lines 37, 38, and 39, you state:

8 "There is no guarantee that any
9 alternate 12 months selected for the
10 test period will meet the criteria if
11 appropriate adjustments are not made
12 based upon the best available evidence."

13 Is there a guarantee that the Company's 2012
14 test period will, in fact, be best reflective?

15 A. Yes.

16 Q. There's a guarantee that if you make the
17 adjustments to the Company's, that it will be best
18 reflective. And yet there is no guarantee that if you
19 make adjustments to the 2012 calendar year, that it
20 will be best reflective?

21 A. No, that's incorrect. What I said on line 37
22 is there's no guarantee that any alternate 12-month
23 test period, unless you make the appropriate
24 adjustments to it, will necessarily best reflect the
25 conditions of the rate period.

1 Q. So there's no guarantee as to the Company's,
2 there's no guarantee as to the 2011 calendar year?

3 MS. SCHMID: Objection, asked and answered.

4 MR. PROCTOR: No, it hasn't been asked and
5 answered. She refused to answer it the first time.

6 THE WITNESS: I -- no. I said that I believe
7 the Company's test period can be adjusted to be
8 reflective.

9 Q. (By Mr. Proctor) Okay. Later on in that
10 page, down on line 45, you refer to Mr. Brubaker's
11 testimony. And his alluding to current conditions or
12 circumstances being the basis for setting rates.

13 Did you consider existing conditions for the
14 Utility as you set about to evaluate which test period
15 would best reflect conditions?

16 A. Yes.

17 Q. And did you also consider current economic
18 conditions as you went about that same process?

19 A. Yes.

20 Q. Do you know that, with certainty, that you
21 can forecast 2012 economic conditions as accurately as
22 you can forecast 2011 economic conditions?

23 A. Well, I guess what -- which conditions do you
24 mean?

25 Q. Any economic conditions that you considered

1 in evaluating the alternate test periods.

2 A. Okay. So will you restate that question
3 then, the 2012 versus '11?

4 Q. Do you know with certainty that the ec --
5 that you can forecast 2012 economic conditions with
6 the same -- with greater precision than you can
7 forecast calendar year 2011 economic conditions?

8 A. I, I think it depends. And if, if you would
9 let me answer that in an example is, I can say that
10 it's going to rain next week, and it doesn't rain.
11 But I can say, It's gonna rain next month on Monday,
12 but it rains.

13 So it was more -- the closer-in time frame
14 prediction was wrong, but the further-in-time
15 prediction was out of -- outer. And so it's not
16 necessarily.

17 Q. But you're concluding that the Company's best
18 reflects economic conditions because, for example,
19 you're projecting that there will be a recovery from
20 the recession?

21 A. I wrote that it's a very slow -- and there
22 are signs indicating that we are slowly coming out of
23 the recession. But my rec -- again, the Division's
24 recommendation was not just based on the economy. In
25 fact it was, you know, other factors weighed far

1 heavily in our determination this case.

2 Q. Well, I believe you referred to your
3 valuation of -- that we're coming out of the recession
4 based upon your cautious optimism model; is that
5 correct?

6 A. I don't think it was modeled. Yeah, what
7 page are you on?

8 Q. This would be on your direct testimony,
9 page 4, line 75.

10 A. Yeah, there -- it w -- there was no model
11 that I used. I, I looked at, you know, the general
12 Federal Reserve, the GDP. The most classic economic
13 sources that economists go to.

14 Q. Did you take into account, for example, the
15 price of oil, as it has been fluctuating in the last
16 three months?

17 A. Yes, I would say I did. I took into account.
18 Even though that inflation wasn't really high, that we
19 know that food prices have been escalated, too, right
20 now. But --

21 Q. Well, how much did you pay for a gallon of
22 gas in January, versus how much do you pay for a
23 gallon of gas today?

24 A. It -- I'm paying a lot right now.

25 Q. Right. Aren't we all? Did you take into

1 account the largest recorded earthquake in the world's
2 third-largest economy, and the resulting tsunami, and
3 the economic impact that that has had and will have?

4 A. I didn't indirectly. And again, a lot of
5 these were unpredictable events, that Mr. Higgins
6 referred to. But I did in the sense it merely
7 reinforces our support for the Company's test period,
8 because we do not want -- in any way want to disincen-
9 the Company to make upgrades to the transmission
10 system, or reliability, or safe operation of our power
11 plants.

12 We, you know, it's -- we would, we would
13 prefer that they do what is needed. What upgrades,
14 what scrubbers, transformer work. So I guess
15 indirectly it was, it was on my mind. I'm very aware
16 of what's going on.

17 Q. Did you take into account in your evaluation
18 of current economic conditions the military action in
19 Libya and the possibility of another war in the Middle
20 East?

21 A. I, I am really very familiar with it and I've
22 been tracking it closely.

23 Q. Did you apply it to the test period to
24 determine whether --

25 A. I did not apply the war to the test period.

1 Q. All right. My question, Dr. Zenger, is these
2 are all factors that can occur without warning and
3 that do, in fact, affect the conditions that -- of
4 customers and conditions with respect to the Company's
5 costs, do they not?

6 A. Yes.

7 Q. And in fact the recession -- the Company
8 responded to the recession by canceling certain
9 projects, did they not?

10 A. Canceling or delaying.

11 Q. Delaying. And so the further out you go in
12 this economy isn't it true that you are inviting such
13 uncertainty to occur, and therefore upset the fact
14 that the test period must best reflect the rate
15 effective period?

16 A. No. But just, as the example I gave you with
17 rain, if some unexpected event is going to occur, it
18 could occur in month 4 or it could occur in month 20.

19 Q. Well --

20 A. It's not gonna affect, you know, how far, how
21 far you go out in projecting the Company's results of
22 operations.

23 Q. Isn't there something that the Company can do
24 to respond to such circumstances, such as another
25 general rate case?

1 A. I think Mr. Taylor just mentioned that.
2 When, when the Company feels they need to come in for
3 another general rate case, they will file.

4 Q. Are you aware of the response to UAE and
5 UIEC's motions filed by the Company in which they
6 stated they anticipate filing annual rate cases?

7 A. Yes.

8 Q. With respect to your pollution control
9 equipment and the need to allow cost recovery for that
10 equipment, about which the Company has no discretion,
11 is there a manner in which such expenses can be --
12 they can acquire cost recovery through the major plant
13 addition process?

14 A. Like I say, I identified in my testimony only
15 Naughton 1 and Naughton 2 that would qualify. And I
16 believe it was in the high 70s. Seventy-something
17 percent of these other capital plant investments would
18 not be able to go through an MPA case.

19 Q. Well, I'm talking about the major plant
20 addition is available to respond to certain of those
21 demands being placed upon the Company for capital
22 investment, correct?

23 A. Yes, the large ones.

24 Q. Even unexpected or -- unexpected capital
25 investments, or if law changes require those capital

1 investments?

2 A. Yes, but it's been -- the MPAs have been
3 filed, so it's up to date. Then long-term planning,
4 which they've been planning for ten-plus years. So
5 these weren't unexpected.

6 Q. And there is, in fact, in rates presently a
7 pollution control project that came in through the
8 first major plant addition case, correct?

9 A. Yes.

10 Q. And that's actually being charged present
11 time to their customers?

12 A. Uh-huh. The Dave Johnston scrubber.

13 Q. Right. Along with there were three other
14 facilities in the two MPA cases, correct?

15 A. Yes.

16 Q. What was the percentage of rate increase that
17 occurred in January of this year as a result of
18 including those four projects into rates?

19 A. I don't know. I think I would defer that to
20 our Division witness, Matt Croft, who's got all of
21 that detailed in the spreadsheets.

22 Q. Does the Company have discretion not to
23 construct to NERC requirements or NERC standards?

24 A. That was my point in my testimony, is we need
25 to do further diligence. Because I do know for a fact

1 there's many and -- like NARUC and organizations are
2 trying to determine the cost to utilities of these new
3 stringent requirements.

4 So we need to do discovery and due diligence
5 to determine exactly which ones of these absolutely
6 need to be done now, or could be postponed. So again,
7 we need further discovery on that.

8 Q. On page 8 of your direct testimony, line 169,
9 you used -- you referenced capital additions, capital
10 investment that was being made. And you use the
11 phrase: Dismissing these investments out of hand by
12 choosing a closer-in test year may not meet the public
13 interest standard.

14 What do you mean by "dismissing these
15 investments"?

16 A. I mean going with a calendar year 2011 and
17 allowing the Company no chance of recovery of them may
18 not be in the public interest.

19 In fact, if they are required by
20 regulators -- by FERC, by EPA, by NERC, different
21 organizations -- you know, the Clean Air Regional Haze
22 Rule. And if they're in fact required and need to be
23 put in, then the Company doesn't have discretion.

24 And again, you know, without knowing that,
25 that's why I said "out of hand." Without doing that

1 due diligence then I think it would be a great
2 disservice to the public interest.

3 Q. But you do not know at this time whether or
4 not any such projects are required?

5 A. I haven't -- I don't know which ones are and
6 are not required at this time.

7 Q. And you state there's no chance of recovery
8 if you have a shorter test period? Is that your
9 testimony?

10 A. I believe -- I'd have to look at the
11 Naughton 2. It, it could go in to 113, the rate base.
12 And --

13 Q. That's -- we're not talking about Naughton.
14 We're talking about these projects that you
15 anticipate --

16 A. The smaller ones.

17 Q. -- potentially could be required. You can't
18 identify them, but they may be required.

19 A. Well --

20 Q. And you just used the phrase, The Company
21 would have no chance of recovery --

22 A. Okay.

23 Q. -- if the shorter -- if the closer-in test
24 period is, is required by this Commission.

25 A. Okay.

1 Q. Are you saying that they would never have a
2 chance to recover those costs?

3 A. No. And let me clarify. I didn't say that
4 they weren't identified. The Company filed them. And
5 I believe in McDougal's Exhibit 8 there are many of
6 these listed.

7 So when you say "identify them," I thought
8 you meant can I say, Okay, this thing needs to be put
9 in because of this mandatory reliability standard. Or
10 this contingency will need --

11 So I haven't gone through one by one and
12 identified, you know, the abs -- the criticalness of
13 it or not.

14 Q. Whether it's required by the EPA or not?

15 A. Yes. It could be deferred or not.

16 Q. So those are the ones that you believe have
17 no chance of recovery?

18 A. Those are the ones that I think are critical
19 that if we don't -- without, without finding out and
20 doing our discovery, those are the ones I think are
21 critical that need to be in this case.

22 Q. But you -- so you still have to do further
23 inquiry to determine whether or not they would be
24 required, and therefore whether or not the 2012 test
25 period would be best reflective of conditions?

1 A. We would do further -- I mean, the Company
2 has represented that, that these are required. But we
3 would, we would definitely do our due diligence and
4 verify that.

5 Q. So at the end of all this empirical study
6 that you -- that the Division performed your
7 conclusion was, We don't object to the Company's test
8 period, and we require conditions and changed
9 assumptions; is that correct?

10 A. Not that we require them, but most likely we
11 would make adjustments.

12 Q. That only with those adjustments will it best
13 reflect?

14 A. I think only with adjustments to any 12-month
15 period -- it wouldn't be reflective, because I think
16 the Company files and we don't just take what the
17 Company files at face value. All the intervening
18 parties go through it and make adjustments.

19 So I think any test 12-month period would --
20 in order to best reflect the conditions, would need to
21 make adjustments.

22 MR. PROCTOR: Thank you very much.

23 THE WITNESS: Uh-huh.

24 CHAIRMAN BOYER: Okay. Thank you,
25 Mr. Proctor.

1 Mr. Dodge?

2 MR. DODGE: Thank you, Mr. Chairman.

3 CROSS EXAMINATION

4 BY MR. DODGE:

5 Q. Good morning, Dr. Zenger.

6 A. Morning.

7 Q. You were the Division witness in the last
8 several dockets dealing with test period, correct?

9 A. Correct.

10 Q. And focussing on the 2007 case, the Division
11 took a similar position you've taken here in that
12 case, saying you didn't object to the 18-month test
13 period that was proposed by the Company, correct?

14 A. Correct.

15 Q. And for reasons explained in the Commission's
16 order they approved a different test period, correct?

17 A. Uh-huh, yes.

18 Q. In this case essentially you're giving the
19 same position: That you don't object, and you haven't
20 seen evidence enough to warrant a rejection of that
21 test period. Is that a fair summary?

22 A. Not quite. I think we -- compared to the '07
23 rate case we feel even stronger in this case that the
24 Company's test period -- that we didn't oppose that
25 because of these safety and reliability concerns and

1 environmental controls that we think may, in fact,
2 need to be put in.

3 Q. Is it the Division's view that unless you can
4 come up with a good reason to reject it, then you
5 should accept the Company's test period, as long as
6 it's within the 20 months?

7 A. You mean just starting from an initial test
8 period determination? Just --

9 Q. Yes. In other words, throughout your
10 testimony you say you don't object. And you don't
11 think you've seen enough evidence to reject the
12 Company's test period. But I don't see a lot of
13 evidence that say, Based on our independent
14 evaluation, we think this is the best one.

15 I'm just trying to understand what you think
16 is the standard. Is the standard that you have to
17 come up with enough evidence to reject theirs, or you
18 look at it from the get-go to see which is the best?

19 A. Well, the Company has the burden of filing.
20 And they filed the June 2012 and the alternate. So
21 they have the burden of filing. And we, as
22 intervening parties -- of course, you know, the Office
23 has a different mission statement. The Division has a
24 different mission statement.

25 But we're unbiased, so we start and look at

1 everything. It could be, you know, the economy could
2 weigh more heavily. It could be rising costs. Excuse
3 me. It could be we're on the verge of a recession.
4 It could be a lot of things. But --

5 Q. I'm focussed on a different issue.

6 A. Go back to that, will you? So restate that.

7 Q. Yeah, I will. I will. I'm focused on a
8 different issue. When you use words like "we don't
9 object to it" and "we don't see enough evidence to
10 reject it," it sounds like you believe that there's
11 essentially a presumption that what the Company
12 proposes should be accepted unless you can come up
13 with a good reason to reject it.

14 Is that the Division's view of how it
15 approaches an analysis of test year?

16 A. No, not necessarily at all. In fact, in my
17 '07 testimony -- I believe it was '07, or '08 -- you
18 know, I talked about there could be any alternate test
19 periods. There could be a Decem -- September 1st to
20 October. There could be a June -- you know, a March
21 to April.

22 There's, there could be alternate ones. And
23 the parties are free to, if they have evidence that
24 shows that that's a more appropriate test period, then
25 I think that should be the case.

1 Q. Dr. Zenger, you agree that the purpose of
2 regulation in this state is not just to ensure
3 reimbursement of all the costs that the Utility
4 spends, right? It's more than that?

5 A. Yes.

6 Q. And do you agree with Dr. Malko that the
7 purpose of regulation is to be a substitute for
8 competition for a regulated monopoly?

9 A. A substitute for competition?

10 Q. Yes.

11 A. I think regulation exists because of the very
12 monopolistic status that our utilities are in. And
13 that regulation exists to make the monopolists on an
14 equal footing as a competitor market. Is that good?

15 Q. That's fine. And is it your view that audits
16 and prudence reviews in the context of a rate case is
17 sufficient, in and of itself, to fulfill that role of
18 substituting or taking the place of competition to
19 ensure reasonable prices?

20 A. See if I understood that right. In a rate
21 case I think there are a myriad of things. We could
22 request a, like Chairman Boyer said, a class cost of
23 service study. We could ask for a lead lag study. We
24 could ask for a work group to be formed to investigate
25 this further.

1 So yes, there's all the analysis we do in a
2 rate case. But then there's things that take place
3 outside of the rate case, such as, such as like going
4 back and looking at the Company's results of
5 operations.

6 And looking at the variance report and
7 seeing, you know, are they over-earning or
8 under-earning. And how much are they over or under-
9 projecting load. So I think it's, you know, as
10 regulators we're looking at a lot of things all year
11 long.

12 Q. Let me ask it a slightly different way.
13 Don't you agree that in order for regulation in this
14 state to fulfill its role to substitute for
15 competition in ensuring reasonable prices, that proper
16 incentives need to be included with regulatory audits
17 and prudence reviews in order to try and cause that to
18 happen?

19 A. What type of incentives? Could you give me
20 an example?

21 Q. Prudent management incentives. For example,
22 the Division agreed, in the recent EBA/ECAM docket,
23 with a 70/30 split of missed projections for net power
24 costs, in part because that provides incentives to the
25 Utility to properly manage net power costs, did it

1 not?

2 A. Yes.

3 Q. And so incentives have a proper role, in
4 addition to just prudence reviews and audits, in
5 trying to set the proper regulatory framework to
6 substitute for competition. You'll agree with that,
7 won't you?

8 A. Yes.

9 Q. If we were to focus, in determining test
10 period, on whether or not the Utility is projecting a
11 lot of costs in an out period, and then measure
12 whether they actually spent those costs after the
13 fact, wouldn't we be incenting projecting a lot of
14 money and then spending it? And is that enough to
15 substitute for competition to make sure prices stay
16 reasonable?

17 A. No, I don't think we would be incenting the
18 Company to spend more. Because even after the rate
19 case, and the Commission issues its order, and all the
20 adjustments that come through, the Company goes back
21 and, you know, has to start from square one.

22 And they're -- they, they have incentives to
23 try to predict most accurately, because it's in the
24 best interest of the Company if they want to get rate
25 recovery and favorable regulatory treatment.

1 Q. Most accurately reflect what they're going to
2 spend. What about the job of making sure they only
3 spend what they really need to? How do you incent
4 them to only spend what they really need to?

5 A. Well, I think things like, for instance in
6 the Populus-Terminal line? The Company knows that we
7 are gonna evaluate any RFP that went out for a
8 contractor. And we're gonna go through and we look at
9 the weighting, and the rankings, and -- to make sure
10 it was the least cost.

11 So, I mean, the Company has incentives just
12 because we're watching over them, for one thing.

13 Q. That's the after-the-fact prudence review.
14 And I'm saying, isn't there a role in addition to that
15 for providing incentives to give them the pot of money
16 that is a reasonable amount to run the business, and
17 then trust them to go out and spend that money wisely,
18 and cancel or postpone projects that aren't really
19 needed, and eliminate expenses that aren't really
20 needed?

