1 **Q. Are you the same Cindy A. Crane who previously provided direct testimony in**
2 **this case on behalf of PacifiCorp dba Rocky Mountain Power (PacifiCorp or**
3 **the "Company")?**
4 A. Yes.

5 **PURPOSE AND SUMMARY OF TESTIMONY**

6 **Q. What is the purpose of your rebuttal testimony?**
7 A. My testimony responds to the testimony filed by the Office of Consumer Services
8 ("OCS"), the Division of Public Utilities ("DPU"), Utah Association of Energy
9 Users ("UAE") and the Sierra Club. I address the parties' overall recommendations,
10 OCS's and UAE's contentions that the Company's use of the Voluntary Request
11 for Resource Decision Review Act ("Pre-approval Statute") to seek approval of the
12 Transaction[1] may not be appropriate, certain parties' concerns regarding the long-
13 term replacement coal supply agreement for the Huntington generating plant,
14 Sierra Club's criticism of the Company's net benefits analysis, and parties'
15 contentions that timely regulatory approval of the entirety of the Transaction is not
16 required.
17 **Q. Please summarize your rebuttal testimony.**
18 A. First, I recognize the general agreement among the parties that the Company should
19 proceed with the Transaction and that its decision to enter into the Transaction is

[1] Consistent with the Company's previous filings, the "Transaction" includes the four components of the Deer Creek mine closure and the settlement of the Company's retiree medical obligation related to Energy West union participants ("Retiree Medical Obligation"). The four components of the closure are: (1) the Company will permanently close the Deer Creek Mine and incur direct closure costs; (2) Energy West will withdraw from the United Mine Workers of America ("UMWA") 1974 Pension Trust ("1974 Pension Trust"), incurring a withdrawal liability; (3) the Company will sell certain mining assets ("Mining Assets"); and (4) the Company will execute a replacement coal supply agreement ("CSA") for the Huntington generating plant and an amended CSA for the Hunter generating plant.

20 in the public interest.

21 Second, I will explain why the Company's decision to enter into the
22 Transaction qualifies for review and approval under the Pre-approval Statute. I will
23 also clarify why, although the Company has been diligent and methodical in its
24 planning with regard to each of the components of the Transaction to ensure
25 significant benefits for its customers, this should not be mistaken for an absolute,
26 unqualified commitment to close the Transaction if the Commission were to deny
27 the application or approve it in a way that would expose the Company to
28 unacceptable risks.

29 Third, I will explain how the Company mitigated the risks associated with
30 a conventional long-term CSA by negotiating broad environmental termination
31 rights and flexibility under the Huntington CSA that are unique and designed to
32 protect customers. Specifically, the Company successfully negotiated a provision
33 in the CSA that allows for termination of the agreement without penalty if an
34 environmental requirement affects the Company's ability to burn coal at the plant.
35 Contrary to parties' contentions, the intent of this termination right is to relieve the
36 Company of its purchase obligation if an environmental requirement makes it
37 uneconomical to burn coal at Huntington, even if the requirement does not outright
38 prohibit the burning of coal. Thus, the long-term nature of the CSA will not
39 adversely affect the Company's resource planning or otherwise limit the
40 Company's options as it responds to new and existing environmental requirements.

41 Fourth, my testimony responds to Sierra Club's criticisms of the
42 Company's net benefits analysis and demonstrates that its specific adjustments are

43 without merit. I also explain that, even if we were to accept all of its unsupported
44 proposed adjustments to the Company's net benefits analysis, the Transaction still
45 provides significant customer benefits.
46 Finally, I reiterate the Company's need for timely regulatory approval of
47 each of the individual components of the Transaction and projected costs to allow
48 the Company to close the Transaction and achieve substantial customer benefits.

49 **GENERAL SUPPORT FOR THE TRANSACTION**

50 **Q. Do parties generally agree that the Transaction is in the public interest?**

51 A. Yes. Collectively, the parties testify that the Company's decision to enter into the
52 Transaction is in the public interest. With the exception of the Sierra Club, the
53 parties have not challenged the Company's present value revenue requirement
54 differential (PVRR(d)) analysis demonstrating the substantial customer benefits
55 resulting from the Transaction. Even the unsubstantiated economic analysis offered
56 by the Sierra Club does not negate the fact that the Transaction provides greater
57 customer benefits than any alternative.
58 OCS recommends a finding that the Transaction would be in the public
59 interest.[2] OCS also specifically recommends that the Commission approve the
60 closure of the mine, the sale of the mining assets to Bowie and the CSAs with
61 Bowie, subject to its concern regarding the long-term replacement CSA.[3]
62 The DPU indicates that overall the Transaction appears to be prudent,[4] that
63 the "Transaction case" as filed is the best choice of the three scenarios given the

[2] OCS/Vastag Direct, p. 6.
[3] OCS/Vastag Direct, p. 6.
[4] DPU/Roll Direct, p. 5.

