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1 June 9, 2016

10:02 a.m.

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

3 PRESIDING OFFICER HAMMER: Good morning.

4 We'll go on the record. This is the time and place
5 noticed for hearing in the matter of the application of
6 Rocky Mountain Power for approval of the power purchase
7 agreement between PacifiCorp and Thayn Hydro, LLC, as
8 commission Docket No. 16-035-04.

9 My name is Michael Hammer, and I am
10 commission's designated presiding officer for this
11 hearing. Let's have appearances please, beginning with
12 the applicant.

13 MS. HOGLE: Good morning. Yvonne Hogle on
14 behalf of Rocky of Mountain Power.

15 PRESIDING OFFICER HAMMER: And do you have any
16 witnesses with you?

17 MS. HOGLE: Oh, I apologize. Yes. Mr. Paul
18 Clements is here, and he's the director of commercial
19 services for Rocky Mountain Power. Kyle Moore is also
20 here, although he is not a witness, and he is a senior
21 structure pricing marketer for Rocky Mountain Power.
22 Thank you.

23 PRESIDING OFFICER HAMMER: Thank you.

24 MR. JETTER: Good morning. I am Justin Jetter
25 with the Utah Attorney General's Offices. I represent

1 the Utah Division of Public Utilities, and with me at
2 counsel table is Charles Peterson with the Utah Division
3 of Public Utilities.

4 MR. MOORE: Robert Moore with the Attorney
5 General's Office representing the Office of Consumer
6 Services. With me is Bela Vastag. He is a utilities
7 analyst with the office.

8 PRESIDING OFFICER HAMMER: Thank you,
9 Mr. Moore.

10 MR. LONG: And I'm -- I'm Adam Long with Smith
11 Hartvigsen here on behalf of Thayn Hydro. My sole
12 witness is Rick Kaster, who is sitting right behind me.

13 PRESIDING OFFICER HAMMER: Thank you,
14 Mr. Long. And Ellis Hall Consultants, LLC, was also
15 granted intervention in this docket. Are they present
16 today? No, okay.

17 VOICE: Ellis Hall is present.

18 PRESIDING OFFICER HAMMER: All right. Does
19 Ellis Hall have any intention of presenting evidence or
20 otherwise participating in the hearing?

21 VOICE: Not at this time, unless something
22 comes up.

23 PRESIDING OFFICER HAMMER: Okay. Well, you're
24 welcome to. Thank you.

25 COURT REPORTER: Is -- could I get her name?

1 Is that Ellis?

2 PRESIDING OFFICER HAMMER: I'm sorry. Can you
3 repeat your name for the court reporter.

4 VOICE: Ellis, E-L-L-I-S, hyphen, Hall,
5 H-A-L-L, Consultants.

6 COURT REPORTER: Okay. That is your name?

7 MS. CERUTI: Oh, I'm sorry. That's the name
8 of the company. I am Kimberly Ceruti.

9 COURT REPORTER: Will you spell that please.

10 MS. CERUTI: K-I-M-B-E-R-L-Y, C, like Charlie,
11 E-R-U-T-I.

12 PRESIDING OFFICER HAMMER: Before we begin,
13 are there any preliminary matters the parties would like
14 to address? I have a hearing statement on the bench
15 from the Office of Consumer Services.

16 MR. MOORE: Yes. We handed those out to the
17 court reporter to make it easier to transcribe
18 Mr. Bela's -- Mr. Vastag's testimony.

19 MR. VASTAG: Statement.

20 MR. MOORE: Statement, sorry.

21 PRESIDING OFFICER HAMMER: Okay. Is there any
22 objection to my receiving this from any of the parties?
23 Thank you.

24 Given the legal briefing that was submitted in
25 this docket, I expect counsel might want to sum --

1 might, pardon me, want to make some sort of legal
2 argument on the record. I don't know if you want to do
3 that or if you choose to do that, you would prefer to do
4 it before we proceed with witnesses, or you would like
5 to make a statement at the end of the hearing. I offer
6 that to any of you who would like to make a comment now.

7 MS. HOGLE: Thank you, Mr. Hearing Officer.
8 The way that the company will approach the issues in the
9 case is, Mr. Paul Clements will be the policy witness in
10 this case. We believe that there is an opportunity to
11 present both -- well, sort of a general policy statement
12 that will include facts and a little bit of law.

13 And if necessary, then I will certainly
14 interject and add anything that I feel was omitted.
15 Thank you.

16 PRESIDING OFFICER HAMMER: Mr. Jetter?

17 MR. JETTER: Good morning, your Honor. The
18 division didn't prepare an oral argument summary of our
19 brief. We -- I suppose, this is kind of a mixed
20 question of fact and law. We intend to present a
21 witness that will summarize the comments that we have
22 provided.

23 And I think our position is fairly clear from
24 our brief, which was also fairly brief, that in this
25 case we think that the facts, in a very narrow,

1 fact-specific view of this particular situation, may
2 support a LEO.

3 COURT REPORTER: May what?

4 MR. JETTER: Support a legally enforceable
5 obligation to support the prior pricing. We think that
6 the commission at this point has a pretty thoroughly
7 established timeline of the negotiations that occurred
8 and is fairly well briefed by the various parties, legal
9 analysis of sort of the boundaries of where states may
10 determine when legally enforceable obligations occur or
11 don't. And it's probably a pretty good question for the
12 commission to answer, I guess, in this case.

13 So that's the only initial statement I'd like
14 to put on the record. Thank you.

15 PRESIDING OFFICER HAMMER: Thank you,
16 Mr. Jetter. Mr. Moore?

17 MR. MOORE: At present the office will rely on
18 its briefing, although we would like to reserve the
19 right to, if needed, as the hearing develops, to provide
20 some legal argument on that issue at the end of the
21 hearing.

22 PRESIDING OFFICER HAMMER: Understood, and
23 Mr. Long?

24 MR. LONG: Like Mr. Moore, we think the issues
25 have been fairly well briefed and thoroughly presented

1 to the commission at this point. We don't anticipate
2 making a formal legal argument or any sort of summary of
3 the briefing position.

4 As a very basic summary of Thayn Hydro's
5 position, Thayn Hydro effectively wants the old Schedule
6 37 pricing. From, from Thayn Hydro's perspective, how
7 they get there is irrelevant. Thayn Hydro also believes
8 that if it comes down a legally enforceable obligation
9 argument, it's clear that that obligation existed based
10 on the facts. And I will ask some questions of
11 Mr. Kaster to give his -- his own version of those
12 facts.

13 PRESIDING OFFICER HAMMER: Thank you. In
14 terms of order of the presentation of the evidence, my
15 instincts tell me it makes sense to begin with the
16 applicant and then perhaps go to Thayn and then the
17 division and the office. Is there any objection to that
18 order?

19 MR. JETTER: Not from the division. That
20 seems like a reasonable way to proceed.

21 MR. MOORE: No objection from the office.

22 MS. HOGLE: No objection from Rocky Mountain
23 Power.

24 MR. LONG: None from Thayn either.

25 PRESIDING OFFICER HAMMER: Excellent. Then we

1 will begin with the applicant. Ms. Hogle?

2 MS. HOGLE: Your Honor, the company calls
3 Mr. Paul Clements as a witness. And I don't know if you
4 want him to follow on to the witness stand or if he can
5 give his testimony where he is now.

6 PRESIDING OFFICER HAMMER: I believe our court
7 reporter would prefer he come to the stand. Make her
8 job a little easier.

9 COURT REPORTER: Thank you. Also, could
10 somebody close that door over there? Thank you.

11 PRESIDING OFFICER HAMMER: Mr. Clements, do
12 you swear to tell the truth?

13 THE WITNESS: Yes.

14 PRESIDING OFFICER HAMMER: Thank you.

15 PAUL CLEMENTS,
16 called as a witness at the instance of the applicant,
17 having been first duly sworn, was examined and testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MS. HOGLE:

21 Q. Good morning, Mr. Clements.

22 A. Good morning.

23 Q. Can you please spell and state your name for
24 the record and state your position with the company.

25 A. Yes. My name is Paul Clements,

1 C-L-E-M-E-N-T-S. I am currently director of commercial
2 services for Rocky Mountain Power.

3 **Q. And can you provide some background in how you**
4 **became involved in this case?**

5 A. Yes. For the past 12 years I have been
6 responsible for negotiating qualified facility power
7 purchase agreements for Rocky Mountain Power, either
8 directly negotiating the agreement myself or in a
9 managerial standpoint overseeing those who negotiate the
10 agreements.

11 **Q. And specifically do you have a background as**
12 **to your involvement in this case that you would like to**
13 **give?**

14 A. Yes. I have been familiar with the
15 negotiation process for the Thayn Hydro power purchase
16 agreement. People who are under my employ negotiated
17 the power purchase agreement, and I was involved in
18 directing and managing their work.

19 **Q. Okay. So in your capacity, did you assist in**
20 **the preparation of the power purchase agreement in**
21 **addition to the subsequent company filings related to**
22 **the power purchase agreement?**

23 A. Yes, I did.

24 **Q. Okay. So do you adopt the company's filings**
25 **here today as your own policy testimony?**

1 A. Yes. From a policy standpoint, I do.

2 Q. And have you prepared a summary that you would
3 like to give today?

4 A. I have.

5 Q. Please proceed.

6 A. Thank you. Good morning. If I speak too
7 quickly, please interrupt me.

8 Pursuant to the commission's provisional
9 conclusion of law issued on March 4th, 2016, the purpose
10 of today's proceeding is to determine whether there is a
11 legally enforceable obligation, or LEO, L-E-O -- that
12 will be a term you will hear frequently today -- was
13 established by Thayn Hydro prior to either the
14 commission issuing its pricing order on September 18th,
15 2015, in the Schedule 37 docket, or the commission
16 issuing its contract duration order on January 7th of
17 2016 in the qualifying facility contract term docket.

