Q. Are you the same Dean S. Brockbank who submitted direct testimony in this proceeding?

A. Yes.

Purpose and Overview of Rebuttal Testimony

Q. What is the purpose of your rebuttal testimony?

A. My rebuttal testimony responds to issues raised regarding the Klamath Hydroelectric Settlement Agreement ("KHSA") and to the arbitration decision related to the Hunter II environmental control investments.

Klamath Hydroelectric Settlement Agreement

Q. Please provide an overview of the areas covered in your rebuttal related to the KHSA.

A. My rebuttal testimony responds to 1) the testimony of Office of Consumer Services ("OCS") witness Ms. Michele Beck, recommending that the Commission deny Rocky Mountain Power's request to recover any costs related to the KHSA and, 2) the testimony of UAE witness Mr. Kevin Higgins that customers should be afforded an offset for dam removal costs allocated to Utah and that it is premature to adjust the depreciation lives of the Klamath project assets given that up to $250 million in funding from the State of California for dam removal has yet to be approved, and 3) the testimony of Division of Public Utilities ("DPU") witness Dr. Artie Powell recommending that the depreciation lives of the Klamath Hydroelectric Project ("Project") assets not be adjusted because the passage of federal legislation endorsing the KHSA is uncertain. In addition, my rebuttal testimony specifically explains that:

- PacifiCorp has not emphasized a dam removal outcome for the Klamath Hydroelectric Project to respond to regional interests;
- The KHSA benefits customers in all states served by PacifiCorp; PacifiCorp's customers in Oregon and California are funding costs for dam removal not in furtherance of their respective state policy preferences for dam removal but rather because the KHSA and the associated dam removal surcharges have been determined by the relevant state public utility commissions as being in the best interest of PacifiCorp's customers in those states; and
- A delay in an adjustment of the depreciation schedule for the Klamath facilities on the basis that California funding and federal legislation have yet to be enacted is unnecessary and may frustrate the realization of the KHSA and its customer benefits.

Clarification of Relicensing and Settlement Efforts

Q. Do you agree with OCS witness Ms. Beck's contention (Beck/175-177) that PacifiCorp redirected its Project relicensing efforts toward a focus on dam removal shortly after filing its license application in 2004?

A. No. Since the filing of the license application in 2004, PacifiCorp has pursued a joint track of engagement in settlement negotiations to resolve the relicensing process while also fully prosecuting the traditional relicensing application to obtain a new Project license. Had the Company pursued a dam removal focus, it would not have robustly engaged in the licensing process subsequent to filing the license application. PacifiCorp's pursuit of the licensing process since submittal of the licensing application has been steadfast and will remain so until a new Project license is obtained or the facilities are removed consistent with the KHSA. Strong engagement in the relicensing process subsequent to submittal of the license application in 2004 is well documented in the Klamath Chronology included in my original testimony (Exhibit RMP___DSB-2).

Q. Can you provide some examples of efforts that contradict witness Ms. Beck's contention that the last five to seven years of the 13-year relicensing process that the Company has pursued have been devoted to "satisfying the interests of Klamath River Basin regional entities whose goal was the removal of the dams rather than the relicensing of a generating facility"? (Beck/222-224)

A. Yes. Since the submittal of the license application, PacifiCorp has vigorously pursued the relicensing process for the Project. These efforts have been contentious and strongly opposed by stakeholders interested in a dam removal outcome to the relicensing process. Some examples include the first ever challenge, in 2006, under the provisions of the Energy Policy Act of 2005, by a licensee to preliminary fishway prescriptions and terms and conditions issued by the U.S. Departments of Commerce and the Interior. This challenge resulted in a quasi-judicial hearing on issues of material fact underlying the agency fishway prescriptions and terms and conditions that are mandatory conditions that must be included in a new license issued by the Federal Energy Regulatory Commission ("FERC").

Another example is PacifiCorp's active participation and review of the Klamath River Total Maximum Daily Load ("TMDL") water quality regulatory process that would inform conditions imposed on the Project through the Clean Water Act 401 certification process. It is fair to say that PacifiCorp's efforts since the license application was filed, to ensure that the Project is fairly and appropriately assigned regulatory responsibilities have not been favorably viewed by stakeholders seeking a dam removal outcome outside of customer protections of the KHSA.