21 Isn't that part of the job of regulatory lag
22 and regulation in keeping a regulated monopoly honest
23 in terms of, again, replacing competition?

24 A. I don't know if I can answer that with all,
25 all the parts of it that you had in there. I can say

1 that in a test period determination we're trying to
2 make -- we're -- pick this test period to adjust rates
3 off so that we come up with a proper revenue
4 requirement. And then the ultimate thing is that the
5 Company has an opportunity to earn a reasonable
6 return.

7 And on the other side it's we want
8 customer -- we want rates to be just, and fair, and
9 reasonable, and we want customers to have access to
10 safe and reliable service. So the test period is
11 undeterm -- this piece of the rate case is one piece.
12 And it's very important. But it's just a piece of the
13 puzzle.

14 I think that --

15 Q. Yeah, that's fine.

16 A. I'm sorry.

17 Q. You specifically talk in your testimony about
18 pollution control equipment and the utility MACT rule
19 that was just issued. Who in the Division is the
20 expert that's going to analyze, in this rate case,
21 whether or not all those investments that are talked
22 about -- the scrubber upgrades, et cetera at these
23 projects -- was or was not prudent, was or was not
24 required in this particular time; who's going do that?

25 A. Brenda is managing the rate case, and she has

1 made various assignments on certain items. So I'm not
2 quite positive who will be doing that.

3 Q. Is the Division confident it can get to the
4 bottom of all those kinds of decisions in an
5 after-the-fact -- excuse me, in a rate case prudence
6 review as opposed to, again, utilizing incentives to
7 the Company to properly manage its expenditures?

8 A. Yes.

9 Q. You're comfortable that you will be able to
10 adequately examine the prudence and timing of all
11 those expenditures?

12 A. We're hoping to.

13 MR. DODGE: No further questions.

14 CHAIRMAN BOYER: Thank you, Mr. Dodge.

15 Ms. Baldwin, questions for Dr. Zenger?

16 CROSS EXAMINATION

17 BY MS. BALDWIN:

18 Q. Hi, Dr. Zenger. I don't know if you have the
19 statute in front of you -- you referred to it a few
20 times -- the 54-4-(3)? And if you don't, I can read
21 it. It says:

22 "If, in the commission's
23 determine" --

24 MS. SCHMID: Pardon me. Could I approach the
25 witness and give her a copy?

1 MS. BALDWIN: Oh, sure.

2 THE WITNESS: I have a copy from my 2007
3 testimony.

4 Q. (By Ms. Baldwin) "If in the
5 commission's determination of just and
6 reasonable rates the commission uses a
7 test period, the commission shall select
8 a test period that, on the basis of
9 evidence, the commission finds best
10 reflects the conditions that a public
11 utility will encounter during the period
12 when the rates determined by the
13 commission will be in effect."

14 Is that correct?

15 A. Yes.

16 Q. Is there anything in there that talks about
17 adjustments?

18 A. Not in the piece you just read.

19 Q. Is there another part of this statute that
20 tells you -- tells the Commission how they are to make
21 the determination for a test period?

22 A. Are you just looking for other parts where it
23 states that we make adjustments?

24 Q. No. I'm asking you, is there anything in the
25 section where the Commission is directed on how to

1 determine a test period as to whether there are any
2 provisions for making adjustments. And I believe you
3 answered no.

4 A. No, I didn't answer that. Because I wasn't
5 clear on the question. I said no in the piece you
6 read. And there's --

7 Q. And then I asked you if in, if in that
8 statute is there another section of that statute that
9 tells the Commission how to make a determination of
10 choosing the test period?

11 A. Yes. If you go on to part (b), and sub (i),
12 and sub (ii), and sub (iii.) And in sub (iii) there's
13 further information.

14 Q. And with respect to a future test period,
15 what does it say about adjustments?

16 MS. SCHMID: I would object to this line of
17 questioning. I believe that the statute speaks for
18 itself.

19 CHAIRMAN BOYER: I do think we probably have
20 the wrong witness here. Dr. Zenger does have a
21 terminal degree, but not in law.

22 MS. BALDWIN: I'm just asking these questions
23 because she has continually said that the statute
24 requires that she apply adjustments. And that the
25 statute requires. And so I'm asking her where in the

1 statute are those requirements that she keeps citing.

2 CHAIRMAN BOYER: I'll help her out then.

3 Look at 54-4-3 sub (a)(i), (ii), and (iii.)

4 MS. BALDWIN: Okay.

5 Q. (By Ms. Baldwin) As to a future test period
6 there's no mention of adjustments?

7 A. Adjusted for known and measurable changes?

8 Q. That's a test period that is determined on
9 the basis of the historic data and adjusted for known
10 and measurable.

11 So is this test period based on historic data
12 and adjusted for known and measurable, as opposed to a
13 future test period?

14 A. It's a future test period.

15 Q. And there's no adjustments for known and
16 measurable in the section for future test period?

17 A. Well, I'm not quite sure what's in the base
18 period, but I know that the Company makes normalized
19 adjustments.

20 Q. With respect to these -- pollution control
21 equipment? I think from the other parties' questions
22 it's clear that you have not evaluated each piece of
23 equipment and determined what regulation it is
24 responding to; is that correct?

25 A. With respect to the pollution control

1 equipment, that is correct.

2 Q. Are you aware that on March 16th the EPA
3 announced proposed rules for toxic pollution, mercury,
4 acid, gas emissions?

5 A. Yes. It's in my surrebuttal, I believe.

6 Q. Are you aware that these rules are supposed
7 to replace the Bush Administration's Clean Air Mercury
8 Rule?

9 A. I'm not familiar with the detailed specifics
10 of the rule. And, you know, I do note that -- I cite
11 some of the toxins that the new rule targets.

12 Q. The new rule has not been effected, the new
13 rule has only been proposed.

14 A. Right.

15 Q. So is that the rule you're talking about?

16 A. That's the rule. It's been like 20 years in
17 the making, and now they're propose -- just proposes a
18 cost allocation rule. The EPA posed this rule, and
19 then they get comments, and the rule gets implemented
20 eventually.

21 Q. And are you aware when it's going to be
22 finalized?

23 A. I'm not. Like I say, I just barely heard
24 that after 20 years that they came out with the rule.

25 Q. Do you believe that the equipment that's

1 being proposed is going to be in response to these
2 proposed rules?

3 A. I don't know if so much -- I wouldn't say
4 that -- probably in this test period that it may not
5 be the new replacement rules. But I know that the --
6 it is for other rules. BART and other rules. Clean
7 air requirements.

8 Q. But not for the replacement rule?

9 A. For the new EPA, no -- rule, I do not know.

10 Q. So the equipment that's going to be installed
11 say in 2012, after the new rules have become
12 effective, you don't know, and -- what are the chances
13 that it will meet those rules?

14 MS. SCHMID: Objection, calls for
15 speculation.

16 CHAIRMAN BOYER: I think Ms. Schmid is
17 correct on that. You can ask her if she knows.

18 Q. (By Ms. Baldwin) Do you have any idea how
19 much -- what the chance would be that the equipment
20 that's going to be installed in 2012 is going to meet
21 the requirements of the rules that were just proposed
22 on March 16th and are not final yet?

23 A. I do not.

24 Q. Okay. If the equipment that is being
25 installed in 2012 does not meet any proposed rule and

1 in fact has to be replaced further down the line, is
2 that a cost that should be recovered from the
3 ratepayers? The installation of that equipment?

4 A. Well, in that hypothetical situation I think
5 the Company would look to see if we're putting in
6 such-and-such scrubber but now we've found out we need
7 to put in this type of scrubber, they would take a
8 look at the plant and find a, you know, what -- do
9 what is prudent.

10 Q. But if we're on the Company's proposed test
11 year wouldn't we be paying for those already?

12 A. I think the Company would come forth with
13 adjust -- with new information and adjustments that we
14 might -- or we might -- the parties might discover
15 this and make adjustments to the case. They could
16 find that the -- that some of the scrubbers aren't
17 prudent, or they are, or they need to be in sooner,
18 or -- there, there's a lot of outcomes.

19 Q. Or they could determine that they weren't
20 necessary at all?

21 A. I don't think that they would be not
22 necessary at all. Just, like I say, without doing the
23 due diligence, from what we read in the Company's
24 application and filing, these were required for some
25 type of regulation.

1 Q. So you're confident none of them are
2 voluntary?

3 A. Without doing further diligence, I don't know
4 that. But, you know, some of them may not be at the
5 Company's discretion. They may not have a choice in
6 timing. Some of them, you know, may, may be something
7 that could be moved or backed up.

8 So I, I couldn't say that. I'm not a hundred
9 percent confident without doing the full -- the due
10 diligence.

11 Q. Are you aware of Mr. Buffett's public
12 statement that he wants his utilities to be clean,
13 regardless of the cost?

14 A. Well, actually I wasn't. I --

15 Q. With that knowledge would that weigh into
16 your decision about what test period would be
17 appropriate?

18 A. In this case? No.

19 Q. In your testimony you have cited several
20 items that you considered. Starting on page 3 of your
21 direct testimony, going over to page 4, you list the
22 factors that the Commission has cited before; is that
23 correct?

24 A. Sorry, I'm in the rebuttal. I listed some of
25 them, not -- it's not all inclusive.

1 Q. These are the factors I think that
2 Mr. Higgins has gone through, Mr. McDougal went
3 through them, and Mr. Brubaker went through them. You
4 list them here but you haven't provided any analysis.
5 Was any analysis in fact done?

6 A. Yes.

7 Q. Would you tell me how the analysis came out
8 when you looked at incentives to efficient management
9 and operation?

10 A. That came out as a neutral. Because the
11 Company, we believe, is always gonna be -- have
12 incentives to operate the most efficiently. Whatever
13 rate of return they're earning, it's in their best
14 interest to operate efficiently and effectively.

15 So in other words that, that factor would
16 have zeroed out in this case.

17 Q. What about the availability and accuracy of
18 data to the parties?

19 A. Yes. And I talked about, you know, the
20 Commission (sic) complied with complete filing. And
21 that, you know, they're sending -- and judging on the
22 past cases as well, they've been sending all the data
23 requests that we've been asking for.

24 And we -- with the variance report we've been
25 able to track, within a few percentage points, the

1 accuracy of the data that we've been receiving.

2 Q. And has it been accurate?

3 A. Well, like I said, it depends if you're
4 looking at like revenues or -- versus net power costs.
5 We kind of, well, there's a total different acceptable
6 variance level for each item. But for the most part
7 it's been very accurate.

8 Some of the places where the Company exceeded
9 the variance threshold were due to weather-related
10 events and such.

11 Q. Could you please go to Mr. Wheelwright's
12 Exhibit 3.1?

13 MS. SCHMID: If the Commission would allow,
14 in preparation for my cross of the Company witnesses I
15 did prepare some copies of DPU Exhibit 3.1. And I'm
16 wondering if that might make the process go more
17 quickly if I could give one to the witness?

18 THE WITNESS: That would help, because I have
19 his testimony but I don't have that one exhibit.

20 CHAIRMAN BOYER: Why don't you do that,
21 Ms. Schmid.

22 MS. SCHMID: Thank you.

23 THE WITNESS: Thank you.

24 Q. (By Ms. Baldwin) Do you have that in front
25 of you now?

1 A. Yes.

2 Q. If you could look at that page. Down at the
3 bottom it says "Net System Load"? The percentage of
4 increase, the Company -- or Mr. Wheelwright's data
5 shows that in 2006 we have a 4.5 percent --
6 4.56 percent increase, 3.77 in 2007, 3.13 in
7 June 2008, and then, as you know, the recession hit
8 and we have a negative after that. Do you see that?

9 A. Yes.

10 Q. For the June '11 and then June '12, the
11 Company shows 3.57 percent for June '11, and
12 3.6 percent -- 68 percent for June '12. Is it
13 reasonable to expect, coming right out of a recession,
14 the same percentage of growth that we saw back in the
15 height of the -- in the 2006-to-2008 period?

16 A. On the surface it wouldn't to me. But I
17 think you'll have to ask this question of
18 Mr. Wheelwright.

19 Q. Okay. Do you have a copy of your article
20 that's attached as an exhibit to Mr. Mal -- or
21 Dr. Malko's testimony?

22 A. Yes. Give me just a minute. I have it.

23 Q. Now, this has your name as an author. And I
24 believe you stated in your rebuttal or surrebuttal
25 that you were an author; is that correct?

1 A. Yes.

2 Q. So you're familiar with the contents of this
3 article?

4 A. Yes.

5 Q. On page 38, could you turn to that page,
6 please?

7 A. Okay, I'm there.

8 Q. The bold lettering in the middle of the page,
9 plus it's actually citing what is in the, I think the
10 second -- first full sentence on the first paragraph,
11 where it says:

12 "It's generally assumed that
13 forecast accuracy is reduced the further
14 out the test period is placed."

15 Do you still agree with that?

16 MS. SCHMID: I would object to this line of
17 questioning, insofar as Dr. Zenger prepared and
18 participated in the article's preparation as an
19 individual, rather than as a Division witness --
20 rather than on behalf of the Division.

21 CHAIRMAN BOYER: Well, I still think it's a
22 fair question though.

23 You can answer that, Dr. Zenger.

24 THE WITNESS: Okay. Yeah. And I do state in
25 the article:

1 "The views expressed in this article
2 are the author's, and don't necessarily
3 represent the public -- the Division of
4 Public Utilities."

5 Q. Okay. As you as Dr. Joni Zenger, do you
6 still agree with this statement?

7 A. On, on the surface, I agree with it. Like in
8 layman's terms the accuracy would be reduced the
9 further out the test period is placed.

10 But that, that -- if you look at it in
11 statistical terms, what -- all that that means is the
12 confidence interval is getting wider. And so it goes
13 both ways.

14 So it's equally as likely that the -- that
15 there would be under-forecasts as there would be
16 over-forecasts the further you went out.

17 Q. So it means it's less accurate, correct?
18 Whether it's un -- I didn't, I didn't point out
19 whether it was over or under-forecasted, it's whether
20 or not it's accurate, correct?

21 A. You can't tell -- you cannot determine the
22 accuracy of a forecast until after the matter of the
23 fact. So after, yeah, if you go and you get the
24 results and then you look at it and say, Was that
25 accurate? You couldn't say that until after it had

1 happened.

2 Q. But then that goes back to that statement.
3 Are you saying that you disagree now with your
4 statement that forecast accuracy is reduced the
5 further out the test period is placed?

6 A. No. No, I -- in this article it -- in
7 layman's terms, that would still be correct. But not
8 if you look at it statistically and technically.
9 Mr. Croft will, I think, also give a little example of
10 this -- address this very issue as well.

11 He did some empirical analysis of the
12 accuracy. And he talks about the forecast.

13 Q. But I just wanted to get on the record, you
14 do still agree with this statement; is that correct?

15 A. I agree in layman's terms. But, you know,
16 like I said yesterday -- or not yesterday, excuse me,
17 earlier, you know, I could predict that it's gonna
18 rain tomorrow, and it doesn't rain. But I can predict
19 that it's gonna rain in three weeks, and it might
20 rain.

21 So does that mean I went out further but I
22 was right, and the shorter I went in I was wrong? So
23 it's not necessarily.

24 Q. But statistically?

25 A. Statistically the confidence interval gets

1 wider on both ends. So it works both ways.

2 Q. And by working both ways, what do you mean?

3 A. That the Company could over-forecast as much
4 as it can under-forecast.

5 Q. Which means it's equally inaccurate?

6 A. It means that it equally has a higher
7 confidence that it may not be accurate.

8 Q. Okay. And if you go to the last page of your
9 article? In the second-to-the-last paragraph it
10 states:

11 "The PSC generally has attempted to
12 decide issues on a case-by-case basis.
13 This process is developing, perhaps
14 slowly, a body of decisions that can
15 provide some precedential value."

16 Then it goes on to say that:

17 "Although the Utah statute allows a
18 party to forecast out 20 months in a
19 rate case, it currently appears that
20 such a relatively-lengthy forecast
21 period is unlikely to be approved by the
22 PSC."

23 Do you disagree with that at this time?

24 A. I do disagree with this at this time. And I,
25 I can explain why, a little bit, that I do. Inasmuch

1 as, like for instance compared to the '06 or '07 rate
2 case, you know, several parties recommended proceeding
3 with caution at first, after the statute was passed
4 that allowed the fully-forecasted test period.

5 So parties proceeded cautiously op -- you
6 know, cautiously, you know, going out. And I think
7 all parties did, including the Commission and the
8 Division. But we've had five rate cases, at least, in
9 the last few years, and at least the Division feels
10 comfortable with making adjustments to the Company's
11 forecasts.

12 And again, I don't think the statute would
13 say you can go out 20 months if it wasn't an option
14 for the Commission to choose.

15 Q. This article was published in May of 2010,
16 correct?

17 A. Oh, yeah. Or I think it's March.

18 Q. It says down at the bottom of the page --

19 A. Yeah, May, you're right.

20 Q. -- "Public Utilities Fortnightly May 2010"?

21 A. Uh-huh.

22 Q. And how many rate cases where we had to
23 decide a test period did we have since May of 2010?

24 A. We had the sixth one. We had the -- where
25 there was the base and the --

1 Q. No. Since May of 2010, which is just last
2 May.

3 A. In May when we were just -- we had -- were
4 probably just finishing up the '09 rate case and --

5 Q. No. The '09 rate case was, um.

6 A. Stipulated.

7 Q. No, the final order for the revenue
8 requirement came out in February.

9 A. Oh, okay, February. The test period issue I
10 believe was stipulated to.

11 Q. And it was the year before this article. So
12 there hasn't been another rate case since this
13 article. So what has changed --

14 A. This would be the next rate case.

15 Q. So what has changed to make you think that a
16 lengthy forecast period, instead of being unlikely,
17 that it is likely?

18 A. As I mentioned in my testimony, many things
19 have changed. We've got, you know, cyber security
20 threats we need to worry about. We've got trying to
21 deliver wind to remote places. We've got, you know,
22 clean coal plants we're trying to make more efficient.
23 Or -- just the landscape has changed.