18 The pricing order on September 18th, 2015,
19 established new pricing that would apply to Thayn Hydro.
20 The contract duration order reduced the maximum contract
21 term that would apply to Thayn Hydro.

22 Thayn Hydro asserts that a legally enforceable
23 obligation was created prior to the issuance of the
24 pricing order. The company does not agree with this
25 assertion. I will detail why the company does not agree

1 in my remarks today. It's also detailed in the
2 company's brief.

3 Thayn Hydro further believes the commission
4 could decide this matter under extenuating
5 circumstances, the same logic that was used for the
6 Three Peaks Power power purchase agreement in Docket No.
7 15-035-70.

8 Thayn Hydro asserts that the commission does
9 not need to address the LEO issue in making a
10 determination in this docket. The company agrees with
11 that position and agrees that the commission need not
12 resolve the LEO issue in this proceeding, and instead,
13 could evaluate and consider the specific facts of this
14 case in making a determination as to what is just and
15 reasonable.

16 Regarding the issue of the establishment of a
17 LEO, the FERC has determined it is up to the individual
18 states, not the FERC, to determine the parameters of a
19 legally enforceable obligation. The FERC has also
20 explained that the purpose of the LEO is to prevent
21 utilities from refusing to enter into a contract with a
22 QF counterparty.

23 To be clear, at no point prior to the pricing
24 order or prior to the contract duration order did the
25 company refuse to enter into a contract with Thayn

1 Hydro.

2 I will briefly summarize the key dates and
3 activities between the time Thayn Hydro first contacted
4 the company and the time of the pricing order. On July
5 7th, 2015, Thayn Hydro first contacted the company
6 regarding renewing their contract that was set to expire
7 at the end of 2015.

8 On July 14th, 2015, the company provided a
9 draft contract to Thayn Hydro. The contract, as first
10 delivered, was not in execution form and was clearly
11 labeled as a working draft that did not constitute a
12 binding offer.

13 While the contract is a renewal of an existing
14 QF agreement, the existing contract between Thayn Hydro
15 and the company was put in place 20 years ago. And the
16 draft provided by the company on July 14th reflected the
17 most up-to-date terms and conditions for similarly
18 situated QFs. So there were several commercial terms
19 that it changed from the existing agreement.

20 On July 22nd, 2015, Thayn Hydro sends an
21 e-mail to the company stating it commits to sell its
22 output under Schedule 37. This commitment occurred just
23 two weeks after initiating discussions without any
24 further exchange of draft contracts. The company views
25 this date as the date on which serious negotiations

1 began between the parties but not the date on which an
2 agreement was consummated.

3 Regarding the timing of negotiations or the
4 duration of negotiations, the company notes the typical
5 time to complete negotiation of a standard qualifying
6 facility power purchase agreement is almost three
7 months, not the two weeks that occurred between the
8 first contact and Thayn Hydro's July 22nd e-mail.

9 The company further notes that not all terms
10 were agreed to at that point. Specifically, there were
11 negotiations ongoing related to the level or the amount
12 of insurance required and regarding an issue related to
13 a default provision if minimum delivery requirements
14 were not met.

15 This ongoing negotiation was evidenced in the
16 e-mails between the parties on August 4th, 2015, and
17 even in some e-mails as late as November 2015. In those
18 August 4th, 2015, e-mails, Thayn Hydro stated, quote,
19 one item that causes me concern, end quote, and quote, I
20 would appreciate you checking into the necessity of
21 adding the requirement, end quote.

22 At that point in time, it appeared that Thayn
23 Hydro was not willing to commit to sell under the
24 contract in its then current form because it continued
25 to inquire regarding changes to the insurance

1 provisions. This is further supported by communication
2 between the parties on September 17th, 2015, where Thayn
3 Hydro inquired again regarding the insurance amounts.

4 Then on September 18th, 2015, the pricing
5 order was issued. And at that point in time, the
6 company could no longer execute an agreement with Thayn
7 Hydro under what we're referring to as the old Schedule
8 37 pricing.

9 On October 1st, 2015, the parties reached
10 agreement on the insurance terms, and the agreement that
11 was reached resulted in insurance terms that were lower
12 than those being initially discussed in August. And the
13 parties reached agreement on a final version of the
14 contract.

15 So to summarize the key points of this
16 timeline relevant to the proceeding today, at no point
17 did the company refuse to execute a contract that was
18 tendered for signature. Second, the company negotiated
19 in good faith over the ordinary course of business,
20 including attempting to resolve issues and negotiate
21 terms when requested.

22 One key point for consideration today, and
23 this is in response to the OCS recommendation, or the
24 Office of Consumer Services recommendation, there is no
25 evidence demonstrating that the inquiries regarding the

1 insurance amounts and the other commercial terms were
2 unconditional, meaning the company cannot be certain
3 that Thayn Hydro would have committed to sell under an
4 agreement with the higher insurance amounts and other
5 issues or whether a lower insurance amount and
6 resolution of those issues was a condition of their
7 commitment to sell.

8 In conclusion, the facts and the associated
9 timeline do not support Thayn Hydro's assertion that a
10 LEO was established through a commitment to sell prior
11 to the pricing order. And the company does not believe
12 the commission should determine that a LEO had been
13 established.

14 As I mentioned earlier in my summary, the
15 company agrees with Thayn Hydro's suggestion that the
16 commission could decided this matter under extenuating
17 circumstances without addressing the LEO issue. These
18 facts are very similar to the facts reviewed by the
19 commission in the Three Peaks Power case I mentioned
20 earlier.

21 Of particular importance to this issue of
22 extenuating circumstances is the unique time involved
23 with the pricing order. The hearing in the Schedule 37
24 docket occurred on September 14th, 2015. The pricing
25 order was issued just four days later on September 18th,

1 2015. The Schedule 37 docket was a contested proceeding
2 where all parties were not in agreement.

3 It is unusual for the commission to issue an
4 order so quickly following a contested proceeding. To
5 be honest, the issuance of the pricing order so soon
6 after the hearing caught the parties off guard. Based
7 on my personal involvement in the negotiations and my
8 experience with similar negotiations, it is reasonable
9 to assume the parties could have finalized negotiations
10 and possibly entered into a contract prior to the
11 pricing order had the parties known in advance that the
12 order was imminent or about to be issued.

13 On a similar note, regarding the applicable
14 contract term, which would be the second issue in this
15 proceeding, the parties reached agreement on all
16 commercial terms in early October 2015, well in advance
17 of the January 7th, 2016, contract term order.

18 The parties did not execute a contract in
19 October after that agreement was reached because the
20 parties were working to resolve the issue related to the
21 applicable pricing. It is probable that the parties
22 would have executed a contract prior to January 7th,
23 2016, or the contract term order date, had there not
24 been an ongoing dispute over the pricing.

25 In summary, to answer directly the question

1 raised by the commission in its provisional conclusion
2 of law, the company does not believe a LEO was
3 established prior to the pricing order. However, as I
4 explained today, the company does not believe the
5 commission is required to address the LEO issue in order
6 to resolve the issue before the commission today.

7 And the company believes the commission can
8 evaluate and should evaluate and consider the specific
9 facts of this case, including the unique nature and
10 timing of the pricing order in its determination of the
11 applicable rate and contract term for Thayn Hydro. That
12 concludes my summary.

13 MS. HOGLE: Mr. Clements is available for
14 cross-examination.

15 PRESIDING OFFICER HAMMER: Mr. Long, we'll
16 start with you.

17 MR. LONG: I have no questions for
18 Mr. Clements.

19 PRESIDING OFFICER HAMMER: Mr. Jetter?

20 MR. JETTER: I have no questions for
21 Mr. Clements. Thank you.

22 PRESIDING OFFICER HAMMER: Mr. Moore?

23 MR. MOORE: No questions from the office.

24 PRESIDING OFFICER HAMMER: Mr. Clements, I do
25 have a few questions. First of all, the initial contact

1 that Thayn corresponded with at Rocky Mountain Power
2 was, is a Mr. Younie?

3 THE WITNESS: That's correct.

4 PRESIDING OFFICER HAMMER: Did I pronounce his
5 name correctly?

6 THE WITNESS: Yes, John Younie.

7 PRESIDING OFFICER HAMMER: I can't remember
8 where in the briefing, but I remember seeing a
9 representation that during the negotiations Mr. Younie
10 was laid off; is that correct?

11 THE WITNESS: Yes. During the negotiation
12 process, Mr. Younie left the company, that's correct.

13 PRESIDING OFFICER HAMMER: All right. There's
14 been testimony in other dockets, and it's the
15 commission's general understanding that the company has
16 been a little overwhelmed with the volume of QF requests
17 that came in in the recent past. And I don't want to
18 delve into Mr. Younie's personnel file. It's none of
19 our business.

20 But was -- were there factors that contributed
21 to his departure, aside from the company's determination
22 it didn't need as much assistance in processing QF
23 contracts?

24 THE WITNESS: I am not aware of the facts that
25 led to his departure from the company, so I can't speak

1 to that. In terms -- if I can expand and respond in
2 general to your question regarding the amount of work
3 that was occurring at that point in time. That was not
4 a factor in this proceeding.

5 It's my testimony and my opinion, having done
6 this for the past 12 years, that the course of
7 negotiations for this power purchase agreement were
8 relatively standard, if not quicker than what we would
9 typically see. They requested a PPA in July 7th. A
10 draft was delivered one week later.

11 What occurred after Mr. Younie left the
12 company, I believe there were some vacations between the
13 two parties. But the pace of negotiations in my opinion
14 was fairly routine or average.

