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August 2, 1999

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2:10 p.m.

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P R O C E E D I N G S

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CHAIRMAN MECHAM: Let's go back on the record. Let's go to the points where the parties were going to consult with their respective clients and colleagues. Who would like to go first?

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MR. FELL: Shall I start, Mr. Chairman?

CHAIRMAN MECHAM: Go ahead, Mr. Fell.

MR. FELL: Since our answer was a team answer, perhaps I could just read the point. As I understand it, we were asked whether we would agree to an additional condition regarding the treatment of these upstream tax savings, and Mr. Burnett is going to distribute to the commissioners what we have circulated to the parties as a condition that, with regard to this particular item, ScottishPower and PacifiCorp put this out, and if I may read it, it

21 reads this way: "The parties to this docket preserve  
22 their right to raise the issue of the treatment of  
23 upstream tax savings and costs in future rate cases.  
24 All parties preserve their positions and have not  
25 waived their rights on this issue. ScottishPower

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1 commits to retain records regarding upstream tax  
2 savings and costs relating to the merger and make  
3 these records available to the DPU, CCS and other  
4 parties in accordance with Stipulation Exhibit 1 and  
5 the discovery rules of the Commission."

6 CHAIRMAN MECHAM: So this would be  
7 Condition 52?

8 MR. GINSBERG: Could we actually have it  
9 maybe marked as an exhibit, just so we -- you know,  
10 it will be buried in the transcript somewhere.

11 MR. FELL: That's certainly all right with  
12 us. We could prepare it in the form of an exhibit so  
13 that it would be more suitable for the record that  
14 way.

15 CHAIRMAN MECHAM: Okay.

16 MR. GINSBERG: This is fine the way it is,  
17 too.

18 MR. DODGE: I don't understand. Is this  
19 just being offered? I mean, is this a new condition  
20 you're offering that we will cross examine on, or are

21 you asking parties to agree to this or what?

22 CHAIRMAN MECHAM: It's as far as they'll go

23 based on the questions you asked.

24 MR. DODGE: It doesn't go far enough, but I

25 just want to know in what context we should bring it

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1 up.

2 CHAIRMAN MECHAM: All right. Now, if we  
3 were to mark this --

4 MR. BURNETT: You can mark it as a cross  
5 exhibit, if you want to.

6 MR. HUNTER: Do you know what your last  
7 exhibit was? I know what my last exhibit is.

8 MR. BURNETT: It's 6.

9 MR. FELL: Is Stipulation Exhibit 2 taken  
10 yet?

11 CHAIRMAN MECHAM: No.

12 MR. DODGE: But it isn't a stipulation.

13 MR. FELL: It's not a stipulation. That's  
14 a problem. All right.

15 MR. REEDER: Cross Examination Exhibit No.  
16 2 seems to make it flow in the record best. I would  
17 suggest Cross Examination Exhibit No. 2, since this  
18 is apparently in response to cross examination.

19 CHAIRMAN MECHAM: All right.

20 (Whereupon Cross Examination Exhibit No. 2

21 was marked for identification.)

22 CHAIRMAN MECHAM: Technically, we haven't

23 admitted Stipulation 1 or DPU 1.0SR, and I would

24 presume that we're going to hold Cross Examination

25 Exhibit 1 until Mr. Morris comes to the stand so that

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1 we can better understand what that document is.

2 MR. REEDER: In off-the-record discussions  
3 we have agreed that Mr. Morris will be the person to  
4 compare the UK conditions and the conditions here.  
5 That will be fine with me, with that understanding.

6 CHAIRMAN MECHAM: Okay. Well, is there any  
7 objection, since we're in the midst of discussing  
8 this, to the admission of Stipulation 1 or DPU 1.0SR,  
9 which is the summary list that the Division prepared  
10 of the merger conditions, or Cross Examination  
11 Exhibit 2, which is the paragraph that Mr. Fell and  
12 Mr. Burnett just distributed? If there's no  
13 objection, we will admit them.

14 (Whereupon Exhibits Stipulation 1, DPU  
15 1.0SR and Cross Examination Exhibit 2 were received  
16 in evidence.)

17 CHAIRMAN MECHAM: I'm holding Cross  
18 Examination Exhibit 1 until we have Mr. Morris take  
19 the stand.

20 MR. REEDER: I will surely examine with

21 respect to it, so we understand, if it is indeed the  
22 document it was purported to be.

23 CHAIRMAN MECHAM: Okay. All right. Is  
24 there anything further on that point? If not, shall  
25 we continue with Condition 3? Mr. Reeder?

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1           MR. REEDER: Thank you. As we broke for  
2 lunch, there was some question about whether there  
3 had been testimony in another state involving whether  
4 the amount of transaction costs was 250 million  
5 dollars or 250 million pounds. We've been able to  
6 answer the question. The testimony was in dollars,  
7 so we'll talk about the same units.

8           Mr. Larson, we were talking about the  
9 amounts that were allocated on books of ScottishPower  
10 and whether these appeared on the books of PacifiCorp  
11 and you were going to try to help us in some  
12 fashion.

13          MR. LARSON: Yeah. First I would say that  
14 the 250 million that was testified to in dollars  
15 represents both ScottishPower and PacifiCorp  
16 responsibility estimate for the transaction. If we  
17 turn back to Attachment 1 to the stipulation, the  
18 last document that shows the items below the line  
19 that summed up to 259 plus million dollars, I'll just  
20 walk down real quickly and point out the ones that

21 PacifiCorp has responsibility for. And I might add  
22 that many of these are upon consummation of the  
23 transaction and have not been paid.

24 PacifiCorp has responsibility for the share  
25 issue cost, the preferred stock cost, and also a

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1 piece of the investment, legal and accounting, \$25  
2 million related to investment banking, 12 and a half  
3 million of which has been paid.

4 We also have already paid out the two and a  
5 half million dollars related to the preferred  
6 stockholder merger approval payments, and have  
7 responsibility for the remaining four items, the  
8 payments to directors, the enhanced severance, the  
9 PacifiCorp stock plan supplemental executive  
10 retirement plan and the retention incentive  
11 payments.

12 So we have responsibility for all of those,  
13 however, none of those dollars have been paid out,  
14 and by my calculations, that would leave PacifiCorp  
15 responsible with somewhere around the \$180 million of  
16 this calculation. I don't have an exact breakdown of  
17 Item Number 3, the investment, legal and accounting.

18 MR. REEDER: Mr. Larson, do these numbers  
19 represent the amounts booked today, or are these  
20 estimates of the total amount?

21 MR. LARSON: These are estimates of the  
22 total amount. What has been paid to date by  
23 PacifiCorp is the two and a half million dollars of  
24 the preferred that I mentioned before and 12 and a  
25 half million dollars in investment banking fees, and

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1 then we have also recorded some legal and accounting  
2 expenses below the line. I do not have the total of  
3 that, but, you know, for the most part, what has been  
4 booked by PacifiCorp is probably in the 20 to 25  
5 million dollar range at this point.

6 MR. REEDER: Two and a half million dollars  
7 was the payment to the preferred shareholders to  
8 secure their consent?

9 MR. LARSON: That is correct.

10 MR. REEDER: And the 12 and a half million  
11 dollars was the amount paid to Solomon Smith Barney  
12 for their fairness opinion?

13 MR. LARSON: That is correct.

14 MR. REEDER: And the payment to directors?

15 MR. LARSON: Has not been paid

16 MR. REEDER: Has not been paid. That's  
17 which line?

18 MR. LARSON: That is -- I don't have a  
19 line. It's right after the preferred stockholder  
20 merger approval payment.

- 21 MR. REEDER: That's the .4 million dollars?
- 22 MR. LARSON: Correct.
- 23 MR. REEDER: And that is to be paid when?
- 24 MR. LARSON: Upon completion of the merger.
- 25 MR. REEDER: What does that represent?

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1           MR. LARSON: Just as it says, a payment to  
2 the board of directors that will no longer be on the  
3 board of directors once the merger is consummated.

4           MR. REEDER: Is this the \$50,000 payment  
5 per nonexecutive director?

6           MR. LARSON: Yes.

7           MR. REEDER: And this payment was promised  
8 to them when?

9           MR. LARSON: I don't know. You'd have to  
10 talk to Mr. O'Brien about the details of that.

11          MR. REEDER: But it will be paid following  
12 the consummation of the merger?

13          MR. LARSON: That is my understanding.

14          MR. REEDER: Mr. Larson, the stipulation  
15 says that no merger transaction related costs shall  
16 be allowed in the rates. What do we mean, rates, Mr.  
17 Larson?

18          MR. LARSON: Prices that are set by the  
19 Utah Public Service Commission and charged to  
20 customers, tariff customers of Utah Power & Light.

21 MR. REEDER: Would rates, in your view,  
22 include future stranded cost payments?

23 MR. LARSON: I don't know that I would  
24 capture rates in relation to future stranded costs.  
25 I'm not sure I follow the question.

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1           MR. REEDER: In some jurisdictions,  
2 stranded costs are justified as a rate. The  
3 Commission has the authority to set and impose the  
4 recovery of stranded costs as a rate. Is this  
5 intended to preclude the recovery of these  
6 transaction costs in stranded costs as a rate?

7           MR. LARSON: Well, I guess at least there's  
8 a couple of different ways of looking at stranded  
9 costs, whether you look at it in a market price  
10 comparison, which would look at some sort of embedded  
11 costs, clearly these costs would have been charged  
12 below the line and would not be included in those  
13 calculations, if that responds to your question.

14          MR. REEDER: Mr. Wright, does ScottishPower  
15 have the intent to, at what future time, claim these  
16 transaction costs as a stranded cost and seek  
17 recovery from the ratepayers in Utah?

18          MR. WRIGHT: I don't believe that's the  
19 case, no.

20          MR. REEDER: Mr. Gimble, do you understand

21 the stipulation the same way?

22 MR. GIMBLE: Yes, I do.

23 MR. REEDER: Mr. Alt, do you understand the

24 stipulation the same way?

25 MR. ALT: Yes.

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1 MR. REEDER: Mr. Larson, missing from the  
2 Exhibit 2 is reference to the premium paid by  
3 ScottishPower for the shares of PacifiCorp. Is that  
4 a transaction cost? Top line. Okay. Mr. Larson, is  
5 the premium on this chart?

6 MR. LARSON: Well, it's on the -- there is  
7 at least an estimate of the goodwill that's on the  
8 first line item on the chart.

9 MR. REEDER: And what is the amount of that  
10 estimate?

11 MR. LARSON: At the time this exhibit was  
12 prepared, it's 1.8 million. That obviously  
13 fluctuates on a daily -- 1.8 billion.

14 MR. REEDER: Okay. Mr. Larson, the reason  
15 I had you do the math on this chart is that my math  
16 isn't really good. I got 1.8 as the first number on  
17 the chart, and the bottom number is \$250 million.  
18 It seems to me the column doesn't work. Can you help  
19 me?

20 MR. LARSON: I don't consider that to be a

21 cost. There will be no payment. This is a stock for

22 stock transfer.

23 MR. REEDER: So then there's \$250 million

24 in the columns below goodwill and \$1.8 billion above

25 those columns; is that correct?

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1 MR. LARSON: There's 1.8 million in the  
2 difference between PacifiCorp stock and ScottishPower  
3 strike price at a given point in time. That, as I  
4 said, fluctuates on a daily basis with the stock  
5 market. I thought your question before was the cost  
6 of the transaction, consummating the transaction.

7 MR. REEDER: It was.

8 MR. LARSON: And those costs are 259  
9 million.

10 MR. REEDER: So the premium that's  
11 reflected in goodwill, the \$1.8 billion is not, in  
12 your view, a transaction cost?

13 MR. LARSON: No.

14 MR. REEDER: Do you intend to recover that  
15 in rates?

16 MR. LARSON: No. I think we've stated  
17 succinctly in data requests that this Commission will  
18 use, for ratemaking purposes, the depreciated book  
19 value to establish rates.

20 MR. REEDER: Is that a condition expressly

21 provided for in this stipulation, that you will not  
22 seek to recover that premium in rates? If so,  
23 where?

24 MR. ALT: 26.

25 MR. LARSON: Item 26.

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1 MR. REEDER: Number 26, Mr. Larson? Is  
2 that your answer?

3 MR. LARSON: Correct.

4 MR. REEDER: When it says, "Any premium  
5 paid by ScottishPower for PacifiCorp stock," that  
6 reference is to the goodwill line on Attachment 2?

7 MR. LARSON: That's correct.

8 MR. REEDER: Will PacifiCorp or  
9 ScottishPower seek to recover this premium in  
10 stranded cost?

11 MR. LARSON: I'm not sure I follow exactly  
12 how that premium even fits into stranded cost.

13 MR. REEDER: Well, I hope it never does,  
14 but you're a very creative fellow, Mr. Larson. Will  
15 you ever seek to recover that \$1.8 billion -- you or  
16 ScottishPower seek to recover that estimate -- get  
17 away from the amount -- that estimate of \$1.8 billion  
18 in stranded costs?

19 MR. HUNTER: Objection. Ambiguous. How,  
20 maybe you can explain, we would seek to recover that

21 stranded cost. How would it flow through expenses in

22 a way to get it recovered from Utah ratepayers?

23 MR. REEDER: All I'm asking is for a

24 stipulation that you will not. You're creative

25 fellows. That's what causes me concern.

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1 MR. HUNTER: The objection stands. I don't  
2 understand how it could happen. Maybe with some  
3 direction we can give him an intelligible answer.

4 CHAIRMAN MECHAM: At this point, I don't  
5 think Mr. Larson understands.

6 MR. REEDER: Mr. Larson, will PacifiCorp or  
7 ScottishPower seek to recover the premium paid above  
8 market for the shares of PacifiCorp in stranded  
9 costs?

10 MR. LARSON: This premium that is being  
11 paid, I mean, it fluctuates. I mean, it's a stock  
12 for stock transfer and so, I mean -- you know, I  
13 mean, today the premium, if you were to compare the  
14 two different strike prices, would not be \$1.8  
15 billion. We've already stated in Condition No. 26  
16 and in responses to data requests that rates will be  
17 set based on, as this says, on original and not  
18 revalued costs, and so if we're going to compare any  
19 type of comparison to market price for power, if that  
20 were used to determine stranded costs, or if you were

21 to sell assets to determine market value of assets,  
22 and those are always compared back to the way that  
23 this Commission sets rates, I have a hard time  
24 figuring out how this 1.8 billion ties into it. I'm  
25 not seeing the tie.

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1 CHAIRMAN MECHAM: So it can't be?

2 MR. LARSON: I don't see how it can be

3 included in there. I mean --

4 CHAIRMAN MECHAM: So the answer would be

5 no?

6 MR. REEDER: They would agree to stipulate

7 that it could not be recovered because it can't be.

8 That would seem to me to be the logical answer. It

9 can't be, so it would won't. Would that be your

10 answer, Mr. Larson?

11 MR. LARSON: Yes.

12 MR. REEDER: Mr. Larson, on the books of

13 PacifiCorp today do you carry the premium that

14 PacifiCorp paid for Utah Power?

15 MR. LARSON: It shows up, obviously, in the

16 equity relationship on the books of the Company, but

17 it is not included in ratemaking for setting prices

18 in this jurisdiction.

19 MR. REEDER: What's the purpose of

20 carrying -- tell me how it shows up in the equity.

21 What's the entry on the left-hand side of the ledger  
22 that records -- Commissioner Jones, you're going to  
23 have to help me here, because I'm out of my depth --  
24 COMMISSIONER JONES: It's called a debit.  
25 MR. REEDER: -- that records the excess.

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1           MR. LARSON: I think it's a whole lot more  
2 appropriate to ask these questions to Mr. O'Brien. I  
3 mean, he's much more familiar with the financing  
4 issues and was the chief financial officer at the  
5 time.

6           MR. REEDER: Okay. Let's just stick with  
7 the question. There is an entry that appears on the  
8 books for the premium paid for Utah Power, correct?

9           MR. HUNTER: Can I suggest that Mr. Larson  
10 isn't the appropriate witness. Mr. Larson has  
11 already indicated he's not the appropriate witness to  
12 answer these questions. Mr. O'Brien is available.  
13 If we move quickly, he'd be even available this  
14 afternoon. We could ask him these questions.

15          MR. REEDER: This is a change of control.  
16 The change of control is a \$3.6 billion transaction.  
17 This state is being asked to approve a transaction,  
18 the first of its kind in the nation, where you bring  
19 in a foreign utility, a foreign domestic utility.  
20 It's a serious change of control matter. I don't

21 think rushing it is in anyone's interest.

22 MR. HUNTER: I'm not asking rushing.

23 All I'm asking --

24 CHAIRMAN MECHAM: Well, let's not argue

25 over what's fast and what's slow.

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1 MR. REEDER: I think my question went fast.

2 THE COURT: But perhaps Mr. O'Brien --  
3 maybe you can reserve your questions for him on that  
4 point.

5 MR. REEDER: We will. Mr. Wright, does  
6 ScottishPower intend to recover the transaction  
7 that -- the premium paid above book for PacifiCorp as  
8 a stranded cost?

9 MR. WRIGHT: If it's outside Mr. Larson's  
10 knowledge, it's certainly outside the range of my  
11 knowledge. I'd refer you to Mr. Morris.

12 MR. REEDER: Does the stipulation preclude  
13 you from making that claim?

14 MR. WRIGHT: Unless it's captured by 26.

15 MR. REEDER: Mr. Gimble, does the Committee  
16 of Consumer Services believe that the stipulation  
17 does or should preclude the recovery of the  
18 transaction costs in premium as a stranded cost if  
19 that ever becomes relevant?