24 And although, you know, like I said, this
25 article wasn't speaking -- that wasn't my personal

1 belief from the Division's belief, but as a Division I
2 could say that we've had those several cases that
3 we've been able to make adjustments through.

4 Q. In the things that you've considered in this
5 case did you consider the EBA that was just ordered?

6 A. Yes.

7 Q. And how -- what was your analysis on that?

8 A. The preliminary analysis that it might
9 slightly favor a closer-in test period, but overall it
10 would probably almost zero out.

11 And in that analysis, you know, we talked
12 about how almost every other state already had some
13 kind of an ECAM, or a CAM, or energy cost adjustment
14 mechanism, and Utah was one of the last ones to have
15 it. Those states have forecasted test periods.

16 So this one, you know, as far as rate
17 sharing -- excuse me, risk sharing, you know, we
18 thought it would benefit ratepayers. Because part of
19 the risk of fuel costs going too high or being put in
20 the net power cost model too high or too low would be
21 assessed monthly, and so it would balance the Company
22 and the customers' needs. At least 70 percent of it.

23 Q. So do you see the EBA as a risk reducer for
24 the Utility?

25 A. Yeah -- yes.

1 Q. What about the ability to go for major plant
2 additions in between rate cases? Do you think that
3 lowers the Utility's risk?

4 A. I, I -- without, you know, getting further
5 information, like Mr. Taylor talked about on when the
6 Company can file those MPAs with respect to general
7 rate cases, it's going to depend. They may have to
8 just end up filing them in general rate cases. But
9 with the two that have gone in I think it's a risk
10 benefit to the Company.

11 Q. When do you -- and do you believe in this
12 risk-sharing-risk-balancing concept?

13 A. Do I believe in it?

14 Q. Yes.

15 A. Well, um, yeah. I'm -- I mean, I think
16 risks, risks are shared, yeah.

17 Q. So -- well, I'm sorry. Do you think that
18 there should be a balance between the risk between the
19 ratepayers and the Utility?

20 A. Yes, I do. I think the risk is, you know,
21 more encompassing than just on what ratepayers might
22 pay or what the Company earned. I think it involves a
23 lot of factors. It involves safety, and just and
24 reasonable rates, the financial integrity of the
25 Company. But yes, I do believe there's a scale. And

1 the Division tries to look at both sides.

2 Q. With the implementation of the EBA and the
3 MPA to some extent, at least you've acknowledged that
4 that might be a risk reducer, does the DPU plan to
5 suggest a lower cost of equity to compensate for this
6 lower?

7 A. I can't comment, I can't comment on that.
8 Chuck Peterson is the Division's cost of capital
9 witness.

10 I do state in my testimony that we are
11 considering other mechanisms, such as a track --
12 tracker-type of mechanism. That has, at least in the
13 pilot stages for Questar's feeder lines has been quite
14 helpful, in that they're not coming in as often for
15 rate cases.

16 But a lot of -- in this case perhaps some
17 distribution and different projects could be grouped
18 together. And the Division's still kind of
19 formulating our ideas on that, and we will file
20 testimony in the revenue requirement phase of the case
21 on that.

22 Q. So would that be something that you suggest
23 be adopted with the rates that go into effect in this
24 case, or something in the future?

25 A. We haven't determined that. I mean, most

1 likely it would be similar, like a pilot project. And
2 I, I, you know, I don't -- I can't answer at this
3 point if we would suggest that it go in with this case
4 or in the future.

5 Q. Well, if it didn't go into effect with this
6 case how would that reduce any of the risk to the
7 ratepayer?

8 A. If it didn't go into effect in this case it
9 wouldn't be a risk reducer to the Company or the
10 ratepayers. It would have no effect.

11 Q. Okay.

12 MS. BALDWIN: No questions.

13 CHAIRMAN BOYER: Thank you, Ms. Baldwin.
14 Commissioner Allen?

15 COMMISSIONER ALLEN: No questions.

16 CHAIRMAN BOYER: And I have no questions
17 either. But let's finish with this witness before we
18 break for lunch. Redirect, Ms. Schmid?

19 MS. SCHMID: Very limited.

20 REDIRECT EXAMINATION

21 BY MS. SCHMID:

22 Q. Dr. Zenger, do you remember Mr. Proctor
23 asking you a series of questions regarding the
24 Division's analysis and the status of its due
25 diligence investigation?

1 A. Yes.

2 Q. What is the status of the Division's due
3 diligence investigation in this case at the moment?

4 A. We are sending out data requests, like on a
5 weekly basis. We're still going through the, you
6 know, minute details of the case. We are getting
7 information. Sending out secondary requests. We're,
8 you know, meeting to talk about what we found and how
9 to proceed. But it's very early in the case.

10 Q. Similarly, Mr. Proctor asked you questions
11 about the MPA statute and rate recovery of projects.
12 Do you recall that?

13 A. Yes.

14 Q. Do you know if the MPA statute establishes a
15 dollar threshold that projects must meet before they
16 qualify for recovery under the MPA statute?

17 A. Yes. It's -- I believe it's a percentage.
18 But for the Company I believe it's a hundred million.

19 Q. Or perhaps 110?

20 A. Or -- yeah.

21 Q. During Mr. Proctor's questioning you made a
22 statement that Mr. Croft's spreadsheet addressed the
23 rate increase. Would you like to revisit that?

24 A. Of the rate increase?

25 Q. That his spreadsheet addresses that.

1 A. Oh. His spreadsheet addresses the, the
2 increase from, from one rate case to the next rate
3 case and doing -- and looking at the accuracy.

4 Q. Okay. And then finally, many of us lay
5 people in the audience have heard the phrase that
6 "regulation is a substitute for competition." But you
7 have a Ph.D. in economics; is that correct?

8 A. Yes.

9 Q. From that sort of more-developed, more-
10 studied perspective do you have any comments you would
11 like to make regarding regulation substituting for
12 competition, how closely it can substitute for, and
13 things like that?

14 MR. PROCTOR: Objection, it is a compound
15 question, and each part asked for a narrative.

16 CHAIRMAN BOYER: I think --

17 MS. SCHMID: I can rephrase.

18 CHAIRMAN BOYER: If you wouldn't mind,
19 Ms. Schmid.

20 Q. (By Ms. Schmid) Dr. Zenger, do you recall
21 Mr. Bonbright discussing that competition and
22 regulation are not exactly similar, and they're -- one
23 moment please. Sorry.

24 That he concludes: Competition is a
25 substitute for regulation, but maybe it should not be

1 emulated too closely?

2 A. Give me one second, Trish. Is -- it's in
3 Mr. -- Dr. Malko's testimony and attachment? Is that
4 the one you're referring to?

5 Q. Actually, I believe that that's not in the
6 selected portion. But I'm asking if you recall this
7 concept through -- in Mr. Bonbright's seminal book on
8 regulation?

9 MR. PROCTOR: Objection, it's leading.

10 CHAIRMAN BOYER: Well, it's a good question.
11 Is it in the Bonbright text?

12 THE WITNESS: Yes.

13 MS. SCHMID: Thank you. Those are all my
14 redirect questions.

15 CHAIRMAN BOYER: Okay, great. Now just
16 according to my calculation we have yet to hear from
17 Messrs. Croft, Wheelwright, Gimble, Higgins, Brubaker,
18 and Dr. Malko. So be thinking about that during the
19 lunch break. We'll recess until 1:45.

20 (A luncheon recess was taken
21 from 12:19 to 1:48 p.m.)

22 CHAIRMAN BOYER: Ms. Schmid, your next
23 witness?

24 MS. SCHMID: Thank you very much. The
25 Division would like to call Mr. Matthew Croft to the

1 stand and have him be sworn, please.

2 (Mr. Croft was sworn.)

3 CHAIRMAN BOYER: Thank you, please be seated.

4 You may proceed, Ms. Schmid.

5 MS. SCHMID: Thank you.

6 MATTHEW CROFT,

7 called as a witness, having been duly sworn,

8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. SCHMID:

11 Q. Mr. Croft, can you please state your full
12 name, for whom you work, title, and business address
13 for the record?

14 A. Yes. My name is Matthew Croft. I'm a
15 utility analyst for the Division of Public Utilities.
16 My address is 160 East 300 South, here in Salt Lake
17 City.

18 Q. Thank you. Have you participated in this
19 docket on behalf of the Division?

20 A. Yes.

21 Q. And did you prepare or cause to be prepared
22 under your direction direct testimony, marked as
23 DPU 2.0, with printed Exhibits 2.1 through 2.5, and
24 then some work papers that were filed with the
25 Commission but not printed due their voluminous

1 nature?

2 A. Yes.

3 Q. Did you also prepare and cause to be filed
4 surrebuttal testimony and exhibits, entitled DPU 2.0R?

5 A. Yes.

6 Q. Was that surrebuttal?

7 A. That was surrebuttal, yes. I believe my
8 exhibits say 2.0R, but that should be surrebuttal,
9 yes.

10 Q. So do you have any changes you would like to
11 make to your testimony?

12 A. No.

13 Q. Except for perhaps make the 2R, SR?

14 A. Yes.

15 Q. Okay. If we could do that. With that, if
16 you were asked the same questions today as are in your
17 filed testimony would your answers be the same, with
18 the correction to SR from R?

19 A. Yes.

20 MS. SCHMID: With that, the Division would
21 like to move for the admission of the testimony and
22 exhibits of Matthew Croft, as previously identified.

23 CHAIRMAN BOYER: Is there objection to the
24 admission of Mr. Croft's direct and surrebuttal
25 testimony, together with exhibits?

1 They are admitted.

2 (Mr. Croft's direct and surrebuttal testimony,
3 with exhibits, was admitted.)

4 MS. SCHMID: Thank you.

5 Q. (By Ms. Schmid) Do you have a brief summary
6 you'd like to provide today?

7 A. I do.

8 Q. Please proceed.

9 A. In my direct testimony I show the results of
10 an analysis I performed which compared past initial
11 plant addition forecasts to actual plant additions. I
12 fully admit that this analysis is not as complete as I
13 or other parties would have liked it to be.

14 I was, however, limited by the data available
15 to me as well as the time available to conduct the
16 analysis. Since, however, capital investment is a
17 major driver in this case I thought it should be
18 addressed.

19 My analysis shows that in most circumstances
20 trends in the variation between actual and forecasted
21 gross plant additions increases with time at the total
22 company level.

23 Although the trend increases with time, I
24 discovered it was also very sensitive to the timing of
25 large projects. Thus, since most of the trends are

1 based on 18-month periods, it's difficult to tell what
2 would happen to the trend line if it were to extend
3 out another six months to 24.

4 Complicating matters even more is the fact
5 that when you change from a 24-month to an 18-month
6 period, or vice versa, you're also changing the
7 monthly plant addition weightings, which can also
8 change the trend line. As such, I found it difficult
9 to rely on that trend.

10 I therefore looked next at how much the
11 Company had been under or over-forecasting in previous
12 cases. My analysis of the revenue requirement effect
13 of the over or under-forecastings was based on the
14 limited information available at the time.

15 However, based on information in
16 Mr. McDougal's surrebuttal testimony it appears that
17 the Company may have consistently under-forecasted
18 their Utah-allocated plant additions as opposed to
19 over-forecasting their plant additions, as was in my
20 analysis.

21 We know that any plant addition forecast in a
22 rate case will inherently be wrong, to some extent.
23 If there are concerns over cost, timing, and prudence
24 of particular projects, they can be appropriately
25 addressed in the revenue requirement phase through

1 adjustments.

2 And that concludes my summary.

3 MS. SCHMID: Thank you. Mr. Croft is now
4 available for cross examination and questions from the
5 Commission.

6 CHAIRMAN BOYER: Okay. Thank you for that
7 concise summary, Mr. Croft.

8 Mr. Monson or Ms. Hogle, cross examination?

9 MS. HOGLE: Just a few, thank you.

10 CROSS EXAMINATION

11 BY MS. HOGLE:

12 Q. Good afternoon, Mr. Croft. Can you please
13 turn to page 6, lines 100 to 103 of your direct
14 testimony? Where you state that the over-forecasting
15 resulted in an average Utah revenue requirement effect
16 of approximately 4 million?

17 A. Yes.

18 Q. Is that correct?

19 A. Uh-huh.

20 Q. Do you recall what the total average Utah
21 revenue requirement was during those same periods that
22 you analyzed?

23 A. I'm sorry, what the revenue requirement?

24 Q. What the total Utah revenue requirement was
25 in each of those periods --

1 A. Oh, okay.

2 Q. -- on an average basis.

3 A. I don't remember exactly, but it's somewhere
4 in the neighborhood of 1 billion or 1.5 billion,
5 somewhere around there.

6 Q. Yes. So -- you are correct. Subject to
7 check I represent to you that Utah's revenue
8 requirement during those periods was in the range of
9 about \$1.5 billion. So out of a total of \$1.5 billion
10 revenue requirement, the difference between forecast
11 to actuals was \$4 million is what your testimony says,
12 correct?

13 A. Based on the limited data that I had, yes.

14 Q. Okay, thank you. One more question. The
15 Division's overall recommendation is that the
16 Company's proposed test period ending June 2012 be
17 accepted by this Commission; is that correct?

18 A. Yes.

19 MS. HOGLE: Thank you.

20 CHAIRMAN BOYER: Thank you, Ms. Hogle.

21 Mr. Proctor?

22 MR. PROCTOR: Yes, just a few.

23 CROSS EXAMINATION

24 BY MR. PROCTOR:

25 Q. In your surrebuttal, Mr. Croft, you referred

1 to the Company's plant addition forecasts as having
2 been wrong. Is that the word that you chose? Over
3 the words that were available to you?

4 A. Well, I --

5 Q. Such as inaccurate?

6 A. That could have been used as well.

7 Q. So you're using the two as the same?

8 A. I think, I think the point is, is that any
9 forecast will not be exactly what it says it'll be
10 when it eventually happens.

11 Q. The last question that was asked of you by
12 the Company's counsel as to the Division's
13 recommendation, I understood that the Division's
14 recommendation was contained in Ms. Zenger's
15 testimony -- Dr. Zenger's testimony. And it was
16 merely that they did not object to the use of the
17 Company's 2012 test period, provided that there were
18 conditions for customer protections and adjustments
19 made.

20 Are you now altering that to a plain
21 recommendation from the Division that the
22 Commission -- that you affirmatively support the
23 Commission's 2012 test period?

24 MS. SCHMID: Objection, I would maintain that
25 the question goes beyond the scope of the prefiled

1 testimony. And that his answer was a mere general
2 answer, repeating what was said today by Dr. Zenger.

3 MR. PROCTOR: I think I'm entitled to cross
4 examine about general answers that he provided in
5 response to a question from the Company.

6 CHAIRMAN BOYER: Overruled.

7 You can answer that, Mr. Croft.

8 THE WITNESS: So if you could restate your
9 question? I'm sorry.

10 MR. PROCTOR: Oh, gosh.

11 Q. (By Mr. Proctor) Are you now changing the
12 Division's recommendation to one of a plain
13 recommendation that the Commission adopt the 2012 test
14 period proposed by the Company?

15 A. I know that, based on the analysis that I
16 did, it doesn't show that the Company's proposed test
17 year is out of line.

18 Q. You didn't answer my question. So you're not
19 changing the recommendation. You're again stating, We
20 just don't object to it; isn't that correct?

21 A. I believe that to some extent you are
22 accepting it as well, yes.

23 Q. I don't. So are you not objecting, or are
24 you actually recommending adoption of the 2012? On
25 behalf of the Division?

1 A. From a plant perspective I, I accept the
2 Company's test year.

3 MR. PROCTOR: I have no questions.

4 CHAIRMAN BOYER: Thank you.

5 Mr. Dodge?

6 MR. DODGE: No questions.

7 MS. BALDWIN: No questions.

8 CHAIRMAN BOYER: No questions? Okay.

9 Commissioner Allen? Commissioner Campbell?
10 Nor do I. We've read your testimony and it's
11 straightforward.

12 Thank you, Mr. Croft. You -- oh, no.
13 Redirect?

14 MS. SCHMID: One question, please.

15 REDIRECT EXAMINATION

16 BY MS. SCHMID:

17 Q. Mr. Croft, are you the Division's policy
18 witness in this phase of this rate case?

19 A. No.

20 MS. SCHMID: Thank you.

21 CHAIRMAN BOYER: Okay. Now you can be
22 excused, Mr. Croft, thank you.

23 Next witness, Ms. Schmid?

24 MS. SCHMID: Next the Division would like to
25 call Mr. Douglas D. Wheelwright as its witness. May

1 he please be sworn?

2 (Mr. Wheelwright was sworn.)

3 CHAIRMAN BOYER: Thank you, please be seated.

4 DOUGLAS D. WHEELWRIGHT,

5 called as a witness, having been duly sworn,

6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. SCHMID:

9 Q. Could you please state your full name, by
10 whom you are employed, your title, and your business
11 address for the record?

12 A. My name is Douglas D. Wheelwright. I am a
13 utility analyst with the Division of Public Utilities.
14 The address is 160 East 300 South, in Salt Lake City.

15 Q. Have you participated on behalf of the
16 Division in this docket?

17 A. Yes, I have.

18 Q. Did you prepare or cause to be prepared under
19 your direction what's been premarked for
20 identification as DPU Exhibit 3.0, your prefiled
21 testimony, and also DPU Exhibit 3.OSR?

22 A. Yes, I did.

23 Q. Do you have any changes or additions to those
24 two prefiled testimonies?

25 A. No, I do not.

1 MS. SCHMID: The Division would like to move
2 the admission of the prefiled testimonies of
3 Mr. Wheelwright.

4 Q. (By Ms. Schmid) And I do not believe -- I've
5 lost my little sheet -- but did you have any exhibits
6 that went with those?

7 A. Yes. Exhibits 3.1, 3.2, and 3.3.

8 MS. SCHMID: In addition we'd like to move
9 the admission of the aforementioned exhibits.

10 CHAIRMAN BOYER: Are there any objections to
11 the admission of Mr. Wheelwright's direct and
12 surrebuttal testimony and exhibits?

13 They are admitted.

14 (Mr. Wheelwright's direct and surrebuttal
15 testimony, with exhibits, was admitted.)