15 PRESIDING OFFICER HAMMER: So you are saying
16 that the pace of negotiations was not affected by
17 Mr. Younie's departure?

18 THE WITNESS: Not in my opinion, no.

19 PRESIDING OFFICER HAMMER: And I'll invite
20 your counsel to interject with respect to any of these
21 questions because they do delve into legal issues.

22 With respect to the company's position that
23 the commission would be justified in finding that
24 extenuating circumstances warrant granting the otherwise
25 outdated pricing to Thayn Hydro, the company has

1 referenced the Three Peaks matter, which was a Schedule
2 38 matter.

3 And Schedule 38 does expressly provide that
4 the commission can essentially postpone or give
5 extensions to otherwise existing deadlines under
6 Schedule 38, which outlines a process for contracting.
7 To my knowledge, Schedule 37 contains no such language.

8 Does that affect the company's analysis of
9 whether or not the commission has authority to find
10 extenuating circumstances exist in this situation and
11 therefore grant the otherwise outdated pricing?

12 THE WITNESS: No. I'd be happy to answer
13 that. In my opinion it does not, and here is why.
14 Schedule 37 has just prices essentially. It's a tariff
15 that has published prices. Schedule 38 includes a
16 process that governs negotiation of the power purchase
17 agreement.

18 There is nothing in Schedule 37 that dictates
19 the process for negotiation, and so I think it's
20 reasonable to look to Schedule 38, when it comes to
21 contract negotiation issues, to make sure there's
22 consistency between what occurs with smaller QFs under
23 Schedule 37 and larger QFs under Schedule 38.

24 So I don't think it's unreasonable to use the
25 contract negotiation principles under 38 when evaluating

1 issues under 37 that are related to contract negotiation
2 process.

3 MS. HOGLE: I would like to add to that as
4 well, if I may. I agree with what Mr. Clements has just
5 stated, and I would also add that the commission -- it
6 is the company's position that the commission has vast
7 discretion and jurisdiction in its jurisdiction over
8 utilities and in its findings of just and reasonable and
9 results that are in the public interest.

10 PRESIDING OFFICER HAMMER: Thank you. Going
11 back to a more fact-specific matter, Mr. Clements, I
12 wonder if you could just elaborate a little bit more on
13 the record concerning your opinion of the materiality of
14 the umbrella insurance requirement and the default
15 provisions that were being negotiated from the
16 perspective of the company to the overall agreement.

17 THE WITNESS: I would say there were two
18 issues that were really outstanding. One was the level
19 of insurance that was being required. And one was an
20 issue related to a default provision in the contract. I
21 would consider both of those issues to be material, as
22 we have had issues with other qualifying facilities who
23 have been unwilling to execute agreements that had terms
24 similar to those.

25 They have been issues that have held up

1 execution of other agreements is the best way to put it.
2 So I would consider them to be in the bucket of material
3 terms or terms that would hold up potential execution of
4 an agreement.

5 PRESIDING OFFICER HAMMER: Just one more
6 question. With respect to the company's position that
7 no LEO was incurred in this case, at least prior to the
8 commission's issuing of what's been referred to as its
9 pricing order, does the company find relevant the fact
10 that this particular QF facility had been in existence
11 and actively doing business with the company for a
12 number of years, had an interconnection agreement?

13 Is that -- are those facts relevant to the
14 inquiry?

15 THE WITNESS: I think they are relevant in
16 that I think it gets you further down the road towards a
17 LEO because your starting point is well down the road.
18 So I think it's very relevant when you compare it to a
19 greenfield QF who has quite a distance to travel down
20 that road.

21 The question, when it comes to a legally
22 enforceable obligation, is not where you are at on the
23 road. It's that if you are at the end of the road and
24 you have made that commitment. I would say they started
25 well down the path because they already had their

1 interconnection agreement, but I don't believe we had a
2 full unconditional commitment because we still had those
3 outstanding issues.

4 PRESIDING OFFICER HAMMER: Thank you,
5 Mr. Clements. That's all the questions I have for you.
6 Any -- Ms. Hogle, it looks like you have something to
7 say.

8 MS. HOGLE: Yes. I just have a couple of
9 questions on redirect.

10 PRESIDING OFFICER HAMMER: Sure.

11 MS. HOGLE: Mr. Clements --

12 PRESIDING OFFICER HAMMER: Ms. Hogle, may I
13 interrupt you. Is there any other party that would like
14 to ask any questions? I'd like to give you the last
15 word, so I think it makes sense to see if anybody else
16 has any questions first.

17 MR. LONG: No questions from Thayn Hydro.

18 PRESIDING OFFICER HAMMER: Mr. Jetter?

19 CROSS-EXAMINATION

20 BY MR. JETTER:

21 **Q. I actually do have just a brief couple**
22 **questions kind of relating to the questions that have**
23 **just been asked, Mr. Clements.**

24 A. Sure.

25 **Q. Could you briefly describe -- I guess with the**

1 background sort of to set up this question, Schedule 37
2 is designed as a fixed rate for QFs that are under a
3 certain size; is that correct?

4 A. That's correct, yes.

5 Q. And it includes pricing terms, but it does not
6 include terms like insurance or the process for
7 negotiating the other terms that are not included
8 directly in the Schedule 37 tariff; is that correct?

9 A. Correct. Schedule 37 only includes pricing.

10 Q. Can you just briefly describe -- and I don't
11 need in detail every one, but what other terms are
12 significant that you negotiate outside of the pricing
13 term?

14 A. The other material terms would be performance
15 guarantees. So if you don't meet a performance
16 guarantee, meaning you don't deliver what you say you
17 are going to deliver, and that happens to be one of the
18 issues that was in question still.

19 Credit always tends to be a material issue,
20 how much credit is going to be posted. The other issue
21 would -- other material issues would be insurance terms,
22 start date, liquidated damages if they fail to come on
23 line when they say they are going to come on line.

24 Default damages if a party defaults over the
25 course of the agreement. Termination damages. What

1 happens if one of the parties defaults and the agreement
2 is terminated?

3 So the material terms of the agreement
4 typically are, if one party doesn't do what they say
5 they are going to do, what happens. And there are quite
6 a few of those.

7 Q. Thank you. And so is it fair to say that
8 before you would, I guess, sign a PPA or consider it a
9 binding agreement then in those cases, you would --
10 those are primarily for evaluating the ability and the
11 reliability of that QF to be able to deliver what it
12 claims it's going to deliver?

13 A. Yes. That's correct. Before they -- before
14 the commitment can occur, they must make sure that they
15 can commit to the terms and conditions that are included
16 as part of the delivery of the energy.

17 Q. And that's where your concern is with a
18 greenfield project; is that right? That they may be
19 willing to, I suppose, even sign the PPA without any
20 ability to actually deliver?

21 A. Yeah. The greenfield project really has two
22 primary differences. One is, they typically don't have
23 an interconnection. We found that that tends to be a
24 great unknown in the process. It often takes longer
25 than what is expected. So having an interconnection is

1 a major step towards reaching that level of commitment.

2 Second, if they have already been an existing
3 project and executed an agreement with us, then there
4 are likely many terms in that existing agreement that
5 would carry over to the new agreement. So we're
6 starting from a point of mutual agreement on many
7 concepts before. So I would say a greenfield is
8 definitely different than a renewing contract.

9 **Q. Okay. Is that fair to say that's been also**
10 **your experience in the number of -- I don't want to name**
11 **them specifically. But we have some typically one year**
12 **PPAs with some, some QFs in Utah.**

13 A. Yes. We have some existing qualifying
14 facilities that are connected to the grid and operating
15 that have one year power purchase agreements. We tend
16 to renew those each year. That renewal process tends to
17 be fairly streamlined, but it still often takes several
18 months.

19 MR. JETTER: Okay. Those are all the
20 questions I have for Mr. Clements. Thank you,
21 Mr. Clements.

22 PRESIDING OFFICER HAMMER: Mr. Moore?

23 MR. MOORE: The office has no questions.

24 PRESIDING OFFICER HAMMER: Ms. Hogle?

25 MS. HOGLE: Just a couple. Just a couple,

1 excuse me.

2 REDIRECT EXAMINATION

3 BY MS. HOGLE:

4 Q. Mr. Clements, Mr. Hammer asked you about the
5 materiality of the fact that the insurance appeared to
6 be the problem for Thayn Hydro. Is there evidence in
7 the record as to the level of materiality in terms of an
8 increase in price for Thayn Hydro that they considered
9 to be -- or that anybody could consider to be material?

10 A. Yes. Thayn Hydro indicated to the company
11 that the insurance amounts that were being requested
12 would result in, I believe it was a 300 percent increase
13 in the premiums. And the company felt like that was a
14 material amount that was of concern to them based on
15 comments they made to the company.

16 Q. And then just another question. Mr. Hammer
17 also asked you about the -- whether in a LEO
18 determination it was relevant that this particular PPA
19 was a renewal.

20 Can you tell -- and I think you have already
21 said this, but in the company's experience, is it also
22 relevant that the average time for negotiation of
23 similarly situated renewals or renewals was what you
24 have testified that it was?

25 A. Yes. So our typical time to negotiate even a

1 renewal PPA is two and a half to three months. And an
2 existing contract starts further down the road towards a
3 LEO, but it's not how far you start. It's where you are
4 when you finish, and you have to get all the way to the
5 finish line to have a commitment to have a legally
6 enforceable obligation.

7 And so an existing agreement, you start in a
8 much better spot. But it's not where you start. It's
9 where you finish when it comes to a legally enforceable
10 obligation, and the company does not believe we had
11 reached that finish line prior to the pricing order.