64 assumptions,[5] that "the Company negotiated favorable terms in its CSAs where the
65 delivered fuel prices are projected to be lower than the estimated costs to continue
66 mining until depletion in 2019 and buying coal from the market,"[6] that the
67 Company "was able to negotiate a favorable present value lump sum payment to
68 settle its retiree medical obligation with the UMWA"[7] and that the Company's
69 decision to withdraw from the UMWA 1974 Pension Trust is in the public interest
70 given the assumptions of the potential liability.[8]

71 UAE takes the position that a finding of prudence is premature but does not
72 oppose certain parts of the Transaction.

73 Sierra Club recommends Commission approval of the Company's request
74 to close the Deer Creek mine, notwithstanding its recommendations regarding the
75 long-term replacement CSA.[9]

76 **APPROVAL OF THE TRANSACTION UNDER THE**
77 **PRE-APPROVAL STATUTE**

78 **Q. The OCS and UAE question the use of the Pre-approval Statute for approval**
79 **of the Transaction given (1) the "estimated" costs of the Transaction and (2)**
80 **the fact that the Company has already made key decisions related to the Deer**
81 **Creek mine. Why is the Company's request for approval of the Transaction,**
82 **including its estimated costs, appropriate under the Pre-approval Statute?**

83 A. Initially, I note the irony of the parties' contentions. On the one hand, they argue

[5] DPU/Davis Direct, p. 9 and 13.
[6] DPU/Roll Direct, p. 9.
[7] DPU/Roll Direct, p. 12.
[8] DPU/Davis Direct, p. 12.
[9] Sierra Club/Fisher Direct, p. 9.

84 that it is too soon for the Company to request approval of the Transaction given
85 that a large portion of the costs of the Transaction are "estimated." On the other
86 hand, they argue that it is or may be too late for the Company to request approval
87 of the Transaction given "primary decisions as to which pre-approval is sought
88 appear to have already essentially been made and implemented, and realistic
89 alternatives no longer appear viable."[10]

90 The Transaction is subject to approval and is not yet consummated. From a
91 policy perspective, my understanding of the purpose of the Pre-approval Statute is
92 to determine whether a resource decision is in the public interest before a
93 transaction is finalized, which we are doing in this Docket. It appears to me that an
94 important consideration in that process is the projected costs of that decision.[11]
95 Further, in reviewing whether a decision is in the public interest and prudent, the
96 Commission is required to consider the estimated or "projected" costs of the
97 decision.[12]

98 **Q. How do you respond to the specific contention that it may be inappropriate to**
99 **use the Pre-approval Statute given the Company is seeking approval of**
100 **estimated costs?**

101 A. I note that the Pre-approval Statute requires findings of "approved projected" costs,
102 not actual costs.[13] My understanding is that part of the intent of the Pre-approval
103 Statute is to give utilities the opportunity to gain pre-approval of a decision before

[10] UAE/Higgins Direct, p. 9.

[11] The Pre-approval Statute indicates "[t]he commission shall include in its order under this section (a) findings as to the approved *projected* costs of a resource decision. Utah Code Ann. § 54-17-402(7).

[12] The basis of both the projected costs and the projected benefits were filed as part of the Company's application and as exhibits to my direct testimony as well as in the direct testimony of Mr. Douglas K. Stuver.

[13] *See, e.g.,* Utah Code Ann. §§ 54-17-402(7), 54-17-403(1)(a)(iii) and 54-17-403(1)(b).

104 incurring significant costs that they may not be able to recover. An order from the
105 Commission approving the Transaction and the projected costs would allow the
106 Company to proceed to close the Transaction and provide it with assurance of cost
107 recovery of prudent costs.

108 **Q. How do you respond to the specific contention that it may also be**
109 **inappropriate for the Company to use the Pre-approval Statute because it has**
110 **already made decisions that the Company is unlikely to undo?**

111 A. The Company has been diligent and methodical in its planning with regard to each
112 of the components of the Transaction and anticipates proceeding with the
113 Transaction; however, this should not be mistaken as an absolute, unqualified
114 commitment to proceed with the Transaction if the Commission denies the
115 application or approves it in a way that would expose the Company to unacceptable
116 risks.