20 MR. GIMBLE: We think it's addressed in 26

21 in terms of any premium that's going to be  
22 disregarded for ratemaking purposes in terms of if  
23 ScottishPower came in and argued before the  
24 legislature or Commission that a premium should be  
25 included in stranded costs, we would certainly oppose

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1 that vigorously.

2 MR. REEDER: Would you contend that they  
3 waived the right to claim it by the stipulation?

4 MR. GIMBLE: I think that is covered by 26.

5 MR. REEDER: So you would make that  
6 contention?

7 MR. GIMBLE: Yes.

8 MR. REEDER: Mr. Alt, same questions.

9 MR. ALT: I would agree with Mr. Gimble.  
10 We haven't really talked about it in the Division  
11 staff, but my personal opinion would be that 26  
12 covers it and that it says disregard for ratemaking  
13 purposes, and if the intent is to try to recover in  
14 rates, in any way, shape or form, stranded costs, it  
15 sounds like that would have it covered.

16 MR. REEDER: So it would be your  
17 understanding that they would be barred by this  
18 agreement from making that contention?

19 MR. ALT: Seems that way.

20 MR. REEDER: Is that a yes?

21 MR. ALT: That's something less than a  
22 hundred percent because I'd have to consult --  
23 MR. REEDER: Fair enough.  
24 MR. ALT: -- with other people.  
25 MR. REEDER: With whom would you have to

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1 consult?

2 MR. ALT: My brilliant staff.

3 MR. REEDER: That's all I have.

4 CHAIRMAN MECHAM: Thank you. Does anyone  
5 else have anything on Condition 3?

6 MR. SANDACK: I have one question.

7 CHAIRMAN MECHAM: Okay. Mr. Sandack.

8 MR. SANDACK: I'm not sure if I should  
9 address this to Mr. Wright or Mr. Larson, but the  
10 executive enhancement plan that you set forth, who  
11 formulated that plan?

12 MR. WRIGHT: This would be the enhancements  
13 referenced -- I believe that they were discussed and  
14 negotiated as part of the merger agreement.

15 MR. SANDACK: Did you consult with any  
16 outside financial advisors as to its reasonableness?

17 MR. LARSON: I think probably the  
18 appropriate person to answer that question again is  
19 Mr. O'Brien.

20 MR. SANDACK: I'll withhold the questions

21 until then.

22 THE COURT: Thank you, Mr. Sandack.

23 COMMISSIONER WHITE: Mr. Alt, I have a

24 question or two that will betray my ignorance about

25 the FERC ratemaking process. It's my understanding

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1 that for at least a part of their costs, the FERC,  
2 Federal Energy Regulatory Commission, sets those  
3 prices and those are reflected in our rates. Am I  
4 correct in that understanding?

5 MR. ALT: To the degree that PacifiCorp  
6 pays FERC rates for anything, then they are passed --  
7 would be passed through as a cost, subject to our  
8 audits. Is that what you mean?

9 COMMISSIONER WHITE: I think so. So  
10 PacifiCorp goes in to FERC and asks it to set certain  
11 rates; is that correct?

12 MR. ALT: FERC has control over some of  
13 their wholesale rates and, I presume, wheeling  
14 rates.

15 COMMISSIONER WHITE: And transmission?

16 MR. ALT: Yeah, that are in interstate  
17 commerce. That would be my understanding. I'm not  
18 an expert on that area, but that's just my broad  
19 understanding.

20 MR. LARSON: If you want, I can try to take

21 a shot at answering your question. FERC does set  
22 some wholesale rates for tariffed customers. The  
23 majority of ours are on special contract. They do  
24 set transmission rates for agreements with parties to  
25 wheel power. Those are -- those revenues off of

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1 those FERC tariffs come back in as a revenue credit  
2 in setting prices, so those come back in and  
3 offset -- an allocated piece of those come back in  
4 and offset Utah prices in setting what retail  
5 customers will pay.

6 COMMISSIONER WHITE: So is it going to be  
7 an issue whether or not PacifiCorp or ScottishPower  
8 can seek recovery of some of the costs, the  
9 merger-related costs in FERC rates? I mean, I  
10 understand that it's the intent that they not be  
11 reflected in the rates set by this Commission, but is  
12 that going to be a concern with respect to FERC?

13 MR. FELL: Mr. Chairman, Commissioners, I'm  
14 not sure that we have a witness in the room right now  
15 who is an expert at how things automatically happen  
16 at FERC or how the first FERC transmission costing  
17 occurs. I suppose the issue is whether it will come  
18 back in transmission pricing.

19 MR. LARSON: I think the issue is that  
20 PacifiCorp/ScottishPower has agreed not to seek

21 recovery of this laundry list of items we've gone  
22 through, and we're not seeking recovery for those at  
23 FERC, and so they aren't going to show up in a FERC  
24 filing that therefore would come back into Utah  
25 prices, if that answers your question.

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1           COMMISSIONER WHITE: So is that a  
2 representation you're making now or is it your view  
3 that your stipulation covers both FERC and the State  
4 Commission?

5           MR. LARSON: I don't know that this  
6 stipulation covers FERC, also. I mean, there's  
7 obviously a hearing before -- I mean a docket before  
8 FERC on these issues.

9           COMMISSIONER WHITE: But it sounds to me  
10 like you are representing that you will not be  
11 seeking to pass through any of these transaction  
12 costs before the FERC.

13          MR. HUNTER: May I interject and maybe  
14 clear it up? There was a commitment made at FERC to  
15 that effect, that we will not try and recover those  
16 costs.

17          COMMISSIONER WHITE: Thank you.

18          MR. REEDER: Mr. Hunter, can you  
19 memorialize for this record where that commitment was  
20 made?

21 MR. HUNTER: No, but I can provide you a

22 copy of it.

23 MR. REEDER: Thank you.

24 MR. HUNTER: You're welcome.

25 MR. REEDER: Would you do so on this record

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1 so we can have it part of this record that you have  
2 indeed done that?

3 MR. HUNTER: Yes.

4 CHAIRMAN MECHAM: Okay.

5 MR. WRIGHT: Could I add, it's certainly  
6 not ScottishPower's intention to pass through these  
7 charges in FERC-related elements of the tariff and,  
8 arguably, the stipulation Condition Number 44 would  
9 catch it in any event, even if Condition 3 did not.  
10 44 states that rates in Utah shall not increase as a  
11 result of the merger.

12 CHAIRMAN MECHAM: All right. Let's go to  
13 Condition 4, then.

14 MR. DODGE: I have actually no questions on  
15 Condition 4 or 5.

16 MR. MATTHEIS: Nor do I.

17 MR. REEDER: I do, but I think they go to  
18 Mr. Morris to compare the UK conditions with these.  
19 Mr. Morris, raise your hand so we know who you are.  
20 Thank you. We now know what the next question is.

21           CHAIRMAN MECHAM: Are there any points the  
22 parties want to make on Point 4 before we go to 5?  
23 All right. Let's go to 5. Mr. Dodge has none. Mr.  
24 Mattheis?  
25           MR. MATTHEIS: No questions.

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1 CHAIRMAN MECHAM: Mr. Reeder?

2 MR. REEDER: I'll wait for Mr. Morris.

3 COMMISSIONER WHITE: I'm not sure who this  
4 question is directed to, but Condition 5, subpart  
5 two, appears to me to say that ScottishPower and  
6 PacifiCorp can agree to a merger, combination,  
7 transfer of assets, and is committing to notifying  
8 this Commission and not seeking approval. Is that a  
9 correct reading of that provision?

10 MR. ALT: My understanding is that, to the  
11 degree that the Utah Code section cited in the last  
12 sentence requires approval, then approval would still  
13 be necessary, and I'm not familiar with those  
14 sections in detail.

15 COMMISSIONER WHITE: Okay. So it's  
16 saying -- first it says it will notify the  
17 Commission, but then in that last sentence you're  
18 saying that it will seek approval if that's what the  
19 code requires?

20 MR. ALT: Yes.

21 MR. WRIGHT: And there is another condition  
22 that deals with that very point and I'm just trying  
23 to identify which one it is at the moment. It's  
24 Condition 9, which I believe represents the output on  
25 the discussions of the issue of Commission approval

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1 for transfer of assets or that type of issue, at  
2 least.

3 COMMISSIONER WHITE: Thank you.

4 MR. FELL: Mr. Chairman, Commissioners,  
5 Condition 8 also, because of terms of that rule, gets  
6 to the same subject area.

7 CHAIRMAN MECHAM: Okay. Let's go to 6,  
8 then.

9 MR. DODGE: My question, I guess of any of  
10 the witnesses, is what is PacifiCorp's transfer  
11 pricing policy and will it be attached so that people  
12 have reference to it?

13 MR. LARSON: What that condition refers to  
14 is the affiliated interest report that is filed on an  
15 annual basis with the Commission and Division of  
16 Public Utilities, and what it does is it deals with  
17 all of the transactions between affiliates and  
18 PacifiCorp and reports those to the Commission, and  
19 what this condition states is that we will continue  
20 to file that affiliated interest report on an annual

21 basis for the Commission, laying out any dealings  
22 that we would have with affiliates and electric  
23 operations.

24 MR. DODGE: Isn't there a policy in effect  
25 as to the pricing for affiliated transactions?

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1 MR. LARSON: Below cost or market.

2 MR. DODGE: Is that part of the transfer  
3 pricing policy that's referenced to here?

4 MR. LARSON: It's part of the detail of  
5 that report and goes through in excruciating detail,  
6 laying out all of those relationships between  
7 affiliates and electric operations.

8 MR. DODGE: And I guess what I'm trying to  
9 get at is, is the policy referenced here something  
10 the Commission has required in terms of affiliated  
11 transactions or is it the report you may?

12 MR. LARSON: Well, the Commission has  
13 required us to file the affiliated interest report.  
14 I don't have a copy of that documentation. The  
15 report itself lays out pretty much in  
16 self-explanatory detail all of the transactions and  
17 the calculations for those.

18 MR. DODGE: Then maybe I should direct this  
19 to Mr. Alt, if he knows, or Mr. Gimble. Do you  
20 understand the nature -- what document or order

21 establishes the rules for affiliated transactions?

22 MR. ALT: Actually, I don't. One of the

23 other Division witnesses probably does. Our

24 affiliate expert is approaching.

25 MR. DODGE: Maybe the question is, in part,

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1 will that be incorporated in a way that anyone  
2 reading this could understand what the policies are  
3 that are being incorporated here?

4 CHAIRMAN MECHAM: Mr. Ginsberg?

5 MR. GINSBERG: The person who knew walked  
6 out of the room. Maybe it was -- it's DPU Exhibit  
7 2.2.

8 MS. CLEVELAND: It's right there. It's on  
9 file with the Commission. As part of the last merger  
10 case, they were required to file and seek approval.

11 MR. DODGE: And that is what's intended to  
12 be referenced, then, by the pricing policy?

13 MS. CLEVELAND: Exactly.

14 MR. DODGE: It's in the record. It's 2.2.

15 MR. ALT: Yes. It's Mary Cleveland's  
16 second exhibit, second witness for the Division.

17 MR. DODGE: Thank you.

18 CHAIRMAN MECHAM: Mr. Mattheis?

19 MR. MATTHEIS: I have no questions.

20 CHAIRMAN MECHAM: Mr. Reeder?

21 MR. REEDER: I have questions concerning  
22 the comparison of the UK condition and this  
23 condition, so Mr. Morris can answer concerning  
24 whether these conditions are in effect or not. I'd  
25 like to ask Mr. Alt if he's had an opportunity to

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1 compare Condition No. 7 in the Cross Examination  
2 Exhibit No. 1 with the transfer pricing policy. Do  
3 you have a copy of Cross Examination Exhibit No. 1,  
4 Mr. Alt?

5 MR. ALT: It's the one that you handed  
6 out?

7 MR. REEDER: Correct.

8 MR. ALT: Yes. I have it here somewhere.  
9 I haven't looked at it. I thought --

10 MR. REEDER: You're not going to escape  
11 examination on it. We'll just have Mr. Morris on the  
12 panel, in addition to you, when it happens.

13 MR. GINSBERG: Do you have a particular  
14 point in it you want to have him reference?

15 MR. REEDER: Yes. Condition No. 7. It's  
16 near the back, about page 21. Do you have the page,  
17 Mr. Alt?

18 MR. ALT: 21 of Cross Exhibit 1? Yeah.

19 MR. REEDER: Yes. It's near the back and  
20 it's entitled Proposed Modification to PES Licensing

21 Conditions.

22 MR. ALT: Did you say page 21?

23 MR. LARSON: 22.

24 MR. REEDER: Page 22.

25 MR. ALT: Okay. Page 22. That sounds more

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1 like what you were saying.

2 MR. REEDER: Yes. Looking at subparagraph  
3 B, are these the kinds of conditions that the  
4 transfer pricing policies intended to cover?

5 MR. GINSBERG: The one that we just  
6 referred to as Exhibit 2A?

7 MR. REEDER: Yes, sir. Thank you.

8 MR. ALT: Well, I'm personally not entirely  
9 sure. Our witness on this is Mary Cleveland who used  
10 the transfer pricing policy as her Exhibit 2. It  
11 might be more appropriate for you to ask her than me,  
12 because I'd be taking a guess at it.

13 MR. REEDER: So your suggestion is we refer  
14 to Ms. Cleveland the question about whether or not  
15 the UK conditions on transfer pricing are more  
16 restrictive or more generous than the transfer  
17 pricing policy of this Commission?

18 MR. ALT: Yes.

19 MR. REEDER: All right. I have nothing  
20 further, then.

21 CHAIRMAN MECHAM: Thank you. All right.

22 Let's go to Condition 7, then. Mr. Dodge.

23 MR. DODGE: Mr. Alt, maybe I'd ask this of

24 you, and the question is -- I'm sorry. Are you

25 there, to 7? The question is -- it indicates that

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1 the companies will provide sufficient information as  
2 to several different actions. Sufficient to what  
3 purpose, in your understanding? Or sufficient for  
4 what?

5 MR. ALT: Well, that's one of the benefits  
6 of our exhibit that shows the three columns. In the  
7 left column we have the issue which is the Division's  
8 concern. The condition adjacent to it in the third  
9 column is really what helps remedy the concern, and  
10 so what we were concerned about is affiliate  
11 transactions between particularly ScottishPower and  
12 other affiliates that would end up in the end result  
13 PacifiCorp actually paying for things they shouldn't  
14 be, which means we end up with them in rates, and the  
15 first thing you have to do to be able to audit this  
16 and prevent it from happening is you have to have the  
17 information that some new affiliate has been formed  
18 that's going to transact business with the regulated  
19 operations of PacifiCorp or to commence -- well, you  
20 can see the three items under the condition.

21           The idea was, if we are notified of them,  
22 it puts us on notice. Our auditors, when they're  
23 looking in a rate case and auditing records, they can  
24 send data requests and get more specifics if they  
25 need to decide whether or not there is any problem

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1 because of these affiliate transactions, but if  
2 you're not notified, it gets a little bit more  
3 difficult. You just accidentally stumble upon  
4 things. So that's the purpose of it. If you're on  
5 notice, you can do something about it. If you're  
6 not, then it gets tougher.

7 MR. DODGE: So the "sufficient" would refer  
8 to sufficient information to understand the potential  
9 for cross subsidization?

10 MR. ALT: Yes.

11 MR. DODGE: Okay. No further questions.

12 CHAIRMAN MECHAM: Thank. Mr. Mattheis?

13 MR. MATTHEIS: No questions.

14 CHAIRMAN MECHAM: Mr. Reeder?

15 MR. REEDER: No questions.

16 CHAIRMAN MECHAM: Anyone else on 7? Is the  
17 expectation after the Commission is notified that we  
18 actually do something about it? I mean, we're  
19 notified about the creation of a new affiliate and  
20 then what?

21 MR. ALT: Well, my idea is that -- it says  
22 notify the Commission, but, as you do frequently with  
23 filings, you just pass them on to the Division for  
24 our use in audit work or to take -- you ask for  
25 recommendations and we would use it as information in

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1 our audits to help decide whether or not, when we're  
2 either doing a semiannual audit to determine how the  
3 Company is earning -- you know, we often make  
4 adjustments to the recorded actual earnings in a  
5 semiannual filing, and this information might trigger  
6 an audit, further data requests or discovery that  
7 might uncover an affiliate transaction and end up  
8 sending costs that were unreasonable or --

9 CHAIRMAN MECHAM: Okay.

10 MR. ALT: -- such. It may work their way  
11 into rates.

12 MR. LARSON: One thing I'd like to make  
13 clear is that any transaction between an affiliate  
14 and electric operations would be reported in the  
15 affiliated interest report, so it would show up  
16 there.

17 CHAIRMAN MECHAM: Okay. Let's go to 8,  
18 then.

19 MR. DODGE: Just a clarification. Mr. Alt,  
20 as you understand rule R746-401, would that -- that

- 21 applies only to actions by PacifiCorp to actually
- 22 sell or dispose of or construct facilities? It
- 23 wouldn't have anything to do with parents of
- 24 PacifiCorp; is that right?
- 25 MR. ALT: That's my understanding, but then

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1 I haven't read in detail 401. That's my  
2 understanding.

3 MR. DODGE: Okay. I have no further  
4 questions on that.

5 CHAIRMAN MECHAM: Mr. Mattheis?

6 MR. MATTHEIS: The only question I had on  
7 this one, PacifiCorp is obligated to abide by this  
8 rule now; is that correct?