12 MS. HOGLE: Thank you. That's all I have.

13 PRESIDING OFFICER HAMMER: Thank you.

14 Mr. Clements, you are excused.

15 THE WITNESS: Thank you.

16 PRESIDING OFFICER HAMMER: And we will proceed
17 to Mr. Long.

18 MR. LONG: Thank you, Mr. Hearing Officer.
19 Thayn Hydro would call Rick Kaster.

20 PRESIDING OFFICER HAMMER: Mr. Kaster, do you
21 swear to tell the truth?

22 THE WITNESS: I do.

23 PRESIDING OFFICER HAMMER: Thank you.

24 RICK KASTER,
25 called as a witness at the instance of Thayn Hydro,

1 having been first duly sworn, was examined and testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. LONG:

5 Q. So Mr. Kaster, your job here, unlike
6 Mr. Clements, your job here is purely as a factual
7 witness. You, you are one of the part owners of Thayn
8 Hydro, and your purpose here is to give the commission a
9 firsthand report of how this process went, you know, to
10 add any details or information that we haven't
11 accurately captured in the pleadings.

12 So I won't be asking you any legal questions,
13 and I won't be asking you to make any conclusions. And
14 I am not asking you to read a prepared statement. As I
15 said, the goal is to get your version of the events with
16 your -- with any details that only you can add.

17 So if you would, for the benefit of the
18 commission, would you introduce yourself, state your
19 name, and describe your involvement with Thayn Hydro.

20 A. My name is Rick Kaster. I live in Idaho.
21 Been working on hydro plants since about 1980. I met
22 the Thayns about 1990. We partnered with them to
23 develop their project. We sold power for three or four
24 years on a short-term basis.

25 (Discussion off the record about speaking up.)

1 A. And then we, we signed a 20 year contract that
2 ran from 1996 to the year 2000. And so in July of 2015
3 I called John Younie to start the renewal process. We
4 had worked with John Younie before on some other issues,
5 so I had his number. And it -- and called him.

6 And so about a week later he sent me the
7 template. We got started on it. It was an extremely
8 easy renewal.

9 **Q. Mr. Kaster, if I could interrupt, I don't want**
10 **to get ahead of ourselves.**

11 A. Yeah.

12 **Q. Just so we're all on the same page --**

13 A. Uh-huh.

14 **Q. -- and the commission's benefit, could you**
15 **give me a real brief rundown of what the Thayn Hydro**
16 **project is, and also describe the recent diversion dam**
17 **improvements.**

18 A. Yeah. It's a -- it's a 575 kilowatt small
19 hydroelectric plant. It's near the city of Green River.
20 It's at the end of an irrigation canal. It also serves
21 some irrigators. Last winter the diversion dam in the
22 river was replaced at a cost of several million dollars.

23 The local water users agreed to cost share on
24 that dam, so and we're the largest water user, so yeah,
25 we made a pretty big commitment there to help cost share

1 on that dam.

2 Q. And what's the current state of the
3 hydroelectric facility? Is it generating power?

4 A. It is running at this time, yes.

5 Q. And that's under on interim PPA at current
6 Schedule 30 pri --

7 A. Yes --

8 Q. 37 prices?

9 A. -- that's right.

10 Q. So over the years when you deal with Rocky
11 Mountain Power, was John Younie your contact? Was there
12 anyone else that you dealt with on a regular basis?

13 A. In the early years, in the early 1990s John
14 wasn't there, but it seems like in the, I don't know, at
15 least 10 years ago or so we started working with John
16 Younie.

17 Q. So he was the person you would go to for
18 questions or concerns or when something went wrong
19 and --

20 A. Yes, that's correct.

21 Q. So you started at least going into the renewal
22 process for your current -- or renewal process to renew
23 your then existing PPA. And you stated that you talked
24 to John Younie in July or so?

25 A. I called him on July 7th.

1 Q. And when did your old PPA expire?

2 A. The end of 2015.

3 Q. So you called John Younie with -- five or six
4 months before your PPA expired, and he then told you
5 about the imminent pricing change?

6 A. He did. I asked him for a schedule of the
7 pricing, and he sent me both the current and the
8 proposed pricing.

9 Q. So at that point, John Younie told you that --
10 and if I am putting words in your mouth, please stop me.
11 John Younie told you that pricing would change, and you,
12 Thayn Hydro then asked for the process to be expedited?

13 A. That's correct.

14 Q. So throughout this process, even before you
15 contacted John Younie, did Thayn Hydro consider selling
16 power to anyone else or consider not renewing the PPA
17 with Rocky Mountain Power?

18 A. No. We didn't.

19 Q. And why not?

20 A. Well, we already had an interconnect there.
21 It's all set up. Trying to wheel power for such a small
22 project would be cost prohibitive, so we didn't even
23 consider that, no.

24 Q. And so Mr. Clements mentioned an e-mail you
25 sent to John Younie on July 2nd, and I'm paraphrasing,

1 but essentially saying that Thayn Hydro was committing
2 to sell output at the then effective Schedule 37
3 pricing; is that correct?

4 A. That's correct. I had -- excuse me. I had
5 asked John if there was any way we could lock in the
6 existing rates by, if we sent a letter of intent or
7 something similar to that. And he responded by saying
8 that if we committed to the existing rates via e-mail,
9 that that would lock us in on those rates. So later
10 that day I sent that e-mail.

11 Q. So at that point did you expect to discuss the
12 pricing issue for the next 20 years ever again?

13 A. I felt like the pricing issue was, was
14 resolved at that point in time.

15 Q. But to that point you hadn't actually signed
16 the PPA?

17 A. No, no.

18 Q. And so from your conversation with John
19 Younie, how did you expect the PPA renewal process to
20 play out? Right? You stated that you thought pricing
21 was taken care of, but the contract wasn't actually
22 signed?

23 A. Yeah. We didn't just sit on our hands. We
24 just dove right into it, and within a couple weeks,
25 the -- John had the PPA ready to -- well, he said he

1 submitted it internally. And the same day on August
2 4th, he gave me the answer on the default question. So
3 that was resolved.

4 The only outstanding issue at that point in
5 time was the question about the insurance. I had raised
6 the insurance question in a voice mail to him on July
7 17th, and followed up with an e-mail to him on the 21st.
8 So it just appears that it was something that slipped
9 past John Younie, that he was -- covered everything else
10 extremely well. But it seemed like the insurance
11 question slipped by him.

12 So on August 4th I just -- I was reminding him
13 that I had a question about the insurance. It was not a
14 new question that I brought up then, so and then August
15 5th John stated that he had submitted the question to
16 the insurance department and that the PPA would be ready
17 to sign in about a month so...

18 **Q. So at -- at that point, the PPA was already in**
19 **Rocky Mountain Power's internal review process as far as**
20 **what you knew from John Younie?**

21 A. That's what he told me, yes.

22 **Q. At any point did you tell John Younie or**
23 **anyone else at Rocky Mountain Power that the insurance**
24 **question was a deal breaker or that the PPA, as**
25 **submitted for review, was unacceptable with Thayn Hydro?**

1 A. No. No, there are no deal breakers in the
2 entire template. In fact, the PPA that John submitted
3 on August 4th is almost a carbon copy of the template I
4 received on the 14th, other than we filled in the
5 blanks, of course, on the -- you know, the projected
6 power outputs and the -- you know, I e-mailed him copies
7 of the interconnection agreement, so on.

8 **Q. So from -- from the very first week of August**
9 **through, through I think August 29th, when John Younie**
10 **told you that he was leaving the company, did you hear**
11 **anything from Rocky Mountain Power from John?**

12 A. No, I didn't. He said it would take about a
13 month, so I was giving him a month. And before the
14 month was up, he sent me an e-mail saying that his last
15 day at work was going to be September 1st.

16 **Q. And you had discussed with John Younie the**
17 **imminent pricing change. Were you concerned about that**
18 **delay at all, the --**

19 A. Well, I wanted to get --

20 **Q. -- month that he wasn't talking to you?**

21 A. Personally I wanted to get it done before the
22 holidays, but I felt like the pricing was established.
23 But at the same time, I just wanted to get it done.

24 **Q. So had someone asked you in, you know, in, say**
25 **August, so prepricing change, what you thought would**

1 happen, I am assuming you thought the pricing was taken
2 care of and the PPA would get signed when it eventually
3 ran through the process. Is that accurate?

4 A. I, I expected a copy of the PPA that would get
5 signed somewhere around the 1st of September and an
6 answer to the insurance question concurrently. They --
7 my understanding was that they were considering the
8 insurance question and consider -- and reviewing the PPA
9 concurrently during the month of August.

10 Q. So -- so after John Younie left, can you tell
11 me what happened. You mentioned that John Younie was
12 leaving the company as of the end of August.

13 A. Yeah, everything just seemed to come to a
14 screeching halt. I called Bruce. Or no, I'm sorry, I
15 e-mailed Bruce Griswold on September 1st, told him I was
16 sorry to hear that John was leaving, that as far as I
17 was concerned, the PPA was done. The only thing I was
18 waiting on was, still hadn't heard back on the insurance
19 question.

20 So then September, it wasn't until
21 September -- well, Bruce e-mailed me back and said,
22 "Give me two days and I'll get back to you."

23 Q. So at that point had Bruce given you the PPA,
24 you know, the same PPA that was submitted with the \$5
25 million umbrella policy, what would you have done with

1 it?

2 A. If that was their answer, we would have signed
3 it. It didn't matter what their answer was, whether it
4 was 5 million or 3 million or no umbrella, we were going
5 to sign the contract.

6 Q. And there was never any question in your mind
7 that you would continue to sell power to Rocky Mountain
8 Power, and that essentially the status quo would remain
9 unchanged except pricing updated to the current
10 schedule --

11 A. Absolutely.

12 Q. -- 37?

13 A. Absolutely.

14 Q. So eventually after, after being introduced to
15 Paul Clements and Kyle Moore, who are here with us
16 today, you were informed that the old Schedule 37
17 pricing was not available. Is that -- is that an
18 accurate statement?