117 **Q. OCS contends that it would be inappropriate for the Commission to pre-**
118 **approve estimated costs given the final amounts are dependent on the**
119 **Company's own actions and that this sets this application apart from other**
120 **resource decisions that have been filed with the Utah Commission where**
121 **estimated costs were based on bids from outside parties.[14] Please respond.**

122 A. First, I would note that this Commission routinely approves estimated costs where
123 final amounts are dependent on the Company's own actions. As the Commission
124 well knows, in our general rate cases the Company uses a forecast test period and

[14] OCS/Vastag Direct, p. 3.

125 seeks recovery of costs that it expects to incur during that forecast test period. Those
126 costs are also dependent on the Company's own actions.

127 Second, I acknowledge that other resource decisions that were brought to
128 the Commission for pre-approval consideration have included projected costs that
129 were based on third-party bids. My understanding, however, is that there are two
130 different laws that contemplate pre-approval requests of a resource decision. One
131 requires that a bidding process take place,[15] and the other one, the Pre-approval
132 Statute used in this case, does not. The fact that the projected costs used by the
133 Company here were not based on bids from outside parties should not disqualify
134 them from pre-approval. Further, in accordance with the Pre-approval Statute and
135 enabling rules, the Company has provided a great deal of financial and modeling
136 information to demonstrate the reasonableness of its projected costs. This will give
137 the Commission the opportunity and the basis upon which it may verify and
138 conclude that proceeding with the Transaction case is, by a large margin, the best
139 of the three alternatives presented.

140 I also note that the Pre-approval Statute allows for review of the proper
141 implementation of the approved projected costs, as readily acknowledged by the
142 OCS in its testimony wherein it generally states that the Pre-approval Statute
143 provides protections for customers should "an energy utility's actions in
144 implementing an approved resource decision are not prudent because of new
145 information or changed circumstances…"[16] This will give parties and the
146 Commission another opportunity to ensure the Company is prudently

[15] *See,* Resource Plans and Significant Energy Resource Approval, Utah Code Ann. § 54-17-301.
[16] OCS/Vastag Direct, p. 8 (quoting UCA 54-17-403(2)(a).

147 implementing approved projected costs. Finally, I note that approval of projected
148 costs does not mean the Company will collect this amount from its customers; the
149 Company will only collect actual costs, consistent with the Company's request for
150 approval of deferral of actual costs incurred.

151 **Q. Parties generally argue that the Company's projected costs related to the**
152 **closure of the Deer Creek mine are too speculative, despite the fact that the**
153 **Pre-approval Statute allows for and in fact requires approval of "projected**
154 **costs." Why are the projected costs related to the closure of the mine**
155 **reasonable?**

156 A. The projected costs used in this case are reasonable and support the overall net
157 benefit calculations presented by the Company. The Company used its experience
158 and expertise to develop the estimates of projected costs related to the Deer Creek
159 mine closure in this case as demonstrated by voluminous work papers that were
160 provided in response to data requests, and that were filed with the Commission as
161 part of the materials that were used in the technical conference held in January in
162 this case.[17]

163 In general, the Company accounted for the mine's extensive infrastructure
164 and estimated the man hours and subsequent manpower required to close the mine,
165 and other numerous and important assumptions to reasonably determine its
166 projected costs. These projected costs by definition will be different from actual
167 costs, but the data shows that the Company used its best estimates based on reliable
168 data to project them.

[17] The workpapers were filed March 3, 2015, and were provided to all parties in the case January 5, 2015 in response to a data request.

169 **Q. Some parties contend that the projected costs specifically related to the**
170 **royalties are too speculative because the Company will not know what they**
171 **are until well into the future. Please respond.**

172 A. Like its other closure costs, the Company used its best estimates to project the
173 royalties based on its vast experience in the mining industry. The recovery-based
174 royalties are dependent upon the amounts to be recovered as a result of the
175 Transaction.
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192 ██████████ OCS's recommendation to wait until more information is
193 known will not change that. Approval of these projected costs does not mean the
194 Company will collect these projected costs from customers; the Company will only
195 collect prudent actual costs, consistent with the Company's request for approval of
196 deferral of actual costs incurred.