9 MR. ALT: That's correct.

10 MR. MATTHEIS: And is this, what,  
11 strengthening, in your view, the application rule?

12 MR. ALT: I think I mentioned this morning  
13 earlier that some of these things refer -- like the  
14 sections that refer to the code, they have to abide  
15 by the code. They have to abide by Commission  
16 rules. These are cases where we had concerns or  
17 issues that we were trying to address and show that  
18 the risk has been mitigated, and so we felt, by  
19 putting this in, we're putting the Company,  
20 ScottishPower and PacifiCorp on notice, there is a

21 rule that deals with this risk and you have to follow  
22 it. It's more of notification, putting them on  
23 notice that this is how we're mitigating the risks  
24 and that they should know that up front. And  
25 everybody else, the public. So that, to me, is my

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1 personal idea of what the nature of that was.

2 MR. MATTHEIS: And, Mr. Wright, you would  
3 agree with that, that it is a commitment by the  
4 Company to abide by the rules that are in place?

5 MR. WRIGHT: Yes. I think it's largely  
6 there for clarification purposes, but obviously we  
7 will comply with all Utah rules and codes.

8 MR. REEDER: Mr. Alt, 401, as it's  
9 presently written, excuses reporting if the amount is  
10 the lesser of \$10 million dollars or 5 percent of the  
11 gross investment of the utility plant devoted to  
12 Utah. Do you understand the rule the same way?

13 MR. ALT: That's my broad recollection.

14 MR. REEDER: So, by this, you're simply  
15 continuing reporting requirements that they report  
16 expansions and additions of more than \$10 million?  
17 That's your intent?

18 MR. ALT: I have this vague recollection  
19 that the criteria is different on a sale than an  
20 acquisition, but I'm not sure.

21           MR. REEDER: Okay. The criteria on a sale  
22 is \$20 million or 10 percent. Is it your intention  
23 that they be excused for sales as long as the sale  
24 doesn't exceed \$20 million?

25           MR. ALT: That's what this says. I mean,

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1 if that's what the rule says, and they have to comply  
2 with the rule, then it goes without -- I'm not trying  
3 to change the rule.

4 MR. REEDER: That's the effect of it, as  
5 you understand it?

6 MR. ALT: Yes.

7 MR. BURNETT: I would simply say the rule  
8 says what it says, and I would -- I think that's a  
9 mischaracterization of the rule. We'll comply with  
10 the rule as it's written.

11 MR. HUNTER: It's \$20 million allocated to  
12 Utah. Since Utah is a third of it, we're talking --

13 CHAIRMAN MECHAM: Well, we'll stick with  
14 the rule.

15 MR. HUNTER: Sounds like a good idea.

16 CHAIRMAN MECHAM: Anything further?

17 MR. REEDER: No, I have nothing further.

18 CHAIRMAN MECHAM: All right. Let's go to  
19 9.

20 MR. MATTHEIS: I'll start on this one, if

21 that's all right.

22 CHAIRMAN MECHAM: Go ahead.

23 MR. MATTHEIS: I guess I'll start with Mr.

24 Wright. I mean, this one appears to cover

25 divestitures, spinoffs and sales. I mean, does that

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1 cover every kind of disposition of an integral  
2 utility function, or are there some dispositions that  
3 wouldn't be covered?

4 MR. WRIGHT: This condition was a condition  
5 lifted directly from the previous merger between  
6 Pacific Power & Light and Utah Power & Light, and  
7 that is why it is in there, so it covers whatever is  
8 meant by the definition, integral utility function.

9 MR. MATTHEIS: I'll ask Mr. Alt, then. As  
10 far as you know, does this cover dispositions of  
11 integral utility functions of any kind? I mean, is  
12 there anything that I'm missing here? It seems to  
13 be, again, an all-encompassing sort of language.

14 MR. ALT: My understanding is it was  
15 designed to be that way. As Mr. Wright pointed out,  
16 this was a condition of the prior UP&L merger, and  
17 the Division felt that we needed to continue that.  
18 We felt that it continued even without it being a  
19 part of this stipulation, but, for clarification  
20 purposes, we wanted the Company to know that we

21 intended it to continue and we, therefore, wanted it  
22 in the stipulation so that there's no ambiguity here,  
23 and we -- and I'll add that during the discussions we  
24 talked about trying to define what an integral  
25 utility function is, and we -- the Division, and I

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1 think other parties, agree that the best was to leave  
2 it the way it was and we'll deal with the  
3 interpretation in the future as it appears -- the  
4 need appears, rather than trying to do it in the  
5 stipulation. We felt comfortable with it and we felt  
6 that it covered the risks that we were trying to  
7 address.

8 MR. MATTHEIS: And your suggested  
9 conditions included integral utility assets?

10 MR. ALT: Right.

11 MR. MATTHEIS: Was that pulled from also  
12 the previous merger conditions?

13 MR. ALT: I don't think so. I don't think  
14 that was in. I think the words that are in the  
15 current one, the new one, is what was in the -- the  
16 only difference is the word "PacifiCorp" was changed.  
17 I think in the original merger order it had "electric  
18 division," or something, "of the merged Company." I  
19 forget just what the phrase was, and we corrected  
20 that, but other than that we used -- my understanding

21 is we used the identical words in the original merger  
22 condition, and we felt that was adequate. And the  
23 original language, we did modify it slightly, but we  
24 feel that we didn't really lose anything from our own  
25 perspective in terms of future interpretations. Now,

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1 somebody else may interpret that different, but that  
2 was our interpretation.

3 MR. MATTHEIS: And I understand that there  
4 is an agreement, but I guess I'll ask each one of  
5 you. What is your view of what an integral utility  
6 function is? I mean, is it something as broad as the  
7 entire transmission system being integral function,  
8 the entire distribution system or is it something  
9 that's --

10 MR. ALT: I'd say clearly yes to those.

11 MR. MATTHEIS: Is there something smaller,  
12 though? I mean, clearly those would be an integral  
13 function. Is there something less or are there just  
14 three functions in a utility, at least from your  
15 view?

16 MR. ALT: Well, I think there are other  
17 things smaller, in our view.

18 MR. MATTHEIS: Such as part of a  
19 transmission system, part of a distribution system?  
20 Or is this completely open?

21 MR. ALT: I think that we would interpret  
22 it to mean that. Again, now you're getting into a  
23 definition that I think, when the case appears, we  
24 felt we'd deal with it then, but I think our opinion  
25 is that it's something less than the whole. If it's

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1 an important integral function of a utility, that it  
2 would fall under the definition, and we would argue  
3 that.

4 MR. MATTHEIS: Is it correct that the  
5 Commission would have the authority to rule that it  
6 is an integral utility function?

7 MR. ALT: Absolutely, in my opinion.

8 MR. MATTHEIS: I guess I'll go to Mr.  
9 Wright next. What's your view of an integral utility  
10 function in this context?

11 MR. WRIGHT: You can see the problem with  
12 defining some of these terms at times. I would say  
13 it's a large scale activity that the utility carries  
14 out. Whether it extends down to individual assets, I  
15 think probably not; however, I would point out that  
16 this is a condition that has been in place for ten  
17 years without, to my knowledge, any problems arising  
18 in that respect. I would also point out that, as a  
19 matter of practice, PacifiCorp does seek approval,  
20 and there is a current issue with regard to the sale

21 of Centralia plant where they have come in. Whether  
22 it's under that definition, I'm not sure, but we're  
23 perfectly happy to comply with the condition that's  
24 been in place for ten years and doesn't appear to  
25 cause any problems either to the DPU or the

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1 Commission or the Company.

2 MR. MATTHEIS: It would certainly be your  
3 position that that would be the Commission's  
4 responsibility ultimately to define integral utility  
5 function in this kind of case?

6 MR. WRIGHT: Yes.

7 MR. MATTHEIS: I have nothing further.

8 CHAIRMAN MECHAM: Thank you. Mr.  
9 Reeder, anything?

10 MR. REEDER: Yes. Mr. Wright, in the UK,  
11 how does ScottishPower hold its integrated utility  
12 functions?

13 MR. WRIGHT: This could get lengthy. In  
14 ScottishPower, there is, I believe, an integrated  
15 license that covers distribution, transmission and  
16 generation. In Manweb, for example, there's a  
17 separate distribution only license because it doesn't  
18 have generation and transmission assets, and in the  
19 water company I believe it is also a combined license  
20 for the assets.

21 MR. REEDER: Do you hold them in separate  
22 corporate entities? Is generation held in a separate  
23 corporation entity from transmission and transmission  
24 held separate in a separate corporate entity from  
25 distribution?

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1 MR. WRIGHT: No.

2 MR. REEDER: Will it become so after this  
3 merger?

4 MR. WRIGHT: One of the conditions  
5 associated with the merger approval that the DTI  
6 proposed was that we would establish ring fences,  
7 clearer ring fences around utility functions within  
8 the UK such that we would hold -- I believe it is the  
9 generation business in a separate entity from the  
10 transmission business, so there will be an increase  
11 in the sort of ring fences, if you like, between the  
12 companies. And I would add that that's because of  
13 the particular market conditions that exist within  
14 the UK where you've got a fully deregulated market  
15 which is pretty competitive, and I think it's part of  
16 the ongoing evolution of that competitive marketplace  
17 in the UK which began in 1990 and continues today.

18 MR. REEDER: Let me see if I understand.  
19 At the end of this transaction, Manweb will be a  
20 separate corporate entity?

21 MR. FELL: Mr. Chairman, these structural  
22 questions are in Mr. Morris' area. This question and  
23 whatever follows on it will be for Mr. Morris.

24 MR. REEDER: If you know. Is Manweb a  
25 separate corporate entity, if you know?

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1 MR. WRIGHT: It is.

2 MR. REEDER: And is -- or will the  
3 transmission entity be a separate corporate entity?

4 MR. WRIGHT: I don't believe that that is  
5 the condition, no. I believe that we have to  
6 establish a clear ring fence around the business. I  
7 don't think it has to be under separate ownership, if  
8 that's what you mean. I think it needs to be a  
9 separate subsidiary within the structure.

10 MR. REEDER: Separate subsidiary within the  
11 structure?

12 MR. WRIGHT: I'm really not sure.

13 MR. REEDER: Fair enough. And generation  
14 will become a separate subsidiary within the  
15 structure in some way?

16 MR. FELL: Mr. Morris is the right person  
17 to answer these questions.

18 MR. REEDER: If you know. We can go on  
19 with this panel forever by keeping these fellows here  
20 and adding more members so we can try to get through

21 it. Do you know?

22 MR. WRIGHT: I would defer to Mr. Morris.

23 MR. REEDER: You don't know?

24 MR. WRIGHT: I don't know for certain, no.

25 MR. REEDER: Do you have an informed idea?

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1 MR. FELL: Mr. Chairman, the stipulation

2 covers every --

3 CHAIRMAN MECHAM: Let's just go with Mr.

4 Morris. So if you have more questions, Mr. Reeder,

5 that go down a different line, let's pursue those.

6 MR. REEDER: All right. Directing your

7 attention to the language "spinoff or sale," assume

8 that ScottishPower were to follow a strategy similar

9 to the strategy that we discussed with respect to the

10 UK where you formed separate entities. Whether it

11 has occurred or not, we'll ask Mr. Morris. Does this

12 stipulation prevent a spin-down?

13 MR. WRIGHT: I don't understand the term

14 spin-down. I'm sorry.

15 MR. REEDER: If you maintain common

16 ownership, which is what you were just trying to

17 explain to me, maintain separate ownership in the

18 same group, does this prevent a spin-down to a

19 separate entity within the same group?

20 MR. FELL: Is the question asking whether

21 PacifiCorp -- whether this applies to PacifiCorp, for  
22 example, spinning -- well, separating its  
23 transmission and placing it in a subsidiary of  
24 PacifiCorp?  
25 MR. REEDER: That's a part of the question,

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1 yes. Does the stipulation preclude spinning down the  
2 assets to a member of the same family? To be  
3 distinguished from spinoff, spin-down.

4 MR. FELL: Let's make clear that the  
5 stipulation doesn't prohibit things in this Clause  
6 9.

7 MR. REEDER: Makes it -- you're correct,  
8 Mr. Fell. Makes it subject to prior approval. Will  
9 this Commission's approval be required if they drop  
10 transmission, distribution, generation or the coal  
11 mines into a separate subsidiary?

12 MR. WRIGHT: Spin-down is not referenced.  
13 It certainly didn't form part of the debate when we  
14 had the discussion regarding this condition.

15 MR. REEDER: Would you be willing to  
16 include that as a condition, that spin-down would be  
17 subject to the Commission's approval?

18 MR. WRIGHT: I would be --

19 MR. FELL: Mr. Chairman, we really need to  
20 consult about some of these requests for -- these are

21 fairly complex questions and we're being asked how  
22 the Company is going to respond to them when we're  
23 not really -- we don't really have a specific set of  
24 facts in front of us. And even then, we'd have to  
25 consult. We had to consult on these terms.

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1           CHAIRMAN MECHAM: Well, it's an interesting  
2 question, so if someone is going to come up to answer  
3 it, we can defer, but I'm just making note here that  
4 I'm assuming somebody, whether -- well, whether it  
5 takes consultation or not --

6           MR. FELL: There are other -- consultation  
7 probably would take care of it and we can get back to  
8 it after the break, but there are other terms of the  
9 stipulation that relate to this issue as well, terms  
10 relating to changes in corporate structure, for  
11 example, terms relating to forming affiliates for the  
12 purpose of transacting business with the utility  
13 would be triggered. Also would be triggered  
14 provisions regarding Commission approval to the  
15 extent the statutes or rules require either notice or  
16 approval of those events.

17           MR. REEDER: I think the heart of the  
18 question, though, Commissioner White's question was,  
19 if you form an affiliate, you simply tell us. This  
20 paragraph requires prior approval if you spin down.

21 Which is it? Do you tell us or do you get our

22 permission?

23 MR. FELL: It says that if PacifiCorp

24 divests an integral utility function, that

25 divestiture requires prior notification and

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1 Commission approval.

2 CHAIRMAN MECHAM: So are you saying that it  
3 doesn't include a spin-down within the Company?

4 MR. FELL: Well, if the spin-down  
5 constitutes a divestiture. It's either that or  
6 there's -- Section 8, for example, talks about notice  
7 requirements for transfers of large utility assets,  
8 and once the notification is provided, then somebody  
9 can decide whether, in fact, it's an approval  
10 requirement or notice requirement, depending on the  
11 nature of the transaction. It's very hard for a  
12 witness to sit there and, on a short description  
13 called a spin-down -- whatever that is -- it's not a  
14 term I'm familiar with -- but to provide a reliable  
15 answer on that.

16 MR. HUNTER: If you're talking about  
17 transmission specifically, I assume that if FERC  
18 ordered the utility to do something with its  
19 transmission, I don't know what the answer is, but  
20 it's simply more complicated than saying that this

21 stipulation deals with that, that FERC says out of  
22 our NOPR, here's what we're going to do with your  
23 transmission. I, quite frankly, don't know what my  
24 options are, other than to do what FERC tells me,  
25 that I have to come to this Commission, that I can

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1 come to this Commission. I don't know. And I'm  
2 absolutely confident if the witness doesn't know, it  
3 is something we'd be happy to look at.

4 MR. REEDER: I think we're to the point  
5 where my argument would be we probably need to have a  
6 clear understanding what happens in those  
7 circumstances, we have to openly force a stipulation,  
8 and seeing that the stipulation at this point is  
9 ambiguous, I don't think it's helpful. I think it's  
10 clear that it is ambiguous in some places. If we  
11 have someone who could answer the questions about  
12 whether they intended it or not and we can clarify it  
13 and build a record and then know what the rules on a  
14 going-forward basis is, rather than have this forever  
15 question. Do we have to have permission or simply  
16 report?

17 CHAIRMAN MECHAM: Doesn't sound like it was  
18 part of the discussion.

19 MR. FELL: Mr. Reeder is trying to create  
20 an impression that there is some enormous ambiguity

21 here, and when you start looking at the requirements  
22 for notification when there's creation of a new  
23 affiliate that will transact business, if you look at  
24 the rules regarding -- the administrative rules  
25 regarding notification to the Commission, Item 9

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1 talks about approval under certain conditions or  
2 circumstances that actually come out of the prior  
3 merger and have a lot of history to them. Other  
4 provisions later talk about change in structure.

5 One of our points about the stipulation is  
6 that it's quite comprehensive, and if you focus a  
7 laser on one piece and say, does the stipulation --  
8 does that provision cover this circumstance, I think  
9 it misleads regarding what the stipulation is about,  
10 or completely ignores the comprehensiveness of it.

11 MR. REEDER: Mr. Fell, this is your panel,  
12 intended to sponsor this stipulation to present  
13 clearly and concisely to this Commission about what  
14 it means. If I ask a question and this paragraph  
15 doesn't cover it, I would expect they would say  
16 another paragraph covers it in this way, so that the  
17 Commission could understand and we could understand  
18 what this stipulation represents. I think now is the  
19 time and here is the place to make those things clear.

20 MR. WRIGHT: Could I just offer as an

21 observation that I think it would impossible for a  
22 stipulation to cover every eventuality. What we have  
23 here is a condition that is existing, and we seem to  
24 be talking about an issue of whether the merger  
25 happens or not, so, arguably, it's not even

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1 appropriate to be in a stipulation which is relating  
2 to a merger. Could PacifiCorp spin down its  
3 transmission business absent the merger. That would  
4 seem to be an issue.