19 A. Well, Kyle left me a voice mail on, I believe
20 it was September 16th, that he was going to be replacing
21 John Younie. I e-mailed him back and said, "Well, you
22 know, that's fine. Let's -- you know, we're still
23 waiting on an answer to the insurance."

24 So from the date when I first brought up the
25 insurance question on July 17th through September 17th,

1 it's actually about nine weeks. And five times I asked
2 the question. I didn't get a single response, other
3 than John Younie telling me that they had submitted it
4 to the insurance department.

5 **Q. But either way, that -- right, that insurance**
6 **-- I assume from Thayn Hydro's perspective, you would**
7 **prefer not to pay more for liability insurance unless**
8 **it's absolutely necessary?**

9 A. We are not guaranteed a profit like Rocky
10 Mountain Power. We just can't go around throwing money
11 away, so I think it's excessive. But, but it's -- but
12 it wasn't going to prevent us from signing the contract,
13 no.

14 **Q. And so eventually, eventually through**
15 **discussions with Rocky Mountain Power, you came to the**
16 **conclusion that the group, you know, the -- hand in hand**
17 **the parties would approach the commission and seek**
18 **approval of the old prices?**

19 A. Yes. Initially they told us that they could
20 not approve the old prices. And we went back and forth,
21 and I think Kyle sent me a number to call the DPU if we
22 wanted to file a complaint. And we discussed it back
23 and forth. I told him I would rather not file a
24 complaint if we didn't have to.

25 And eventually we got around to Paul and Kyle

1 saying that we agreed, you should get the old rates, but
2 we need to go through the DPU. So that's where we are
3 at now, I guess.

4 **Q. Mr. Clements mentioned extenuating**
5 **circumstances. Can you tell me your understanding of**
6 **what that -- what the situation is and why --**
7 **essentially why we are here today?**

8 A. Well, I believe that if John Younie had been
9 allowed to finish the process, we -- you know, we
10 wouldn't be here today. You know, or else if somebody
11 had been appointed immediately after he was terminated
12 or he left or whatever happened, we wouldn't be here
13 today.

14 **Q. So at the point where John Younie left, you**
15 **know, end of August, as far as you were concerned, was**
16 **there anything left to do, other than sign the PPA?**

17 A. No. Like I say, I was waiting on an answer.
18 I mean, we, we really have no leverage in these
19 negotiations. We don't have anything that the power
20 company wants. It's not like we can negotiate and trade
21 back and forth, but I feel like we ought to be able to
22 ask questions and get answers to the questions.

23 **Q. Did you ever -- were you ever presented with a**
24 **ready-to-sign copy of a PPA prior to the pricing change?**

25 A. No.

1 Q. So you never refused to sign an agreement
2 before the pricing changed?

3 A. No.

4 Q. I just have a couple more questions in
5 conclusion, and then we'll let -- let the other parties
6 ask you whatever they have. For the benefit of the
7 commission, will you summarize your testimony today and
8 also describe the relief that you would like to see be
9 granted.

10 A. Well, I don't know if the delays by the power
11 company were intentional or not. I have no way of
12 knowing that, but they certainly weren't our fault. And
13 you know, we were promised the old rates. We did
14 everything we could to lock in on those, and I just feel
15 like we deserve them or we wouldn't be here today.

16 Q. And what would you like the commission to do?
17 I assume you would like the commission to grant the old
18 rates and then allow the payments under this current
19 interim PPA to be trued up. Is that --

20 A. That's true.

21 MR. LONG: I have no further questions for
22 you, Mr. Kaster. Thank you.

23 PRESIDING OFFICER HAMMER: Ms. Hogle, any
24 cross?

25 MS. HOGLE: Can you give me a minute?

1 PRESIDING OFFICER HAMMER: Absolutely.

2 MS. HOGLE: No cross.

3 PRESIDING OFFICER HAMMER: Mr. Jetter?

4 CROSS-EXAMINATION

5 BY MR. JETTER:

6 Q. Good morning. I do have just a few brief
7 questions for you.

8 A. Sure.

9 Q. And they relate to the insurance. I don't
10 believe that on the record before the commission there
11 is any indication of the -- what I am trying to find out
12 is, what's the value difference between the premium for
13 the policy under what -- I suppose it was under the old
14 contract or what you were requesting from Rocky Mountain
15 Power and the increase in the amount of the coverage.
16 Do you know that?

17 A. I think the five -- for a single project, a \$5
18 million umbrella is in the neighborhood of \$8,000 per
19 year. For a 3 million, it's probably closer to 5 or
20 6,000 per year.

21 Q. Okay.

22 A. I mean, it's not huge. But it adds up. And
23 it is quite a bit of money for a small project.

24 Q. Okay. That's the only question I had for you
25 this morning. Thank you.

1 A. Okay.

2 MR. MOORE: The office has no questions.

3 Thank you.

4 PRESIDING OFFICER HAMMER: All right,
5 Mr. Kaster. I have just a few questions. First of all,
6 I was a little confused about your position at the
7 company. Are you an employee or a principal or
8 independent consultant?

9 THE WITNESS: I am a -- I work for Thayn
10 Hydro.

11 PRESIDING OFFICER HAMMER: Okay.

12 THE WITNESS: And I am also a company owner
13 with, on the project.

14 PRESIDING OFFICER HAMMER: And I'll pose this
15 more to your counsel and the other parties' counsels
16 respectively. There were e-mails attached to multiple
17 of the briefs that were submitted to the commission.
18 Mr. Kaster, you were party on most of those e-mails. I
19 think there were one or two that might have been company
20 internal e-mails.

21 To the extent any party wants to admit the
22 e-mails that Mr. Kaster participated in, into evidence,
23 I think Mr. Kaster is best situated to authenticate
24 those and testify to their veracity. So I would just
25 put that question to first your counsel and anyone else

1 who would like to ask Mr. Kaster about those e-mails.

2 MR. LONG: Yeah. I think that would be
3 proper, and I suppose it's also proper to have
4 Mr. Kaster testify as to the accuracy of the facts
5 contained in the various pleadings. You know, to the
6 extent they are factual, they are based primarily on his
7 knowledge.

8 THE WITNESS: Pretty much, pretty much all
9 true as far as I can remember. There's been quite a few
10 briefs.

11 PRESIDING OFFICER HAMMER: So Mr. Long, do you
12 want to actually take Mr. Kaster through any exhibits
13 that were attached to the briefing, or do you want him
14 to make a statement that he has reviewed all -- I mean,
15 how do you want to proceed?

16 MR. LONG: I don't think it's necessary to go
17 through them one by one.

18 Q. (By Mr. Long) I guess, Mr. Kaster, to the best
19 of your knowledge, are the factual statements contained
20 in the pleadings filed by Thayn Hydro true and accurate?

21 A. Yes.

22 Q. And are the e-mails attached to the various
23 pleadings filed by both Thayn Hydro and the other
24 parties, are those -- are those e-mails that were sent
25 and true to the best of your knowledge?

1 A. Yeah. All of the e-mails that I was a party
2 to are actual e-mails, if that's what you mean.

3 MR. LONG: Is that sufficient, Mr. Hearing
4 Officer?

5 PRESIDING OFFICER HAMMER: Yes, thank you.
6 Anyone else want to add anything on that subject before
7 we continue?

8 MS. HOGLE: Mr. Hearing Officer, I just have a
9 question. Would it be then appropriate to at this time
10 move for the admission of all of the pleadings that
11 contain -- all of the pleadings, period, as evidence
12 into the record?

13 PRESIDING OFFICER HAMMER: Well, all the
14 pleadings are certainly in the record. But they take
15 different form. And I can't -- I can't recall the form
16 of each one off the top of my head.

17 For example, I know Mr. Long was the author of
18 the documents that Thayn Hydro filed. So any
19 representations made in those are the representations,
20 for example, of Thayn Hydro's counsel. So I don't think
21 it would be appropriate to admit those representations
22 as evidence. They are certainly in the record, as are
23 all the parties filings.

24 But to the extent you want the commission to
25 consider factual evidence in this docket, I think it

1 would be appropriate that any exhibits are attested to
2 or identified that you would like the commission to
3 consider.

4 MS. HOGLE: Certainly. Your Honor, the
5 company moves then for the admission of its pleadings,
6 in addition to any accompanying exhibits that are
7 attached thereto, as evidence into the record, including
8 its application.

9 PRESIDING OFFICER HAMMER: Let me finish with
10 Mr. Kaster, and then we will revisit this before we
11 proceed.

12 MS. HOGLE: Okay. Thank you.

13 PRESIDING OFFICER HAMMER: Mr. Kaster, were
14 you aware that Rocky Mountain Power had sought to make
15 changes to the Schedule 37 pricing in May 2014? There
16 was a docket. It was Docket No. 14-035-04. The
17 commission ultimately denied some of the changes the
18 company wanted to make, and the company and the Division
19 of Public Utilities appealed the commission's decision.
20 And it was actually on appeal as late as December 2015.

21 I just wondered if you had any awareness of
22 those proceedings.

23 THE WITNESS: No. I haven't really paid
24 attention to the various schedules.

25 PRESIDING OFFICER HAMMER: Thank you.

1 Mr. Kaster, and I apologize if I didn't catch this the
2 first time, if you spoke to it. I heard you speak to
3 the materiality or lack thereof in your view of the
4 insurance requirements, or at least the fact that Rocky
5 Mountain Power's unwillingness to lower the insurance
6 requirement would not have prevented Thayn from entering
7 the contract.