KHSA was Executed as a Prudent Business Decision to Protect and Benefit Customers, Not to Advance State Policy Objectives

Q. Witness Ms. Beck contends that the KHSA resolves basin wide interests rather than issues germane to the continued operation of the Project and cites your testimony as a reason for this conclusion: "Mr. Brockbank describes settlement discussions in October 2004 with 'attention to resolving basin-wide issues among the stakeholders.' Brockbank Direct, line 288 – 292." (Beck/183-185). Is this an accurate reading of your testimony?

A. No. My testimony (Brockbank/288-292) explains that PacifiCorp began settlement discussions in October 2004 to resolve issues related to its relicensing application, and that those discussions continued through 2005 and mid-2006. At that point, in mid-2006, stakeholders participating in the relicensing settlement discussions turned their attention to resolving basin-wide issues among themselves and proceeded with those settlement discussions without PacifiCorp. Because these settlement discussions were of a different nature and not related directly to resolution of PacifiCorp's relicensing application and continued operation of the Project, PacifiCorp did not participate in these negotiations, as is also stated in my direct testimony (Brockbank Direct/294-296). The end result of these stakeholder discussions of basin-wide issues was the Klamath Basin Restoration Agreement (KBRA). PacifiCorp is not a party to the KBRA as it deals with issues that are beyond the scope of PacifiCorp's relicensing application and does not address the continued operation of the Project.

Q. Is there other support for your view that the KHSA is strictly related to resolution of the relicensing proceeding and continued operation of the Project?

A. Yes. This view is also supported by the statement of purpose included in the KHSA:

> "1.2 Purpose of Settlement
> The Parties have entered into this Settlement for the purpose of resolving among them the pending FERC relicensing proceeding by establishing a process for potential Facilities Removal and operation of the Project until that time."[1]

Q. Witness Ms. Beck states as OCS's position that Utah customers should not bear KHSA-related costs because "the costs relate to resolving Klamath basin regional interests and not the continued operation of a generating resource". (Beck 205/206). Why do you believe witness Ms. Beck holds this view?

A. I believe witness Ms. Beck is confusing the KBRA, which is an attempt to resolve basin-wide issues that are beyond the scope of Project relicensing and continued Project operations, with the KHSA, which does narrowly address the resolution of the relicensing process and the continued operation of the Project.

[1] KHSA §1.2, p. 3.

Q. Even though PacifiCorp may not have signed the KBRA, do the Company's KHSA implementation costs included in the case fund or implement activities under the KBRA?

A. No. When negotiating the KHSA with many of the same stakeholders that had negotiated the KBRA, one of PacifiCorp's key principles was that implementation activities under the KHSA were to address effects related solely to the Project and its continued operation and that PacifiCorp and its customers were not responsible for implementing KBRA-related basin wide restoration activities.

Q. Is this principle included in the KHSA?

A. Yes, this principle is included as a recital in the KHSA:

> "WHEREAS, PacifiCorp is a regulated utility and did not participate in the KBRA negotiations and will not have obligations for implementation of the KBRA".[2]

Q. Witness Ms. Beck states that under the KHSA the "expenditures and financial commitments by PacifiCorp, Oregon and California are intended to resolve long-standing and contentious disputes over resources in the Klamath River Basin, to the benefit of the interests of Indian tribes, environmental organizations, fishermen, water users and local communities." (Beck/231-235). Do you agree that the KHSA is a one-sided agreement that benefits these regional interests at the expense of PacifiCorp or its customers?

A. No. I believe the KHSA represents a fair and balanced resolution of the issues related to the relicensing and continued operation of the Project for the parties to the KHSA, including PacifiCorp and its customers in all the six states that comprise its service territory.

[2] KHSA §1.1, p. 3.

Q. Please explain why you believe the KHSA benefits all of PacifiCorp's customers.

A. Under the KHSA, customer costs related to dam removal are capped at $200 million and the Company and its customers are afforded liability protection against potential adverse consequences of dam removal. In addition, customers will continue to benefit from the low-cost power provided by the Project until the facilities are removed. The projected dam removal date of no earlier than 2020 ensures that customers will benefit from the low-cost, carbon-free energy produced by the Project for at least ten years and the need to replace the energy from this generating resource is deferred for that 10-year period. The rebuttal testimony of Company witness Mr. Steven R. McDougal contains the details of the cost-benefit analysis conducted by the Company that demonstrates the KHSA is in the interest of the Company's customers.