197 **Q. OCS specifically cites the Company's execution of the CSA and the Asset**
198 **Purchase and Sale Agreements ("APSA") for certain mining assets with**
199 **Bowie, all dated December 12, 2014, as evidence that the Company has already**
200 **made key decisions that it is unlikely to unwind.[18] Please respond.**

201 A. The Company has indeed executed the CSA and the APSAs with Bowie; however,
202 the agreements include a conditions precedent provision that requires regulatory
203 approval prior to closing and binding the Company and Bowie to perform under
204 those agreements. Incidentally, the same type of provision was negotiated with
205 CH2MHill in the Company's EPC contract related to the Company's request for
206 pre-approval of the acquisition of Lake Side 2.[19]

207 **HUNTINGTON CSA**

208 **Q. Please describe the Huntington CSA.**

209 A. As part of the overall Transaction, the Company executed a long-term agreement
210 with Bowie Resource Partners, LLC ("Bowie"), whereby Bowie agreed to supply
211 the Company's coal requirements for Huntington from the close of the Transaction
212 through December 31, 2029. The CSA includes a "take-or-pay" provision generally

[18] OCS/Vastag Direct, p. 3.
[19] The final, executed EPC contract that was filed with the Utah Commission as support for the transaction was dated December 14, 2010. The Company filed its application December 21, 2010.

213 requiring the Company to purchase a minimum specified amount of coal. Such
214 "take or pay" provisions are an essential component of virtually all long-term coal
215 supply agreements and constitute the consideration required to obtain favorable
216 pricing. In this case, however, the Company was able to mitigate the risk associated
217 with the take-or-pay provision by negotiating a provision, Article 8, that provides
218 the Company with broad termination rights if new or existing environmental laws,
219 regulations, or a settlement agreement affect the Company's ability to burn coal at
220 Huntington.

221 **Q. What are the parties' concerns about the CSA?**

222 A. The parties argue that the Company's termination rights may not be as broad as the
223 Company intended and that the provision may not allow the Company to terminate
224 the CSA if it were to decide to stop burning coal for economic reasons.[20] For
225 example, Sierra Club claims that PacifiCorp's recent decisions to end coal burning
226 at Company-owned plants were driven by economic reasons and were not the result
227 of new or existing environmental requirements that explicitly prohibited burning
228 coal.[21]

229 **Q. Do you agree with the parties' concerns?**

230 A. No. Article 8 was specifically negotiated by PacifiCorp to provide the Company
231 with relief from the take-or-pay provision of the CSA if environmental laws or
232 government policies or settlements affect the Company's ability to burn the
233 minimum amount of coal specified in the contract.

234 **Q. Please discuss the relevant portions of Article 8.**

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[20] *See*, *e.g.* Sierra Club/Fisher Direct, p. 16; DPU/Roll Direct, p. 10; OCS/Vastag Direct, p. 7.
[21] Sierra Club/Fisher Direct, p. 17.

235 A. The first paragraph of Article 8 describes a Coal Consumption Event ("CCE") and

236 states that, if a CCE occurs,

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240 The mitigation measures are also described in Article 8, which is set out

241 in full on pages 15 and 16 of Confidential Exhibit RMP___(CAC-5), attached to

242 my direct testimony.

243

244 **Q. Why did the Company negotiate Article 8?**

245 A. The Company negotiated Article 8 in recognition of the uncertainty now inherent

246 in the environmental regulation of coal generation. The Company's intent was to

247 secure broad flexibility in responding to the impacts of changing environmental

248 regulations or settlements on Huntington, including the ability to terminate the

249 CSA without liquidated damages if future changes in applicable environmental

250 requirements affect the Company's ability to operate Huntington as a coal-fired

251 facility.

252 Article 8 allows the Company to terminate the CSA if a regulation

253

254 per year. Under Article 3 of the CSA, the Company's minimum requirement is

255 and its maximum requirement is . The use of

256 the threshold for Article 8, which is less than the

257 plant's [REDACTED], was intended to

258 provide the broadest protection possible.

259 **Q. Would Article 8 allow the Company to terminate the CSA if an environmental**

260 **requirement made continued operation of Huntington uneconomic?**

261 A. Yes. The Company intended Article 8 to address a scenario where an environmental

262 requirement made the continued operation of the plant as a coal-fired facility

263 uneconomic, and the Company made this intent clear during its negotiations with

264 Bowie. As Sierra Club correctly points out, none of the Company's decisions to

265 close or re-power coal plants was the result of an outright prohibition on burning

266 coal. Rather, the decisions were made based on the economic impact of the

267 environmental requirement on the operation of the particular plant. From the

268 Company's perspective, it would make no sense to agree to a narrow clause that

269 would limit the Company's termination rights in the manner the parties fear.