8 My understanding is, there was also some
9 discussion and negotiation about default provisions.
10 Can you speak to those negotiations and whether the
11 outcome of them may have precluded Thayn Hydro from
12 proceeding and entering a final contract?

13 THE WITNESS: No. There were no provisions
14 that would have prevented us from signing the contract.

15 PRESIDING OFFICER HAMMER: Thank you. And
16 this might be a question better directed or as well
17 directed to the Division of Public Utilities. But my
18 understanding is that Thayn did at one point file an
19 informal complaint with the division. I don't know if
20 that complaint was abandoned in light of Rocky Mountain
21 Power's filing of an application in this docket.

22 But can you give me an understanding as to
23 what transpired with respect to that informal complaint?

24 THE WITNESS: Yes. We did file an informal
25 complaint, and then it kind of gotten -- it got taken

1 over by this mutual application, I believe.

2 PRESIDING OFFICER HAMMER: Okay. That's all I
3 have. Thank you, Mr. Kaster.

4 THE WITNESS: Thank you.

5 MR. LONG: I have just a couple redirect
6 questions if I may.

7 REDIRECT EXAMINATION

8 BY MR. LONG:

9 Q. Mr. Kaster, you mentioned that the \$5 million
10 umbrella policy requirement that was new in this PPA
11 would cost Thayn Hydro about \$8,000 a year?

12 A. That's correct.

13 Q. Do you know off the top of your head about how
14 much power Thayn Hydro sells to Rocky Mountain Power
15 every year, a dollar value that you receive from Rocky
16 Mountain Power?

17 A. Well, it depends on the rate for that
18 particular year. I think with the existing rates we're
19 probably looking at, I don't know, give or take a
20 hundred thousand per year.

21 Q. So current -- currently the amount of -- the
22 amount of power you are selling to Rocky Mountain Power
23 is in the six digits?

24 A. Yes. I would think. I would say so.

25 Q. And just one final question to reinforce your

1 point. At any point in this process did you, did you
2 expect to not sign a renewal PPA?

3 A. No.

4 MR. LONG: I have no further questions. Thank
5 you.

6 PRESIDING OFFICER HAMMER: Mr. Kaster, I have
7 one, a follow-up, which is actually off point, but I
8 neglected to ask it to you the first time. And I
9 apologize for that. I will give your counsel an
10 opportunity to follow up if he desires to.

11 But you made some statements essentially
12 suggesting that there are no other takers for the power
13 that Thayn Hydro generates. Can you elaborate on that a
14 little bit?

15 THE WITNESS: You know, the few times I have
16 looked into wheeling power years ago, it was very cost
17 prohibitive. A lot of -- a lot of utilities, if they
18 want to buy power, they want to buy it in huge blocks of
19 power that we are not capable of delivering.

20 PRESIDING OFFICER HAMMER: And did you explore
21 that option at all during the negotiation process for
22 this renewal?

23 THE WITNESS: Not really.

24 PRESIDING OFFICER HAMMER: Anything else?

25 MR. LONG: No questions, thank you.

1 PRESIDING OFFICER HAMMER: Thank you. You are
2 excused, Mr. Kaster.

3 THE WITNESS: Thank you.

4 PRESIDING OFFICER HAMMER: So we'll return --

5 MR. MOORE: Mr. Hearing Officer?

6 PRESIDING OFFICER HAMMER: Yes.

7 MR. MOORE: I don't know if this will be
8 useful at all, but I do have some copies of some e-mails
9 that could be more formally introduced if you -- if that
10 would be necessary or helpful.

11 PRESIDING OFFICER HAMMER: Was it your
12 intention to do so during your presentation of evidence?

13 MR. MOORE: No. These are all Mr. Kaster's
14 e-mails. I just had them.

15 PRESIDING OFFICER HAMMER: You know, I think
16 the -- probably the best solution will be for us to have
17 all the parties present their evidence. We'll have a
18 short recess. I'll look over my notes, and maybe you
19 all can discuss among yourselves perhaps stipulating to
20 the admission of certain e-mails. Does that sound
21 agreeable? Mr. Long?

22 MR. LONG: Yes, that would be fine.

23 PRESIDING OFFICER HAMMER: Ms. Hogle?

24 MS. HOGLE: Well, I suppose I am not -- first
25 of all, is it okay if we go off the record?

1 PRESIDING OFFICER HAMMER: Are you concerned
2 about confidential information being exposed?

3 MS. HOGLE: Possibly. But I just want to
4 discuss the process as -- as it comes up. And I don't
5 know if you want that to be in the record or -- I am
6 concerned about your use of the word "stipulated,"
7 stipulate as to the e-mails, given that the company used
8 certain e-mails in its pleadings.

9 And to the extent that Mr. Kaster has already
10 indicated to his -- the best of his knowledge they are
11 accurate, I am not sure what the purpose of stipulating
12 would be. And I am not sure whether you want to discuss
13 this on the record or off the record.

14 PRESIDING OFFICER HAMMER: Well, no. That's
15 why I thought the parties might do so off the record
16 while I was out of the room. My recollection was that
17 there may have been an e-mail or two that were internal
18 to the company to which Mr. Kaster was a party.

19 I don't -- and I don't know that Mr. Clements
20 was a party to all of those e-mails. I don't know if
21 there would be any objection to their admission. The
22 commission is not formally bound by the rules of
23 hearsay, but I thought I'd allow you all an opportunity
24 to talk about it off the record.

25 MS. HOGLE: Okay.

1 PRESIDING OFFICER HAMMER: So may we proceed?
2 Mr. Jetter?

3 MS. HOGLE: Thank you. The division would
4 like to call and have sworn in Mr. Charles Peterson.

5 PRESIDING OFFICER HAMMER: Mr. Peterson, do
6 you swear to tell the truth?

7 THE WITNESS: Yes.

8 CHARLES PETERSON,
9 called as a witness at the instance of the Division of
10 Public Utilities, having been first duly sworn, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. JETTER:

14 **Q. Good morning, Mr. Peterson. Would you please**
15 **state your name and occupation for the record.**

16 A. Charles E. Peterson. I am a utility technical
17 consultant with the Division of Public Utilities.

18 **Q. Thank you. And in the course of your**
19 **employment with the Utah Division of Public Utilities,**
20 **did you have the opportunity to review the application**
21 **filed by Rocky Mountain Power in this docket?**

22 A. Yes.

23 **Q. And did you create and cause to be filed with**
24 **the commission an action request response dated March**
25 **2nd, 2016?**

1 A. Yes.

2 Q. Are there any edits or corrections you would
3 like to make to that?

4 A. Yes, one small one. On page 2, the paragraph
5 before the section that's headed discussion, I refer to
6 the date in which comments were due as March 10th, 2016.
7 That was actually the date for reply comments. The
8 correct date should have been March 3rd, March 3, 2016.

9 Q. Thank you. And we discussed briefly entering
10 some various evidence into the record, but my specific
11 question for you is, as you look through the page 2 and
12 3 of that division memo, there are a number of bullet
13 pointed facts which are generally dates of an -- and
14 occurrences of events.

15 You don't have personal knowledge of those, do
16 you?

17 A. No. I relied on documentation provided either
18 by -- I think mostly by PacifiCorp.

19 Q. Okay. And that was largely from the same
20 e-mails we have discussed earlier about entering those
21 into the record?

22 A. Yes.

23 Q. Okay. And --

24 A. Also, I -- there's a correction. I believe
25 there are also some copies of telephone records that

1 would seem to indicate apparently or confirm certain
2 dates of phone conversations. But we also had that kind
3 of information available to us.

4 Q. Thank you. And you have that information
5 available, just so it's clear for the record, that that
6 was available and provided by the parties through data
7 requests?

8 A. Yes.

9 Q. Okay. Would you like to give a -- just a
10 brief summary of --

11 A. Are we going to ask for the admission of the
12 memos or not?

13 Q. I was intending to wait and --

14 A. Oh.

15 Q. -- we were going to do kind of a bulk --

16 A. Okay.

17 Q. -- admission.

18 A. That's fine. In answer to your question about
19 brief statement, yes. I have a very brief statement.
20 Because the division believes that its position is well
21 set forth in the division's memo of March 2nd, 2016, as
22 well in -- as in the brief this counsel dated March or
23 May 6th, 2016.

24 Briefly, based upon the specific facts of this
25 case, the division supports granting the earlier

1 Schedule 37 pricing that was in effect in July 2015.

2 And also the division does not at this point object to a
3 20 year term for the contract between PacifiCorp -- or
4 the proposed contract between PacifiCorp and Thayn
5 Hydro. And that concludes my comments.

6 **Q. Thank you.**

7 MR. JETTER: I have no further questions for
8 Mr. Peterson. He is available for cross-examination.

9 PRESIDING OFFICER HAMMER: Ms. Hogle?

10 MS. HOGLE: No cross.

11 PRESIDING OFFICER HAMMER: Mr. Long?

12 MR. LONG: No cross.

13 PRESIDING OFFICER HAMMER: Mr. Moore?

14 MR. MOORE: No cross.

15 PRESIDING OFFICER HAMMER: Thank you. I don't
16 have anything for you, Mr. Peterson.

17 THE WITNESS: Thank you.

18 PRESIDING OFFICER HAMMER: Mr. Moore?

19 MR. MOORE: The office calls Bela Vastag.

20 PRESIDING OFFICER HAMMER: Mr. Vastag, do you
21 swear to tell the truth?

22 THE WITNESS: Yes.

23 PRESIDING OFFICER HAMMER: Thank you.

24 BELA VASTAG,

25 called as a witness at the instance of the Office of

1 Consumer Services, having been first duly sworn, was
2 examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MOORE:

5 Q. Mr. Vastag, can you please state and spell
6 your full name.

7 A. My name is Bela Vastag. That's B-E-L-A. Last
8 name V-A-S-T-A-G.

9 Q. What is your occupation?

10 A. I am a utility analyst, and I work for the
11 Utah Office of Consumer Services.

12 Q. During the course of employment at the office,
13 did you have the opportunity to review the application
14 in this case?