5         So what we're trying to do is to capture  
6 issues that are raised by the merger, so there's a  
7 number of reasons why this didn't even come up in  
8 debate and a number of reasons why, even if it did,  
9 it wouldn't be included in the stipulation.

10         MR. REEDER: It seems we have a parent  
11 corporate structure vastly different than the  
12 corporate structure of the acquired company, and it  
13 would seem to me that it would be an appropriate  
14 issue for resolution.

15         MR. FELL: A spin-down does not require any  
16 change in the corporate structure. PacifiCorp  
17 already has subsidiary entities.

18         CHAIRMAN MECHAM: All right. Let's forge  
19 ahead from there. Do you have more on this one, Mr.  
20 Reeder?

21 MR. REEDER: Mr. Alt, is it your intention

22 the stipulation covers a spin-down?

23 MR. ALT: Well, after hearing all the

24 discussion, it seems like the best place it fits is

25 Condition No. 8 to the degree that Rule 401 --

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1 because it clearly talks about the transfer, which is  
2 what you seem to describe. I wasn't familiar with  
3 the term spin-down, but it seems like that's what it  
4 is.

5 MR. REEDER: Would the answer be then that  
6 Condition No. 8 would prohibit a spin-down of  
7 PacifiCorp assets?

8 MR. ALT: No, it doesn't prohibit it. It  
9 requires them to comply with the Rule 401, whatever  
10 its requirements are. I don't think it prevents it.

11 MR. REEDER: What do you understand those  
12 conditions to be, Mr. Alt?

13 MR. ALT: Well, you pointed out that  
14 there's trigger limits, that if the asset has a value  
15 of more than so many dollars or a percent of the  
16 Company's assets on either -- and it differs on a  
17 sale or an acquisition, that it triggers a  
18 requirement to report that to the Commission, and  
19 again, I don't have 401 in front of me and I  
20 haven't -- I've skimmed it. I haven't read it

21 carefully recently, so I don't remember just what  
22 other requirements relating or beyond just simple  
23 notification there are in it.

24 MR. REEDER: But it's your position that  
25 401 covers a spin-down?

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1           MR. ALT: It covers it to the degree that  
2 it would exceed the trigger limits and would  
3 therefore require notification to the Commission, and  
4 then whatever action was necessary or whatever else  
5 was required in 401 could be carried out.

6           MR. REEDER: Mr. Gimble, what was your  
7 intention?

8           MR. GIMBLE: I think I pretty much agree  
9 with what Mr. Alt has said, however, I probably  
10 wouldn't object to spin-down being added to 9.

11          MR. REEDER: Let's use a real world  
12 hypothetical. Let's assume that FERC should decide  
13 that the transmission operations of this Company  
14 should be managed independently, either by an ISO, an  
15 RTO or some other configuration. What would this  
16 stipulation compel in that probable set of  
17 circumstance? Mr. Alt?

18          MR. ALT: I presume at least notification  
19 to the Commission, if it met their trigger criteria.

20          MR. REEDER: Mr. Gimble, I think your

21 answer was you wanted prior approval before they  
22 separated the transmission functions into a separate  
23 entity. Did I correctly assume what your position  
24 would be?  
25 MR. GIMBLE: That is my position, yes.

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1 MR. REEDER: Mr. Wright, are you going to  
2 seek prior approval or are you simply going to notify  
3 the Commission if an RTO is required?

4 MR. FELL: Mr. Chairman, I object. It  
5 really is a legal question. It involves federal  
6 preemption. Transmission assets that are subject to  
7 the jurisdiction of the Federal Energy Regulatory  
8 Commission are -- it's quite a complex legal issue as  
9 to who has jurisdiction over those transfers, and  
10 that's what FERC's study is all about.

11 CHAIRMAN MECHAM: It is a matter where  
12 you've already -- you've addressed the matter already  
13 with Mr. Wright and I think his answer would be "I  
14 don't know" at this point. Not to put words in his  
15 mouth.

16 MR. WRIGHT: You may put words in my  
17 mouth.

18 CHAIRMAN MECHAM: So perhaps we ought to  
19 move to the next subject.

20 MR. REEDER: PacifiCorp. What is the

21 meaning of PacifiCorp? Does that include PacifiCorp  
22 and its affiliates or does it include only the single  
23 company, PacifiCorp? To you, Mr. Larson, does  
24 PacifiCorp hold in affiliate entities any of its  
25 operating properties, for example, coal mines or

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1 generators, and if so, which ones?

2 MR. LARSON: PacifiCorp holds all of the  
3 utility assets. My understanding is that Interwest  
4 Mining has some association with the mines, but the  
5 assets are held by PacifiCorp.

6 MR. REEDER: Are the mines in PacifiCorp or  
7 are they in Interwest?

8 MR. LARSON: The mines themselves are in  
9 PacifiCorp and are in rate base.

10 MR. REEDER: And what assets are in  
11 Interwest?

12 MR. LARSON: I don't think there are any  
13 assets in Interwest.

14 MR. REEDER: Are any of the generating  
15 facilities held by affiliates of PacifiCorp?

16 MR. LARSON: No. I believe they're all  
17 held by PacifiCorp and included in rate base.

18 MR. REEDER: Are the interests that you  
19 hold in jointly-owned facilities held by PacifiCorp  
20 or an affiliate of PacifiCorp?

21 MR. LARSON: They are held by PacifiCorp.  
22 There may be one small mining asset related to the  
23 Bridger Coal Mine that is held in a relationship with  
24 Idaho Power, but absent that, all of the other assets  
25 are held by PacifiCorp or recorded on our books.

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1           MR. REEDER: Mr. Alt, in the stipulation  
2 was it your intention that all of the integrated  
3 utility functions necessary to provide service would  
4 be subject to this stipulation or only those owned by  
5 the corporate entity, PacifiCorp?

6           MR. ALT: I'm not sure there was a  
7 difference.

8           MR. REEDER: Do you see a difference  
9 between those owned by a single corporate entity and  
10 those necessary to provide service?

11          MR. HUNTER: Which are those additional  
12 assets?

13          MR. REEDER: He said he's not sure what's  
14 in Interwest and he's not sure which generation  
15 facility may be held separately.

16          MR. LARSON: No. I said there are no  
17 assets in Interwest, no mining assets. They're all  
18 included in electric operations on the books and  
19 there are no generation plants. Those are all  
20 included in PacifiCorp books.

21 MR. REEDER: If it is the case, Mr. Larson,  
22 that there are no assets held outside of PacifiCorp,  
23 would you accept the condition that if they're held  
24 by PacifiCorp, an affiliate necessary to provide  
25 service, that the Commission's prior approval be

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1 required?

2 MR. LARSON: I'm not sure I follow the  
3 question. Can you restate that question?

4 MR. REEDER: If it is the case that none or  
5 only minor assets are held outside of the parent  
6 corporate entity of PacifiCorp, would you accept the  
7 condition that none of the assets essential to the  
8 integrated utility function could be spun off, spun  
9 down or sold without the Commission's prior  
10 approval?

11 MR. LARSON: Well, I mean, to get into that  
12 type of detail, I mean, I certainly would want to  
13 defer to Mr. O'Brien. I mean, I think he has a  
14 better perspective of how PacifiCorp holdings and all  
15 this fit in. I think he is probably better equipped  
16 to respond to that.

17 MR. FELL: Mr. Reeder also changed in  
18 question in talking about integral utility function  
19 to saying any asset, which is a very different  
20 picture.

21 MR. REEDER: I'm sorry, Mr. Fell. I missed  
22 your distinction. Is your distinction between  
23 function and asset and this condition that we missed?

24 MR. FELL: Yes. Between the first sentence  
25 and the second one.

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1 MR. REEDER: What is your position, then,  
2 sir? That as long as it's a function and not an  
3 asset, they can deal with it differently? I don't  
4 see the difference, at least I hope there isn't, in  
5 function and asset.

6 MR. FELL: The point is that ScottishPower  
7 and PacifiCorp have agreed to seek -- to provide  
8 notification and seek approval for the divestiture or  
9 spinoff, or whatever the words are, of integrated  
10 utility functions, which the witnesses have described  
11 as large scale, and then if you're talking about  
12 individual assets, that's a different question  
13 because it isn't the large scale of the integrated  
14 utility function that this first sentence talks  
15 about.

16 MR. REEDER: Mr. Gimble, do you understand  
17 the stipulation that way?

18 MR. GIMBLE: Well, I think the way I view  
19 it in terms of integral utility function is something  
20 quite -- something less than all the generation. I

21 mean, they're coming in -- they've had Centralia on  
22 the market. They have buyer and they're going to  
23 come in before this Commission for approval of that  
24 transaction. We would expect any kind of future  
25 transactions like that to come before the

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1 Commission.

2 MR. REEDER: Mr. Alt, you've been party to  
3 the discussion between -- the distinction between  
4 function and asset. What's your understanding of  
5 what that distinction, if any, means in this  
6 paragraph?

7 MR. ALT: Well, I talked about this  
8 earlier. The first sentence talks about an integral  
9 utility function and somebody -- Mr. Mattheis asked  
10 me questions about what I thought that was, and I  
11 said -- I don't recall saying that it necessarily  
12 meant any particular asset.

13 In our discussions with all the parties,  
14 someone raised the question, well, what if they sell  
15 a line truck? Do they have to get Commission  
16 approval? Well, and I facetiously said, Only if it's  
17 a really big one. But, in reality, I don't think the  
18 Commission wants to have a hearing on the sale of a  
19 line truck. That's just my personal opinion. So you  
20 have to make a distinction between integral utility

21 function and asset. Some assets, like the Centralia  
22 generating plant, are big enough and integral enough  
23 that I think that that's something the Commission  
24 would want to entertain and want someone to seek  
25 their approval of, but a truck, no. So there's a

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1 difference.

2 MR. REEDER: So how do you enforce this  
3 condition if you don't know what it is they've got to  
4 get prior approval on, Mr. Alt?

5 MR. ALT: Well, again, some of these  
6 conditions are intended, I think, to be loose enough  
7 that the Division or other parties in future rate  
8 proceedings can interpret them as they see.  
9 Sometimes if you get things too specific, you  
10 actually end up being too restrictive and exclude  
11 yourself from action when you really think it should  
12 be taken, but if you keep the structure of the  
13 language broad enough that you leave a door open for  
14 you to interpret things that you feel need to be  
15 done -- and that was the approach we took on this  
16 particular condition. We feel we did not preclude  
17 future action. We simply felt, let's not define it  
18 narrowly today and possibly exclude things that we  
19 didn't want excluded.

20 CHAIRMAN MECHAM: Okay. Shall we move to

21 Condition 10? Mr. McNulty?

22 MR. McNULTY: Thank you. This is for Mr.

23 Wright or Mr. Larson. As I understand it, the

24 companies have agreed to come before this Commission

25 as it relates to the sale of the Centralia plant,

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1 correct?

2 MR. WRIGHT: That's my understanding, yes.

3 MR. McNULTY: A little closer to home, if  
4 the Company is about the business of selling the  
5 Hunter II plant, is that something under this  
6 condition and under the rules that you would  
7 anticipate coming to this Commission for approval?

8 MR. WRIGHT: I think this discussion is  
9 served to illustrate definition of problems with  
10 respect to the condition, but if that is required  
11 under Code Section 746-401 or if it is deemed to be  
12 an integral utility function or indeed whether it's  
13 practiced to do so, ScottishPower is not seeking to  
14 change what happens at the moment. What we're  
15 seeking to do does not extend what happens at the  
16 moment, and that's the purpose behind these  
17 conditions.

18 MR. LARSON: I guess I would add that  
19 Section 401 states specifically what transactions we  
20 must report, and certainly we would report those

21 ahead of time and the Commission would have 30 days  
22 to determine, you know, how to proceed forward on  
23 those issues and it would be the intent to continue  
24 to comply with what's in the code.  
25 MR. McNULTY: At the risk of asking you to

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1 identify and further argue about what a utility  
2 function is, are you saying that there might be a  
3 scenario where the sale of the Hunter II plant is not  
4 the sale of an integral utility function?

5 MR. LARSON: I mean, clearly the sale of  
6 Hunter plant, I mean, is clearly in excess of \$10  
7 million or \$20 million allocated to Utah, so clearly  
8 that would fall under a Section 401 filing that would  
9 be made with the Public Service Commission and they  
10 would make some determination on how to proceed  
11 forward with that.

12 MR. McNULTY: Thank you.

13 CHAIRMAN MECHAM: Mr. Sandack.

14 MR. SANDACK: I guess I'm confused. I'll  
15 address this to Mr. Larson. Is there any condition  
16 or stipulation that if you do sell off a major asset,  
17 such as Hunter II, that the successor abides by these  
18 conditions or your existing contracts?

19 MR. LARSON: I'm not aware of anything  
20 that's contained within this that would deal with

21 that at all.

22 MR. SANDACK: So this is -- in other words,  
23 if the merger just went right through, you could sell  
24 off something and you wouldn't have to abide by the  
25 existing conditions of this merger, the successor?

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1           MR. LARSON: When the transaction goes  
2 through, if -- for example, under the Centralia plant  
3 we are seeking an accounting order for the Commission  
4 on dealing with that, and we'll shortly, you know,  
5 make a filing with the Commission and I think at that  
6 time the facts will be laid on the table and the  
7 Commission will make a determination on how to  
8 proceed, you know, based on evidence.

9           MR. SANDACK: Am I correct in understanding  
10 there's no plan now to divest any of the assets that  
11 you're acquiring as a result of this merger?

12          MR. WRIGHT: Other than the ones that are  
13 already in trade or sales. There is no intention to  
14 sell any further assets.

15          MR. SANDACK: Would you object to abiding  
16 by at least existing contracts you have or requiring  
17 the successor to abide by existing contracts with  
18 entities that might succeed to that asset?

19          MR. HUNTER: Objection. The contracts will  
20 specify what the conditions are for those kind of

21 transactions. We're not talking about something that  
22 involves the Commission's jurisdiction. And we'd be  
23 happy to abide with our contracts. In fact, we've  
24 said that in our conditions. To the extent they  
25 require us to -- I assume we're talking about labor,

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1 bargaining unit agreement.

2 MR. SANDACK: Well, I'm interested in that.

3 MR. HUNTER: I thought so. The bargaining  
4 unit agreements specifically have provisions that  
5 talk about successors and we'd be happy -- of course,  
6 we'll have to abide by those.

7 MR. SANDACK: In addition to that, though,  
8 you have other conditions as a result of presumably  
9 what this Commission will order if the merger is  
10 approved. Do you object if those conditions were  
11 attached to any disposition of the asset such as  
12 might come under this stipulation?

13 MR. HUNTER: I assume that if at the time  
14 we file a notice with the Commission saying here's  
15 what we intend to do, the Commission at that time  
16 will say what they want us to do with the  
17 transaction, whether they want us to apply  
18 conditions, whether they want different conditions,  
19 and so that's something that the Commission will have  
20 jurisdiction to look at and will determine sometime

21 in the future.

22 MR. SANDACK: That's all I have. Thank

23 you.

24 CHAIRMAN MECHAM: Thank you, Mr. Sandack.

25 I'm assuming we've addressed Conditions 10 and 11.

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1 We've certainly talked about them. Mr. Mattheis?

2 MR. MATTHEIS: I just have one question on  
3 No. 10 for Mr. Wright. It talks about providing  
4 information and being available to testify on matters  
5 that are relevant and within the jurisdiction of the  
6 Commission. Would ScottishPower abide by the  
7 decision of the Committee as to what is relevant and  
8 what is in their jurisdiction?

9 MR. WRIGHT: Of course.

10 MR. MATTHEIS: That's all I have.

11 CHAIRMAN MECHAM: Okay. With respect to  
12 11, what is adequate access? It's obviously not  
13 defined anywhere.

14 MR. ALT: Well, my attorney felt that that  
15 was an adequate word.

16 CHAIRMAN MECHAM: So you'll know it when  
17 you see it?

18 MR. ALT: Yes. In fact, there is one  
19 place, I think, where we had "adequate" in here twice  
20 in the same sentence and we felt one "adequate" was

21 enough. I think this might have been the place, but  
22 I'm not sure. And you'll notice we used the word  
23 "relevant," which is another key word in that same  
24 sentence. Relevant books and records and efficiency.  
25 CHAIRMAN MECHAM: Those are all argument

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1 words.

2 MR. ALT: Right. Which means that if one  
3 party or company disagrees with another party about  
4 what's relevant and what access is adequate, they can  
5 bring it to this Commission to resolve. We felt that  
6 this Commission had the authority to make those  
7 decisions about what was relevant and what was  
8 adequate. That's my view.

9 CHAIRMAN MECHAM: All right.

10 MR. GIMBLE: And the Committee has no  
11 problem with that interpretation.

12 CHAIRMAN MECHAM: Okay. Let's take a short  
13 recess and come back and resume with No. 12.

14 (Recess, 3:30 p.m.)

15 (Reconvened, 3:50 p.m.)

16 CHAIRMAN MECHAM: Let's go back on the  
17 record and go to Condition 12. Mr. Dodge, anything  
18 on Condition 12?

19 MR. DODGE: Yes, I do. Mr. Wright, it  
20 indicates in 12 that the Company will make a filing

21 of merger savings achieved. What will that filing  
22 reflect, other than merger savings achieved? How  
23 will you calculate merger savings achieved for  
24 purposes of that report?  
25 MR. WRIGHT: Not to divert to a different

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1 condition, but Condition 13 discusses ScottishPower  
2 filing a merger transition plan with the Commission.  
3 That transition plan will contain a large number of  
4 initiatives designed to make the Company more  
5 efficient and accountable to its customers,  
6 et cetera. There will therefore be initiatives in  
7 the transition plan with targeted merger savings,  
8 efficiencies resulting from those initiatives. We  
9 will report progress against the achievements of  
10 those efficiencies in the semiannual filing. That is  
11 my understanding of 12.