16 Q. (By Ms. Schmid) Do you have a summary to
17 give today?

18 A. Yes, I do.

19 Q. Please proceed.

20 A. Thank you, Commissioners. The purpose of my
21 analysis and testimony was to review the net power
22 costs included in the proposed June 2012 test year in
23 comparison to historical results. Actual monthly
24 results have been used in order to compare the
25 historical June year end with a forecast June test

1 period.

2 In addition, I reviewed the variance reports
3 to see how the actual results compared to the
4 forecasts approved in previous rate cases. As part of
5 the analysis I completed a comparison of the Company's
6 proposed June 2012 test year to the December 2011 test
7 year that has been suggested by various parties.

8 While several of the individual components of
9 the forecast net power costs appear to be in line with
10 historical trends, I did notice variations in
11 qualified facilities purchases, short-term and
12 secondary sales, as well as short-term and balancing
13 purchases.

14 It should be noted that short-term sales and
15 short-term purchases have been the category of net
16 power costs that has seen the greatest divergence from
17 previous forecast reports reported in the Company's
18 variance reports.

19 There is a significant difference in the
20 value of the electric swap transactions in the
21 forecast test period compared to historical results.
22 While these areas are a concern and will require
23 further examination, these issues do not require a
24 change in the test year.

25 Any amounts to be included or excluded from

1 base rates will need further review and analysis
2 before the implementation of the approved energy
3 balancing account scheduled to begin at the conclusion
4 of this case.

5 After review of the information provided in
6 the June 2012 forecast, I have determined that there
7 are several areas that will need further analysis and
8 explanation by the Company. Any modification to the
9 values forecast in the proposed test year can be
10 accomplished by adjustments to the June 2012 forecast
11 provided.

12 Information dealing with the value of
13 financial swap transactions for natural gas and
14 electricity have not been fully examined by the
15 Division at this time. The Division plans on
16 reviewing these items, along with others, in more
17 detail in the revenue requirement phase of this case.

18 That concludes my summary.

19 MS. SCHMID: Thank you. Mr. Wheelwright is
20 now available for cross examination and questions from
21 the Commission.

22 CHAIRMAN BOYER: Okay. Thank you,
23 Mr. Wheelwright.

24 Ms. Hogle or Mr. Monson, any questions?

25 MS. HOGLE: I have none.

1 CHAIRMAN BOYER: Cross examination?

2 Mr. Proctor?

3 MR. PROCTOR: None.

4 CHAIRMAN BOYER: Mr. Dodge?

5 MR. DODGE: No questions.

6 CHAIRMAN BOYER: Ms. Baldwin?

7 CROSS EXAMINATION

8 BY MS. BALDWIN:

9 Q. Mr. Wheelwright, on page 8 of your testimony,
10 your direct testimony? At the top you talk about the,
11 I think it's the network load?

12 A. Yes.

13 Q. Starts at the beginning? And then if you
14 also go back to your Exhibit 3.1?

15 A. Yes.

16 Q. From this exhibit does -- are you saying that
17 the Company is projecting that in the June 2011-
18 June 2012 period that the percentage of increase in
19 system load will be comparable to that between June
20 and June 2008? June 2006 and June 2008?

21 A. That is the information that was provided by
22 the Company, yes.

23 Q. And what weight does the Division put on this
24 extrapolation?

25 A. I'm not sure I understand your question.

1 Q. Well, do you think it's reasonable to take
2 figures from the June 2006 to June 2008, which were a
3 period of growth, and then project them onto a period
4 that we're just getting out of a recession?

5 A. Well, I think you need to look at a couple of
6 factors. One is that we're coming out of a negative
7 growth phase for the Company, where actually loads
8 have actually gone down. So as we project forward
9 we're actually beginning from a lower base. So as we
10 begin to grow and become out of this recession, we may
11 see an increase in loads.

12 Q. So this 3.57 is above the .62? It's on a
13 different floor?

14 A. Yes. We're --

15 Q. Okay.

16 A. Yeah, we were -- if you look back to
17 June 2008, we were 59.2. We're going back to almost
18 where we were in June 2008 for the June 2011 period.

19 Q. And did the -- do you think that events such
20 as the tsunami, with the disruption in the chain of --
21 I can't -- I forgot the word. The chain of supply?
22 Do you think that something like that is going to have
23 any effect on these numbers?

24 A. I don't know why the tsunami would affect the
25 loads in Utah.

1 Q. Production, and growth, and the recovery
2 depending on sales of parts. Being able to get parts?

3 A. There, there is a potential. I don't know.

4 Q. Did you take anything like that into
5 consideration when you were doing your evaluation?

6 A. Certainly we looked at all the factors. But
7 I don't think we looked specifically at the tsunami
8 and tried to calculate a dollar amount that that would
9 impact Utah loads.

10 MS. BALDWIN: No further questions.

11 CHAIRMAN BOYER: Commissioner Allen?
12 Commissioner Campbell? Nor I.

13 Let's see. Redirect, Ms. Schmid?

14 MS. SCHMID: None.

15 CHAIRMAN BOYER: Okay. Well, thank you,
16 Mr. Wheelwright. You may be excused.

17 Do you have any other witnesses, Ms. Schmid?

18 MS. SCHMID: That concludes the Division's
19 witnesses for this portion of the rate case.

20 CHAIRMAN BOYER: Okay. Thank you,
21 Ms. Schmid. We'll move now to the Office.

22 (Mr. Gimble was sworn.)

23 CHAIRMAN BOYER: Please be seated.

24 Mr. Proctor?

25 MR. PROCTOR: Thank you, Mr. Chairman.

1 DANIEL E. GIMBLE,
2 called as a witness, having been duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. PROCTOR:

6 Q. You are Daniel E. Gimble?

7 A. That's correct.

8 Q. And you are a special projects manager with
9 the Office Of Consumer Services, correct?

10 A. I am.

11 Q. And in this particular test period phase you
12 have filed three phases of testimony: Direct,
13 rebuttal, and surrebuttal, marked respectively OCS-1D,
14 1R, and 1SR, each for test year; is that correct?

15 A. That's correct.

16 Q. Do you have any corrections to make to any of
17 those testimonies?

18 A. Yes, I have two corrections.

19 Q. What are they, sir?

20 A. First in terms of my direct. Page 4,
21 line 110. 2010 should be 2011.

22 And then turning to my surrebuttal, page 1.
23 At the bottom the number on line 30 should be
24 5.83 percent.

25 Q. Are there any other corrections that you wish

1 to make?

2 A. No.

3 MR. PROCTOR: The Office would offer the
4 testimony as marked.

5 CHAIRMAN BOYER: Are there any objections to
6 the admission of Mr. Gimble's direct, rebuttal, or
7 surrebuttal testimony?

8 They are admitted.

9 (Mr. Gimble's direct, rebuttal, and
10 surrebuttal testimony was admitted.)

11 Q. (By Mr. Proctor) Mr. Gimble, you have a
12 brief statement. If you would please provide that?

13 A. Sure. The Office's recommendation on test
14 period is as follows: The Company should rely -- or
15 the Commission should rely on a forecast test period
16 that is closer in time than the Company's proposed
17 test period that ends June 2012. The Commission
18 should also require the use of a 13-month average rate
19 base, like you've done in previous cases.

20 Secondly, the Commission should provide its
21 test year decision early in GRCs to enable parties to
22 conduct a more-efficient discovery audit process and
23 more effectively prepare their cases.

24 If the Commission decides in favor of a test
25 period other than that proposed by the Company we

1 believe it should include two weeks for the Company to
2 refile its case. And impose a requirement that delays
3 beyond that point will stop the 240-day time period.

4 In terms of support for the Office's test
5 period recommendation, we basically indicated the MPA
6 and EBA ratemaking processes provide the Company an
7 opportunity to recover major plant additions, and up
8 to 70 percent of increases in net power costs that
9 occur in between general rate cases.

10 These represent important new factors that
11 serve to mitigate regulatory lag. Not eliminate, but
12 mitigate. The Commission should give weight to the
13 new MPA and EBA ratemaking processes in making its
14 test period decision in this proceeding.

15 We also had testimony pointing out that the
16 Wyoming and Utah GRC cases are running on concurrent
17 schedules, and new rates in each case will be
18 published in late September 2011.

19 That effectively means the two cases will
20 have the same rate effective period as discussed, I
21 think, by Mr. McDougal earlier today. But in this
22 case the Company is proposing a test period that is
23 six months longer. We think you should consider this
24 factor in making your test period decision.

25 Lastly, we submit that our recommendation on

1 test period strikes an appropriate balance between
2 ratepayers and shareholders, and if adopted would
3 produce a fair and reasonable outcome. And that
4 concludes my summary.

5 MR. PROCTOR: Mr. Gimble is available for
6 cross examination, thank you.

7 CHAIRMAN BOYER: Thank you, Mr. Gimble.

8 Let's turn to the Company. Cross examination
9 of Mr. Gimble? Ms. Hogle?

10 CROSS EXAMINATION

11 BY MS. HOGLE:

12 Q. Good afternoon, Mr. Gimble.

13 A. Good afternoon.

14 Q. You just mentioned that one of the factors
15 that OCS, you, recommend a closer-in-time test period
16 is the fact that the Company has available to it the
17 Major Plant Addition Statute, correct?

18 A. That's correct.

19 Q. Did you read Mr. Taylor's direct testimony?

20 A. I did.

21 Q. Okay. He testified --

22 A. It's been a while.

23 Q. Okay. He testified that of the \$3.6 billion
24 in new capital investments, only 1.1 billion of that
25 qualifies for cost recovery under the Major Plant

1 Addition Statute, correct? Do you recall that?

2 A. Maybe you ought to take me there. Did he
3 have a?

4 Q. Do you have a copy in front of you?

5 A. I do.

6 Q. Okay. If you go to page 15, table 6?

7 A. I'm there.

8 Q. Okay. So if you add the 800 million, plus
9 the 157 million for the Naughton projects, the first
10 two of them, the November 11th and May 12th? That's
11 roughly about 1.1 billion that would qualify for cost
12 recovery under the Major Plant Addition Statute, given
13 the limitations in that statute that really only
14 single projects that in total exceed one percent of
15 rate base qualify, correct?

16 A. That's correct.

17 Q. And as I just -- as the table shows,
18 800 million of that is already included in rates?

19 A. That's correct. And it's -- and that's what,
20 in terms of the correction that I just made to my
21 testimony, the 5.63 percent, that increase back in
22 January relates to those four projects.

23 Q. Thank you. One project that could qualify
24 for cost recovery under the Major Plant Addition
25 Statute is the Naughton Unit project, with a cost of

1 approximately \$150 million, correct?

2 A. Um.

3 Q. The very top one?

4 A. The top -- the 157?

5 Q. Uh-huh.

6 A. Yes, potentially.

7 Q. Okay. Will you assume for me that the
8 Commission's order in the 2009 general rate case was
9 issued just in June 2010, okay? And this would mean,
10 then, that the Naughton project that we just talked
11 about, that the in-service date of that project would
12 be 18 months from the date that the Commission order
13 came out, correct?

14 A. Correct.

15 Q. Okay. So if the Company were to pull that
16 project out of this rate case tomorrow and file for
17 cost recovery under the Major Plant Addition Statute,
18 would the Office oppose the Company's filing in the
19 Major Plant Addition Statute? Or under the Major
20 Plant Addition Statute?

21 MR. PROCTOR: Objection, it requires
22 speculation, since there is no such application
23 pending and one doesn't know any of the terms or
24 conditions of it.

25 CHAIRMAN BOYER: Well, but she's framing a

1 hypothetical here and asking him to assume certain
2 facts that are not in evidence.

3 You can go ahead and answer that, Mr. Gimble.

4 THE WITNESS: That decision prob -- would be
5 made by Ms. Beck, in consultation with her attorney,
6 Mr. Proctor, I'm sure. And probably key staff
7 members.

8 Q. (By Ms. Hogle) Thank you. Let's go to the
9 OCS's recommendation here today. Just to be clear,
10 the OCS did not recommend any specific test period; is
11 that correct?

12 A. We recommended a test period closer in time
13 to the, to the filing.

14 Q. Okay. It had some criticisms of the
15 Company's chosen test period? That that was the
16 recommendation, the closer in time, because the
17 Company's chosen test period had some criticisms?

18 A. But I don't know if in my testimony I called
19 it -- alluded to criticisms. What we raised to --
20 what we raised -- there's eight factors that the
21 Commission considers that were delineated in its 2004
22 order.

23 We -- since that time there now is the MPA
24 statute. There's the new ratemaking process that
25 involves the EBA, where the Company has a deferred

1 account already on variations. And we recommended to
2 the Commission that it consider those two new
3 processes in making its test period decision in this
4 case.

5 Q. Mr. Gimble --

6 A. That was our position.

7 Q. Okay. Would you agree with me that all test
8 periods, including historical ones, are a forecast of
9 what will happen in the future?

10 A. Well, if you're using a historical test
11 period you're using actual information that
12 normally -- well, it is adjusted. There's
13 normalization adjustments.

14 Q. So, but it is a forecast of what will happen
15 during the rate effective period, correct?

16 A. I don't know if I'd call it a "forecast."

17 Q. Okay. Will you agree with me that no one can
18 perfectly predict what's gonna happen in the future?

19 A. Yes. Any forecast is gonna be inaccurate to
20 some degree. Forecasts longer out in time, like the
21 Commission has heard testimony on today, is gonna be
22 more subject to error, typically, than closer-in-time
23 forecasts.

24 Q. So there is no such thing as a perfect test
25 period, because that's -- you just know that no one

1 can predict exactly what will happen, correct?

2 A. Define "perfect" for me, if you would.

3 Q. Well, no one will be able to guess exactly
4 what the costs will be that would be incurred by the
5 Company during the rate effective period?

6 A. I would say all test periods are subject to
7 modifications. Whether they be normalization
8 adjustments, or annualization adjustments, so forth.

9 Q. So there would be criticisms with every test
10 period?

11 A. Yes, but I think some test periods are more
12 preferable because you're dealing with information
13 that is more, if you will, known and measurable.

14 Q. I'm sorry, did you say yes, right?

15 A. If you want to re-ask the question.

16 Q. I said that there would be criticisms with
17 any test period. I believe your answer was yes, and
18 then you, you explained.

19 A. I wouldn't call them "criticisms." I would
20 say that any test period has some degree of need to
21 adjust. Even a historical test year.

22 MS. HOGLE: Thank you. That's all I have.

23 CHAIRMAN BOYER: Okay. Thank you, Ms. Hogle.

24 Ms. Schmid, any cross examination of this
25 witness?

1 MS. SCHMID: No questions.

2 CHAIRMAN BOYER: Mr. Dodge?

3 MR. DODGE: No questions.

4 CHAIRMAN BOYER: Ms. Baldwin?

5 MS. BALDWIN: No questions.

6 CHAIRMAN BOYER: Commissioner Allen?

7 Commissioner Campbell has a question.

8 COMMISSIONER CAMPBELL: Several years ago I
9 think the Committee had one of your national
10 consultants testify on test year. And if I remember
11 right, it was her testimony that she was okay with a
12 longer test period because she felt like she could
13 make necessary adjustments.

14 And I guess my question is, is this a change
15 of Office -- first of all, do you remember that? And
16 if so, is this a change of Office position on test
17 year? And if so, why?

18 THE WITNESS: Yeah, I do remember it, because
19 I addressed it in my testimony. And in that testimony
20 I indicated that the Office's policy on test year has
21 evolved. And one of the key reasons why it's evolved
22 is changes that have occurred since two thou -- that
23 was in 2007 test year.

24 Changes that have occurred since then
25 pertaining to the Major Plant Addition Statute and

1 also the EBA, which have the combined effect of
2 reducing the Company's exposure to regulatory lag.

3 COMMISSIONER CAMPBELL: And I understand that
4 part of your testimony.

5 THE WITNESS: Sure.

6 COMMISSIONER CAMPBELL: I guess my question
7 is, is there any change in the Office's perception of
8 its ability to make adjustments to make the test year
9 one that you think would accurately reflect the
10 conditions?

11 THE WITNESS: In her testimony she added --
12 it was a layered recommendation, in terms of
13 indicating that she did have concerns -- I went back
14 and read that last night. She did have concerns about
15 her -- about the Office's ability to effectively
16 adjust that test period running out, I think it was
17 approximately 18 months.

18 And she actually put in her testimony various
19 safeguards to protect customers in case there were
20 difficulties in terms of adequately adjusting a test
21 year that ran out 18 months.

22 CHAIRMAN BOYER: Mr. Gimble, I think you've
23 already answered this question, but we've been asked
24 by you and other witnesses to consider the energy
25 balancing account order that we just issued recently,

1 and also the existence of the Major Plant Addition
2 Statute.

3 And I don't want to mischaracterize your
4 testimony, but is it your testimony that there are
5 restrictions on when the Company can file major plant
6 additions under the statute?

7 THE WITNESS: I really didn't address that in
8 my testimony. Other than to say that it looked like
9 with the Naughton project that it could come in in
10 late, I think, 2012.

11 CHAIRMAN BOYER: Okay, thank you.

12 Redirect, Mr. Proctor?

13 MR. PROCTOR: Yes, thank you. Thank you,
14 Mr. Chairman.

15 REDIRECT EXAMINATION

16 BY MR. PROCTOR:

17 Q. Mr. Gimble, when in the 2007 rate case -- it
18 was Ms. DeRonne at the time, it's now Ms. Ramas --

19 A. Right.

20 Q. -- provided that assessment that we could --
21 that the Office could manage adjustments on an
22 18-month test period, did the Utility conditions and
23 the economic conditions that existed in 2007, have
24 they changed now in 2011?

25 A. Well, I think since 2007 that they've changed

1 from the standpoint of we've worked through the most
2 significant recession in decades. And we're in the
3 position now of coming hopefully out of that
4 recession. But in 2007 I think conditions were
5 different.

6 Q. And the recession that you refer to, has the
7 Company -- or did the Company alter its capital
8 investments in response to that recession?