15 A. Yes.

16 Q. Have you reviewed the docket in this case?

17 A. Excuse me?

18 Q. Have you reviewed the entire docket in this
19 case?

20 A. Yes.

21 Q. On March -- did you participate in the
22 preparation of the March 3rd, 2016, comments from the
23 Office of Consumer Services?

24 A. Yes, I did.

25 Q. Do you have any changes you would like to make

1 to those doc -- to that?

2 A. I have no changes.

3 Q. Would you adopt these comments as your
4 testimony?

5 A. Yes.

6 MR. MOORE: Deviate slightly from the
7 division's, we would like to introduce those comments
8 into evidence at this point.

9 PRESIDING OFFICER HAMMER: Any objection?
10 They are admitted.

11 Q. (By Mr. Moore) Have you made a brief
12 statement -- have you prepared a brief statement
13 summarizing the position of the office at this time?

14 A. Yes, very brief.

15 Q. Could you please read it into the record.

16 A. Absent a decision by the commission that a
17 legally enforceable obligation or LEO exists such that
18 Thayn Hydro is entitled to outdated prices and terms,
19 the Office of Consumer Services' position in this
20 proceeding remains the same as presented in our comments
21 dated March 3, 2016, that the terms of Schedule 37
22 should be followed and that the price and terms used in
23 the QF PPAs under Schedule 37 should be those in effect
24 at the time the PPA contract is executed.

25 Should the commission decide that a LEO was

1 formed with Thayn Hydro at some point in time, the
2 office requests that the commission consider in its
3 decision the argument in the office's response legal
4 brief dated May 6, 2016.

5 The office does not believe it is necessary
6 for the commission to make a broad determination of when
7 a LEO exists in this proceed -- proceeding. The office,
8 however, suggests that the commission open a new
9 proceeding to consider such broader issues, as well to
10 update the language in the Schedule 37 tariff as
11 appropriate. That concludes my statement.

12 MR. MOORE: Mr. Vastag is now available for
13 cross-examination.

14 PRESIDING OFFICER HAMMER: Ms. Hogle?

15 MS. HOGLE: No cross.

16 PRESIDING OFFICER HAMMER: Mr. Long?

17 MR. LONG: No cross.

18 PRESIDING OFFICER HAMMER: Mr. Jetter?

19 MR. JETTER: No cross, thank you.

20 PRESIDING OFFICER HAMMER: Mr. Vastag, is it
21 Vastag or Vastag? I want to make sure I enunciate it
22 correctly.

23 THE WITNESS: I say Vastag.

24 PRESIDING OFFICER HAMMER: Vastag, thank you.
25 Mr. Vastag, in the statement you just gave, you stated

1 the office requests that the commission consider in its
2 decision the argument the office's response legal brief.
3 In its decision the argument -- pardon me. The office
4 requests that the commission consider in its decision
5 the argument in the office's response legal brief dated
6 May 6th, 2016.

7 Sorry I butchered that, and this question
8 might be better directed to your counsel. But is there
9 a particular portion of the brief or particular argument
10 in the brief that you are referring to or just the
11 entirety of the contents of that document?

12 MR. MOORE: The entirety of the contents of
13 the document. It was written to give a background and
14 then to answer a specific question.

15 PRESIDING OFFICER HAMMER: Okay. Thank you.
16 Well, if there's nothing else from the parties at this
17 time, then we will recess briefly. To be clear, what I
18 am suggesting the parties do is perhaps discuss whether
19 they can stipulate to the admission of any e-mails that
20 were attached to any briefing in this case that have not
21 already been introduced.

22 I think that it would be the most expedient
23 way to handle the issue to simply allow you to discuss
24 amongst yourselves off the record. So I'll give you a
25 few minutes to do that, and we will reconvene in perhaps

1 10 minutes. Thank you.

2 (Recess from 11:13 a.m. to 11:26 a.m.)

3 PRESIDING OFFICER HAMMER: We're back on the
4 record. Did the parties have an opportunity to discuss
5 the admission of e-mails attached to legal briefs and
6 other filings in this case?

7 MS. HOGLE: Yes, your Honor.

8 PRESIDING OFFICER HAMMER: And was a
9 stipulation reached?

10 MS. HOGLE: Yes. And the company moves on
11 behalf of all of the parties in this case for the
12 admission of all of the e-mails that were attached to
13 all of the pleadings that were filed in this case, in
14 addition to the admission of all of the comments that
15 are not pleadings, including the application, the
16 original application, and everything that has been filed
17 formally with this commission as evidence in the record
18 in this case.

19 PRESIDING OFFICER HAMMER: I assume from
20 Ms. Hogel's having articulated that as a joint motion,
21 there is no objection.

22 MR. JETTER: No objection.

23 MR. MOORE: No objection.

24 PRESIDING OFFICER HAMMER: Thank you. They
25 are admitted, and I appreciate that stipulation. For

1 the parties' benefit, I am not attempting to make this
2 process more laborious than it needs to be. I simply
3 want to make sure we have a clean record in the event
4 there were an appeal, so thank you.

5 MS. HOGLE: And your Honor, we -- I apologize.
6 We also conferred and would like maybe the opportunity
7 to make a short closing statement or at least allow
8 parties to make a short closing statement if, if that's
9 what they want.

10 PRESIDING OFFICER HAMMER: Of course. That
11 would be fine. We will begin with you.

12 MS. HOGLE: Okay. Thank you. Under Utah law,
13 avoided cost pricing for Schedule 37 is based on the
14 currently effective Schedule 37 rates. The Public
15 Service Commission must follow that law unless it is
16 shown by substantial evidence that Thayn Hydro was
17 legally obligated to deliver power to PacifiCorp.

18 Rocky Mountain Power's position is that Thayn
19 Hydro has not supported its claim by substantial
20 evidence. Having said that, this commission has vast
21 discretion to make a finding in this case based on the
22 unique and extenuating circumstances present that will
23 result in just and reasonable results and that are in
24 the public interest. Thank you.

25 PRESIDING OFFICER HAMMER: Thank you,

1 Ms. Hogle. Anything from you, Mr. Long?

2 MR. LONG: Yes. I'll also make a very brief
3 closing statement. Thayn Hydro unconditionally
4 committed to sell its output to Rocky Mountain Power
5 prior to the order on September 18th, 2015, modifying
6 the Schedule 37 pricing. As such, if the commission
7 desires to address the legally enforceable obligation
8 issue, it is clear that Thayn Hydro and Rocky Mountain
9 Power did establish a legally enforceable obligation to
10 sell and buy power respectively prior to the pricing
11 change.

12 Thayn Hydro further asserts the commission can
13 reach this conclusion without setting any Utah-specific
14 precedent. The commission can reach its conclusion
15 based solely on existing FERC precedent.

16 That said, Thayn Hydro believes that the
17 commission has the power under its extremely broad
18 authority over public utilities granted by statute to
19 resolve this issue without addressing the legally
20 enforceable obligation question.

21 The commission has the ability to determine
22 that the Thayn Hydro PPA should include the old Schedule
23 37 pricing based on extenuating circumstances. Thayn
24 Hydro asks that the commission recognize that fairness
25 requires that the PPA include the old Schedule 37 rates.

1 PRESIDING OFFICER HAMMER: Thank you,
2 Mr. Long. And this question is directed to both
3 Ms. Hogle and Mr. Long, to the extent they are inclined
4 to answer it. But the extenuating circumstances
5 argument that both of your clients are asserting, is
6 that based solely on the language in Schedule 38, or are
7 you looking to title 54 or other legal sources in
8 support of that argument?

9 MS. HOGLE: I suppose I can go first.

10 PRESIDING OFFICER HAMMER: Okay.

11 MS. HOGLE: I believe that it's both. You do
12 look to Schedule 38, and the reason why is, as
13 Mr. Clements indicated, there are no set procedures in
14 Schedule 37, one.

15 And second, there are many cases in which the
16 commission -- or it is clear that the commission has
17 vast discretion in its authority to regulate public
18 utilities to reach results that are just and reasonable
19 and in the public interest, in addition to, in
20 specifically statute -- excuse me, the utility code in
21 Section 54. Thank you.

22 PRESIDING OFFICER HAMMER: Thank you.

23 MR. LONG: Thayn Hydro -- Thayn Hydro,
24 likewise, believes the commission has extremely broad
25 authority over public utilities granted to it by

1 statute. Thayn Hydro believes that the commission has
2 that power to the fix things that have not happened as
3 they should, without reliance on Schedule 38 or any
4 other Rocky Mountain Power tariff.

5 If -- the commission has the ability to simply
6 make the world as it should have been. That is all that
7 Thayn Hydro is asking the commission do, recognize that
8 the situation should have worked out differently.
9 Because of circumstances, really, you know, a perfect
10 storm of circumstances, we ended up here, and really we
11 shouldn't have.

12 PRESIDING OFFICER HAMMER: Thank you,
13 Mr. Long. Mr. Jetter?

14 MR. JETTER: Thank you, your Honor. Just a
15 brief closing statement. I'd like to put on the record
16 now that from the division's point of view, this is a
17 unique circumstance that rarely occurs where you have
18 a -- particularly a Schedule 37 negotiation that spans
19 the time frame of two different pricings.

20 The division opposed the old 37 pricing when
21 it was put into effect. We appealed the commission's
22 final order in that docket. But we are here today in
23 support of providing that pricing because we believe it
24 was the pricing in effect at the time that Thayn Hydro
25 sought a renewal.