Q. UAE Witness Mr. Higgins recommends that Klamath dam removal costs allocated to Utah customers be offset in recognition that "customer contributions are being made in furtherance of Oregon and California state policies to remove this RMP system resource." (Higgins/348-349) Do you agree that these customer costs have been assessed based upon state policy preferences for dam removal in those states?

A. No. It has been the policy preference of the Governors of both the State of California and the State of Oregon, and the resource agencies reporting to the Governors in those states. However, the customer surcharges in both California and Oregon were approved by the independent public utility commissions in those states on the basis that the KHSA, including the imposition of customer surcharges, provides superior cost and risk protections for customers as compared to continuing on the path of relicensing the facilities. The Klamath allocation issues are addressed in the rebuttal testimony of witness Mr. McDougal.

Q. Can you provide evidence that this was the basis of the decisions of the public utility commissions in California and Oregon?

A. Yes. The recent order issued by the California Public Utilities Commission affirming dam removal surcharges for California customers supports this view through a finding of fact that "Through the use of the KHSA cost cap, ratepayers are protected from the uncertain costs of relicensing, litigation, and decommissioning that customers may be responsible for sans the KHSA. If the KHSA surcharge is not instituted, ratepayers would be exposed to an uncertain amount of costs."[3] Similarly, the Oregon Public Utility Commission, in its review of surcharges for Oregon customers, found that "Because the KHSA limits costs and manages risk better than relicensing, we find the KHSA to be in the best interest of customers."[4]

[3] CPUC Decision 11-05-002, May 6, 2011. Section 11, Paragraph 8.
[4] OPUC Order No. 10-364, p. 13.

Appropriateness of Not Deferring Recovery of Relicensing and Settlement Costs

Q. Witness Ms. Beck apparently holds the view that the 13-year relicensing and settlement effort for the Project, and the associated costs, would be unnecessary but for the Company's decision to enter into the KHSA. (Beck/218-221) Do you agree?

A. No. The Company was obligated under the Federal Power Act to pursue relicensing of the Project unless it intended to surrender the Project license and decommission the facilities. As described in my direct testimony (Brockbank/346-349), PacifiCorp believes that decommissioning of the facilities is not in the best interests of the Company or its customers without necessary protections such as those afforded to the Company and its customers in the KHSA. Thus, the relicensing and settlement process costs were necessary to incur and are prudent and appropriate to include in rate base regardless of the Company's decision to execute the KHSA to resolve matters related to the relicensing of the Project.

Q. Do you then agree with the testimony of DPU witness Dr. Powell that "It appears that most, if not all, of these costs would be incurred regardless of which path the Company follows: relicensing or removal. Since these cost would be incurred regardless, and since the Dam is operational, I see no need to remove these costs from the case"? (Powell/382-385)

A. Yes. The relicensing and settlement process costs have been prudently incurred consistent with the requirements of the relicensing process as overseen by the FERC and represent costs that will enter rate base regardless of whether Project dams are removed pursuant to the KHSA or the Project is ultimately relicensed.

As noted by witness Dr. Powell, removal of these costs from the case would not serve customer interests since this would result in substantial increases to overall project costs as additional AFUDC charges accumulate for the project. These costs would ultimately be borne by customers, thereby ultimately increasing customer costs.

Reasonableness of Adjusting Depreciation Lives Now

Q. UAE witness Mr. Higgins cites the fact that the State of California has yet to enact funding for up to $250 million in dam removal costs as a reason that it is premature to adjust the depreciation lives of the Klamath project assets. Do you view the lack of funding from the State of California at this time as an impediment to the KHSA moving forward?

A. No. The KHSA identifies the customer contribution as the principal funding source for dam removal by specifying that any California bond funding (or other appropriate State of California funding mechanism) will be used to fund the difference between the customer contribution and the actual cost to complete dam removal.[5] Thus, the customer contribution through the surcharges on customers is the primary source for dam removal funding, with State of California funding necessary only if the actual cost of dam removal exceeds the customer contribution. The actual cost of dam removal has yet to be determined. The U.S. Department of the Interior, through the Secretarial Determination study process, is developing a detailed plan for removal of the facilities, which will include a detailed statement of the estimated costs of removal.[6] Until the detailed plan is

[5] KHSA §4.1.2.A, p. 24.
[6] KHSA §3.3.2, p. 19.

developed, the costs of dam removal remain uncertain and it is unclear if any funding from the State of California will be necessary.