9 A. I don't know the an -- I would expect that
10 they did, but I don't know the answer to that.

11 Q. Do you know whether or not, for example, they
12 canceled any major natural gas power plant
13 construction?

14 MS. SCHMID: Objection, leading.

15 MR. PROCTOR: I asked him if he knew.

16 CHAIRMAN BOYER: He can ask if he knows, and
17 then we'll go from there.

18 THE WITNESS: They, they did cancel the
19 construction of approximately a 600-megawatt combined-
20 cycle plant.

21 MR. PROCTOR: Thank you, Mr. Gimble.

22 CHAIRMAN BOYER: Okay, very well. Thank you,
23 Mr. Gimble, you are excused.

24 And I think that's your only witness?

25 MR. PROCTOR: That is, thank you.

1 CHAIRMAN BOYER: Okay. Let's turn now to the
2 UAE intervention group. Mr. Dodge?

3 MR. DODGE: Thank you, Mr. Chairman. We call
4 Kevin Higgins.

5 CHAIRMAN BOYER: Mr. Higgins, welcome back.

6 MR. HIGGINS: Thank you, Mr. Chairman.

7 (Mr. Higgins was sworn.)

8 CHAIRMAN BOYER: Thank you. Please be
9 seated.

10 KEVIN C. HIGGINS,
11 called as a witness, having been duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DODGE:

15 Q. Mr. Higgins, will you tell us who you are and
16 why you're here?

17 A. Yes. My name is Kevin C. Higgins. And I'm
18 here on behalf of the UAE intervention group.

19 (The court reporter asked the witness to turn
20 on his microphone.)

21 THE WITNESS: And I have prefiled testimony
22 in this proceeding on the topic of test period.

23 Q. (By Mr. Dodge) And does the direct testimony
24 marked UAE Exhibit TP-1.0, and the rebuttal testimony
25 marked UAE Exhibit TP-1R constitute your testimony in

1 this case?

2 A. Yes, it does.

3 Q. And do you have any changes?

4 A. I do not.

5 MR. DODGE: Mr. Chairman, I'd move the
6 admission of those two exhibits.

7 CHAIRMAN BOYER: Are there any objections to
8 the admission of Mr. Higgins' direct and rebuttal
9 testimony?

10 Okay. They are admitted, then.

11 (Mr. Higgins' direct and rebuttal testimony
12 was admitted.)

13 Q. (By Mr. Dodge) Mr. Higgins, could you please
14 provide a brief summary of your testimony?

15 A. Yes, I will. Thank you. Good afternoon. My
16 recommendation to the Commission is that the best test
17 period to be used in this general rate proceeding is
18 calendar year 2011. In my opinion, calendar year 2011
19 best reflects the conditions Rocky Mountain Power will
20 encounter during the period the rates will be in
21 effect.

22 In the alternative, I recommend that the
23 Commission require the use of the Company's
24 alternative test period filed in this proceeding, the
25 year ending June 30, 2011. I provide the following

1 evidence in support of my position:

2 The conditions that Rocky Mountain Power will
3 encounter are more uncertain the further into the
4 future the test period is extended, particularly with
5 respect to certain key variables. One important
6 example is renewable energy credits, or RECs.

7 The Commission knows, from recent experience,
8 that the value of REC sales can change suddenly. And
9 that RECs have the potential to impact rates in a
10 substantial and beneficial manner. The further into
11 the future the test period extends, the less
12 confidence we have about what the value of RECs will
13 be.

14 This is clear in the Company's rate case
15 filing, as the Company expresses considerable
16 uncertainty with respect to future REC values
17 associated with the pendency of decisions by
18 California regulators that affect the eligibility of
19 using out-of-state resources for compliance with
20 California renewable energy requirements.

21 Consequently, even though the Company's base
22 period REC revenues totaled over \$98 million, Rocky
23 Mountain Power's filing in this case only includes
24 about \$56 million of REC revenues in the test period
25 ending June 2012 due to this uncertainty.

1 Net power costs are another example of this
2 increased uncertainty the further into the future the
3 test year extends. In its EBA proceedings, both here
4 and in Wyoming, Rocky Mountain Power has presented
5 extensive testimony arguing that its projections of
6 net power costs are subject to significant error.

7 In this case one of the major differences
8 between projected net power costs for the test period
9 ending June 2012 and the one ending December 2011 is
10 that the projected value of electric swaps decreases
11 dramatically, as shown in the analysis prepared by the
12 Division's witness Mr. Wheelwright.

13 This single item explains nearly \$76 million
14 of the \$124 million difference in net power costs
15 between the two test periods. In other words, the
16 largest component of the difference is one of the most
17 speculative items in the net power cost forecast.

18 On the other hand, the difference in coal
19 costs, which the Company cites as a major factor in
20 its overall rate increase, is only around \$10 million.
21 Using a net power cost forecast that is closer in time
22 will better reflect the conditions that Rocky Mountain
23 Power will encounter, because it is more likely to be
24 realistic.

25 This is reinforced by our recent experience

1 with other difficult-to-anticipate events, such as
2 statutory changes to tax depreciation rates that have
3 been intended to stimulate the economy, known as
4 "bonus depreciation."

5 A test period closer in time increases the
6 likelihood that the tax depreciation rate used in
7 setting rates will actually match that which the
8 Utility will encounter when it files its taxes. The
9 case for a projected test period relatively close in
10 time is even stronger now than when the Commission
11 ruled in favor of this approach in 2008.

12 As has been discussed today, since that time
13 two major regulatory changes have been enacted that
14 ameliorate the Company's claim that a far-reaching
15 test period is needed to compensate for projected
16 future costs: Passage of legislation allowing for
17 cost recovery of major plant additions, and the recent
18 approval by the Commission of a four-year energy
19 balancing account mechanism pilot.

20 Taken together, the introduction of the MPA
21 and EBA argue for moving the test period even closer
22 in time than the standard of the 12 months out that
23 has been adopted in recent cases. Of the two test
24 periods presented by the Company in this filing, the
25 test period June 2011 best fits this bill.

1 I recommend that if the calendar year 2011
2 test period is not adopted by the Commission, then the
3 test period ending June 2011 should be selected.

4 The selection of the calendar year 2011 for
5 the test period strikes a reasonable balance between
6 the customer and Company interests by setting rates
7 based on a forward-going projection of costs for the
8 upcoming year, while limiting the period of projected
9 costs to one that is relatively close in time.

10 This approach reduces the likelihood of
11 forecast error, and better protects both customers and
12 Company from the effects of difficult-to-anticipate
13 events that a test period extended further out into
14 the future would expose us to.

15 Significantly, the calendar year 2011 test
16 period I am recommending is the same period that the
17 Company has filed in Wyoming on November 22, 2010.
18 And as has been discussed today, both rate cases in
19 Wyoming and Utah have very, very similar rate
20 effective periods.

21 In conclusion, as it is the Company's -- as
22 it is the Commission's task to identify the test
23 period that best reflects the conditions the Utility
24 will encounter, I encourage the Commission to use a
25 test period about which more is known rather than

1 less.

2 I do not believe the test period should be
3 determined by simply selecting the period in which the
4 Utility projects it will make the largest amount of
5 capital investment. The amount of capital
6 expenditures is a condition the Utility will create or
7 control, whereas the standard in the statute is the
8 conditions that the Utility will encounter. Which is
9 suggestive of factors outside the Utility's direct
10 control.

11 Taking into account the uncertainties
12 inherent in projecting future conditions, the test
13 period that best reflects the conditions the Utility
14 will encounter for setting rates is calendar year
15 2011. And that concludes my summary.

16 MR. DODGE: Mr. Higgins is available for
17 cross.

18 CHAIRMAN BOYER: Thank you, Mr. Higgins.

19 Rocky Mountain Power, any cross examination
20 of this witness? Mr. Monson?

21 MR. MONSON: We do have some questions for
22 Mr. Higgins.

23 CROSS EXAMINATION

24 BY MR. MONSON:

25 Q. Mr. Higgins, you were quite critical of the

1 Company's choice to file this case using a test period
2 ending June of 2012 in your testimony; is that right?

3 A. I, you could say that I'm, I don't think it's
4 the best test period. I have -- I was critical of the
5 Company's reply brief respecting -- or response, I
6 would say, to UAE's proposal that this be a calendar
7 year 2011 test period. I would say I was pretty
8 critical about it.

9 Q. Well, and in your testimony you in fact said
10 that the Company's choice was gamesmanship, and
11 brinkmanship, and trying to manipulate the process,
12 and things like that, didn't you?

13 A. I, I believe -- yes. The short answer is
14 yes. And those -- my testimony on that subject, which
15 I stand by, should be viewed in light of the
16 information about the Company's perspective that it
17 provided in that response.

18 Q. And that's because you believe the Commission
19 has kind of established a standard for a 12-month
20 forward test period; is that right?

21 A. The Commission has established a precedent
22 for it. My understanding is that this subject can be
23 considered anew. And the Commission has certainly
24 provided and encouraged a process where this subject
25 can be considered in a manner that allows it to happen

1 prior to the complete filing of a rate case.

2 Q. But the Commission doesn't require it to be
3 considered prior to the filing of a case, does it?

4 A. The Commission does not require it, no.

5 Q. And you were the witness for UAE in the 2007
6 rate case? The one you're referring to as being
7 precedent, right?

8 A. Yes, I was.

9 Q. And in that case it was UAE's position that
10 the Commission had had one of the most conservative
11 test years in the Company. And now the country was
12 ask -- in the Country. And the Company was now asking
13 it to move to a far-out test period that you thought
14 was extreme; is that right?

15 A. Yes.

16 Q. I want you to review -- I want to review with
17 you just a little bit of your testimony in that case.

18 A. Sure.

19 Q. You probably don't have a copy of it.

20 A. I don't.

21 Q. Well, this is the transcript anyway, so.

22 MR. MONSON: May I?

23 CHAIRMAN BOYER: Please.

24 (Pause.)

25 Q. (By Mr. Monson) Mr. Higgins, I'll represent

1 to you that this is just excerpts from the transcript,
2 but that it does include your full summary and the
3 full cross examination by Mr. Ginsberg. Would you
4 accept that?

5 A. Sure.

6 Q. Okay. Could you turn to what is page 103,
7 which is about the, well, it's the back of the second
8 page. And could you read for the Commission lines 7
9 through line 17?

10 A. "Utah is really in transition with
11 respect to its treatment of test
12 periods. Traditionally this state is
13 one in which test periods were set on a
14 historical basis, even without known and
15 measurable changes. That's clearly
16 going to be different in this case.

17 "There is a statute that governs a
18 test period. And I believe that in
19 transitioning to a new approach, using a
20 fully-forecasted test period that is
21 nearer in time is an appropriate step
22 for the Commission to be taking."

23 Q. Okay. And then could you now look back about
24 four more pages to page 218, please? It's actually
25 next-to-the-last page.

1 A. Yes.

2 Q. And could you read your answer to
3 Mr. Ginsberg's questions on lines 10 through 17?

4 A. Yes. "Well, I guess I would like to
5 see Utah gain some experience in using
6 even what I would call a closer-in-time
7 or modest test period first. I would
8 think that if over time there's a
9 comfort level that is developed with
10 using the forecast, a closer forecast,
11 then the Commission could reassess at a
12 later period as to whether or not
13 something further into the future would
14 be warranted or not."

15 Q. Okay. And so I guess what I wanted to ask
16 you about that is, you felt like at the time that,
17 because we were moving from an historic test period to
18 a future test period, that maybe we should take a
19 smaller step. Is that a fair summary of your
20 testimony?

21 A. I think that's fair.

22 Q. Okay. But you said the Commission could
23 reassess that as we gain more experience?

24 A. Certainly.

25 Q. Now, I don't know if you've been the UAE's

1 witness in all the rate cases that have been filed
2 since the 2003 amendment to the test period statute.
3 Have you?

4 A. I probably have been.

5 Q. I assumed you probably had been. Are you
6 aware that there's been six rate cases since then?
7 That Rocky Mountain Power -- the Company has had six
8 rate cases since that time. Does that sound about
9 right?

10 A. I'll accept that.

11 Q. Okay. And of those six rate cases, test
12 period has been resolved by stipulation in four. Does
13 that sound right?

14 A. That sounds right.

15 Q. So there's been two cases where test period
16 was not resolved by stipulation. One was the '07
17 case, which we've just been talking about, and one was
18 the '08 case; is that right?

19 A. That is correct.

20 Q. And in the '08 case the Company initially
21 proposed a test period extending 12 months from the
22 date of filing, approximately 12 months, and -- but
23 with a year end rate base, right?

24 A. That is correct.

25 Q. And several parties, including UAE, opposed

1 that; is that right?

2 A. Yes.

3 Q. The Commission ultimately ordered the Company
4 to refile, using a test period ending over 18 months
5 from the original date of filing but with average rate
6 base; is that right?

7 A. That is correct. And I'll, you know, I'll
8 note that at the time the re -- the Company was
9 reordered to file it was no longer 18 months out from
10 when that test period would be. But the state -- the
11 question as you asked is -- the answer is yes.

12 Q. And to be fair, the Company refiled on
13 September 10th of 2008, right? Do you recall that?

14 A. Yes.

15 Q. And so the test period in terms of, if that
16 was considered the filing, was 15 1/2 months out; is
17 that right?

18 A. Yes.

19 Q. So the Commission in the '07 case ordered a
20 test period that went out just a little bit more than
21 12 months, and in the '08 case went out 15 1/2 months?

22 A. Right. And of course in the second case the
23 Commission was also grappling with the complexity of
24 the fact that the Company had filed for an end-of-
25 period rate base. Which added, I think, greater

1 difficulty to the determination.

2 And in my own view I felt that the Commission
3 was perhaps trying to find a compromise there between
4 the end-of-period rate base the Company had filed and
5 the positions of the other parties, as well as the
6 Commission's prior precedent. And the result is what
7 we described.

8 Q. And do you recall which party it was that
9 repre -- that recommended the rate base the Commission
10 ultimately adopted? Or the test period?

11 A. I, I don't recall specifically.

12 Q. Okay. Okay, let's also then go to the 2009
13 case. In that case the Company was required to file
14 for a test period before filing its application,
15 right? By the order in the 2008 case?

16 A. Yes.

17 Q. And it initially requested a test period
18 ending about 18 months after the anticipated filing
19 date; is that right?

20 A. Yes.

21 Q. And when I say that, obviously when it filed
22 that it didn't know when it was gonna file its
23 application. But it was approximate -- you know, it
24 was 18 months -- it was actually, if you took it from
25 the date they filed the request for determination, it

1 was more than 20 months. But from the date they
2 actually ended up filing the rate case it was about
3 18 months, right?

4 A. Yes.

5 Q. The parties then entered into a stipulation
6 in that case for a test period that ended about
7 12 months after; is that right?

8 A. Yes, that's correct.

9 Q. And do you recall that part of the terms and
10 conditions for that stipulation were that the parties
11 wouldn't oppose the Company's filing two major plant
12 addition cases; is that right?

13 A. That is correct.

14 Q. And there was some controversy about whether
15 or not you could file a major plant addition case in
16 conjunction with a rate case and how that would all
17 work; is that right? Do you remember that?

18 A. I, you know, I don't recall specifically the
19 controversy, Mr. Monson.

20 Q. Is it your position that the Company can
21 file -- let's use this Naughton example that's come
22 up. Could the Company pull the Naughton plant -- the
23 Naughton scrubber out of this case and file a major
24 plant addition case simultaneously or concurrently
25 with this general rate case? What's your view on

1 that?

2 A. I --

3 MR. DODGE: First of all -- excuse me just
4 for a minute. I'm going to object to the extent it
5 calls for a legal conclusion. And it's also not a
6 question that's been posited in a way that would
7 elicit a formal response from UAE as a policy matter.

8 I certainly don't object to him exploring
9 Mr. Higgins' notions on things, but this is partly a
10 legal question and partly a policy question that UAE
11 has not been called upon to make a decision on.

12 CHAIRMAN BOYER: I'm gonna sustain that
13 objection.

14 MR. MONSON: Can I ask Mr. Higgins just for
15 his own personal opinion?

16 Q. (By Mr. Monson) Not -- I'm not trying to put
17 you in the position of making a decision for UAE. But
18 do you have a personal position on that issue whether
19 the Company could do that?

20 A. As Mr. Dodge said, I don't know at all from a
21 legal standpoint whether the Company could do that or
22 not. It would, you know, I guess the one parallel I
23 would look to is that at one time -- when the Company
24 previously made a 12-month filing in the case you
25 referenced, Mr. Monson, the Company also had plans to

1 file major plant addition cases shortly thereafter.

2 And I don't know to what extent the example
3 you posited to me, the hypothetical with respect to
4 Naughton, would parallel that prior circumstance or
5 would be distinct from it. And, quite frankly, I
6 would need to spend more time analyzing that question
7 before I think I could give an informed answer.

8 Q. (By Mr. Monson) That's fair. In your
9 testimony you say that your, your proposed test period
10 that extends about 12 1/2 months from the date of
11 filing in this case strikes a reasonable balance
12 between customers and the Company; is that right?

13 A. Yes.

14 Q. And you say it reduces the risk of forecast
15 error?

16 A. Yes.

17 Q. Here you're talking about a forecast of the
18 test period, right?

19 A. Yes.

20 Q. You acknowledge in your testimony that
21 Section 54-4-4, subpart (3), provides the standard for
22 selection of a test period; is that right?

23 A. Yes.

24 Q. In fact, you quote the whole statute, right?

25 A. Yes.

1 Q. And you've said in your summary -- and we've
2 heard it 20 times today -- that that's -- the statute
3 says that:

4 "The commission shall select a test
5 period, on the basis of the evidence,
6 that the commission finds best reflects
7 the conditions that a public utility
8 will encounter during the period when
9 rates determined by the commission will
10 be in effect."

11 Right?

12 A. Yes.

13 Q. Now, you'd agree with me that the rate
14 effective period in this case is gonna be longer than
15 the day the rates go into effect?

16 A. I hope so.

17 Q. Is it even conceivable that it wouldn't be
18 longer than that?

19 A. Nothing surprises me anymore. But no, I, I'm
20 joking. It would be -- it would not be conceivable
21 for it to be shorter than the day it went into effect.

22 Q. Okay. And the rate effective periods from
23 those cases that were filed since 2003 to 2009 have
24 ranged between about 8 1/2 months to about 20 months.
25 Does that seem about right?