270 **Q. Is it your understanding that Bowie recognizes that Article 8 is intended to**

271 **allow the Company to terminate the CSA if an environmental requirement**

272 **makes continued operation of Huntington uneconomic?**

273 A. Yes. During the negotiations this intent was made clear to Bowie and, based on the

274 communications between the Company and Bowie, Bowie recognizes that Article

275 8 was intended, at a minimum, to cover this type of scenario. Thus, the Company

276 believes that the contract language substantially mitigates the potential risk to

277 customers related to changing environmental requirements.

278 **Q. Sierra Club is also concerned that the long-term CSA creates an incentive for**
279 **the Company to continue to burn coal at Huntington when it would otherwise**
280 **be uneconomic to do so and therefore limits the Company's future options.**[22]
281 **Please respond.**

282 A. Because the Company can exercise its environmental termination rights if a new
283 or existing environmental regulation or settlement causes it to become
284 uneconomical to burn coal at Huntington, there is no incentive to continue burning
285 coal when it is uneconomical to do so and the Company's options are not limited.
286 Further, the Company will conduct its future planning related to fueling strategy of
287 the Utah plants based on its understanding of Article 8.

288 **Q. Sierra Club also argues that non-regulatory developments, such as low gas or**
289 **market prices or reduced demand, could render Huntington uneconomical,**
290 **and concludes that instead of entering into a long-term CSA, the Company**
291 **should purchase coal on the market.**[23] **Are Sierra Club's concerns justified?**

292 A. No. Sierra Club produced no evidence or analysis indicating that there is a material
293 probability that such a scenario would occur. Moreover, as described in the direct
294 and rebuttal testimonies of Mr. Seth Schwartz, given current market conditions, it
295 is reasonable and prudent to enter into the long-term Huntington CSA at below-
296 market prices. Sierra Club is essentially asking customers to bear the burden of
297 higher market coal prices for the foreseeable future based on speculation that other
298 market forces may eventually render market coal a better option than a long-term
299 CSA. While it is theoretically possible that the scenario described by Sierra Club

[22] Sierra Club/Fisher Direct, p. 18.
[23] Sierra Club/Fisher Direct, p. 19.

300 may occur, mere speculation is no basis for long-term resource planning or
301 decision-making.

302 **Q. Sierra Club recommends that the Commission impose conditions that would**
303 **essentially require the Company to hold customers harmless from any**
304 **potential risk associated with the take-or-pay provisions.[24] Is this type of**
305 **condition necessary or appropriate?**

306 A. No. Sierra Club is asking the Commission to prejudge ratemaking treatment of
307 speculative damages under the contract. The Company is simply asking that the
308 Commission not prejudge the appropriate ratemaking treatment of alleged future
309 damages incurred under the CSA based on unfounded fears and speculation. Sierra
310 Club's conditions are no more reasonable than a condition preemptively requiring
311 customers to bear all future costs, including potential damages, incurred under the
312 CSA.

313 **Q. Sierra Club argues that the Company's analysis relating to the decision to**
314 **enter into the long-term Huntington CSA should have considered shutting**
315 **down the plant or re-powering with natural gas.[25] Please respond to these**
316 **concerns.**

317 A. First, I would note that even though Sierra Club raised this concern, it does not
318 dispute that the Transaction provides customer benefits. Second, as discussed
319 above, the Company's decision to enter into the long-term CSA does not affect the
320 Company's decision-making related to closing or re-powering Huntington because
321 of the broad termination rights. Third, this type of analysis is conducted as part of

[24] Sierra Club/Fisher Direct, p. 20.
[25] Sierra Club/Fisher Direct, p. 10.

322 the Company's integrated resource planning process, and the Company's
323 assumptions in its economic analysis in this case are consistent with its most recent
324 integrated resource plan.

325 **Q. Do you have any other concerns related to the criticisms of the Huntington**
326 **CSA?**

327 A. Yes. The recommendations give no consideration to the integrated nature of the
328 Transaction. The Huntington CSA was part of the overall agreement with Bowie,
329 which also included the sale of the Mining Assets and Bowie's assumption of
330 Preparation Plant obligations. The Company could not have achieved the same
331 agreement with Bowie if it had not entered into a long-term CSA. Not only does
332 the CSA provide below market coal prices, but it also enables the Company and
333 customers to realize numerous other benefits.