Q. What is the impact of delaying an adjustment to depreciation for the Klamath Hydroelectric Project?

A. Delay in adjusting the depreciation schedule would conflict with the intent of the KHSA, which is to adjust the depreciation schedule of the facilities immediately to minimize the customer impact, i.e., to spread the costs out over as long of period as possible to reduce the impact to customers in a given time period. Otherwise, the impact to customers will be greater if full depreciation of the facilities occurs on a shorter timeframe. Therefore, I don't believe it is premature because deferring the depreciation adjustment to a future rate case following passage of legislation may have a greater impact to customers.

Q. As the basis for a recommendation to remove accelerated depreciation of the Klamath project, DPU witness Dr. Powell cites uncertainty that Congressional approval of the KHSA will ultimately occur. As a rationale for this position, Witness Dr. Powell cites "the current economic and political climate" (Powell/365-366) given his understanding that "Congress must approve funds for removal costs". (Powell/358) Do you agree with this assessment?

A. No. The KHSA does not require that Congress allocate funding for dam removal. In fact, on this very point the KHSA states that "The United States shall not be liable or responsible for costs of Facilities Removal".[7] Because the KHSA does not require that Congress authorize funding for dam removal, I believe the current

[7] KHSA §4.10, p. 31.

economic climate and challenging federal budget situation is not an impediment to Congressional authorization of the KHSA. Further, because federal funds for dam removal are not required, I believe this lessens potential political difficulties that could otherwise be present.

Q. Are there other substantive reasons for not delaying the adjustment in the depreciation lives of the facilities?

A. Yes, the KHSA was negotiated to protect PacifiCorp's customers in all of its states and adjustment of the depreciation schedule for the Klamath facilities at this time is consistent with the KHSA and the positions of the Oregon Public Utility Commission and the California Public Utilities Commission. Both of those state commissions have found the KHSA to be in the best interests of customers in those states. While the Company is optimistic that legislation endorsing the KHSA will be passed this year, obtaining this endorsement from Congress for the KHSA will, in part, be based upon the ability of the parties to the KHSA to demonstrate successful implementation of portions of the agreement and the support of entities outside the KHSA process that are in a position to determine the merits of the settlement. Because of the substantial customer benefits and protections included in the KHSA, I believe the Commission should adjust the depreciation schedule of the Klamath facilities in a manner consistent with the intent of the KHSA and thereby signal its support of the settlement to interested parties. The Commission's support of the KHSA in this manner would likely advance the process of obtaining federal legislation, thereby furthering the KHSA and the realization of its considerable customer cost and risk protections.

Hunter II Arbitration

Q. Are you familiar with the arbitration between PacifiCorp and Deseret Generation & Transmission Cooperative that took place from January 31 through February 8, 2011, and that Mr. Howard Gebhart discusses in his testimony?

A. Yes.

Q. What is the relationship between PacifiCorp and Deseret Generation & Transmission Cooperative, which we may refer to as simply "Deseret"?

A. They are both co-owners of the Hunter Steam Electric Generating Unit No. 2, which is an electric generating facility in Castle Dale, Utah that is referred to as "Hunter II." PacifiCorp is the majority owner of Hunter II with 60.310%, Deseret owns 25.108% and Utah Associated Power Systems ("UAMPS") owns the remaining 14.582 %.

Q. Are the rights and responsibilities of PacifiCorp and Deseret with respect to Hunter II governed by a contract?

A. Yes, there is an *Ownership and Management Agreement Dated October 24, 1980 between Utah Power & Light Company and Deseret Generation & Transmission Co-Operative* ("O&M Agreement"). The O&M Agreement, including several amendments, spells out management and other contractual responsibilities between the owners of Hunter II.