1 A. That seems about right.

2 Q. Okay. Now, section -- subsection (b) of the
3 statute, which is also in your testimony, says:

4 "In establishing the test period
5 determined in Subsection (3)(a), the
6 Commission may use:"

7 And then it lists the three alternatives.

8 A. Yes.

9 Q. Right?

10 A. Yes.

11 Q. Okay. So the three options that are given in
12 subsection (b) are options that the Commission can use
13 to establish the test period that's determined in
14 subsection (3)(a), right?

15 A. Yes.

16 Q. Okay. And would you agree with me that when
17 it says "based on the evidence" it's talking about the
18 evidence that the test period best reflects the
19 conditions the Utility will encounter during the rate
20 effective period; is that right?

21 A. Yes.

22 Q. Okay. Have you analyzed the investments the
23 Company says it will make in the first six months of
24 2012?

25 A. I have reviewed some of the information about

1 them, yes.

2 Q. And have you provided any evidence to this
3 Commission that it's unlikely that the Company will
4 actually make those investments?

5 A. No.

6 Q. And that period, the first six months of
7 2012, will be in the rate effective period, won't it?

8 A. In all likelihood, yes.

9 Q. In your testimony in the 2007 case -- I'll
10 represent this to you, and if you want to see it, I'll
11 be happy to show you. You were concerned about the
12 Company's proposed test period, because you said:

13 "A significant portion of the
14 Company's capital expenditure
15 projections for its proposed test period
16 is comprised of budget targets by
17 category, as opposed to specific
18 projects."

19 I don't expect you to remember exactly that,
20 but does that sound like what you might have said?

21 A. Sounds like me.

22 Q. And it was -- just in case you want to check
23 it, it was on page 10 of -- and lines 18 through 20 of
24 your test period testimony in that case.

25 A. Okay.

1 Q. Now, that's not the case here, is it?

2 A. In this case, these -- the Company has
3 provided a list of specific investments. That is
4 true.

5 Q. So if your test period were adopted, it would
6 not include investments that the Company's projecting
7 it's gonna make during the rate effective period; is
8 that right?

9 A. That is correct.

10 Q. And it also wouldn't include net power cost
11 increases that the Company is anticipating during the
12 rate effective period?

13 A. It would not include the particular
14 projections that the Company has made about net power
15 costs in that period, that is true. But I don't have
16 as much confidence in those projections as I do about
17 the 2011 net power costs.

18 Q. And one of the reasons you offer for using a
19 closer-in test period is the Major Plant Addition
20 Statute, right?

21 A. Yes.

22 Q. You're aware that the Company used its MPA
23 filings in Utah in lieu of filing a general rate case.
24 That was part -- kind of part of the stipulation,
25 wasn't it?

1 A. Quite frankly, I don't know that it was in
2 lieu of filing a general rate case. I saw that as an
3 entire package that, you know, that the Company agreed
4 to change its requested test period in combination
5 with the major plant additions filings. To what
6 extent those replaced rate cases, I don't know.

7 Q. Well, didn't it also agree not to file a rate
8 case for a certain period of time?

9 A. Yes, it did agree to a stay of some extent.

10 Q. And you're a witness also in the Company's
11 Wyoming rate cases; is that right?

12 A. Yes.

13 Q. And so you're aware that there was a Wyoming
14 general rate case at the same time the major plant
15 addition cases were going on in Utah?

16 A. Yes.

17 Q. So there have been, at least in the last
18 three or four years, has been one more rate case in
19 Wyoming than in Utah? General rate case?

20 A. I would have to go back and count that up
21 to --

22 Q. Okay.

23 A. -- concur with that.

24 Q. Now, you've said if the Commission isn't
25 gonna choose a calendar year 2011 test period that

1 you'd recommend it choose a June 2011 test period; is
2 that right?

3 A. As the next alternative, yes.

4 Q. Okay. And then that, that alternate proposal
5 caused Mr. Taylor to point out that if the Commission
6 did that, that one of the major plant additions that
7 it approved would actually only be partially allowed
8 during that test period. Do you recall that?

9 A. I recall that part of Mr. Taylor's testimony,
10 yes.

11 Q. And you said that argument was a red herring
12 because it would not be a stretch for the Company to
13 argue that an adjustment is warranted in that case,
14 right?

15 A. Right. I, I pointed out that the
16 circumstance Mr. Taylor was referencing was really an
17 artifact or a consequence of having the single-issue
18 ratemaking provision in the statute. And that when
19 you have those types of special ratemaking treatment
20 it can create unusual circumstances that need to be
21 accommodated.

22 Q. So is it your position, then, that the
23 Commission, using a fully-forecast test period, can
24 make adjustments to include costs that ought to be
25 included in the test period but aren't for some

1 reason?

2 A. I would say that I would, I would take a
3 narrower view on that and make the following
4 qualification: That if you had the special
5 circumstance in which the Company was filing a
6 forecast test period, and in which there was already,
7 in rates, a component of plant that was in that test
8 period, that I would think the Commission could take
9 into consideration the fact it had already fully
10 approved that particular plant when it makes its rate
11 determination and it determines the allowed plant in
12 service.

13 Q. Okay. You say that the Company's position
14 that the Commission should choose a test period that
15 forecasts the rate effective period is contrary to the
16 legislative intent language about presumption, right?

17 A. Actually, I, you know, I didn't quite hear
18 what you said, Mr. Monson. I'm not following.

19 Q. I said that -- well, it's actually in your
20 rebuttal testimony.

21 A. Okay. Help me find it, please.

22 Q. Let me turn to it. I was trying to summarize
23 it. But it's lines 122 to 131 of your rebuttal?

24 A. Okay.

25 Q. And there you're talking about how rate

1 effective periods are always in the future and so
2 forth --

3 A. Yes.

4 Q. -- and tautological assertions and so forth,
5 right?

6 A. Yes.

7 Q. So you're saying there that -- and I believe
8 you say, if you get down to line 125, you start
9 talking about presumption and that's inconsistent with
10 the legislative intent, right?

11 A. Yes.

12 Q. Okay. You've consistently had the position
13 that a 12-month forward test period should be used; is
14 that right?

15 A. My position has been one relatively close in
16 time. And the 12 months fits that bill, yes.

17 Q. And you believe that Rocky Mountain Power is
18 playing games to not choose that as its primary
19 recommended test period; is that right?

20 A. I felt that Rocky Mountain Power did engage
21 in some bit of brinksmanship with it's filing in this
22 case, because the Commission has a clear path that
23 would allow the Company to put this issue on the table
24 to be resolved prior to filing a full case.

25 And by choosing the option that the Company

1 chose in having the clock start on when a
2 determination must be made in this matter, that the
3 Company put pressure on the parties and the
4 Commission -- particularly the Commission -- to make a
5 determination favorable to the Company.

6 And that is my interpretation of the
7 decisions that the Company took in putting this
8 package together.

9 Q. So are you saying the Commission should have
10 a presumption in favor of a 12-month test period?

11 A. No, I'm not saying the Commission should have
12 a presumption in favor of it. But I do believe that
13 the Commission should take into account the fact that
14 its, its precedent has been 12 months. And I believe
15 that the -- it's something that probably would have
16 been reasonable for the Company to acknowledge.

17 Q. Its precedent wasn't 12 months in the 2008
18 case, was it?

19 A. 2008 case was complicated by the Company's
20 attempt to include an end-of-period rate base. Which,
21 as I have described, made the determination of test
22 period in that case more complicated. And the
23 Commission, as I stated, I believe tried to find a
24 compromise there that could work within the framework
25 of the case that had been filed.

1 The last time the Commission decided this
2 case -- this matter without the complexity of an
3 end-of-period rate base, the Commission determined
4 that the best test period was one that was
5 approximately 12 months out.

6 Q. I'm gonna ask you about used and useful for
7 just a second. Your proposed test period includes in
8 it investments that will not be completed and used and
9 useful as of the start of the test period; is that
10 right?

11 A. That is correct.

12 Q. So in that respect your proposed test period
13 also has that same problem?

14 A. It does. And I concede that it is a problem.
15 It's just an -- it's less of a problem with the test
16 period that I'm proposing, but I would admit it is
17 still a problem.

18 Q. Okay. And the two -- so -- but apparently
19 you don't think it's a problem that prevents the
20 Commission from using a forecast test period?

21 A. That is correct.

22 Q. Okay. And just one other set of questions.
23 Do you recall what happened in the 2007 rate case when
24 the Commission ordered the Company to refile using the
25 calendar year test period that you recommended, as

1 opposed to the test period the Company had
2 recommended? Do you recall what happened to the
3 revenue requirement in that case?

4 A. In 2007?

5 Q. Yes.

6 A. Yes.

7 Q. What happened?

8 A. It was lower.

9 Q. How much, do you know?

10 A. Approximately \$40 million.

11 Q. Forty million dollars. Just as a result of
12 test period change, right?

13 A. Yes.

14 Q. Okay. And in this case the Company has filed
15 two alternative -- a recommended test period and an
16 alternative test period. What is the difference in
17 revenue requirement from the 2012 June test period to
18 the June 2011 test period? Do you know that?

19 A. It's approximately, I believe it's about
20 \$140 million or so.

21 Q. A hundred and forty million dollars. So if
22 the Commission were to adopt your recommendation, I
23 know we don't have the exact number, but is it fair to
24 say that it's probably gonna be 70, maybe 80 million
25 dollars difference in revenue requirement, just from

1 changing the test period?

2 A. I -- that's probably a reasonable guess.

3 MR. MONSON: Okay. That's all I have,
4 thanks.

5 THE WITNESS: Thank you.

6 CHAIRMAN BOYER: Okay. Thank you,
7 Mr. Monson.

8 Ms. Schmid, cross examination?

9 MS. SCHMID: No questions.

10 CHAIRMAN BOYER: Mr. Proctor?

11 MR. PROCTOR: No, thank you.

12 CHAIRMAN BOYER: Ms. Baldwin?

13 MS. BALDWIN: No questions.

14 CHAIRMAN BOYER: No questions, okay.

15 COMMISSIONER CAMPBELL: Yeah, I've got a
16 couple. I think Mr. Monson asked you this at the very
17 end, but I just want to confirm that I heard right.
18 So with your recommended test year with the 2011
19 calendar date with an average rate base, was it your
20 agreement with him that there are used and useful
21 assets that would not be fully recovered?

22 THE WITNESS: I believe, if I recall
23 correctly, the question that Mr. Monson had asked me
24 about the 2011 test period was that would there be
25 assets that would be -- that would not be used and

1 useful.

2 And I agreed that there would be some assets
3 that would not be used and useful. But I -- are you
4 referring, Commissioner Campbell, to another question?

5 COMMISSIONER CAMPBELL: Well, let -- I --
6 okay, so I understand his question was a little
7 different than mine.

8 THE WITNESS: Okay.

9 COMMISSIONER CAMPBELL: The question I want
10 to ask you is the same I asked Mr. Taylor.

11 THE WITNESS: Okay.

12 COMMISSIONER CAMPBELL: And that is, with a
13 test period ending December 2011 --

14 THE WITNESS: Yes.

15 COMMISSIONER CAMPBELL: -- would there not be
16 assets put into rate base between June 30th and the
17 date of our order that would not receive full recovery
18 under that method?

19 And then the second question I'm gonna ask
20 you, so you prepare for it, is in the '08 case with a
21 15-month period, did that not resolve that? Because
22 the 15-months brought the average rate base right
23 about around the time when the order was issued.

24 THE WITNESS: Okay, so let me go to your, to
25 your first question then. You -- you're asking me

1 that if the 2011 calendar year test period were
2 adopted, would there be assets that went into rate
3 base between -- and then the dates, I want to make
4 sure I'm tracking, are?

5 COMMISSIONER CAMPBELL: Well, the average
6 rate base --

7 THE WITNESS: Yes.

8 COMMISSIONER CAMPBELL: -- versus when the
9 order came out.

10 THE WITNESS: Versus when the order came out.
11 The average rate base would -- the establishment of an
12 average rate base for that period would provide for a
13 synchronized full recovery of the assets over a
14 12-month period.

15 It would, it would not line up exactly with
16 the value of the plant in service on the date that
17 rates went into effect.

18 So I believe that's the issue you were
19 getting at. If rates go into effect in September, and
20 an average rate base approximates the value of plant
21 in service at about June, let's say. You do have that
22 little bit of a difference.

23 COMMISSIONER CAMPBELL: Let me ask the
24 question a different way. In an environment of a
25 growing rate base --

1 THE WITNESS: Yes.

2 COMMISSIONER CAMPBELL: -- does the use of an
3 average rate base ever allow the Company to earn a
4 full return on that item of their rate case?

5 THE WITNESS: I wouldn't say it doesn't ever
6 allow them to earn their return. I would say that if
7 you have rapidly-growing rate base, then you, you
8 know, you have -- you create the possibility that the
9 Utility will have assets that it's using that it's not
10 earning a full return on. You know, I would agree
11 with that.

12 COMMISSIONER CAMPBELL: Okay. That was my
13 question. Now, I want to explore some of your
14 uncertainty issues. And I guess the one -- let's just
15 talk about electric swaps then.

16 If the Commission were to use the Company's
17 suggested test year, how would the parties make
18 adjustments -- or, or what sort of evidence, or how
19 would you go about analyzing whether their
20 calculations as far as electric swaps was correct, and
21 how would you counter that?

22 THE WITNESS: Well, I'm -- if you accepted
23 their -- if you, you know, if you accepted the
24 Company's test period then I think, you know, we would
25 be working with the data framework that the Company

1 provides.

2 We would be starting with the Company's
3 assumptions about what the world looks like in 2012.
4 Up through June 2012. And in that situation the
5 Company, quite frankly, is greatly advantaged. It
6 has -- it owns the system, it owns the -- its
7 resources.

8 And we would have to attempt to probe the
9 Company's model. We might challenge some of the
10 assumptions that are used for prices, or look --
11 attempt to inspect the data.

12 But quite frankly, when you're attempting to
13 evaluate the Company's case that far out you don't
14 really have the advantage of bringing -- of looking at
15 updated information very easily that can help refine
16 your view of the world.

17 One of the things that we can look at today
18 in a rate case that is say 12 months out is that
19 because the world does evolve, and because new
20 information becomes available, whether it's
21 information about renewable energy credits or, or
22 otherwise, you know, we can use those developments to
23 inform us about the validity of the Company's
24 assumptions.

25 When it's further out, you know, we can

1 attempt to use our opinion and apply it to the
2 Company's opinion about some of these factors, but
3 it's just a lot more challenging, I'll say.

4 COMMISSIONER CAMPBELL: And that answer is
5 the same for net power costs as well as the REC issue?
6 I mean, it's basically that we would be faced with
7 their opinion versus your opinion on these issues?

8 THE WITNESS: Yes. I mean, you, you know,
9 you -- there will be obviously a valuation of the
10 assumptions used in the modeling for net power costs,
11 for example. Certainly parties can challenge
12 prudence, but that doesn't happen that often in net
13 power costs.

14 It would really be one party's opinion versus
15 another about what the world is going to look like at
16 that time.

17 CHAIRMAN BOYER: Let me ask just a very
18 direct question. If the Commission selects a test
19 period that excludes capital investments that are --
20 that have a high likelihood of being placed in service
21 during the rate effective period, can the Company --
22 does the Company have a reasonable opportunity to earn
23 its authorized return?

24 THE WITNESS: I believe the Company does have
25 a reasonable opportunity to earn its authorized

1 return. The, you know, if you, if you use a -- I mean
2 there, there's gonna be a cutoff at some point in a
3 rate case -- or in a test period.

4 And the test period that I, you know, I'm
5 proposing is not a historical test period, it is a
6 projected test period. And so one, you know, one
7 could ask the question if something, you know, comes
8 into service the day after or the month after the test
9 period closes, are we depriving the Utility of earning
10 their return?

11 And, you know, I -- my answer would be not --
12 no, not as a general proposition. On that specific
13 item that might come in, would there be a return on
14 that specific item? Not necessarily. But of course
15 Utah has special treatment that does allow for large
16 special items to come in after the closing of a rate
17 case.

18 So I think the tools are there to provide the
19 necessary balance between customers' interest in
20 getting a test period that is based on reasonably-
21 certain projections, or close projections, and the
22 Company's interest in being able to recover
23 investments that may occur later in time and are
24 significant.

25 CHAIRMAN BOYER: Okay. Thank you,

1 Mr. Higgins.

2 Redirect, Mr. Dodge?

3 MR. DODGE: No questions, thank you.

4 CHAIRMAN BOYER: Well thank you, Mr. Higgins,
5 you are excused.

6 THE WITNESS: Thank you, Mr. Chairman.

7 CHAIRMAN BOYER: And I think that brings us
8 now to Ms. Baldwin and her fleet of witnesses.

9 MS. BALDWIN: Yes, thank you.

10 CHAIRMAN BOYER: Would you like to call your
11 first witness, please?

12 Oh. Well, let's put your first witness on,
13 have him sworn, get his summary in, and then we'll
14 take a break. We do need to rest our reporter and our
15 commissioners.

16 MS. BALDWIN: Sure. Mr. Maurice Brubaker.

17 CHAIRMAN BOYER: Oh, you know, before you do
18 that, I'm sorry.

19 Mr. Monson, did you want to introduce this
20 into evidence? The transcript excerpt?

21 MR. MONSON: I don't think it needs to be
22 introduced into evidence. The Commission can take
23 notice of it.

24 CHAIRMAN BOYER: Yes, we can. Thank you.

25 All right. Pardon the interruption,

1 Ms. Baldwin.

2 MS. BALDWIN: Mr. Brubaker, would you please
3 take the stand?

4 (Mr. Brubaker was sworn.)

5 CHAIRMAN BOYER: Thank you. Please be
6 seated. And welcome back.

7 THE WITNESS: Thank you.

8 MAURICE BRUBAKER,

9 called as a witness, having been duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. BALDWIN:

13 Q. Mr. Brubaker, could you please state your
14 name for the record?

15 A. It's Maurice Brubaker.

16 Q. And on whose behalf are you testifying today?

17 A. UIEC.

18 Q. And are you the author of the testimony filed
19 under your name on March 9th that was the direct
20 testimony for test period?