334 As described in my direct testimony, the Company's net benefits analysis
335 compared the PVRR of mine closure without the Bowie deal (Market case) and
336 mine closure with the Bowie deal (Transaction case). The result of this analysis
337 demonstrated that the customer benefit of the Transaction case over Market case is
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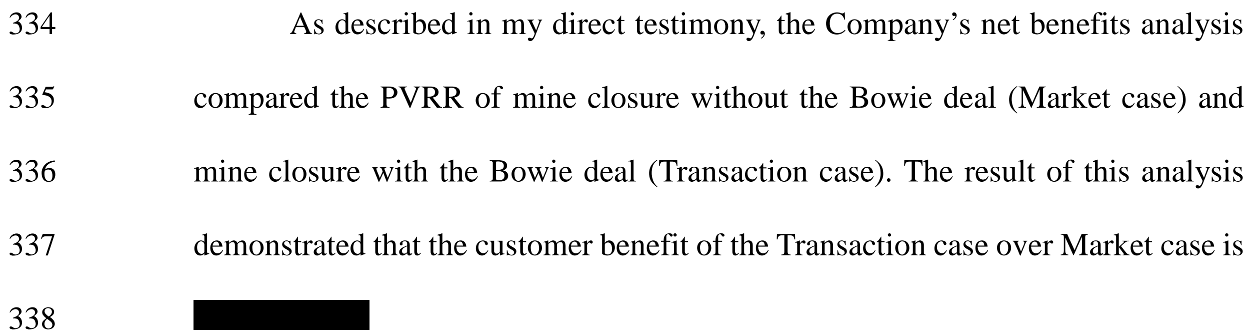

339 **Q. Sierra Club faults the Company for modeling the Retiree Medical Obligation**
340 **in only its Transaction case, but not its Market case, even though both cases**

341 **assumed mine closure.[26] From this, Sierra Club claims that the benefits**
342 **achieved by the Company's renegotiation of its union contract, in the amount**
343 **of ██████ (the difference between the ██████ settlement and the**
344 **Company-assumed liability of ██████) should also apply to the Market**
345 **case, and that doing so reduces the benefit of the Transaction case compared**
346 **to the Market case by the achieved savings of ██████ to ██████.**
347 **Does this criticism have merit?**
348 A. No. The Sierra Club provides no evidence to support this claim. It is easy to assume
349 that the Company would have been able to successfully negotiate the Retiree
350 Medical Obligation settlement without the CSA. However, the facts show
351 otherwise.
352 **Q. Please explain.**
353 A. The facts are that the Company was negotiating both the CSAs *and* the sale of the
354 Mining Assets with Bowie at the time the union finally came to the table to
355 negotiate. Bowie needed the Mining Assets to supplement the CSAs for Hunter and
356 Huntington - and the Company would not have been able to sell the Mining Assets
357 without the closure of the Deer Creek mine. In addition, the history of the
358 Transaction shows that the Company had always contemplated a long-term coal
359 supply agreement, as opposed to short-term market purchases, with either the sale
360 or the closure of the mine to meet the Huntington plant's fueling requirements.
361 Therefore, the Company would not have settled the RMO liability with the union
362 under a Market case scenario. In reality, the Company was able to negotiate this

[26] Sierra Club/Fisher Direct, p. 23.

363 benefit with the union because the overall Transaction, including the CSA, gave
364 the Company leverage that it otherwise lacked.

365 **Q. Please elaborate on the history of the Transaction and how the Transaction**
366 **provided the Company bargaining position with the union.**

367 A. While a driving factor in the decision to close the Deer Creek mine was to withdraw
368 from the 1974 Pension Trust to limit the Company's growing liability, the Company
369 was also concerned about the future coal supply of the Huntington plant. The
370 Company had explored the sale of the mine beginning in late 2012 and into the
371 spring of 2013, and even had two bids. Both bids included long-term coal supply
372 agreements. However, neither bid provided acceptable terms for the Company and
373 its customers. The bids the Company received in 2012/13 required that the
374 Company backstop the 1974 Pension Trust liability, and contained unfavorable
375 terms in their proposed long-term coal supply agreements. Rather than selling the
376 Deer Creek mine and executing the coal supply options, the Company continued
377 to search for better options. During this time, the Company was also not getting
378 any traction in its labor negotiations with the union.