12 MR. DODGE: So the reports will start with  
13 the filing identified in 13 and then report progress  
14 towards those standards, and that's basically all?

15 MR. WRIGHT: That is my understanding.  
16 Those will be the merger savings.

17 MR. DODGE: Mr. Gimble, does the Committee  
18 have any intent to try and look at merger savings  
19 vis-a-vis what the Company might have achieved on its  
20 own without the merger?

21 MR. GIMBLE: That came up in the context of  
22 the last merger. As you well know, as you proceed  
23 out into the future, that becomes more and more  
24 difficult. I mean, what you end up with is kind of a  
25 fictional comparison. You have, well, what would

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1 have PacifiCorp done on its own versus, you know, as  
2 a merged company. Maybe in the first year that makes  
3 a little sense to try to look at that comparison, but  
4 as you move out, it becomes more problematic.

5 MR. DODGE: Do you know whether the  
6 Committee has any intent to try and do that, even for  
7 the first year or two or for some period of time?

8 MR. GIMBLE: I haven't thought through that  
9 at this point.

10 MR. DODGE: Mr. Wright, in any event, it's  
11 clearly not the applicant's intent to file something  
12 comparing to what PacifiCorp would have done or might  
13 have done on its own?

14 MR. WRIGHT: I think that would be  
15 extremely difficult. I think the purpose of the  
16 transition plan is to provide a benchmark for  
17 effectively monitoring this condition. Without the  
18 transition plan, I think it would be extremely  
19 difficult, but with the transition plan, you have a  
20 statement of what we are targeting as merger savings

21 and they can be -- progress against that can be

22 reported under 12, so I think you're in good shape

23 with regard to being able to monitor 12.

24 MR. LARSON: One addition, I would say, Mr.

25 Dodge. I mean, stand alones are obviously something

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1 that, as Mr. Gimble said, are very, very difficult,  
2 and one of the things that would be -- I lost my  
3 train of thought here.

4 CHAIRMAN MECHAM: That's all right. You're  
5 not alone.

6 MR. LARSON: I had a good idea here,  
7 something I wanted to say. When we come back, I'll  
8 come back to this issue.

9 MR. DODGE: At the risk of moving to  
10 Paragraph 13, Mr. Wright, because you referenced it,  
11 if that transition plan will be essentially the base  
12 against which you report progress, will that  
13 transition plan be subjected to comments by parties  
14 or Commission approval or any other public process  
15 like that?

16 MR. WRIGHT: No. That's not the  
17 intention. The transition plan is about a business  
18 decision. It's about making the business more  
19 efficient. I would -- we do not propose to seek  
20 approval of the transition plan. We would merely say

21 that, in terms of costs or whatever associated with  
22 transition plan, we bear the burden of proving that  
23 the costs are offset by benefits and what have you,  
24 so -- but we don't anticipate it being approved. I  
25 think that would fall within the category of

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1 micromanaging the utility.

2 MR. DODGE: So the reports in Stipulation  
3 Paragraph 12 are really reports of the Company's  
4 identification of potential savings and the Company's  
5 view of whether those have been achieved as opposed  
6 to some Commission-determined merger savings?

7 MR. WRIGHT: Well, I think the transition  
8 plan will be very explicit in terms of its  
9 initiatives and I think it will be very clear what we  
10 are targeting and what the achievements are. The  
11 purpose of 12 is to allow the Commission and the  
12 regulators, DPU, CCS, to monitor our performance  
13 against what we said we were going to achieve. I  
14 think that's very clear. That is with a view to  
15 seeing what merger savings are coming through and  
16 potentially, you know, in the falls of time, can be  
17 captured in rates. That's the purpose of that  
18 condition.

19 MR. DODGE: What if hypothetically the  
20 merger plan filed six months after the merger is

21 approved -- or the transition plan shows \$5 million a  
22 year can be captured in efficiencies and that's all?  
23 Is it your view that the Commission is basically  
24 stuck with that determination, that it can't say, No,  
25 no. Merger savings are more than that?

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1           MR. WRIGHT: Well, it would be difficult, I  
2 think, for the Commission to determine that the  
3 savings there were more than that, but the transition  
4 planning exercise, just to elaborate slightly, is an  
5 extremely detailed exercise. We have conducted  
6 transition planning at both Manweb and Cinemore and  
7 indeed in our own business in Scottish Power. You  
8 can rest assured it will be a very thorough  
9 examination of PacifiCorp and the extent of  
10 efficiencies that can be made in PacifiCorp will be  
11 identified by the transition plan, so I think it will  
12 be a very complete exercise.

13           I can't speculate as to the amount of  
14 savings that will be delivered but if that were, the  
15 outcome, then the merger credit is already there and  
16 guaranteed, so net benefits would still be delivered  
17 to Utah customers regardless of the output of the  
18 transition plan. The transition plan and the ability  
19 to make cost savings in the future can be considered  
20 upside as part of this approval.

21 MR. DODGE: Mr. Gimble, in the third and  
22 fourth years of the merger credit, there is an  
23 opportunity for the Company to offset that credit by  
24 demonstrated merger savings by later conditions. How  
25 does the Committee propose to essentially audit those

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1 merger conditions, the baseline set in the transition  
2 plan and then the reported savings to determine  
3 whether there has been or has not been that amount of  
4 savings?

5 MR. GIMBLE: The first thing we will look  
6 at, obviously, is the reports they're going to file,  
7 the semiannual filings. I mean the information that  
8 they're going to file related to merger-related  
9 savings in each semiannual filing. I mean, that will  
10 be the first piece of information that we ship out to  
11 somebody like Hugh Larkin or Mike Brosch or somebody  
12 like that.

13 In terms of demonstrating that an item is a  
14 merger-related savings, the onus is on the Company to  
15 make that demonstration, to put forward evidence.

16 MR. DODGE: Mr. Alt, I guess the same  
17 question of you. Does the Division have a plan for  
18 how they will try and audit the amount of merger  
19 savings?

20 MR. ALT: Today we don't have a plan. Our

21 only plan is that we will audit the filing, including  
22 the information on merger savings that they would  
23 claim.

24 MR. LARSON: Actually, I have my thought  
25 that came back to me.

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1 MR. DODGE: All right. Mr. Larson, what's  
2 your thought?

3 MR. LARSON: As I mentioned earlier, you  
4 know, in my opening statement, I mean, the PacifiCorp  
5 refocus program, Back to the Core Business, you know,  
6 was initiated in October of 1998, and all of those  
7 savings associated with that refocus program will  
8 occur in 1999, and so I don't think we'll have a  
9 problem. I mean, those savings will be there.  
10 Customers will get those benefits. The initiatives  
11 that Mr. Wright talks about ScottishPower will put  
12 forward in the transition plan were all incremental  
13 savings to any plans that PacifiCorp currently had in  
14 place on a going-forward basis, so I think there will  
15 be a clear delineation between these merger-related  
16 savings and anything that PacifiCorp was going to  
17 do. And as it relates to including these in the  
18 semiannual, you know, in a tab to show the  
19 merger-related savings, you know, it's not uncommon  
20 for us in the regulatory process right now, as we

21 look at initiatives, may spend money or decide to  
22 shut something down, to do, you know, an analysis to  
23 make sure that the savings associated with the  
24 transaction or the initiative that we're going to do  
25 will exceed the cost of doing something. I don't see

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1 it any different in what we will be reporting in this  
2 process. Clearly, we would expect that the  
3 initiatives that will be in the transition plan will  
4 have savings that will exceed the cost.

5 MR. DODGE: Mr. Larson, certainly, though,  
6 had the merger not been announced, PacifiCorp would  
7 have been looking for other ways to save money above  
8 and beyond the refocus program that was focused  
9 primarily in 1999?

10 MR. LARSON: Well, I think it's pretty  
11 clear that, you know, right now PacifiCorp has got  
12 its hands full with just trying to take care of the  
13 initiatives that we have underway, and I think that's  
14 the beauty of this transaction. I mean,  
15 ScottishPower has got a proven track record in some  
16 areas that will be beneficial to our customers, and I  
17 think that what we're talking about here with  
18 ScottishPower is that they're bringing forth some  
19 expertise in areas that we don't currently have and  
20 we will be able to forward some things in addition to

21 taking care of some areas that currently aren't up to

22 speed at PacifiCorp.

23 MR. DODGE: But surely you don't

24 disagree -- I mean, Mr. O'Brien is too good a utility

25 manager not to be looking for other ways to save

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1 costs in the year 2000, had the merger not occurred.

2 MR. LARSON: Well, I mean, clearly Mr.

3 O'Brien is a good utility manager. I'll agree with

4 you on that.

5 MR. DODGE: I figured you'd have to.

6 MR. LARSON: But as I said, I mean,

7 currently we have got our arms full and our hands

8 full with the initiatives that we are currently --

9 the business centers and other things, and so, you

10 know, it's hard to say exactly when PacifiCorp stand

11 alone would initiate, you know, some of the things

12 that are being talked about.

13 I guess the one thing that I can say is

14 that ScottishPower has already committed to filing

15 the transition plan and accomplishing these

16 initiatives, and from my perspective, basically

17 they've put their money where their mouth is on this

18 issue and they put \$12 million on the table each of

19 the next four years as a down payment in achieving

20 those objectives, and I think that's a pretty serious

21 commitment to achieving those. That commitment of  
22 \$12 million is something you would not be getting  
23 from PacifiCorp stand alone.

24 MR. DODGE: I attempted to call you Mr.  
25 Bryner, but I'll pass on that. Those are all the

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1 questions I have.

2 CHAIRMAN MECHAM: Mr. Mattheis.

3 MR. MATTHEIS: Mr. Wright, did I understand  
4 you to say that you thought it would be difficult for  
5 the Commission to determine merger savings?

6 MR. WRIGHT: No. I think the question was,  
7 would the Commission be in a better position than the  
8 Company to determine the extent of merger savings,  
9 and my answer was that we would be the ones  
10 conducting the transition planning exercise. We have  
11 a good deal of experience in conducting that exercise  
12 and you can rest assured that it will be a very  
13 thorough program and a very detailed plan, so I was  
14 struggling to understand how, after that has taken  
15 place, how the Commission would be in a position to  
16 say you've got it wrong. The merger savings are  
17 actually more or less than you had hypothesized.

18 MR. MATTHEIS: But the Commission will be  
19 in that position to judge the merger savings,  
20 contrasted, for example, with the transition costs,

21 contrasted with the third and fourth years. I mean,  
22 they'll have to judge whether the savings are there.

23 MR. WRIGHT: No, no. You misunderstand. I  
24 took the question to mean the aggregate level of  
25 efficiencies that were available, so if our

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1 transition plan came up with, for example, an  
2 additional \$20 million in savings could be achieved  
3 in PacifiCorp, I understood the question to be if the  
4 Commission came back and said it was 30 million. I  
5 don't know the basis for that assessment. They will,  
6 of course, have a role in monitoring the savings that  
7 we've said are achievable, and that's the purpose of  
8 Condition 12.

9 MR. MATTHEIS: I'll stop there. That's all  
10 I have.

11 CHAIRMAN MECHAM: Thank you. Mr. Reeder.  
12 Anything?

13 MR. REEDER: A few, please. Mr. Larson,  
14 PacifiCorp has underway several initiatives to reduce  
15 costs, do they not?

16 MR. LARSON: I think the only initiative  
17 that I'm aware of is the \$30 million refocus program  
18 that Mr. McKennon announced in October of '98.

19 MR. REEDER: And the refocus program  
20 reduced your O&M costs by \$30 million in 1999? That

21 was the objective and that's been the achievement

22 that's underway and done?

23 MR. LARSON: Well, the objective is to

24 reduce costs by \$30 million from the budgeted level

25 that we had for 1999, and we expect that all of those

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1 savings from that budgeted level will be achieved in  
2 1999.

3 MR. REEDER: So when the benchmark is  
4 prepared in this case, you would not expect that any  
5 of the initiatives that were covered by the refocus  
6 program would be claimed as merger savings, would  
7 you?

8 MR. LARSON: I would not expect. I think I  
9 have stated prior that these are incremental.

10 MR. REEDER: In addition to the refocus  
11 programs, there were a couple of employment actions  
12 in 1998. What were the savings from those employment  
13 actions?

14 MR. LARSON: Those -- are you talking about  
15 early retirement programs?

16 MR. REEDER: I've simply seen reference to  
17 two employment actions that reduced your costs.

18 MR. LARSON: Those were part of the refocus  
19 program.

20 MR. REEDER: Is it true that there was, in

21 addition to the refocus program, an additional \$50  
22 million to be saved in employment costs as a result  
23 of employment action?

24 MR. LARSON: I will defer to Mr. O'Brien.

25 I'm just not aware of that \$50 million.

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1           MR. REEDER: If it should appear on this  
2 record that, in addition to the \$30 million in the  
3 refocus program, that there is an additional amount  
4 to be saved as a result of employment action, would  
5 that savings be outside of the benchmark for merger  
6 savings?

7           MR. LARSON: It is -- as I stated, all of  
8 the PacifiCorp refocus objectives are intended to be  
9 accomplished and reflected in calendar year 1999.  
10 The transition plan that will be filed by  
11 ScottishPower will occur sometime in 2000, and that  
12 will be incremental over and above anything that  
13 PacifiCorp has accomplished to date.

14           MR. REEDER: And will that be true of the  
15 initiatives in addition to the refocus plan?

16           MR. LARSON: As long as the initiatives  
17 have occurred. I mean, I'm not aware of anything  
18 that would occur after 1999, and so it should be  
19 reflected in 1999 results.

20           MR. REEDER: Has PacifiCorp prepared a

21 multi-year plan showing its path forward?

22 MR. LARSON: You would have to talk with

23 Mr. O'Brien on that.

24 MR. REEDER: You have no knowledge of such

25 a plan?

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1 MR. LARSON: I have no knowledge.

2 MR. REEDER: So in this record it should

3 appear --

4 MR. HUNTER: Of that specific item.

5 MR. REEDER: So if in this record it should

6 appear that there is such a multi-year plan and that

7 there were initiatives in addition to refocus, would

8 this stipulation and the benchmark to be established

9 exclude the savings from that multi-year plan?

10 MR. LARSON: I'm going to stick with

11 deferring to Mr. O'Brien. He is much more aware of

12 that plan and what would be contained in it, if it

13 exists.

14 MR. WRIGHT: Could I just make a statement?

15 MR. REEDER: Please do, because I'm going

16 to ask around the horn the same question.

17 MR. WRIGHT: I thought you might. We're

18 not seeking to count any existing initiatives within

19 the transition plan. The transition plan will be a

20 stand-alone piece of work that will be conducted by

21 ScottishPower after the closing of the merger. The  
22 stunned initiatives contained within that transition  
23 plan will form the benchmark for calculating the  
24 extent of merger savings achieved, and to the extent  
25 that they are offsetable against the merger credit,

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1 so we've been pretty explicit that we're not seeking  
2 to double count any merger savings that PacifiCorp  
3 have already set in train, and I would further point  
4 out that we, as Mr. Gimble says -- Mr. Alt, I think,  
5 as well -- have the burden of proof with regard to  
6 demonstrating merger savings are things that  
7 ScottishPower has initiated as a result of the  
8 transition planning exercise.

9 MR. REEDER: So in terms of the multi-year  
10 plan that I asked Mr. Larson, if there were to be a  
11 multi-year plan having initiatives to begin in '99 or  
12 2000, the savings that would result from that plan  
13 would not be savings you would claim as a merger  
14 credit; am I correct?

15 MR. WRIGHT: I don't know of an existence  
16 of a plan because I believe it's the testimony of Mr.  
17 O'Brien that no such plan in detail exists going  
18 forward, so I think you're asking me a hypothetical  
19 question.

20 MR. REEDER: Please answer it as a

21 hypothetical question.

22 MR. WRIGHT: What's the question?

23 MR. REEDER: If there is a PacifiCorp

24 multi-year plan and if in that plan there is a

25 program for savings, then does ScottishPower intend

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1 to claim those savings as merger credits?

2 MR. WRIGHT: No.

3 MR. REEDER: Mr. Gimble, is it your

4 understanding of the stipulation that they could not

5 claim initiatives yet to be undertaken that

6 PacifiCorp has planned as merger savings?

7 MR. GIMBLE: That's my understanding.

8 MR. REEDER: Mr. Alt?

9 MR. ALT: Yes.

10 MR. REEDER: Thank you. I have nothing

11 further on that one.

12 CHAIRMAN MECHAM: Thank you. Anything

13 further from anybody else?

14 COMMISSIONER WHITE: When the parties talk

15 about merger savings, it seems to me that if the

16 merger occurs and after the plan is filed, then

17 subsequent to that, all savings would automatically,

18 by definition, be thought of as merger savings, or

19 are you saying, any of you, that in the future the

20 companies will be identifying savings and then

21 categorizing them as savings that would have happened

22 anyway or savings that can be attributable to the

23 merger?

24 MR. WRIGHT: I think what we're saying is

25 that, to the extent that we claim any savings to

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1 offset the merger credit, that they're subject to  
2 challenge, and if there was a challenge that those  
3 savings would have happened in the ordinary course,  
4 then we have the burden of demonstrating that that  
5 wouldn't have been the case. It's very difficult to  
6 set out a hypothetical benchmark, and that's why, you  
7 know, we have to go down that route, but we accept  
8 the burden of proving that there are merger savings.