1 And particularly in 37, I think the idea is to
2 satisfy PURPA's regulation, which specifically I am
3 looking at 18 CFR 292.304, subpart C, which is the
4 standard rate for purchases. And it's a standard rate
5 for purchases for small qualifying facilities.

6 And the reason that those exist is because in
7 those small contracts, the transaction costs of a
8 substantial long negotiation with individualized project
9 pricing may be such a high transaction cost that it
10 would thwart the sale of energy from small power
11 production facilities that are under 3 megawatts in our
12 case.

13 And I think that that really is the reason
14 that Schedule 37 does not include a more full guideline
15 for walking through the entire negotiation process, like
16 Schedule 38 does. And the fact that it doesn't include
17 that kind of leaves us in a bit of limbo because we
18 don't have a specific timeline for moving through a 37
19 project.

20 And for that reason, I think it is reasonable
21 to look to 38 as, it's not -- certainly not binding. 38
22 is clear that it doesn't apply to a project under 3
23 megawatts. However, I think that the principles
24 involved in negotiating some of the non-pricing elements
25 are similar. And to that extent, it might be

1 persuasive, if not binding, to look to Schedule 38 for
2 the idea of potentially an extenuating circumstance
3 decision in this docket.

4 With respect to whether a legally enforceable
5 obligation occurred in this case, FERC and the federal
6 laws provide states fairly broad authority in
7 determining when that is, and something that might be a
8 legally enforceable obligation in one state may not be
9 in another. And in Utah we haven't thoroughly sorted
10 that out.

11 I think we generally are in agreement with
12 some of the other parties that defining the boundaries
13 of that for Utah might be more appropriate to do with
14 more parties involved.

15 And for that reason, in the instance or in the
16 outcome, if it were the outcome that the commission
17 found a legally enforceable obligation to be in
18 existence in this case granting the prior pricing from
19 the earlier Schedule 37, the division would simply
20 request that an order, if it is in that nature, be very
21 narrowly construed to the facts of this case and leave a
22 determination of sort of the bounds of what a legally
23 enforceable obligation might be, leave those a little
24 more open to potentially a future rule making or
25 something along those lines.

1 And so that would be the -- our suggestion as
2 far as if the commission determines that that is the
3 case, just to have a narrow ruling. And to reiterate,
4 the division is not opposed to the idea of an
5 extenuating circumstance in this case because we do
6 believe that the prior 37 pricing, based on the fact
7 that happened, would be a just and reasonable outcome in
8 this specific instance with these specific facts. So
9 that's my closing statement.

10 PRESIDING OFFICER HAMMER: And as I posed to
11 Ms. Hogle and Mr. Long, would the -- under this theory
12 of an extenuating circumstance justifying granting Thayn
13 Hydro the otherwise outdated price, does -- is it the
14 commission -- pardon me, the division's position that
15 the commission's authority to grant that stems from its
16 broad powers under Title 54?

17 MR. JETTER: Yes. I would say it's from the
18 broad powers under 54. I don't -- I don't think that
19 there's a plain reading of Schedule 38, as it currently
20 exists, that would support a direct application of 38.
21 I think it would merely be a situation where we don't
22 have a specific tariff or rule that covers this type of
23 negotiation.

24 Schedule 37 is -- does have some language in
25 it that's somewhat limiting on, on signing a contract, a

1 PPA with pricing that's not in effect at that time. But
2 I think it's possible to -- for the commission to have
3 the authority to find a special circumstance where that
4 pricing would be appropriate with that language because
5 in my opinion, that language is really a limitation on
6 Rocky Mountain Power's ability to sign the contract, not
7 necessarily the commission's authority to approve that
8 pricing and potentially a -- I suppose, a reviewed
9 exception to that.

10 PRESIDING OFFICER HAMMER: Thank you. And on
11 the LEO issue, would I be correct in summarizing that
12 the division's position is that it's ambiguous or
13 perhaps undecided as to whether a LEO can be shown or
14 has been shown to exist in this particular circumstance,
15 but in the event the commission were to find that one
16 did, any order should be narrowly drawn and construed to
17 apply to the circumstances at issue in this case?

18 MR. JETTER: Yes, that's exactly accurate, I
19 think. And just add a little bit to that. As I have
20 looked through some other states that do have more
21 concrete rules, whether they are from just precedent of
22 commission's orders, the facts in this case could be a
23 LEO in one state and not in another.

24 So it's -- it's really a borderline case in my
25 opinion, which is probably why we are here. And by

1 that, I mean it's a borderline on -- it might be at the
2 edge on some cases and might not be a LEO in others.
3 It's not on the other border where it almost certainly
4 is, for example. I think it's a maybe.

5 PRESIDING OFFICER HAMMER: But the division is
6 not -- has not elected --

7 MR. JETTER: Yeah.

8 PRESIDING OFFICER HAMMER: -- to advocate for
9 any particular standard in this docket?

10 MR. JETTER: No, I think -- I think we'd like
11 to have some more parties involved if we are setting a
12 complete standard in something like an administrative
13 rule.

14 PRESIDING OFFICER HAMMER: Thank you.
15 Mr. Moore?

16 MR. MOORE: The office will rest on its
17 pleadings on the issue of what constitutes a LEO and
18 whether it's a LEO in this case. We have briefed it
19 kind of extensively, and I don't know that I disagree
20 with or have any comments on the other parties'
21 explanation of their positions.

22 I do want to make two brief comments on an
23 issue we are a little bit contrary to the other parties
24 in this docket. First one is the exceptional
25 circumstances. We in our briefing argued that they

1 should not apply primarily because the term
2 "exceptional" in the Three Peaks case, the term
3 "exceptional circumstances" is in existence in Schedule
4 38.

5 And we are uneasy with the notion that the --
6 that a term such -- as broad as exceptional
7 circumstances should be read into the entire utilities
8 code. For that reason, we don't believe that issue
9 should be decided on the exceptional circumstances
10 approach.

11 Also, we believe that, as contrary to the
12 March 16, 2016, provisional conclusions of law, what the
13 commission said that absent the showing a LEO existed,
14 the commission will not order RBM (sic) to enter into a
15 PPA using price terms contrary to the political tariff.

16 That appears to be the law in this case, but
17 since it was interim order, certainly the commission can
18 change their minds on their point. And the parties can
19 urge the commission to change their minds.

20 We just mentioned -- we would just state that,
21 given the fact that it is the law of the case at this
22 point, the commission does not need to address it. It
23 can rely on the fact that they have addressed it, that
24 issue in their March 16, 2016, provisional conclusions
25 of law.

1 We also state that we feel that the Schedule
2 38 language as it now stands is inconsistent with FERC
3 precedent -- precedents. Rather clearly in the Idaho
4 cases which we cited, and I believe the division cited
5 and I believe Thayne cited, they were very clear that a
6 bright line test of signing a contract is insufficient
7 to imply to LEO concept.

8 Because of that, we agree with the division
9 that we should probably have future proceedings to amend
10 title -- I mean Tariff 37 and to address the LEO
11 doctrine on a broader scale than just the focus the
12 facts of this case, which are unique. Thank you.

13 PRESIDING OFFICER HAMMER: Thank you,
14 Mr. Moore. And I don't mean to put you on the spot, but
15 if -- to the extent the commission were to agree with
16 the other parties in this case who have suggested that
17 Title 54 would empower the -- or does empower the
18 commission to grant the otherwise outdated pricing to
19 Thayne Hydro based on its discretion -- we can use the
20 term extenuating circumstances, but it's really, I think
21 the argument is, it's a matter of the commission's
22 discretion, or within the commission's discretion.

23 Does the office have any comment or does it
24 agree?

25 MR. MOORE: We are -- certainly the commission

1 can exercise its discretion however it wants within the
2 statutory framework. We are a little concerned that
3 that's too broad a brush to paint the entire utility
4 code with. We think that a better approach would be to
5 amend Schedule 37, and if we need a exceptional
6 circumstances language, to include it in the tariff.

7 PRESIDING OFFICER HAMMER: Does anyone have
8 anything else before we adjourn?

9 MR. LONG: Mr. Hearing Officer, I have one
10 point that Mr. Kaster addressed that may have not been
11 stated explicitly. So the current situation with Thayn
12 Hydro is that the project is generating power and is
13 being sold to Rocky Mountain Power under an interim
14 power purchase agreement with the current Schedule 37
15 rates.

16 In the event that the commission orders the
17 PPA to use -- the PPA that's the subject of this
18 application to use the old Schedule 37 rates, Thayn
19 Hydro asks that that order also include a true-up of
20 payments made under the interim PPA. You know, so in
21 other words, from Thayn Hydro's perspective, to make
22 those old prices effective from the date of the interim
23 PPA which was at this point several months ago.

24 PRESIDING OFFICER HAMMER: Thank you,
25 Mr. Long. Does anyone have anything to add? Thank you.

1 We're adjourned.

2

3 (The hearing adjourned at 11:45 a.m.)

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C E R T I F I C A T E

STATE OF UTAH)
COUNTY OF SALT LAKE)

THIS IS TO CERTIFY that the foregoing proceedings were taken before me, Teri Hansen Cronenwett, Certified Realtime Reporter, Registered Merit Reporter and Notary Public in and for the State of Utah.

That the proceedings were reported by me in Stenotype, and thereafter transcribed by computer under my supervision, and that a full, true, and correct transcription is set forth in the foregoing pages, numbered 3 through 74 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.

WITNESS MY HAND and official seal at Salt Lake City, Utah, this 16th day of June, 2016.



Teri Hansen Cronenwett, CRR, RMR
License No. 91-109812-7801

My commission expires:
January 19, 2019

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