21 A. Yes.

22 Q. And are you the author of the testimony filed
23 on March 17th under your name that was entitled
24 Rebuttal Testimony, that also had an exhibit?

25 A. I am.

1 Q. And are you the author of the testimony that
2 was filed on March 21st under your name, noted as
3 Surrebuttal?

4 A. Yes.

5 Q. Do you have any changes to any of this
6 testimony?

7 A. I do. I have just one change, and it's in
8 the direct testimony. And it's on page 5 of the
9 direct testimony. On line 13 is a sentence that was
10 intended to be edited out. It begins: "This
11 volatility," and ends on line 14. I'd just like to
12 strike that particular sentence. Otherwise I don't
13 have any changes.

14 Q. Would your answers be the same, if asked here
15 today, as in your testimony that has been prefiled?

16 A. Yes.

17 MS. BALDWIN: Commission, the UIEC moves to
18 admit Mr. Brubaker's testimony.

19 CHAIRMAN BOYER: Is there any objection to
20 the admission of Mr. Brubaker's direct, rebuttal, and
21 surrebuttal testimony as modified today?

22 MR. MONSON: We don't object to its
23 admission, but we would request that the Commission
24 instruct the witness to put page numbers on his
25 testimony so that when we cross him we can refer to a

1 page number.

2 CHAIRMAN BOYER: That would be --

3 MS. BALDWIN: And that's not my witness's
4 fault. He had page numbers. It got taken off during
5 editing somehow.

6 CHAIRMAN BOYER: That would be helpful.

7 MR. MONSON: And the other thing, I think all
8 the other parties have filed testimony using
9 consecutive line numbering, as required by the
10 Commission's rules, and Mr. Brubaker hasn't followed
11 that rule either. But I'm not gonna object to his
12 testimony on those technical grounds.

13 CHAIRMAN BOYER: So noted. But it does
14 create some difficulty for the Commission as well with
15 so many line 5s, and -- but with that, they are
16 admitted.

17 (Mr. Brubaker's direct, rebuttal, and
18 surrebuttal testimony, with exhibits, was
19 admitted.)

20 Q. (By Ms. Baldwin) Mr. Brubaker, could you
21 please give a summary of your testimony?

22 A. Yes. My testimony is that calendar 2011 is
23 the appropriate test year for this case. I think it
24 best reflects conditions during the period rates will
25 be in effect.

1 I note that there are three proposed test
2 years: The first is 12 months ended June 30, 2011,
3 which the Company filed as their alternative test
4 year. There is, of course, the calendar year 2011
5 test year proposal. And then the Company's preferred
6 12 months ended June 30, 2012.

7 I think the calendar 2011 test period is
8 superior, for several different reasons: First, it's
9 close in time. The rates go into effect just a few
10 months prior to the end of the test year, so it
11 enables us to reflect costs at a current level.

12 Second, the test year of 2011 reduces the
13 possibility of errors in forecasts of plant in service
14 and other expenses that have been forecasted out six
15 months further than the Company's preferred test year.

16 Things of particular concern are the
17 commercial service date of plant additions. Whether
18 or not those would unfold as forecasted, or whether
19 there might be some construction delays, economic
20 conditions, or other things that would affect
21 construction.

22 And second, net power cost issues are fairly
23 large here. There are a number of things that happen,
24 particularly beginning January 2012, that are not
25 particularly well explained and may not be knowable by

1 the time we have hearings in this case.

2 And that includes the replacements for the
3 BPA contracts. The going to zero value of some of the
4 QF contracts. Changes in the wheeling rates. And
5 other elements including, I guess, swaps that you just
6 talked to Mr. Higgins about.

7 I think that the 2011 test year captures
8 about 90 -- about 75 percent of the \$3 billion of
9 capital additions that the Company has talked about
10 having made from the end of the base period,
11 June 2010, through its forecast for June 2012. So we
12 get about three-quarters of that in in that test
13 period.

14 A lot of the changes in net power costs occur
15 in 2011. And those are reflected -- about 80 percent
16 of the projected increase in NPC is captured in the
17 calendar '11 test year. And if the Company is right
18 about their numbers forecasted on out, then they would
19 capture 70 percent of the difference, the remaining
20 20 percent. So they'd be at 94 percent collection
21 under the operation of the net power costs for the EBA
22 clause if they're right about that.

23 I think also that the closer-in-time test
24 year minimizes but doesn't eliminate any issues about
25 used and useful. And that might be a problem in terms

1 of rates going into effect. From a regulatory point
2 of view, or as an analyst, I have some concerns about
3 putting into rates the cost of facilities that aren't
4 yet used and useful. But recognize that we must make
5 some practical compromises if we're gonna have any
6 kind of a forecast test period at all.

7 I think having the closer test period of 2011
8 reduces the chance that you have things that don't
9 come in at all. And certainly reduces the time that
10 they could be in rates without being in service down
11 to three months, instead of possibly nine months under
12 the June 2012 test year.

13 Finally, I think the calendar '11 test year
14 strikes an appropriate balance between the customers
15 and the stockholders in terms of the ability to
16 recognize current cost levels, but also have some
17 confidence or a greater degree of confidence in the
18 numbers that go into the determination of the rates.

19 Just a couple other quick things, because
20 others have talked about it. I point out the MPA
21 statute and the EBA availability. And I also note
22 that the Wyoming filing is contemporaneous. The
23 Company has testified that calendar 2011 is the best
24 evidence of costs during the rate effective period in
25 the Wyoming filing.

1 And, you know, if it's good enough for
2 Wyoming, why isn't it good enough for Utah? I'll stop
3 there with my summary.

4 CHAIRMAN BOYER: Okay. Thank you,
5 Mr. Brubaker.

6 Let's take a ten-minute recess, and then
7 we'll continue.

8 (A recess was taken from 3:16 to 3:31 p.m.)

9 CHAIRMAN BOYER: So it's now 3:30, and
10 we've -- we're gonna cross examination Mr. Brubaker,
11 and then we're gonna hear from one more witness.

12 Our intent -- our hope was, when we issued
13 our last order, that the test year issue would have
14 been resolved before the case -- the rate case was
15 filed. And that didn't happen in this instance.

16 So our intention at this moment is, if we can
17 finish early enough today to give us some time to
18 deliberate, we may be able to come back and issue an
19 order from the bench to accommodate all of the
20 interested parties so they can continue on their way
21 preparing for the other phases of this rate case.

22 So we'll see how it goes. But I presume now
23 that Mr. Brubaker is available for cross examination?

24 MS. BALDWIN: Yes, he is.

25 MR. DODGE: But the start of the ball game is

1 the end of the period you'll go, right? You won't
2 overlap with that, right?

3 CHAIRMAN BOYER: Somebody said --

4 MULTIPLE SPEAKERS: Five thirty.

5 CHAIRMAN BOYER: Five twenty-seven actually
6 is when it starts.

7 THE WITNESS: It's guaranteed.

8 CHAIRMAN BOYER: Sadly in my case I have to
9 tend grandchildren tonight, so I have another
10 commitment. But I've got coverage until I get there,
11 so we'll go as long as we need.

12 Mr. Monson, cross examination for
13 Mr. Brubaker?

14 MR. MONSON: Thank you.

15 CROSS EXAMINATION

16 BY MR. MONSON:

17 Q. Good afternoon, Mr. Brubaker.

18 A. Good afternoon, Mr. Monson.

19 Q. Just a couple of things in your summary I
20 want to touch on. You called the June 2011 period the
21 "Company's alternative test period." You aren't
22 trying to suggest that the Company recommended that as
23 an alternative, are you?

24 A. Oh, no.

25 Q. Okay. Just it was the alternative one filed

1 under the Commission's rules?

2 A. That's correct.

3 Q. Okay. And you also mentioned about the --
4 75 percent of the investment I think you said takes
5 place in 2011; is that right?

6 A. By the end of 2011, that's correct.

7 Q. Right. And if the Commission uses a calendar
8 year 2011 test period, of course a lot of that
9 investment is only gonna get partial recovery; is that
10 right?

11 A. With the average rate base. It would be in
12 rates -- effectively in rates for the period of time
13 that it was in service during that test year.

14 Q. Right. Okay. Let me see. I'm trying to
15 take the hint here.

16 So you quote -- in your rebuttal testimony
17 you quote Mr. Brian Dickman's testimony in Wyoming,
18 right?

19 A. I do.

20 Q. And you've got some ellipses in your quote so
21 that means you left out part of it; is that right?

22 A. I think that's what that means.

23 Q. Okay. It's on page 11 of your rebuttal?

24 A. Right.

25 Q. If you count.

1 A. Yep.

2 Q. You have to count them.

3 A. Our apologies for that.

4 Q. Okay. But in fairness, you did attach his
5 testimony --

6 A. I attached it, yes.

7 Q. -- to the exhibit? So if we want to see what
8 you left out we can turn to his testimony, right?

9 A. Right, sure.

10 Q. And I think it's on -- let's see, it's --
11 well.

12 A. Page, it's -- well.

13 Q. It's about page --

14 A. Page, I think it's page 7.

15 Q. Seven?

16 A. I'm sorry, page 5. Page 5.

17 Q. Page 5, right, yeah.

18 A. My apologies.

19 Q. Thanks. And the part you left out is kind of
20 in the middle, and it says:

21 "The Company also considers
22 statutory constraints of the
23 jurisdiction, issues addressed in
24 previous regulatory proceedings and in
25 collaboration with intervenors in those

1 cases, the current regulatory
2 environment, and the need for
3 transparency with customers and
4 regulators."

5 A. Right.

6 Q. Is that right?

7 A. Right.

8 Q. Are you familiar with Wyoming statutes on
9 test period?

10 A. It's my understanding that there aren't any.

11 Q. Okay. I wasn't trying to trick you.

12 A. Oh, no, no.

13 Q. Maybe I was, I don't know. And do you know
14 anything about the previous regulatory proceedings in
15 Wyoming?

16 A. Limited. I've been in a couple of cases, but
17 not for a few years.

18 Q. Do you know that Wyoming had a general rate
19 case last year while Utah was having major plant
20 addition cases?

21 A. I believe that's correct, yes.

22 Q. And do you know what percentage increase the
23 Company's seeking in its rates in Wyoming?

24 A. Currently?

25 Q. In this rate case that it filed. The one you

1 referred to.

2 A. I think it's about 17 percent.

3 Q. Yeah, it's -- in fact, it's in Mr. Dickman's
4 testimony, isn't it? If we wanted to look at it --

5 A. Yes.

6 Q. -- we could figure it out. Would you accept
7 that it's 17.3 percent overall?

8 A. Sure.

9 Q. And do you know what amount of rate increase
10 the Company is seeking here in Utah? The same
11 percentage?

12 A. It's a lower percentage.

13 Q. About 14?

14 A. Fourteen, I think so.

15 Q. About 14.1 or something like that, right? Do
16 you think those are some of the other considerations
17 that Mr. Dickman referred to in his testimony? The
18 things we talked about: The statute, the prior rate
19 cases, the amount of the rate increase, the regulatory
20 environment?

21 A. I don't know that he referred to the amount
22 of the rate increase as part of his reason for the
23 2011 test year. I would note that we've had two MPA
24 increases and I'm not sure those facilities are yet in
25 Wyoming rates, so that would partly explain the

1 difference in the percentage increase requested now.
2 But the statutory conditions is something that anyone
3 would have to take into account.

4 Q. Okay. And you were a witness for UIEC in the
5 Company's 2008 general rate case, right?

6 A. I think I was.

7 Q. And in fact you filed testimony on the test
8 period issue --

9 A. Yes.

10 Q. -- is that right? And your testimony was
11 about the appropriate use of an end-of-period rate
12 base versus an average rate base, right?

13 A. As I recall, it was.

14 Q. And do you recall which party in that case it
15 was that recommended the rate base ultimately -- I the
16 mean the test period ultimately adopted by the
17 Commission?

18 A. I don't.

19 Q. Would you accept, subject to check, that it
20 was UIEC that recommended a 2009 test period that went
21 out 18 months?

22 A. Subject to check.

23 Q. I mean -- and 15 1/2 months from the
24 refiling?

25 A. As I recall, the main issue was average

1 versus end of period in that case, but I'll accept
2 what you say.

3 Q. Okay. You say:

4 "The purpose of a test year is to
5 establish a framework in which
6 consistent assumptions about revenues,
7 expenses, and investments can be
8 coordinated to establish a revenue
9 requirement."

10 Do you recall that?

11 A. Yes.

12 Q. And the Company's proposed test period meets
13 that criteria, right?

14 A. Yes.

15 Q. And you go on to say:

16 "The information included in the
17 test year should be accurate, and there
18 should be internal consistency among the
19 various components. As part of the test
20 year selection process there must be a
21 balancing of a need to have current cost
22 data and the ability to verify the
23 information presented."

24 Do you recall that?

25 A. I do.

1 Q. And then later you say:

2 "The issue at hand is what
3 reasonably-current period of time that
4 is reflective of current conditions will
5 allow the Division, Office, and
6 intervenors to have a realistic chance
7 of dealing with the Utility's data."

8 Does that sound like your testimony?

9 A. It does.

10 Q. So you believe the Commission should select a
11 test period that can be forecast as accurately as
12 possible, and that the forecast during the period can
13 be verified by other parties as much as possible?

14 A. I do. I mean, those are considerations as to
15 the selection of the test period and the ability
16 particularly to validate the data that's in the
17 proposed test year numbers. And my point is just the
18 further out you go, the less certain that is.

19 Q. Okay. And in all, you filed three rounds of
20 testimony on test period, right?

21 A. Right.

22 Q. And I could only find two references in that
23 testimony to the Utah Code Section 54-4-3. Is that
24 right? Do you --

25 A. I didn't count them. I know I referred to

1 it.

2 Q. Okay. And you said in that testimony you
3 were familiar with it, right?

4 A. Yes.

5 Q. Okay. And you say, in connection with both
6 of your references to that, that the important part of
7 that statute is best evidence, right?

8 A. Well, it's certainly an important part of it.

9 Q. I mean, you don't -- yeah, and you -- I mean,
10 that's the only part of it you referred to when you
11 referred to it; is that right? The "best evidence"
12 words. Do you want me to point you to them, or?

13 A. No, huh-uh. That's fair.

14 Q. Okay. And you go on to say that:

15 "Best evidence must pass the test of
16 being reliable and not speculative,
17 while being reasonably reflective of
18 current circumstances."

19 Is that right?

20 A. Correct.

21 Q. Do the words "best evidence" appear in the
22 statute?

23 A. Not together.

24 Q. Okay.

25 A. It's the best evidence of the conditions that

1 will be in effect during the rate effective period.

2 Q. Okay. Now, when you say "best evidence," I
3 mean, the word "best" isn't in there, is it? It just
4 says "evidence." Based on the evidence.

5 A. I think -- I thought the word "best" was in
6 the statute, just not joined up with the word
7 "evidence."

8 Q. Okay. Well, if I represent to you that it's
9 not in the statute, would you accept that?

10 A. Okay.

11 Q. Okay.

12 A. But I would disagree with you, because the
13 word "best" is in the statute.

14 Q. Oh, it is?

15 A. It is.

16 Q. I'm sorry, where is it?

17 A. 54-4-3(a.)

18 Q. Oh, best reflects, right?

19 A. I shorthanded the --

20 Q. Okay.

21 A. -- concept --

22 Q. All right.

23 A. -- is what I was doing.

24 Q. I'm sorry. I'm sorry.

25 A. I was not intending to bend the meaning of

1 the statute by any means.

2 Q. Nor was I. I'm sorry that I, I forgot that
3 reference to it. So that's what I'm trying to get at,
4 is what is the evidence that the Commission is to look
5 at? Evidence of what? That's -- do you understand
6 that from the statute?

7 A. Yes. I think the Commission has to make a
8 judgment about what is the most supportable and best
9 set of data to carry out the purpose of the statute.

10 Q. And what's the purpose of the statute?

11 A. Is to reflect the evidence that best -- or to
12 pick the period that best reflects the conditions
13 expected to be faced by the Utility during the rate
14 effective period.

15 Q. Okay. So it's evidence of what's gonna be
16 experienced during the rate effective period?

17 A. Right.

18 Q. Okay. Have you provided any evidence to this
19 Commission that the test period you're proposing best
20 reflects the conditions that the Utility will
21 encounter during the rate effective period?

22 A. There's no way to provide numerical evidence
23 of that because we're talking about events that
24 haven't occurred yet. So my analysis was, was from
25 the analytical point of view of how much confidence

1 can we have in projections that far out, given what
2 I've identified as some major concerns about the first
3 six months of 2012 as they appear in the Company's
4 forecasted test year. That's the only kind of
5 evidence I think I can present.

6 Q. So -- are you through?

7 A. Yes.

8 Q. Okay. So the evidence that you've presented
9 is questioning the accuracy of the Company's
10 forecasts; is that right?

11 A. And the ability to accurately forecast that
12 far out. And to deal with the changes that the
13 Company has asserted will occur. And whether, within
14 the constraints of the, the test -- or the, the
15 hearing process in this proceeding, there's a
16 reasonable chance of intervenors, the Division, and
17 Office being able to test and validate those numbers.

18 And I'm very concerned that there isn't. And
19 that's why I think that the calendar 2011 test period
20 is a better overall selection than the June '12 test
21 period.

22 Q. And that's because you believe it is a more
23 accurate forecast of 2011; is that right?

24 A. Let me say it this way. I have more -- much
25 more confidence in those numbers as being the costs

1 that will be experienced when the rates go into effect
2 than I do about the Company's projections.

3 Q. So have you provided the Commission with any
4 forecast for the rate effective period?

5 A. No.

6 MR. MONSON: Thank you.

7 CHAIRMAN BOYER: Okay. Thank you,
8 Mr. Monson.

9 Ms. Schmid, cross examination for this
10 witness?

11 MS. SCHMID: No questions.

12 CHAIRMAN BOYER: Mr. Proctor?

13 MR. PROCTOR: No, thank you.

14 CHAIRMAN BOYER: Mr. Dodge?

15 MR. DODGE: No questions.

16 CHAIRMAN BOYER: Okay. Commissioner Allen?
17 Commissioner Campbell?

18 COMMISSIONER CAMPBELL: I have one. In your
19 summary you talked about the used and useful concept,
20 along with forecasts. And I know you must go to other
21 states. How do other states that use forecasts
22 reconcile their forecasting of capital additions with
23 the used and useful concept?