9           COMMISSIONER WHITE: Well, it does seem  
10 hypothetical to assign it to a merger benefit as  
11 opposed to something that would have happened  
12 anyway. Does the Division or the Committee see an  
13 issue in categorizing benefits in the future?

14           MR. ALT: My reaction is, after hearing Mr.  
15 Wright describe his concept, is that the merger  
16 savings would primarily come from the transition plan  
17 being implemented successfully and that that would be  
18 spelled out in detail, and it would be easier to  
19 audit that transition plan from the standpoint of  
20 making sure that it doesn't already include the kind

21 of things that Mr. Larson talked about that the  
22 Company was already doing, like in the refocus  
23 program. It seemed to me that wouldn't be an  
24 impossible task.

25 COMMISSIONER WHITE: But you won't be

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1 saying, well, if this Company had not merged, then  
2 these are some of the savings they would have  
3 achieved, anyway? Or is there going to be an attempt  
4 to do that kind of exercise?

5 MR. ALT: I did not see that as an exercise  
6 we would do. I am reminded, and as I think Mr.  
7 Gimble mentioned, that we went through many years at  
8 PITA of doing stand alone versus merged company  
9 analysis, trying to identify savings or benefits  
10 being the differential. After many years, the  
11 Division realized this is a folly. You can't simply  
12 do this, and the farther away you are from the  
13 merger, the more impossible it gets, and we were well  
14 into that area, and so I would not envision us trying  
15 to do that, quite frankly. As I said earlier, I  
16 thought that looking at the transition plan that  
17 supposedly will be in quite detail, according to Mr.  
18 Wright, I think we could tell whether or not that  
19 plan included things that were already in plans that  
20 PacifiCorp had before the merger. I think that would

21 be an easier judgment.

22 CHAIRMAN MECHAM: But even after listening

23 to all of this, I still don't understand what the

24 measure is going to be. I mean, I just don't

25 understand what the yardstick is.

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1           MR. ALT: Do you want to try that, Mr.  
2 Wright?

3           MR. WRIGHT: The yardstick, the comparison  
4 tool, I think -- well, I think it will become clear  
5 when we file the transition plan, because that will  
6 incorporate the initiatives that we believe are  
7 directly as a result of ScottishPower bringing its  
8 skills and experience to PacifiCorp and pursuing a  
9 number of initiatives to make the business more  
10 efficient.

11           You may say that, you know, it's a heroic  
12 assumption to say that none of that could have been  
13 achieved by PacifiCorp, and I think that that's  
14 where, you know, the color coding of dollars begins  
15 to become difficult. However, we do accept the  
16 burden of trying to demonstrate that, and I think the  
17 discussion regarding the transition planning exercise  
18 and the availability of merger savings was germane to  
19 the discussion in terms of the merger credit. That's  
20 why I think the DPU and the Committee wanted to see a

21 larger up-front guarantee of savings going forward,  
22 so there wouldn't be that absent the merger, and that  
23 fell into the negotiations in terms of the merger  
24 credit.  
25 In terms of the going-forward position, I

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1 have the benefit of seeing the transition plan and  
2 it's a pretty detailed piece of work and I'm  
3 confident that we can be measured against that going  
4 forward.

5 CHAIRMAN MECHAM: But if we have to wait  
6 for six months for the transition plan to come in,  
7 how will we know, in making the decision whether or  
8 not the merger is in the public interest, what the  
9 net positive benefits are to this merger?

10 MR. WRIGHT: Because you can rely upon the  
11 benefits that we've already put that are guaranteed  
12 which would include all the service quality measures,  
13 the environmental measures, the conservation,  
14 et cetera, in addition to the merger credit, which is  
15 guaranteed, and the fact that the risks of the  
16 transaction would be mitigated by conditions, so  
17 we're not asking that the transition plan savings be  
18 included necessarily in that decision. We believe  
19 that the guaranteed merger credit, along with the  
20 other benefits, along with the mitigation of risks,

21 is sufficient to prove the public interest.  
22 I referred to the transition plan savings,  
23 the merger savings as upside earlier on and I believe  
24 that's the way that you could view it. We're very  
25 confident in our ability to make the Company more

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1 efficient, but the issue is should you rely upon that  
2 for the purposes of this, and I don't believe that's  
3 what we're asking.

4 CHAIRMAN MECHAM: So you think you can  
5 quantify the costs of this merger, and given the  
6 benefits that are already in the stipulation, you  
7 believe that those outweigh the costs of the merger  
8 and we can conclude that there are net positive  
9 benefits -- quantifiable net positive benefits  
10 outweighing the cost of the merger irrespective of  
11 the transition plan?

12 MR. WRIGHT: Yes, I do, because the costs  
13 of the transaction, for example, have been  
14 specifically excluded. The costs of the major  
15 initiatives that we've identified as merger  
16 commitments, which includes the service standard  
17 package, have been excluded. The risks inherent in  
18 the transaction have been mitigated through  
19 conditions, so the service quality standards, all the  
20 other benefits I referenced, plus the merger credit,

21 would appear to be on the positive side of the  
22 balance sheet. The costs have been excluded. The  
23 benefits are clear, so I would say that you could  
24 make that estimation based upon what is there at the  
25 moment.

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1           COMMISSIONER WHITE: So for the first two  
2 or three years, the way the merger credit fits in is  
3 that it is in addition to any other savings achieved  
4 through the transition plan?

5           MR. WRIGHT: Correct.

6           COMMISSIONER WHITE: So if you identify \$10  
7 million in savings in the first year, ratepayers  
8 would benefit to the tune of 22 million? That's how  
9 this would work?

10          MR. WRIGHT: If there were a rate case to  
11 capture the 10 million. There would have to be a  
12 rate case to capture the 10 million in terms of the  
13 operating costs of the Company, but if there were,  
14 then that would be the case, yes.

15          MR. GIMBLE: And that's because Utah, as  
16 you well know, operates based on historical test  
17 years. At least it has in the past.

18          COMMISSIONER WHITE: Did PacifiCorp or the  
19 Division or the Committee make any attempt to compare  
20 possible benefits -- and I know that this is very

21 speculative -- but did you compare this merger with a  
22 possible merger with a domestic or a neighboring  
23 utility, which we understand to be, you know,  
24 possibly full of other opportunities for savings? I  
25 mean, I recognize it's very speculative, but the

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1 point was raised that this may be foreclosing what  
2 may possibly be a better offer. Was there any  
3 attempt to quantify those two scenarios?

4 MR. ALT: From the Division's perspective,  
5 our view is that our job was to evaluate this merger  
6 application on its merits against the standards set  
7 by the Commission of a net positive benefit. We  
8 spent a lot of time and analysis and came to the  
9 conclusion that it was, with this stipulation of 51  
10 conditions, including a 12 million per year for four  
11 year guaranteed merger credit. We feel it meets the  
12 standard. We didn't feel that our job was to say,  
13 oh, is there another application that might come  
14 along in the future that would best this one. That  
15 wasn't part of the standard, and so we did not even  
16 factor that in.

17 MR. GIMBLE: The Committee also didn't look  
18 at an alternative merger candidate as part of our  
19 analysis. If there would have been another offer on  
20 the table, obviously we would have considered it, but

21 obviously there's not another offer on the table. I  
22 would just say that if there was another domestic,  
23 let's say, candidate, offer on the table -- let's  
24 talk hypothetically -- that was located in the  
25 western market, then we may have other risks to

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1 mitigate, such as market power, those types of things  
2 going forward, if an econo-electric restructuring  
3 occurred, so any kind of merger has potential  
4 benefits and risks.

5 MR. LARSON: And from the Company  
6 perspective, Mr. O'Brien was part of the discussions  
7 with ScottishPower and I will defer to him to give  
8 you our perspective.

9 CHAIRMAN MECHAM: All right. What more do  
10 we need to talk about with respect to 13? That's the  
11 transition plan.

12 MR. REEDER: We could go back to tax issues  
13 but we shan't.

14 CHAIRMAN MECHAM: Thank you. Let's go to  
15 14.

16 MR. DODGE: Off the record we did some  
17 checking around to find out what this umbrella loan  
18 agreement is, and I think we now have an  
19 understanding of what at least Ron thinks it is, and  
20 I guess I just want to confirm with those on the

21 panel. Do you understand the terms of the umbrella

22 loan agreement, Mr. Alt?

23 MR. ALT: No. I had deferred to Mr.

24 Burrup. I think -- I don't even think I actually

25 even read it. I think I just -- he characterized it

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1 in general terms and we were discussing it.

2 MR. DODGE: Is there any intent to make  
3 that part of this record for purposes of  
4 clarification?

5 MR. HUNTER: We do --

6 MR. DODGE: Do you have copies?

7 MR. HUNTER: I have copies of the  
8 Commission's order adopting it.

9 MR. REEDER: Do we have copies of the loan  
10 agreement?

11 MR. FELL: Generally speaking, it's a cash  
12 management arrangement. There are copies filed with  
13 the Commission because it's an affiliate agreement.

14 MR. ALT: The Division has a copy and we  
15 can -- I just saw Mr. Burrup with it.

16 MR. DODGE: Yeah. Mr. Burrup handed it  
17 around. I was just asking him to put it on the  
18 record. I don't have enough to put on the record.

19 MR. ALT: We felt that in the condition, we  
20 cited the docket number when the Commission last

21 approved and dated their order and felt that that was  
22 sufficient reference to the document without actually  
23 attaching it to the stipulation.

24 MR. DODGE: Let me make sure then I  
25 understand. There was some initial confusion as we

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1 read it. Do you understand, Mr. Wright, what the  
2 limit is for upstream loans from PacifiCorp to its  
3 affiliates? Well, upstream or downstream, but loans  
4 from PacifiCorp to affiliates?

5 MR. WRIGHT: Again, I'm afraid, Mr. Dodge,  
6 I am not intimate with the terms of the umbrella  
7 agreement. Unfortunately, I'm going to have to defer  
8 to my financial witness.

9 MR. DODGE: How about you, Mr. Larson?

10 MR. LARSON: I mean, I actually am somewhat  
11 familiar with the loan agreement, but to get all of  
12 your questions answered on it, I think it's more  
13 expeditious just to have Mr. O'Brien deal with these  
14 issues. He's intimately familiar with it.

15 MR. DODGE: We can ask that. My  
16 understanding, just so maybe Mr. O'Brien can prepare,  
17 is that that umbrella loan agreement, as modified by  
18 the 1977 report and order referenced in this  
19 edition --

20 MR. LARSON: 1997?

21 MR. DODGE: Thank you. 1997 order limits  
22 loans out of PacifiCorp to others to an aggregate of  
23 \$200 million at any given time. It lifted the limit,  
24 however, on loans to PacifiCorp from affiliate, and I  
25 guess that's the question. Is my understanding

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1 accurate as to the intended limits of that affiliate  
2 loan agreement?

3 MR. LARSON: I think that's correct, but  
4 Mr. O'Brien can go into the detail on it.

5 MR. DODGE: Okay. I have no further  
6 questions on that.

7 CHAIRMAN MECHAM: Mr. Mattheis?

8 MR. MATTHEIS: Yeah. Just a couple quick  
9 questions. Mr. Wright, if -- I don't know if you  
10 have a copy of this in front of you --

11 MR. WRIGHT: I do not.

12 MR. MATTHEIS: The copies we have received  
13 of it do not appear to be signed, but it would be the  
14 intent of ScottishPower to abide by the terms and  
15 conditions approved in the '97 Commission order  
16 whether or not the underlying loan agreement was an  
17 executed document?

18 MR. WRIGHT: As I haven't seen it, I didn't  
19 know whether it was signed or not. I think we have  
20 to assume for the purpose of the condition that it

21 had been executed.

22 MR. MATTHEIS: So that would be yes? I

23 mean, you would abide by it, whether or not it's an

24 executed document?

25 MR. WRIGHT: Yes.

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1 MR. FELL: The document has been executed.  
2 It's been executed by all parties.

3 MR. DODGE: Is that accurate? We were just  
4 told to the contrary.

5 MR. REEDER: Could we just ask that it be  
6 produced and made a part of the record so we know  
7 what the final document is and what it says?

8 MR. HUNTER: We'd be happy to do that.

9 CHAIRMAN MECHAM: Sounds simple enough.

10 MR. HUNTER: In fact, when Mr. O'Brien gets  
11 on the stand, he will be prepared.

12 MR. MATTHEIS: With that, I have no other  
13 questions.

14 CHAIRMAN MECHAM: All right. Mr. Reeder?

15 MR. REEDER: Mr. Larson and Mr. Wright, and  
16 even to you, Mr. Alt and Mr. Gimble, is it your  
17 understanding that the loans that PacifiCorp might  
18 make are \$200 million per affiliate?

19 MR. LARSON: To simplify this, I think if  
20 we just pass all of these questions to Mr. O'Brien,

21 he can answer them all and we'll get it done quickly.

22 MR. REEDER: Okay. Let's go to the

23 stipulation. Mr. Alt, you, on behalf of the Division

24 recommended they enter into the stipulation. Do you

25 have an understanding that this was a \$200 million

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1 limit one time or a \$200 million per affiliate cap?

2 MR. ALT: To my recollection, on the break,  
3 Mr. Burrup mentioned to me that was one item that was  
4 not completely clear, as I recall. He's nodding yes,  
5 that I remembered correctly. So I guess the  
6 agreement says what it says and on that point we're  
7 not clear.

8 MR. REEDER: So, hypothetically, if  
9 PacifiCorp has 20 affiliates, how much money can it  
10 loan out?

11 MR. ALT: Hopefully not more than it has.

12 MR. REEDER: Mr. Alt, if PacifiCorp borrows  
13 \$5 billion in the short-term market and has \$1  
14 billion cash in the bank, can it loan out that full  
15 \$6 billion under this loan agreement?

16 MR. ALT: I don't know. I haven't read the  
17 agreement myself personally. You can ask Mr. Burrup  
18 that.

19 MR. HUNTER: The Commission's order seems  
20 to clearly --

21 CHAIRMAN MECHAM: Our order is quite clear.

22 MR. ALT: I haven't even read the order.

23 CHAIRMAN MECHAM: It seems to say in the

24 aggregate.

25 MR. REEDER: In the aggregate per affiliate

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1 or in the aggregate --

2 CHAIRMAN MECHAM: Well, it refers to  
3 subsidiaries. I would interpret that as meaning  
4 completely. \$200 million at any one time.

5 MR. REEDER: Intercompany loans capped at  
6 \$200 million?

7 CHAIRMAN MECHAM: They have 20 affiliates.  
8 There's \$200 million out and no more. That's the way  
9 I would read that order.

10 MR. REEDER: So if PacifiCorp has \$6  
11 billion cash on its balance sheet, only \$200 million  
12 can get out?

13 CHAIRMAN MECHAM: Well, from our very clear  
14 order, that would be the way I would interpret it.

15 MR. REEDER: I have nothing further. That  
16 order is clear now.

17 COMMISSIONER WHITE: Noticing that the  
18 order does say "without limitation," so it seems to  
19 be at odds with the other paragraph we're looking at  
20 that does have a limitation.

21 MR. FELL: Mr. Chairman, it would be useful  
22 for Mr. O'Brien -- to hold this for Mr. O'Brien  
23 because it actually is a beneficial arrangement for  
24 PacifiCorp to have that loan agreement. He could  
25 explain more about that.

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1 MR. HUNTER: We can make our representation  
2 as to what we think the order says. \$200 million is  
3 the limit in aggregate. That's up. Down, you --

4 MR. TINGEY: Out.

5 MR. HUNTER: Out. That's the limit on the  
6 amount we can loan, and that's the way we read it.  
7 That's the way the application we filed with the  
8 Commission stated it. I don't think -- there has  
9 never been any confusion in the past.

10 MR. REEDER: So, adding ScottishPower in  
11 here, the limit didn't change? The total balance  
12 sheet can never exceed \$200 million. ScottishPower  
13 could have a note in there? Is that the way you  
14 understand the stipulation, Mr. Witnesses? You were  
15 afraid I was going to ask you, weren't you?

16 MR. HUNTER: No. I was waiting for my  
17 name. We are doing a certain amount of testifying as  
18 attorneys, but Mr. O'Brien can make it clear.

19 MR. REEDER: Mr. Alt, when you agreed to  
20 the stipulation, what was your understanding? \$200

21 million total?

22 THE WITNESS: I told you, I personally

23 didn't have an understanding. My understanding was

24 that our staff -- the Division staff was comfortable

25 with this condition in mitigating the risk that we

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1 saw, and that the actual specific terms I didn't  
2 personally get -- read it and understand it. That's  
3 not my area of expertise. So one of our CPAs, Mr.  
4 Burrup -- that is his area. You can ask him what his  
5 understanding was when he represented to me that it  
6 covered our risk.

7 MR. REEDER: Mr. Gimble?

8 MR. GIMBLE: I am not intimately familiar  
9 with the agreement up until now, but it seems to cap  
10 at 200 million.

11 MR. REEDER: It was your understanding it  
12 was a cap at 200 million?

13 MR. GIMBLE: That's my understanding right  
14 now, reading it.

15 MR. REEDER: Is there any prohibition on  
16 the affiliate loaning the money upstream so you go  
17 from PacifiCorp to affiliate upstream? Mr. Alt?