Q. Are you familiar with the terms of that O&M Agreement and its amendments?

A. Yes.

Q. Which entity is responsible for the operation and management of the Hunter II facility under the O&M Agreement?

A. Under the O&M Agreement, PacifiCorp is designated as the Operator of Hunter II. As the Operator of Hunter II, PacifiCorp has, subject to certain exceptions, the exclusive responsibility for the operation and management of Hunter 2 in accordance with "Reasonable Utility Practice," as that term is defined in the O&M Agreement, and the other provisions of the O&M Agreement, including, but not limited to, responsibility for decisions with respect to the timing, extent and nature of any actions with respect to Capital Improvements in the ordinary course of business and the integration of the operation of Hunter II with the remainder of PacifiCorp's electric utility system.

Q. Have there been any amendments to the O&M Agreement that specifically address capital improvements?

A. Yes. Prior to its amendment, Section 4.1(a) of the O&M Agreement required the unanimous consent of the Hunter II Management Council for certain enumerated capital improvements, such as capital improvements that were to be implemented within six months of being reported to the Management Council. In 1999, PacifiCorp and Deseret entered into a settlement that resolved a coal pricing dispute. As part of that settlement they entered into an *Agreement Regarding The Coal Supply And Pricing Relationship Between PacifiCorp And Deseret Generation & Transmission Co-Operative Under The Ownership And Management Agreement*, effective January 1, 1999 (hereafter "1999 Agreement"). Among other things, the 1999 Agreement replaced Section 4.1(a) of the O&M

Agreement with new language that provides a mechanism for Deseret to challenge and receive a determination, by binding arbitration and within 120 days, that Capital Improvements proposed by PacifiCorp requiring expenditures in excess of One Million Dollars ($1,000,000) ("Major Capital Improvements") are, or are not, consistent with Reasonable Utility Practice, as that term is defined by the O&M Agreement.

Q. Briefly explain how decisions about Major Capital Improvements are handled under the O&M Agreement.

A. Section 4.1(a) of the O&M Agreement, as amended by the 1999 Agreement, requires the unanimous consent of the Hunter II Management Council for all Major Capital Improvements, subject to arbitration procedures set out in Section 4.1(a).

Q. How does the arbitration procedure work?

A. According to Section 4.1(a) of the O&M Agreement, as amended, each Major Capital Improvement proposed by PacifiCorp should be presented to the Hunter II Management Council and then voted on not less than 30 days later. If Deseret withholds its consent for a Major Capital Improvement, PacifiCorp and Deseret have 60 days to try and work things out. If they cannot, either may, within the next 60 days, submit the matter to arbitration before the American Arbitration Association.

Q. And is that the provision under which the 2011 arbitration between PacifiCorp and Deseret arose?

A. Yes.

Q. Can you explain how the arbitration between PacifiCorp was initiated?

A. Yes. In 2010, Deseret sued PacifiCorp in Utah state court, alleging various claims for breach of the O&M Agreement and other related causes of action. Among other things, Deseret claimed that it should not be required to pay for certain capital improvements including: (1) a "Scrubber Upgrade," which increased the removal of SO_2 from the flue gas and included subsets of the project scope, which dealt with end-of-life issues for various pieces of equipment; and (2) a "Baghouse Conversion" which replaced a worn out electrostatic precipitator ("ESP") with a pulse jet fabric filter or baghouse that controls particulate emissions at the plant. PacifiCorp removed the case to federal court and then moved the court for an order compelling arbitration on the issues of whether the Scrubber Upgrade and the Baghouse Conversion were consistent with "Reasonable Utility Practice." The court granted PacifiCorp's motion, compelling arbitration on this limited issue.

Q. Did the parties then proceed to arbitrate those two issues?

A. Yes, we went to arbitration for seven days between January 31-February 8, 2011, and a Final Award was issued on February 17, 2011.

Q. What was the arbitrator's job in the arbitration?

A. By contract, "the sole question to be decided either "yes" or "no" by the arbitrator is whether the [disputed] Major Capital Improvement . . . is consistent with Reasonable Utility Practice, as defined by the O&M Agreement."

Q. What determination did the arbitrator make?

A. He determined that the Baghouse Conversion is consistent with Reasonable Utility Practice, as defined by the O&M Agreement, but that the Scrubber Upgrade is not consistent with Reasonable Utility Practice.