379 In 2013, it became obvious that both the quality and volume of the reserves
380 at the Deer Creek mine were dropping and that, in turn, operating expenses would
381 increase significantly. At that time the Company realized that closure, rather than
382 the sale, of the Deer Creek mine was a more realistic option, especially given prior
383 failed attempts to sell the mine on favorable terms. However, the closure of the
384 Deer Creek mine meant that the Company also had to secure coal that would meet
385 certain coal quality specifications, would be of sufficient volumes to meet the

386 Huntington plant's large annual fueling requirements for a very long period of time,
387 and would be at reasonable or below-market prices. The only way the Company
388 could ensure these terms for customers was by negotiating a long-term CSA. No
389 supplier would ever agree to these terms without a long-term contract, assuming
390 sufficient suppliers even existed in the market that could provide the volumes
391 needed at Huntington (2.5-2.9 million tons annually). Bowie was willing to provide
392 the Company these and other favorable, flexible terms in exchange for a long-term
393 commitment. The Company would not have been able to negotiate these terms in
394 the CSA with Bowie had it not been for a long-term commitment. In turn, the
395 UMWA would not have settled the Retiree Medical Obligation as long as it
396 believed there was a chance that the mine would remain open. It wasn't until the
397 Transaction was nearly finalized and the Company's intent to close the mine
398 became clear to the UMWA, based on the ongoing negotiations with Bowie for the
399 sale of the Mining Assets and for a long-term coal supply agreement, that the
400 Company was able to negotiate the Retiree Medical Obligation settlement.

401 In sum, the Company knew that to withdraw from the 1974 Pension Trust,
402 it must either close the mine or sell it to a buyer who was willing to assume the
403 1974 Pension Trust liability. The bids the Company received in 2012/13 contained
404 unfavorable terms. The Company continued to pursue options to address the
405 pension and supply issues and in late 2013 the Company and Bowie began
406 discussions. Discussions initially involved selling the mine to Bowie but it quickly
407 became evident that a mine closure, a replacement CSA and selling of the Mining
408 Assets was a more feasible outcome. The CSA with Bowie provided the favorable

409 terms and the flexibility needed to meet the Huntington plant's requirements. As a
410 result of these events, the Company was able to reach a very favorable settlement
411 agreement with the union.

412 **Q. Why couldn't the Company rely on short-term market purchases, as Sierra**
413 **Club infers, to meet the Huntington plant's fueling requirements?**

414 A. As Mr. Schwartz testifies in his rebuttal testimony, the Company has limited options
415 in Huntington, Utah. While I will not go into the details of Mr. Schwartz's rebuttal
416 testimony, realistically there are only three options. They are limited by both their
417 production capacity and by their current contractual obligations. In addition, there
418 is no rail infrastructure in Huntington and no other way to transport coal to Hunter
419 or Huntington other than by truck or conveyor belt. Transportation costs would be
420 very costly. Thus relying on short-term market purchases with the limited number
421 of suppliers in Huntington, Utah, under the foregoing conditions would expose the
422 Company and its customers to unacceptable risks and would be imprudent.

423 **Q. Are there other similarly sized plants that are owned or operated by the**
424 **Company where the Company does not have long-term coal supply**
425 **agreements to secure the fueling requirements of that plant?**

426 A. Yes. The Company does not have a third-party, long-term coal supply agreement at
427 the Dave Johnston plant. The Dave Johnston plant typically consumes 3.5 million
428 tons of coal annually. The Dave Johnston plant is located south of the Powder River
429 Basin ("PRB") which produces approximately 400 million tons of coal annually.
430 The plant is generally supplied by a portfolio of coal supply agreements ranging in
431 terms of three years or less. Coal deliveries are received by rail from the BNSF

432 Railway Co. ("BNSF"). As a result of the plant's location to the PRB and its ability
433 to receive coal by rail, a long-term coal supply agreement is not needed for the Dave
434 Johnston plant.

435 **Q. So is it realistic for the Sierra Club to claim that the Company could have gone**
436 **to the market to meet the fueling requirements of the Huntington plant and**
437 **therefore claim that the [REDACTED] benefit should have been applied to the**
438 **Market case?**

439 A. No. An unsupported claim does not become a fact just because the Sierra Club
440 subjectively believes that it is. The Utah Commission must assess the evidence
441 presented to make decisions and the Sierra Club has not provided any evidence to
442 support what it subjectively believes. All it has done is shift numbers and amounts
443 around to make an unsubstantiated calculation. The Company, however, has
444 presented undisputed evidence that (1) it would not have closed the mine without
445 also securing the long-term fueling requirements at Huntington with the CSA with
446 Bowie because it would not have left its position open and vulnerable to the current
447 market conditions in that area; and (2) the union would not have settled had it not
448 truly believed the Company was closing the mine. The Sierra Club's argument that
449 the [REDACTED] benefit should be applied to the PVRR(d) in the Market case fails
450 and should be rejected because it's a hollow claim.