18 MR. ALT: The agreement -- I mean, the  
19 condition says -- simply says at the end that  
20 ScottishPower defines -- well, says, "shall be deemed

21 an affiliate in accordance with the terms of the  
22 umbrella loan agreement," so if the agreement  
23 provides for that type of a loan from PacifiCorp to  
24 an affiliate, I would assume that it means upstream  
25 to ScottishPower, but again, I haven't read the loan

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1 agreement to know.

2 MR. REEDER: Was it your intention in the  
3 stipulation that the affiliates be precluded from  
4 loaning upstream to ScottishPower?

5 MR. ALT: I'm not sure that our intent was  
6 that they be not permitted, but there be restrictions  
7 on the nature of the loan, and that's my  
8 understanding of what that loan agreement does.  
9 Again, I'm not the expert in this area.

10 MR. REEDER: I have nothing further. It  
11 appears that we've got several instructions of what  
12 that may mean and how it will operate.

13 CHAIRMAN MECHAM: Well, we expect Mr.  
14 O'Brien to make it perfectly clear to us. Let's move  
15 to 15.

16 MR. FELL: Mr. Chairman, could I go back  
17 and tie down one of the other issues that came up,  
18 and that was whether transaction costs could be  
19 included somehow in FERC transaction rates?

20 CHAIRMAN MECHAM: Yes.

21 MR. FELL: For transmission or for  
22 wholesale power. The FERC merger approval order,  
23 dated June 16, 1999, says -- and I quote --  
24 "PacifiCorp commits to exclude all  
25 transaction-related costs from rates for transmission

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1 service and wholesale power sales." The result of  
2 that is that the transition costs will not appear in  
3 transmission rates or in wholesale power costs.

4 MR. REEDER: I suppose you would be -- are  
5 transaction costs as referred to by PacifiCorp in  
6 that commitment the same transaction costs the  
7 witness had referred to here, or do we have the same  
8 dispute that you had in Wyoming?

9 MR. FELL: We actually didn't have a  
10 dispute in Wyoming. We made it clear in Wyoming in  
11 the exhibit that was filed. And you're asking  
12 whether the Company would define them the same way?

13 MR. REEDER: Precisely.

14 MR. FELL: And I think Mr. Larson said the  
15 answer to that was yes, that they would treat them  
16 uniformly.

17 MR. REEDER: Thank you.

18 CHAIRMAN MECHAM: All right. Thank you.

19 Let's go to condition 15. Anything, Mr. Dodge?

20 MR. DODGE: I have no questions.

- 21 CHAIRMAN MECHAM: Mr. Mattheis?
- 22 MR. MATTHEIS: No questions.
- 23 CHAIRMAN MECHAM: Mr. Reeder?
- 24 MR. REEDER: Why two years? For Mr. Morris
- 25 I have questions concerning the longer term of the UK

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1 condition, and why two years here. Why two years,  
2 Mr. Alt?

3 MR. ALT: First, my understanding is that  
4 the two years only applies to the cash flow summary,  
5 not the certification requirements in the latter part  
6 of that condition. Is that your understanding? I  
7 guess I can't ask you questions.

8 MR. REEDER: You can. I will say I'm not  
9 clear.

10 MR. ALT: Well, that's the Division's  
11 understanding, that the two years apply to the cash  
12 flow summary. And, again, that was an internal staff  
13 recommendation and I don't specifically remember why  
14 we restricted it to two years. Again, you can  
15 probably ask Mr. Burrup that question.

16 MR. REEDER: Mr. Wright, do you agree with  
17 Mr. Alt's construction of that sentence? Two years  
18 applies only to the cash flow of the dividends for  
19 constrained by certifications forever?

20 MR. WRIGHT: I'm not sure it was discussed

21 when the stipulation was arrived at. I would merely  
22 point out that we wouldn't have a problem with that  
23 extending. It certainly would be our intention to  
24 make sure that PacifiCorp was adequately covered to  
25 meet all of its outstanding commitments and carry out

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1 its public service obligations in the state of Utah,  
2 but as to the duration, the problem with not having  
3 fixed durations in these things is that the  
4 implication is it lasts forever, which is equally not  
5 relevant. At some future point to be determined, I  
6 think people will accept that PacifiCorp was part of  
7 ScottishPower and this condition would fall away. I  
8 don't think it's intended that it last forever, but  
9 neither do I think -- I wouldn't object to that  
10 particular part lasting for longer than two years.

11 MR. REEDER: Let me make sure I understand  
12 what you said. Cash flow is limited to two years.  
13 Certification is unlimited, correct?

14 MR. WRIGHT: Well, as I say, I think this  
15 problem is saying something that's not bounded by any  
16 time, but we could -- we could certainly agree to a  
17 longer time period if that was a concern. I'm just  
18 reluctant to agree to forever because what is  
19 forever. I think it becomes redundant after a  
20 sensible period of time.

21 MR. REEDER: It is presently unconstrained

22 by time?

23 MR. WRIGHT: Well, as I say, I can't

24 recall, and I was involved in negotiating this

25 stipulation. I can't recall a discussion relating to

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1 whether the two years applied to just the first  
2 sentence or the second sentence. What I've said is  
3 if there are parties that think that that needs to be  
4 a longer time duration, we could look at that.

5 MR. REEDER: Mr. Larson, were you a party  
6 to these negotiations?

7 MR. LARSON: I think I've already said  
8 previously I was.

9 MR. REEDER: Do you read paragraph 15 as  
10 Mr. Alt reads paragraph 15?

11 MR. LARSON: I concur with what Mr. Wright  
12 just said.

13 MR. REEDER: Mr. Gimble? Shall we go for  
14 two for two?

15 MR. GIMBLE: Please ask the question.

16 MR. REEDER: Do you agree that the two-year  
17 limitation in paragraph 15 limits only the obligation  
18 to file cash flow summaries and does not limit the  
19 obligation to file a certification otherwise  
20 required?

21 MR. GIMBLE: Yes.

22 MR. REEDER: Thank you.

23 CHAIRMAN MECHAM: Thank you. Does anyone

24 else have a question on that?

25 COMMISSIONER WHITE: Well, when it says --

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1 in the second sentence when it says that an officer  
2 of PacifiCorp will certify certain things, that  
3 officer could be someone who was assigned to  
4 PacifiCorp from the corporate parent, from  
5 ScottishPower, it seems to me, or was the intent that  
6 it be a PacifiCorp officer who is located in Utah? I  
7 mean, the certification pertains to the state of  
8 Utah.

9 MR. ALT: My recollection is I don't think  
10 we talked about it specifically. In my own  
11 interpretation it means it could be someone in  
12 Portland. I don't think we intended it had to be  
13 that person that they've committed to be located in  
14 Utah.

15 COMMISSIONER WHITE: I guess a concern that  
16 I think could come up is if there is a disagreement  
17 between local management and the ScottishPower parent  
18 over whether the Utah operations had sufficient  
19 capital, is an officer of PacifiCorp really going to  
20 contravene orders from the corporate parent and

21 refuse to certify? I mean, I'm not sure how much

22 this provision really means.

23 MR. ALT: Well, I guess -- again, not being

24 a lawyer, but I was thinking that if an officer

25 certified that it would not create a problem for

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1 meeting their commitments and, in fact, we had  
2 evidence that it did later, wouldn't there be some  
3 recourse that the Commission or other parties could  
4 take because of that failure to meet -- you know,  
5 it's basically certifying something that turned out  
6 to be just the opposite of what they certified.  
7 Isn't there some action we could take?

8 MR. LARSON: I guess I would just note for  
9 the record that, you know, once the transaction is  
10 completed, Mr. Alan Richardson will become the chief  
11 executive officer of PacifiCorp and an employee of  
12 PacifiCorp, and he is currently a member of the board  
13 of directors of ScottishPower, and I think he will  
14 have full authority to sign the documents on behalf  
15 of PacifiCorp.

16 COMMISSIONER WHITE: Thanks.

17 CHAIRMAN MECHAM: Okay. Let's go to 16,  
18 then. Mr. Dodge?

19 MR. DODGE: I have no questions on 16.

20 MR. MATTHEIS: No questions.

21 MR. REEDER: No questions.

22 MR. McNULTY: Commissioner?

23 CHAIRMAN MECHAM: Mr. McNulty.

24 MR. McNULTY: Mr. Wright, before we were --

25 I was asking you about the penalty provisions that

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1 are found in Attachment 1 and you indicated that you  
2 thought maybe the penalty provisions would be better  
3 discussed in relationship to this Number 16. I guess  
4 I -- this is more housekeeping than anything else. I  
5 wanted to make sure, is it your understanding that  
6 the penalties that are to be paid to the customers  
7 are in addition to any other remedies that are  
8 available to customers?

9 MR. WRIGHT: That's correct, yes.

10 MR. McNULTY: Mr. Larson, is that your  
11 understanding as well?

12 MR. LARSON: Yes.

13 MR. McNULTY: There's one other small  
14 issue. Paragraph 16 indicates that the penalties  
15 will be paid for failure to meet any of the five  
16 network performance standards in Utah, but it says  
17 that ScottishPower will make the payments. Do we  
18 really -- do we mean PacifiCorp there as the  
19 operating entity in this state?

20 MR. WRIGHT: I think the intention of using

21 ScottishPower was to make clear that this is  
22 shareholder funds rather than possibly, you know,  
23 ratepayers' funds, so that how I've construed that.  
24 That's the intention.  
25 MR. McNULTY: Mr. Larson, is that your

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1 understanding?

2 MR. LARSON: Correct.

3 CHAIRMAN MECHAM: Anything further on 16?

4 Let's move to 17.

5 MR. DODGE: I guess the only question I  
6 have on 17, and perhaps for you, Mr. Larson, which of  
7 the reports listed there are public, A; and B, which  
8 ones would you normally, upon request, make available  
9 to customers of those that aren't public?

10 MR. LARSON: Let me do my best and walk  
11 through those. Certainly the FERC Form 1 is a public  
12 document and filed, both the PacifiCorp and then also  
13 the State Form 1, filed with the Public Service  
14 Commission. The annual and quarterly reports are  
15 public documents. The semiannual is a public  
16 document. It's filed with the Commission, the DPU  
17 and Committee. The monthly financial and operating  
18 reports are filed with the DPU. I think those are  
19 available. I think the same with -- the SEC reports  
20 are public. The annual class cost of service study

21 is something that's filed with the Commission on an  
22 annual basis. I'm not intimately familiar, but I  
23 would suspect that the EIA 826 is a public report.  
24 And the affiliated interest report is filed annually  
25 with the Commission, the DPU and Committee. The

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1 five-year financial plan is something that is not a  
2 public report and is made available for review at  
3 PacifiCorp offices.

4 MR. DODGE: So other than (i), the Company  
5 would have no trouble giving the other information  
6 upon request to the customers?

7 MR. LARSON: No.

8 MR. DODGE: Thank you. No further  
9 questions.

10 CHAIRMAN MECHAM: Mr. Mattheis?

11 MR. MATTHEIS: No questions.

12 CHAIRMAN MECHAM: Mr. Reeder?

13 MR. REEDER: No questions.

14 COMMISSIONER WHITE: Mr. Larson, you  
15 weren't completely clear on subparagraph (f) and (h).  
16 Did you intend to indicate that those would be public?

17 MR. LARSON: Yes. The annual, of course,  
18 is filed with the Commission and it's --

19 COMMISSIONER WHITE: Yeah, you indicated  
20 it's filed with the Commission. It wasn't clear to

21 me --

22 MR. LARSON: It's not under protective  
23 order, certainly, and it's not something we file with  
24 the general public, but it certainly is available for  
25 anyone that wants to look at it.

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1           COMMISSIONER WHITE: What's the problem  
2 with filing the five-year financial plan and forecast  
3 under provisions of confidentiality? What was the  
4 reason for indicating that it wouldn't be filed but  
5 it would be available?

6           MR. LARSON: Well, I think obviously a  
7 five-year financial plan contains with it forecasts  
8 of earnings which have a huge impact on potential  
9 stock prices, and this stuff is highly sensitive and  
10 therefore we keep this stuff on Company premises, and  
11 folks can look at it and people have looked at our  
12 five-year plans in the past, but, you know, to the  
13 extent that it gets out or somehow, it has a huge  
14 impact potentially on the stock market.

15          CHAIRMAN MECHAM: Anything further on 17?  
16 Let's move to 18.

17          MR. DODGE: I always hesitate to go  
18 anywhere where FASB appears because I don't  
19 understand it well, but is FASB 52 a standard that  
20 this Commission has adopted for ratemaking purposes,

21 Mr. Larson?

22 MR. LARSON: And I haven't spent a lot of  
23 time with FASB 52. It really deals with foreign  
24 currency accounting, and this condition is just  
25 stating that we will comply with FASB 52. If you

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1 wanted more detail on the specifics of FASB 52, Mr.  
2 Morris could go into excruciating detail with you.

3 MR. DODGE: I will allow someone who  
4 understands it better, like Commissioner Jones or  
5 someone, to ask the questions. No further questions.

6 MR. MATTHEIS: No questions.

7 MR. REEDER: I, too, am timid about FASB.  
8 No questions.

9 CHAIRMAN MECHAM: I'm incredulous.

10 MR. REEDER: Well, just occasionally.

11 CHAIRMAN MECHAM: Okay. Let's move to 19.

12 MR. DODGE: I have no questions. My one  
13 question on 19 was asked earlier.

14 CHAIRMAN MECHAM: All right.

15 MR. MATTHEIS: I have no questions.

16 CHAIRMAN MECHAM: Anything, Mr. Reeder? We  
17 have been on this ground before.

18 MR. REEDER: We have. If I can have just a  
19 moment to prepare a note on -- no, I have nothing at  
20 this time.

21 CHAIRMAN MECHAM: Does anyone else have  
22 anything on 19?

23 COMMISSIONER JONES: I just had a  
24 question. Who determines what group of A utilities  
25 is used there. Is that DPU's decision?

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1 MR. ALT: Actually, it's a Commission  
2 decision, assuming, like anything else, if it's in  
3 dispute, different parties have different views about  
4 what the comparable list is. We envision, just like  
5 in a rate case where you determine rate of return on  
6 equity, that you would maybe help resolve that.

7 MR. LARSON: And I guess I would say that  
8 this is just one of many of the conditions here that  
9 memorializes what is currently the practice with  
10 PacifiCorp and really not anything different than  
11 ScottishPower.

12 CHAIRMAN MECHAM: All right. Thank you.  
13 Let's go to 20.

14 MR. DODGE: My only question on 20 is  
15 whether the Company will agree, without further  
16 request, that that be sent to intervenors in the  
17 proceeding. I guess that's for Mr. Larson or Mr.  
18 Wright.

19 CHAIRMAN MECHAM: Any response?

20 MR. WRIGHT: Yes. I hesitate because I

21 don't know that I have detailed a current semiannual  
22 filings with the Commission and therefore I wouldn't  
23 want to, without knowledge of that, to just agree to  
24 that. If the semiannual filing -- maybe we can clear  
25 that up. Was that on one of the previous --

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1 MR. DODGE: And I don't mean to request  
2 automatically all semiannuals go to all intervenors.  
3 I'm just talking about this first report. After that  
4 it will be in the summary.

5 MR. WRIGHT: I don't perceive a problem  
6 with that.

7 MR. DODGE: Thank you.

8 CHAIRMAN MECHAM: Anything, Mr. Mattheis?

9 MR. MATTHEIS: No questions.

10 CHAIRMAN MECHAM: Mr. Reeder?

11 MR. REEDER: Nothing on 20.

12 CHAIRMAN MECHAM: All right. Let's go to  
13 21.

14 MR. DODGE: I believe my question on that  
15 was asked earlier, so I have no other questions.

16 CHAIRMAN MECHAM: Anyone else?

17 MR. REEDER: I have a question on 21 for  
18 Mr. Morris.

19 CHAIRMAN MECHAM: Okay. If there's nothing  
20 further on 21, let's go to 22.

21 MR. DODGE: Mr. Alt, this is where you --  
22 my understanding is that under a recent amendment of  
23 Utah Code Annotated, Section 54-4-31, it enables  
24 utilities to apply under Commission promulgated  
25 standards for a waiver of the requirement to apply

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1 for Commission approval of debt issuances of certain  
2 types, and this exception -- or, excuse me, this  
3 stipulation suggests after 12 months the Company may  
4 apply for one.

5 My first question is: To your knowledge,  
6 has the Commission promulgated any standards pursuant  
7 to which that sort of a request would be filed at  
8 this point?

9 MR. ALT: Well, if I understand your  
10 question correctly, a few years ago, and I can't  
11 remember precisely, the statute was changed to allow  
12 the Commission the option of, through rulemaking, of  
13 waiving the filing requirements and approval of debt  
14 issuance, or I think it's even broader than that,  
15 security issues, and the Division, I might add, was  
16 supportive of that legislative change at the time.  
17 However, we felt with this merger that there were  
18 some new risks that, at least initially and for some  
19 short time or some reasonable time period, we wanted  
20 the Commission to retract that waiver that they had

21 already granted in rulemaking, basically reverse that  
22 rulemaking and to re-require the Company to get  
23 Commission approval for security issuances under the  
24 statute as original, and with the idea that after a  
25 year, that the Company could re-apply for that to be

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1 changed back the way it is now. Not that it would be  
2 automatic, but that they could apply after a year and  
3 we would deal with it then based on our experience,  
4 so that's our understanding of what this was about.  
5 And it was a Division requirement. You know, when we  
6 were negotiating, we felt this was important.