Q. Did the arbitrator explain his reasoning?

A. Yes. Although by contract the arbitrator was only supposed to answer the sole question about Reasonable Utility Practice either "yes" or "no," he chose to provide a written explanation along with these determinations. In this light, his written explanation was never intended to be comprehensive "findings of fact" or even a thorough discussion of all of the evidence presented because the arbitrator's only job was to answer "yes" or "no" to the issue of Reasonable Utility Practice for the disputed projects.

Q. Explain what the term "Reasonable Utility Practice" means.

A. This term is defined in the O&M Agreement. It has a rather lengthy definition, but basically there are three components: First, a "Reasonable Utility Practice" is one that at a particular time is engaged in or approved by a significant portion of the electric utility industry; or, second, it is one that, based on the known facts, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition (while not being limited to the optimum practice, method or act); and third, a "Reasonable Utility Practice" is one that does not discriminate against Hunter II or Deseret's ownership interest in Hunter II as compared to PacifiCorp's practices at the other units at the Hunter plant or at its other plants.

Q. Briefly explain what the arbitration award says with respect to the Baghouse Conversion.

A. In explanation of his decision that the Baghouse Conversion is consistent with Reasonable Utility Practice, the arbitrator stated that the Baghouse Conversion (i) is a practice that is utilized by a significant portion of the electric utility industry; (ii) is the reliable, low-cost and perhaps only solution to end-of-life issues associated with the existing ESP given the need to also control mercury emissions; and (iii) does not discriminate against Deseret's interests.

Q. Briefly explain what the arbitration award says with respect to the Scrubber Upgrade.

A. In explanation of his decision that the Scrubber Upgrade is not consistent with Reasonable Utility Practice, the arbitrator concluded that: (i) no end-of-life issues are presented with regard to the Scrubber Project (page 15 of the award); (ii) the Scrubber at Hunter II is functioning well and meeting all emissions requirements (page 15 of the award); (iii) PacifiCorp made decisions relating to the Scrubber Upgrade without regard for its contractual obligations to Deseret (page 16 of the award); and (iv) PacifiCorp did not meet its burden of proof to show that the Scrubber Upgrade is consistent with Reasonable Utility Practice because (a) reliable evidence did not show that the Scrubber Upgrade was a practice that was approved by or engaged in by a significant portion of the electric utility industry when the existing scrubber was functioning well and meeting emission limits; (b) others in the electric utility industry would have postponed this upgrade as long as possible to see what regulatory limits would be imposed and what technology would become available; (c) PacifiCorp did not consider alternatives to the Scrubber Upgrade; (d) the alleged benefit of the Scrubber Upgrade was minimal, as calculated by Mr. Gebhart, in light of the cost which far exceeded other PacifiCorp units for similar projects; (e) PacifiCorp voluntarily incurred the Scrubber Upgrade costs without arguing to the Utah Division of Air Quality that the costs outweighed any perceived benefits as PacifiCorp did for its Wyoming plants with the Wyoming Division of Air Quality, which demonstrated a lack of concern for PacifiCorp's contractual obligations to Deseret; and (f) PacifiCorp discriminated against Deseret's interest in Hunter II by applying similar scrubber upgrades to all Utah units when the facts did not fit and implementing the Scrubber Upgrade at Hunter II while not performing a similar upgrade at other facilities (pages 16 – 17 of the award).

Q. Does the arbitrator's explanation rely on reasons that are not at issue in this rate case?

A. Yes. As explained above, the Deseret arbitration award focuses solely on what the arbitrator considered to be the elements of the contractual obligation between two parties and the evidence that did or did not comply with those elements. Also, as explained below, those contractual obligations are different than the standard this Commission must employ in this rate case. For example, the arbitrator's conclusion that PacifiCorp did not meet its contractual obligation to consult with Deseret on the Scrubber Upgrade has no bearing on the issues before the Commission in this rate case. Likewise, whether PacifiCorp discriminated against Deseret in deciding to install the Scrubber Upgrade has no application to this rate case. Yet, these were reasons that the arbitrator offered to explain why the Scrubber Upgrade is not consistent with Reasonable Utility Practice.

Q. Does the arbitrator's explanation erroneously rely on misconstrued evidence that is contrary to the evidence offered in this rate case?