24 THE WITNESS: I think -- I'm trying to think
25 of specific states that use future test years. I

1 don't work in that many that use future test years.
2 But I think typically the commissions have found some
3 way to reconcile those, either within the context of
4 their statutes or their practices and procedures, to
5 where they're able to do that.

6 But I don't know if any of those have been
7 challenged. But just, you know, from my point of view
8 as someone who deals with rate cases and concepts, it
9 just troubles me somewhat that we have customers
10 paying rates to support investments that are not in
11 service. And we don't know if they will be in service
12 as forecasted.

13 I think at the end of the day it's probably
14 more of a legal question than anything that has to be
15 reconciled as to what can be done. But from a
16 practice standpoint I have, I have concerns about
17 that.

18 CHAIRMAN BOYER: Okay. I have no questions.
19 Ms. Baldwin, any redirect?

20 MS. BALDWIN: No, thank you.

21 CHAIRMAN BOYER: Okay. Well, thank you,
22 Mr. Brubaker. You are excused.

23 THE WITNESS: Thank you. Appreciate it.

24 CHAIRMAN BOYER: Ms. Baldwin, you want to
25 call your next witness?

1 MS. BALDWIN: Dr. Malko.

2 (Dr. Malko was sworn.)

3 CHAIRMAN BOYER: Thank you, please be seated.

4 THE WITNESS: Thank you.

5 J. ROBERT MALKO, Ph.D.,

6 called as a witness, having been duly sworn,

7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MS. BALDWIN:

10 Q. Dr. Malko, could you please state your name
11 for the record?

12 A. J. Robert Malko.

13 Q. And on whose behalf are you testifying today?

14 A. I'm testifying on behalf of the UIEC.

15 Q. And are you the author of the testimony filed
16 as rebuttal testimony on March 17th under your name,
17 which included one attachment?

18 A. Yes.

19 Q. And are you also the author of the
20 surrebuttal testimony filed under your name on
21 March 21st, with three exhibits?

22 A. Yes.

23 Q. Do you have any changes to any of that
24 testimony?

25 A. Not at this time.

1 Q. Would your answers be the same if asked here
2 today?

3 A. Yes.

4 MS. BALDWIN: Commission, the UIEC moves to
5 admit Dr. Malko's rebuttal and surrebuttal testimony.

6 CHAIRMAN BOYER: Are there any objections to
7 the admission of Dr. Malko's rebuttal and surrebuttal
8 testimony?

9 They are admitted.

10 (Dr. Malko's rebuttal and surrebuttal
11 testimony, with exhibits, was admitted.)

12 Q. (By Ms. Baldwin) Dr. Malko, do you have a
13 summary prepared for today?

14 A. Yes, I do.

15 Q. Would you please give it?

16 A. Thank you. In terms of my rebuttal and
17 surrebuttal, some key themes that I attempted to
18 present in that testimony are the following:

19 One, that the regulatory treatment of a test
20 period involves risk sharing, risk balancing, and risk
21 shifting between the regulated utility company and its
22 customers.

23 Second theme was that the risk sharing/risk
24 balancing is really a feature of what I would view of
25 as economic regulation of the Utility.

1 Next, in looking at the specifics of this
2 case I came to the conclusion, with emphasis on this
3 risk sharing/risk balancing, that with the approval
4 and implementation of the EBA, the MPA, continuing
5 issues with forecasting, and what the Company had
6 proposed in Wyoming, that it was appropriate, in
7 balancing risk between the ratepayer and the
8 shareholder, that a calendar year 2011 test period be
9 approved, as opposed to a test period ending on
10 June 30, 2012, within that context.

11 The other thing that I do want to add in my
12 summary is that I did attach an article that I was a
13 coauthor with Dr. Zenger and Mr. Peterson, of the
14 Division staff, which attempted to talk about a range
15 of test period issues in Utah.

16 And for the record, I want to express my
17 appreciation for the time and effort that Dr. Zenger
18 and Mr. Peterson put into that paper.

19 And I have found in past experiences, when I
20 was at the Wisconsin Public Service Commission, that
21 by writing papers, when people would come with
22 questions to me it was easier just to send out the
23 paper.

24 So again, for the record, I certainly express
25 my appreciation to Dr. Zenger and Mr. Peterson. And

1 that concludes my summary.

2 MS. BALDWIN: We make Dr. Malko available.

3 CHAIRMAN BOYER: Okay. Rocky Mountain Power,
4 cross examination of this witness?

5 MR. MONSON: We do.

6 CROSS EXAMINATION

7 BY MR. MONSON:

8 Q. Dr. Malko, good afternoon.

9 A. Good af -- and your name again, Mr.?

10 Q. I'm Gregory Monson.

11 A. Mr. Monson. Yes, sir.

12 Q. Attorney for Rocky Mountain Power.

13 A. Yes, sir.

14 Q. Okay. You recommend that the Commission
15 adopt a 2011 calendar year test period because it more
16 effectively meets the object of reasonable risk
17 sharing between customers and the Company; is that
18 right?

19 A. Risk sharing and risk balancing, yes, sir.

20 Q. Right. And you go on to say:

21 "Economic issues and debate
22 concerning assumptions of forecasts,
23 accuracy of forecasts, and updates of
24 forecasts clearly play a role in
25 selection of a test period.

1 "Risk sharing and balancing provide
2 an effective regulatory approach to
3 address these issues and meet public
4 interest concerns."

5 Do you recall that?

6 A. Yes, sir.

7 Q. And you say that:

8 "The test period proposed by the
9 Division will shift greater risk to
10 ratepayers concerning forecasted capital
11 investments and forecasted energy
12 costs." Is that right?

13 A. Given the information that I've looked at in
14 this proceeding thus far, yes, sir.

15 Q. So the risk sharing you're talking about here
16 is the risk associated with forecasts. And
17 particularly forecasts of capital investments and
18 energy costs; is that right?

19 A. That's correct.

20 Q. Now, you cite as one of the bases for your
21 opinion that the EBA, the energy balancing account
22 approved by the Commission, has reduced the risk of
23 rate recovery to the Company; is that right?

24 A. Yes, sir.

25 Q. And you attached to your rebuttal testimony

1 an article that you authored with Dr. Zenger that you
2 just talked about in your summary, right?

3 A. Dr. Zenger and Mr. Peterson.

4 Q. And Mr. Peterson. And do you have that
5 article?

6 A. Yes, sir.

7 Q. Can you turn to the page, I think it's
8 page 37 of the article? It's the first page of the
9 article, as far as I can tell, after the cover.

10 A. Correct.

11 Q. Do you have that? Could you read the last
12 full sentence on the page, starting with: "In
13 addition"?

14 A. "In addition to accuracy, the DPU
15 expects the forecasts to be unbiased.
16 That is, over time forecasts should be
17 wrong on the high side about as often as
18 they're wrong on the low side."

19 Q. Now, that does say "the DPU expects." Do you
20 agree with that?

21 A. Since I, since I'm a coauthor, that's
22 certainly a consideration I have.

23 Q. And are you aware that --

24 A. But I'm not here to speak for the DPU.

25 Q. I understand. I understand. But I just

1 meant do you personally agree with the philosophy that
2 an unbiased forecast would have an equal likelihood of
3 being high or low?

4 A. Well, again, as a general proposition. One
5 could look at a specific set of data for a specific
6 utility and one could come up with a different
7 conclusion.

8 Q. Are you aware that the forecasts of power
9 costs for Rocky Mountain Power for about 12 years have
10 been low in every rate case?

11 A. The power costs associated with electricity?

12 Q. Yes.

13 A. Yes.

14 Q. For Rocky Mountain Power.

15 A. Right.

16 Q. Would that indicate to you those forecasts
17 were biased?

18 A. In, in and of itself, no.

19 Q. Okay. Do you agree with me that risk sharing
20 can only appropriately happen if forecasts that are
21 used are not biased?

22 A. Could you read that -- or could you repeat
23 that question?

24 Q. Sure. Could you agree with me that
25 appropriate balancing and sharing of risks would only

1 occur if forecasts that are used in setting rates are
2 unbiased?

3 A. Unless there were other adjustments to
4 compensate for that.

5 Q. Okay. And are you referring to the EBA?

6 A. Yes.

7 Q. Okay. You're aware that the EBA has a
8 risk -- has a sharing mechanism in it?

9 A. The 70/30.

10 Q. Right.

11 A. That's correct.

12 Q. And so I want you to assume for a minute
13 that, that net power costs during the rate effective
14 period in this case will be 21 million higher on a
15 system average basis each month than they have been in
16 the past, okay?

17 You got that? Okay. And I want you to
18 assume that the, that the bias or the un -- whatever
19 it is in the forecast continues the same way it has in
20 the past. In other words, that the forecasts used in
21 setting rates are lower than actual net power costs.
22 Okay?

23 A. (Moves head up and down.)

24 Q. All right. Then if that's the case, the
25 Company will receive \$6.3 million each month, during

1 the rate effective period, less than its actual net
2 power costs; is that right?

3 A. Given these restrictive assumptions, and if
4 there's no other modifications, that would follow.

5 Q. And that's with the EBA in place?

6 A. Correct.

7 Q. So do you regard that as an appropriate
8 sharing of risks and balancing of risks?

9 A. Without looking at other considerations, you,
10 you have to put that within a context. You have to
11 put the rule within a context with say what's the
12 allowed return, what's the rate designs, other
13 features in the rate case.

14 Q. Okay. You also cite the MPA statute, the
15 statute that allows the Company to seek recovery for
16 major plant additions, in your testimony as one of the
17 bases for your support for your test period; is that
18 right?

19 A. That's correct.

20 Q. And I assume, I assume you've reviewed the
21 Company's evidence on what its, what its plant
22 additions will be during the first half of 2012?

23 A. For this particular case, yes.

24 Q. And so you're aware that the Company's saying
25 they're gonna invest -- they're projecting to invest

1 \$824 million in capital additions during the first six
2 months of 2012?

3 A. That's the projected forecast, given the
4 situation.

5 Q. Okay.

6 A. The current situation.

7 Q. And are you aware that only one of those
8 projects, in the amount of \$120 million, might be
9 eligible for the major plant addition?

10 A. Based on testimony that I've seen.

11 Q. Okay. And depending on where the Company's
12 rate base is at the end of this case, even
13 \$120 million might not cover. It might not be
14 qualified because it may not be -- it may be less than
15 one percent of the Company's rate base. Is that
16 possible?

17 A. That's possible. But the Company, again, has
18 control in terms of when they're gonna add capital --
19 new capital additions.

20 Q. So, so at any rate, at least \$604 million of
21 investments would not be eligible for major plant
22 addition treatment; is that right?

23 A. Given the Company's forecasts, and given the
24 Company's choices of when they're gonna add those
25 plants.

1 Q. Okay. In the article, on the same page,
2 really kind of the first paragraph of the article,
3 under the -- in the left column, it says:

4 "A framework is required for
5 selecting a test period based on the
6 evidence that best reflects the
7 conditions the public utility will
8 encounter during the rate -- or during
9 the period when rates will be in
10 effect."

11 Do you agree with that?

12 A. Yes, I do.

13 Q. Do you know where that standard comes from?

14 A. Either from past commission orders or
15 interpretation of the statute.

16 Q. Okay. Have you provided any evidence to this
17 Commission that the test period you're proposing will
18 include the costs and expenses that the Company is
19 expecting to incur during the rate effective period in
20 this case?

21 A. The evidence that I attempted to provide is
22 within this context of risk sharing and risk
23 balancing. With the clear understanding -- and
24 regulation -- that when a test period is selected it
25 provides a company with an opportunity, not a

1 guarantee, to earn a return. And there are balancing
2 incentives in that process, including regulatory lag.

3 Q. So you say you've reviewed the Company's
4 case -- given it limited review, I think is what you
5 said; is that right?

6 A. Yes, sir.

7 Q. So have you -- in that limited review have
8 you been able to identify any investments or any costs
9 that are included in the Company's case that you don't
10 think will be incurred in the rate effective period?

11 A. I don't have a clear crystal ball of what's
12 gonna occur in the first six months of 2012.

13 Q. Did you review Mr. McDougal's testimony filed
14 on test period?

15 A. I, I reviewed the testimony filed for the
16 test period.

17 Q. Did you review his exhibit showing 48 pages
18 of capital additions that he believes will take place
19 during the course of the test period?

20 A. Certainly not line by line, no.

21 Q. In your surrebuttal testimony you attach
22 little excerpts from Bonbright, Phillips, and Morin
23 for the proposition that regulation should be a
24 substitute for competition, right?

25 A. That's correct.

1 Q. And the excerpt you have from Dr. Morin's
2 book also has a reference to Kahn; is that right? Do
3 you want to look at it? I'll tell you where it is, if
4 you want.

5 It's just at the bottom of the first
6 paragraph of what you copied. It has Phillips,
7 Bonbright, Kahn, Allen, Rasmussen. Do you see that?

8 A. In the Morin book?

9 Q. Yeah.

10 A. Oh, I see. I was looking at the specific
11 quote that I gave you.

12 Q. Oh, okay. Sorry.

13 A. But in terms of the exhibit, yes.

14 Q. So that's referring to Dr. Alfred Kahn; is
15 that right?

16 A. The recently-deceased Dr. Alfred Kahn.

17 Q. Right. Do you recognize him as an expert in
18 utility regulation?

19 A. On some matters.

20 Q. Do you know what he said about test periods?

21 A. Not, not off the top of my head.

22 Q. If I read a statement from him will you tell
23 me whether or not you agree with it?

24 A. Sure.

25 Q. He said: "The fact is, regulatory

1 commissions have always been in the
2 business of projecting, whether they
3 knew it or not. When they used historic
4 test year statistics, fully verifiable
5 and verified, graven in stone, as the
6 basis of future rates, they were, in
7 fact, projecting.

8 "They were assuming that the future
9 would be similar to the past. It is no
10 more speculative, then, to make the best
11 possible estimate of future conditions
12 when setting future rates, and honesty
13 compels it."

14 Have you ever heard that before?

15 A. I think I may have read it.

16 Q. It was actually in Mr. McDougal's testimony
17 in this case, wasn't it?

18 A. Yes.

19 Q. Do you agree with that statement?

20 A. Not, not necessarily. I think when you look
21 at Dr. Kahn's writings a significant amount is
22 influenced by his focus on marginal cost and marginal
23 cost pricing, which pushes him into the camp of
24 forecasting. So that statement doesn't surprise me.

25 Q. Do you see any difference in principle

1 between his statement and your statement in the
2 article with Dr. Zenger about that the test period
3 should best reflect the conditions the Utility will
4 encounter during the rate effective period?

5 A. Well, the, the point is, one needs to look at
6 the information and factors that are available, make a
7 judgment, and make forecasts to align them.

8 Q. And even if we use a historic test period
9 we're using that to forecast the rate effective
10 period, aren't we?

11 A. With the idea we have known and knowable
12 information coming out of that period of history.

13 Q. But we're still speculating that that rate --
14 that that historic period will be like the rate
15 effective period, aren't we?

16 A. Well, I would prefer to use the concept that
17 we're trying to make an informed judgment and apply
18 analytical skills to arrive at that.

19 Q. So --

20 A. As opposed to speculating.

21 Q. So just because we're using a closer-in
22 forecast period or even a historic period, we're still
23 forecasting the rate effective period, aren't we?

24 A. We're still forecasting, but there's more
25 certainty the closer in we get.

1 Q. More certainty about what?

2 A. Certainty with respect to what has already
3 occurred.

4 Q. We have more certainty about what those
5 numbers represent for a different period than the rate
6 effective period; is that right?

7 A. That is correct.

8 MR. MONSON: Thank you.

9 CHAIRMAN BOYER: Okay. Thank you,
10 Mr. Monson.

11 Ms. Schmid, cross examination?

12 MS. SCHMID: No questions.

13 CHAIRMAN BOYER: Mr. Proctor?

14 MR. PROCTOR: No questions.

15 CHAIRMAN BOYER: Mr. Dodge? Okay.

16 Commissioner Allen? Commissioner Campbell? Nor me.
17 Redirect?

18 MS. BALDWIN: No redirect.

19 CHAIRMAN BOYER: Okay. Well, thank you,
20 Dr. Malko. You are excused.

21 THE WITNESS: Thank you.

22 CHAIRMAN BOYER: Okay. Here's what we're
23 going to do now. We're going to take a recess. And
24 we'll try to be efficient and quick, but we have a lot
25 of deliberation to do, and some arm twisting, and so

1 on.

2 So let's take a -- let's say that we'll
3 reconvene at 4:30, if we can, and if we can't, as soon
4 thereafter as possible, and we'll see if we can't
5 issue a bench ruling in this case today. Okay? Sorry
6 to make you cool your heels, but talk among
7 yourselves.

8 (A recess was taken from 4:04 to 5:00 p.m.)

9 CHAIRMAN BOYER: Just out of courtesy to you,
10 we're unable to come up with a bench order today. So
11 what our current intention is is to work on it over
12 the weekend. And then next week get at least some
13 sort of a memorandum decision out identifying what the
14 test year is gonna be.

15 It may not have all the rationale and that
16 sort of thing, we may put that in the final order.
17 But just so the parties can plan and prepare their
18 testimony for the other stages of this case.

19 I mean, it's a difficult case. We had a lot
20 of good testimony on either side. And it's just a
21 very difficult issue for us to get out in short order
22 like this. And so we beg your indulgence to wait
23 until next week and we'll get you something in
24 writing. Thank you all for your participation.

25 (The hearing was concluded at 5:01 p.m.)

C E R T I F I C A T E

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

This is to certify that the foregoing proceedings were taken before me, KELLY L. WILBURN, a Certified Shorthand Reporter and Registered Professional Reporter in and for the State of Utah.

That the proceedings were 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 proceedings so taken and transcribed is set forth in the foregoing pages, numbered 1 through 253, inclusive.

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.

SIGNED ON THIS 6th DAY OF April, 2011.

Kelly L. Wilburn, CSR, RPR
Utah CSR No. 109582-7801

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