7 MR. DODGE: And there's no implied consent  
8 by the Division with any filing after a year to  
9 exempt?

10 MR. ALT: That's not our interpretation.  
11 Our interpretation is simply that we recognize that  
12 after a year it would be a reasonable time for them  
13 to apply for, you know, re-application of this waiver  
14 and that we would deal with it based on the merits at  
15 that time and not prejudge it.

16 MR. DODGE: To your knowledge, has any  
17 utility requested a waiver under this section up to  
18 this point?

19 MR. ALT: Well, my understanding is that  
20 PacifiCorp currently has exercised that waiver and

21 not filed for approval of security issuances after  
22 that rulemaking was implemented. I don't know how  
23 many, but I'm sure that they have used it.  
24 MR. DODGE: Mr. Larson, is that your  
25 understanding?

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1 MR. LARSON: That's correct.

2 MR. DODGE: Okay. I have no further

3 questions. Thank you.

4 CHAIRMAN MECHAM: Mr. Mattheis?

5 MR. MATTHEIS: No questions.

6 CHAIRMAN MECHAM: Mr. Reeder?

7 MR. REEDER: It would appear that the

8 questions that I have largely need to be initially

9 addressed by Mr. Morris. Then I would appreciate Mr.

10 Alt and Mr. Gimble's response after we've had a

11 comparison of the UK conditions with these

12 conditions.

13 CHAIRMAN MECHAM: All right. Let's go to

14 23.

15 MR. DODGE: I have a question, I guess, of

16 the applicants. Mr. Wright, maybe I'll start there.

17 Is it my understanding that ScottishPower intends, by

18 paragraph 23, to agree to a broad waiver of any claim

19 for any reason that this Commission doesn't have or

20 in the future may not have jurisdiction over

21 interaffiliate loans and cost allocations?

22 MR. WRIGHT: It's affiliate interest

23 transactions which is referenced in the condition.

24 MR. DODGE: And what does that reference?

25 Affiliated transactions and the cost allocation among

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1 them?

2 MR. WRIGHT: Correct.

3 MR. DODGE: Among the affiliates? And that  
4 it's intended to be a broad waiver regardless of  
5 whether any existing or future laws may give a claim  
6 for preemption?

7 MR. WRIGHT: That is correct.

8 MR. DODGE: So regardless of whether  
9 federal laws now or changes in the future could give  
10 the Company an argument that this Commission is  
11 preempted from exercising that jurisdiction, the  
12 Company agrees this Commission will retain that  
13 jurisdiction in all circumstances?

14 MR. WRIGHT: As it relates to the public  
15 utility holding company.

16 MR. DODGE: What about other acts? In  
17 other words, if there are other federal acts that in  
18 the future arguably give it grounds for preemption to  
19 a federal agency, is it the intention of the  
20 applicants to waive any claim that that preemption

21 occurs?

22 MR. WRIGHT: I'm not aware of what the  
23 federal acts are. This, of course, is a condition,  
24 is in relation to a particular concern that was  
25 actually shared amongst a number of jurisdictions

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1 which went to the point of whether there would be  
2 federal preemption in terms of cost allocations and  
3 affiliate transactions. That is what it deals with.  
4 You are asking me things that I have no knowledge of  
5 at all.

6 MR. DODGE: And if you have no knowledge,  
7 that's -- we can ask another witness, but let me just  
8 explore that just a bit. The last paragraph --  
9 sentence of that paragraph says, If the Public  
10 Utility Holding Company Act is repealed or modified,  
11 the companies still agree not to seek any preemption  
12 of any subsequent modification or repeal. I'm not  
13 quite sure what that means, but my question is: Is  
14 that intended to say that, regardless of what federal  
15 laws may change to or be enacted, regardless of  
16 whatever federal laws come along, this Company will  
17 always agree this Commission will have jurisdiction  
18 over the affiliate transaction, affiliated interest  
19 transaction?

20 MR. WRIGHT: With respect to the subject

21 matter of the Public Utility Holding Company Act, I

22 think that's fairly clear.

23 MR. DODGE: I guess I don't understand

24 that. The last sentence says, if that Act is

25 repealed, it still provides, even if it's repealed,

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1 so it goes away. What is intended to be conveyed by  
2 that agreement that the companies will not seek --  
3 will agree not to seek any preemption?

4 MR. FELL: Mr. Chairman, that is maybe a  
5 lawyer's question.

6 CHAIRMAN MECHAM: Well, yeah, although it  
7 is what the condition actually states, so --

8 MR. FELL: I think what I was going to say  
9 is that I think the language is fairly clear. I  
10 mean, the Commission is able to interpret or  
11 understand that last sentence standing on its own.  
12 It is the Commission that will be interpreting this  
13 section. As to other federal laws, the Federal Power  
14 Act, for example, preempts state jurisdiction on  
15 transmission services and rates and wholesale sales  
16 and that can't be waived, so there are all sorts of  
17 other federal laws that cannot be waived, but this --  
18 these particular provisions, the Securities and  
19 Exchange Commission has allowed state commissions to  
20 exercise authority such as is described in paragraph

21 23.

22 MR. DODGE: I guess, to be honest, I'm not  
23 sure what Mr. Fell just said, but what I'm trying to  
24 get to -- and if you can't answer it, Mr. Wright, I  
25 guess that's the answer and the Commission just has

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1 to answer that it may be ambiguous, unless someone  
2 else can answer it. My question is: As it relates  
3 to affiliate interest transaction and cost  
4 allocations among affiliates, is it the applicant's  
5 agreement that, under all circumstances, they will  
6 have jurisdiction and the Company will never argue  
7 they don't have jurisdiction to analyze that issue  
8 and make appropriate rulings vis-a-vis Utah rates?

9 MR. WRIGHT: Well, now you're in the right  
10 ball park. Previously you were stating all federal  
11 laws. The subject matter of PUHCA which this  
12 addresses is affiliate interest transactions. PUHCA  
13 is repealed or modified, by definition, and it will  
14 be replaced by something that will deal with that.  
15 If that is a federal law, we're saying that we won't  
16 seek preemption under that law for cost allocation  
17 issues at a state level.

18 MR. DODGE: Okay. So when you earlier said  
19 within the subject matter of PUHCA, you were limiting  
20 it to affiliated interest transactions?

21 MR. WRIGHT: That's what the condition

22 says.

23 MR. DODGE: I had misunderstood that.

24 Thank you.

25 CHAIRMAN MECHAM: Thank you. Mr.

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1 Mattheis?

2 MR. MATTHEIS: Just one quick question.

3 When I look at the words, any future Utah proceeding,

4 Mr. Wright, I assume that means any proceeding. Not

5 just Commission proceedings, court proceedings.

6 Anything that might arise in Utah?

7 MR. WRIGHT: Correct.

8 MR. MATTHEIS: That's all I have.

9 CHAIRMAN MECHAM: Mr. Reeder?

10 MR. REEDER: No questions.

11 CHAIRMAN MECHAM: Thank you. Anything from

12 anyone else on this condition?

13 MR. REEDER: Maybe someone could explain to

14 us at some point what Ohio Power versus FERC stands

15 for, but not today.

16 MR. FELL: We can take it up after the

17 adjournment.

18 CHAIRMAN MECHAM: Let's go to 24.

19 MR. DODGE: I have no questions on 24.

20 CHAIRMAN MECHAM: From anyone over there?

21 MR. MATTHEIS: I have no questions.

22 COMMISSIONER WHITE: I don't understand

23 what's in the SEC filed lobbying reports. Could you

24 give me an idea what that condition refers to?

25 MR. ALT: I was afraid you were going to

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1 ask, and I'm not prepared to answer. Mr. Powell,  
2 William Powell, was our witness on this in reviewing  
3 the PUHCA requirements and impacts, and I'd have to  
4 consult with him or you can get the answer or you can  
5 wait till he's on the stand.

6 COMMISSIONER WHITE: I can wait.

7 MR. ALT: Okay.

8 CHAIRMAN MECHAM: Okay. Let's -- if  
9 there's something funny, we need to know.

10 Okay. Let's move to 25. We talked about  
11 25.

12 MR. DODGE: Mr. Chairman, maybe we need to  
13 get some guidance from you about what you want to do  
14 vis-a-vis the time, et cetera. It's in this  
15 condition that certain intervenors have suggested the  
16 addition of the words "and taxes" or "taxes" as an  
17 addition to that condition, and I guess it's here  
18 that we would go back to the issue of taxes and want  
19 to supplement the record with the confidential  
20 information. It may be that you would want us to do

21 that at the end of the hearing today when everybody  
22 is leaving, anyway, whether that be now or later.

23 CHAIRMAN MECHAM: We're getting close.

24 MR. DODGE: I was hoping.

25 CHAIRMAN MECHAM: Well, let's skip over 25

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1 and see what we've got beyond that for a few minutes  
2 here. How about 26?

3 MR. DODGE: I believe -- I forget now if it  
4 was you, Mr. Alt, or someone else that referred to  
5 this earlier, and maybe for the first time I begin to  
6 understand it, but the distinction between original  
7 and revalued costs, that relates to how the Company  
8 carries the value of assets on their own records  
9 after the merger? Is that accurate?

10 MR. ALT: I think Mr. Larson is the one  
11 that actually talked about it. In other words, we  
12 used rate base to apply the allowed rate of return on  
13 rate base to determine part of the revenue  
14 requirement, and that this says that the rates --  
15 that rate base would be based on the original cost  
16 and not revalued as a result of the merger. That was  
17 my understanding of the intent of this.

18 MR. DODGE: There's been some reference to  
19 the Company revaluing the assets on its own books.  
20 This is intended to insulate ratemaking from that

21 process?

22 MR. ALT: Yes.

23 MR. DODGE: I believe that's all the

24 questions I have on that.

25 CHAIRMAN MECHAM: Mr. Mattheis?

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1 MR. MATTHEIS: I don't think I have any  
2 questions here, either.

3 MR. REEDER: Mr. Alt, we discussed earlier  
4 that this condition, in your judgment, bars certain  
5 stranded costs claims for the premium that have been  
6 paid in this -- or to be paid in this transaction,  
7 does it not?

8 MR. ALT: As I understand it, to the degree  
9 that there's a relationship between the premium and  
10 stranded costs. I thought that's the link.

11 MR. REEDER: To the extent there is any  
12 claim made for the premium in a stranded cost claim  
13 in the future, it would be your position this  
14 agreement would preclude that?

15 MR. ALT: Yes.

16 MR. REEDER: Thank you. I have nothing  
17 further.

18 CHAIRMAN MECHAM: Anything further on 26?  
19 27?

20 MR. DODGE: I do have a question on 27.

21 Mr. Alt, if you're not the one to answer this, tell  
22 me, but I'm trying to understand the second clause in  
23 paragraph (a). It talks about not allowing  
24 underlying outages to increase above current levels,  
25 and the first clause talks about complying with the

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1 proposed performance standards. Does the second  
2 clause add something not included in the first  
3 clause? In other words, do the performance standards  
4 not already require outages not go below current  
5 outages?

6 MR. ALT: Let me see if I captured it.

7 We're talking about 27 (a)?

8 MR. DODGE: Right. I'm just trying to  
9 understand what the second clause includes that the  
10 first clause of 27 (a) does not.

11 MR. ALT: Okay. The first one is saying  
12 that they will comply with the performance standards  
13 and service guarantees, which theirs, if they don't  
14 meet -- they lay out the standards, and if they don't  
15 meet them -- like some of the standards have to do  
16 with duration of outages will improve by 10 percent  
17 at the end of five years, that kind of thing, and  
18 there's penalties if they don't. And then service  
19 guarantees relate to the payments of \$50 in some  
20 cases to customers if some particular guarantee is

21 not met.

22           The last clause is saying that the current  
23 level of reliability that PacifiCorp is providing  
24 prior to the merger, that we don't want it to  
25 deteriorate and that they will maintain it at or

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1 above those levels, the reliability. That's what  
2 that -- my interpretation of that second clause.

3 Does that answer the question?

4 MR. DODGE: Actually, I think that it  
5 does. It's an immediate requirement as opposed to  
6 one, for example, that has a five-year --

7 MR. ALT: Correct. Correct. We're not --  
8 we didn't -- we felt that, in the interim, we don't  
9 want to wait five years to find out that service is  
10 worse than what it is now. That would be a major  
11 thing against the net positive benefit standard, in  
12 my view.

13 MR. DODGE: And then my next question goes  
14 exactly to that. If they fail to meet that  
15 condition, do you fall back to the Commission's  
16 penalty powers?

17 MR. ALT: That's my interpretation. Mr.  
18 Maloney, our Division witness, is a witness in this  
19 area, but that's what my understanding is, and he's  
20 nodding his head so I will take that as confirmation

21 I'm speaking correctly.

22 MR. DODGE: Thank you. On paragraph (c) --

23 again, you may tell me to ask this of someone else,

24 which I'm willing to do. Do you understand by what

25 standard the "if necessary" will be measured in

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1 paragraph (c)?

2 MR. ALT: Well, I think the idea was in the  
3 Company's -- as I understand it, in the Company's  
4 original proposal, the performance standards only  
5 lasted and guarantees for that five-year period and  
6 there's nothing in their original filing that talked  
7 about, well, what happens after that time period?  
8 Will they be continued at that same level? Will we  
9 even have them? And the Division's view was, well,  
10 this, we thought, was one of the more significant  
11 benefits, even though it's hard to quantify it, but  
12 we thought it was a valuable benefit to the merger of  
13 getting these voluntary standards and commitments to  
14 make guarantees to customers. But we didn't want to  
15 say the -- you know, if that's what helped drive the  
16 net positive benefit and it only lasts five years,  
17 well, we want a net positive benefit, you know,  
18 throughout -- you know, continuing, not just for five  
19 years, and so this was to clarify with the Company,  
20 and they told us, yeah, we intended to keep something

21 going and maybe we want to revise them and make them  
22 even tighter and better than they are, and so this  
23 was a commitment. At the end of that time period, we  
24 will meet with the Company and we'll make some  
25 recommendations to the Commission, which it says here

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1 for their approval of continuation if we decide they  
2 need to be changed, so it -- does that kind of answer  
3 your question?

4 MR. DODGE: I think that it does, and  
5 implicit in that is that the Commission could adopt  
6 different or more rigorous standards than what the  
7 Company may recommend?

8 MR. ALT: Well, we think that the  
9 Commission has that authority already, and that --  
10 yes.

11 MR. DODGE: Then my last question on this  
12 paragraph is: Do you understand the performance  
13 standards referenced in this section to apply to  
14 transmission level issues or distribution level  
15 reliability issues or both?

16 MR. ALT: Well, the performance standard --  
17 well, for example, I mentioned the one on the  
18 duration, average duration of outages. The  
19 performance standards are based on statewide averages  
20 and, as I understand, include all compounds of the

21 system, because you're talking about the impact on  
22 customer outages, and so if you have a transmission  
23 outage that results in customer outages, then my  
24 understanding is that would impact the performance  
25 and therefore the measurement against the standard,

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1 so -- is that what you meant?

2 MR. DODGE: Yes, I think so. Is that your  
3 understanding, Mr. Wright, or would you defer that to  
4 Mr. MacLaren?

5 MR. WRIGHT: I am not the SAIDI, SAIFI and  
6 MAIFI expert for ScottishPower. Mr. MacLaren is and  
7 he will deal with these questions.

8 MR. DODGE: Thank you. That's fine. I  
9 have no further questions.

10 MR. MATTHEIS: I have nothing.

11 MR. REEDER: Nothing.

12 COMMISSIONER WHITE: In 27 (a), that second  
13 clause talks about, for the periods set out in  
14 ScottishPower witness Moir's direct testimony. I  
15 don't recall what those periods were.

16 MR. ALT: Unfortunately, nor do I. Mr.  
17 Maloney is the witness.

18 MR. WRIGHT: It's five years.

19 COMMISSIONER WHITE: Five years. Okay.  
20 Thanks.

21           COMMISSIONER JONES: Mr. Alt, if the  
22 Company doesn't perform based on the standards  
23 they've set up here, does the Commission have any  
24 other alternative other than a financial penalty to  
25 the Company?

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1           MR. ALT: Well, I think we're talking  
2 about, you know, whatever the Commission's authority  
3 is in the statutes, and there are provisions for  
4 financial penalties for violation of Commission  
5 orders and rules, and Mr. Maloney spent quite a bit  
6 of time researching that. The Commission has broad  
7 powers. Again, I'm not an attorney, and I'm fairly  
8 familiar with the code but I'm not, you know,  
9 specific, not knowledgeable enough about specific  
10 powers that the Commission has for recourse if they  
11 don't meet this. I know they have the penalty.  
12 There's up to a maximum of -- I think it's like  
13 \$2,000 a day for violation of a Commission order,  
14 you know, in each instance or something. Mr. Maloney  
15 is more versed in that than I am. I'm sorry.

16           COMMISSIONER JONES: I'll ask him that.

17           CHAIRMAN MECHAM: Okay. Let's go off the  
18 record.

19           (Discussion off the record.)

20           CHAIRMAN MECHAM: We'll quit for today and

21 come back at quarter to 9:00.

22 (Record closed at 5:13 p.m.)

23 \* \* \* \*

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REPORTER'S CERTIFICATE

STATE OF UTAH     )  
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COUNTY OF SALT LAKE )

I, RENEE L. STACY, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public for the State of Utah, do hereby certify that the foregoing transcript, consisting of pages 129 to 254, was stenographically reported by me at the time and place hereinbefore set forth; that the same was thereafter reduced to typewritten form, and that the foregoing is a true and correct transcript of those proceedings.

Dated this 3rd day of August, 1999.

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RENEE L. STACY, CSR, RPR

My Commission expires:

November 9, 1999

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