A. Yes. The arbitrator is simply wrong that the Scrubber Upgrade does not pose any end-of-life issues. The arbitrator focused on the modifications to the scrubber that are intended to meet a more stringent SO_2 emission rate, but are not the result of end-of-life issues, while virtually ignoring the more costly subset of end-of-life projects like the replacement of the dilapidated lime preparation area, which was also part of the Scrubber Upgrade. The testimony of Mr. Chad A. Teply makes clear that the Scrubber Upgrade includes costs for a subset of the project scope related to end-of-life issues for various pieces of equipment, such as reagent preparation equipment and scrubber waste handling equipment that simply does not fit the arbitrator's rationale for his "No Reasonable Utility Practice" determination for the Scrubber Upgrade. Also, the arbitrator misconstrued the evidence related to the SO_2 reductions associated with the Scrubber Upgrade and improperly relied on Mr. Gebhart's erroneous arbitration testimony in doing so, all as explained in Mr. Richard W. Sprott's testimony filed in this rate case. In addition, the arbitrator demonstrated his misunderstanding of the regional haze requirements by asserting that PacifiCorp should have argued that the benefit did not justify the cost of the Scrubber Upgrade, as explained in Mr. Sprott's testimony.

Q. Did the arbitrator's explanation of his decision indicate the weight he gave to those reasons described above for concluding that the Scrubber Upgrade was not consistent with Reasonable Utility Practice?

A. No. The arbitrator's explanation simply offered a list of reasons - some of which are contrary to the evidence in this rate case - without indicating which reason was more important or controlling than the others. For example, the arbitrator may very well have relied on his rationale that PacifiCorp discriminated against Deseret or failed in its contractual duties to Deseret more heavily than the other reasons he offered when reaching his ultimate decision that the Scrubber Upgrade was not consistent with Reasonable Utility Practice. Because that rationale has no bearing in this rate case, the ultimate conclusion of the arbitrator should likewise have no bearing.

Q. Did the arbitrator consider the impact of the Scrubber Upgrade or Baghouse Conversion on the rates PacifiCorp charges in Utah?

A. No. In the arbitration, the issues were very limited and focused solely on whether PacifiCorp's decision to install the Baghouse Conversion and Scrubber Upgrade at Hunter II is consistent with the contract requirement of Reasonable Utility Practice.

Q. In your understanding, how was the issue presented to the arbitrator in the arbitration different from the issue presented to the Commission in this rate case?

A. As I understand it, the Commission must examine the prudence of investments made by the Company to ensure that the Company's rates are just and reasonable for the retail customers in Utah and that the Company's investors are fairly compensated. This typically requires the Commission to consider both long-term and short-term consequences to customers as well as the reasonableness of the Company's actions in relation to its entire system. The arbitrator did not examine these issues. He was limited to looking at whether PacifiCorp fulfilled its contractual obligations to a single joint owner, Deseret. He was not authorized to consider impacts upon customers, and did not consider all of the Company's system, just one generating unit in isolation. This latter factor is extremely important. If an owner has to make environmental upgrades at only one generating unit, the owner may be able to delay the upgrade to the last date feasible. That is how the arbitrator appears to have viewed the Company's actions. But, of course, the Company has 26 coal units to manage and, as the testimonies of other Company witnesses in this case have repeatedly emphasized, it is simply not feasible or economic to delay environmental upgrades for all 26 units to the last moment. Thus, the Commission's assessment of the Company's action should focus on the system, not an individual unit.

Q. Mr. Gebhart implies that the arbitrator adopted Mr. Gebhart's conclusions in the arbitration. Is that accurate?

A. No. As explained above, the arbitrator made no actual factual "findings" at all about Mr. Gebhart's conclusions or otherwise. Rather, he simply was called upon pursuant to the terms of the parties' arbitration agreement to answer a "yes" or "no" question about whether the Company had carried its burden to prove specific investments were "Reasonable Utility Practices" as defined in the parties' commercial contract. In the arbitrator's explanation, he did make reference to some of the arbitration testimony offered by Mr. Gebhart, but as explained above in reference to the testimony of Mr. Teply and Mr. Sprott, the arbitrator did so in error. In any event, because the arbitration decision is limited to a "yes" or "no" award, it is at best misleading to say that the arbitrator adopted any witnesses' conclusions, and it is certainly a misstatement to say the arbitrator considered the same issue that is now before this Commission.

Q. Does this conclude your rebuttal testimony?

A. Yes.