451 **Q. Sierra Club claims that the Company did not appropriately account for coal**
452 **blending costs at the Hunter plant in its net benefits analysis by excluding those**
453 **costs from the Transaction case, while including them in the Market case.**[27]

[27] Sierra Club/Fisher Direct, p. 28.

454 **Sierra Club asserts that the Company's Transaction case assumes that the coal**
455 **blending, which was previously conducted by the Company at the Preparation**
456 **Plant, will be provided for free once the Preparation Plant is sold to Bowie.**
457 **Are Sierra Club's criticisms warranted?**

458 A. No. Sierra Club misrepresents the Company's analysis. The Transaction case
459 assumes Bowie will absorb Preparation Plant operating costs through 2020.
460 Beyond 2020, the Company assumes that all coal purchases will comply with
461 Hunter plant coal specifications, obviating the need for incremental coal handling
462 costs. This assumption is warranted because (1) Bowie controls and produces the
463 vast majority of coal in Utah, (2) Bowie will need to continue to operate the
464 Preparation Plant to meet contract specifications, and (3) coal pricing assumptions
465 are for coal that meets Hunter plant specifications.

466 The Market case assumes the Preparation Plant is shuttered in 2015 and
467 coal deliveries to the Hunter plant are either put in the plant's hopper or on the
468 plant's stockpile and pushed into reclaim feeders using bulldozers or scrapers. The
469 Company's analysis reasonably reflects the additional coal handling costs it would
470 incur in this scenario.

471 **OTHER ISSUES**

472 **Q. The parties' recommendations undermine the Company's claim that it needs**
473 **regulatory approval of the Transaction as a package by May 31, 2015.[28] Please**
474 **respond.**

475 A. If the Company does not receive the necessary regulatory approvals by May 31,
476 2015, it can waive the conditions precedent requiring the approvals, but only if
477 Bowie also agrees. If the Company does not receive one or more state regulatory
478 approvals by that deadline, it would need to weigh the risks of a decision to waive.

479 **Q. What are the Company's options if it does not receive the necessary regulatory**
480 **approvals?**

481 A. The benefits of the Transaction are contingent on timely regulatory approvals. If
482 regulatory approvals are not obtained, the Company would be left with two options.
483 First, the Company could close the mine and purchase coal from the market,
484 assuming that this scenario met the Commission's public interest standard. The
485 assumptions and results would be similar to the Market Case, including Preparation
486 Plant closure and pension withdrawal. This option would result in higher
487 replacement coal prices and loss of the proceeds from sale of the Preparation Plant.

488 Second, the Company could operate the mine through its depletion. In this
489 case, the costs would be higher than estimated in the Keep case due to restarting
490 development work to initiate longwall mining operations.

[28] *See generally,* OCS/Vastag Direct; UAE/Higgins Direct; DPU/Roll Direct.

491 **Q. Are any of the Company's specific requests set forth in its application**
492 **severable in a way that would allow the Company to move forward with only**
493 **certain aspects of the Transaction?**
494 A. No. The requests for regulatory approvals are not severable because they are all
495 integral to the Transaction to close the Deer Creek mine. Where possible, however,
496 the Company seeks approval of regulatory assets and proposes to address
497 ratemaking treatment in future ratemaking proceedings, as addressed in more detail
498 in Company witness Mr. Stuver's direct and rebuttal testimony.
499 The major components of the transaction are integrated through Article 10
500 of the Huntington CSA. On or before the May 31, 2015, deadline in the Huntington
501 CSA, PacifiCorp must have resolved labor disputes and associated successorship
502 obligations with the UMWA in a manner satisfactory to Bowie, closed the property
503 sale agreements that are part of the Transaction, and received all necessary
504 regulatory approvals. The Huntington CSA requires the Company to begin closing
505 the Deer Creek mine within three months of its effective date. Because of the pre-
506 closing and post-closing conditions of the Huntington CSA, the Company must
507 obtain all the regulatory approvals requested in the application by May 31, 2015.
508 The Huntington CSA is terminable by Bowie if PacifiCorp does not meet this
509 deadline. The benefits of the Transaction to close the Deer Creek mine are derived,
510 in part, from the Huntington CSA, and the proposed closure of the mine is
511 contingent on its approval.
512 **Q. Does this conclude your rebuttal testimony?**
513 A. Yes.