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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of: The

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Docket No. 04-035-04

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Petition of Desert

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Power, LP for Approval

)

TRANSCRIPT OF

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of a Contract for the

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PROCEEDINGS

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Sale of Capacity and

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Energy from its

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TECHNICAL CONFERENCE

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Proposed QF Facilities

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August 31, 2006 \* 1:30 p.m.

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Location: Public Service Commission

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160 East 300 South, Hearing Room

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Salt Lake City, Utah

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## 1 A P P E A R A N C E S

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4 Ron Allen, Commissioner

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Charles Darling  
18 Karl Miller  
Roger Swenson

19

FOR PACIFICORP:

20

21 David L. Elmont, Esq.  
Bruce Griswold  
Douglas Bennion  
22 Kenneth Houston  
Dean Brockbank  
23 Mark Moench

24 FOR ICGA:

25 Mike McCarvey

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## 1 P R O C E E D I N G S

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3 COMMISSIONER CAMPBELL: Let's go on the  
4 record in Docket 04-035-04 in the matter of the  
5 petition of Desert Power, LP for approval of a  
6 contract for the sale of capacity and energy from its  
7 proposed QF facilities.

8 We are in a Technical Conference. The  
9 intent is to be able to share information with each  
10 other and perhaps in a little freer method than will  
11 take place at our hearing next week if that goes  
12 forward. What I would like to do is turn some time  
13 over to Karl Miller from MMC to talk to us about  
14 their proposed purchase of Desert Power and see if  
15 any of the parties have questions for him.

16 Go ahead, Mr. Miller.

17 MR. MILLER: Thank you, Mr. Chairman.

18 My name is Karl Miller. Thank you for  
19 allowing me to speak briefly. I realize that my time  
20 is going to be brief with you today, but I think that  
21 it's important that I be here to do two things. One  
22 is introduce my company so that the stakeholders,  
23 PacifiCorp, the Commission, and anybody who has  
24 relevant involvement in this matter know who we are.  
25 And more importantly, secondarily, understand why

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1 we're going to be involved in the Desert Power  
2 project and what our intentions are and what some of  
3 the key conditions of that involvement are.

4           MMC Energy is a public company. We're  
5 listed on the NASDAQ in the U.S. and on the Deutsche  
6 Borse in Germany. We are an acquisition firm. We  
7 buy, own, operate power plants, primarily in North  
8 America. The executives and the board members of MMC  
9 are clearly experts in the field and I will leave it  
10 up to you do your own research. And we're happy to  
11 answer with experts any data requests that come  
12 regarding our business or matters that are relevant  
13 to Desert Power.

14           But for the purpose of this group today,  
15 we have executed a letter of intent with exclusivity  
16 with the principals of Desert Power to acquire 100  
17 percent of the operating project and all ancillary  
18 assets, contracts, permits, and anything that really  
19 is relevant to the project, including the PPA with  
20 PacifiCorp.

21           And I will get right to the direct point.  
22 The basis of the transaction that will allow not only  
23 this project to continue for the benefit of the State  
24 of Utah and the ratepayers and, frankly, to serve the  
25 reliability purposes of the grid is, very simply, a  
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1        bona fide PPA. The Power Purchase Agreement has to  
2        be upheld in current form, or relatively close to  
3        current form, notwithstanding the date of  
4        commissioning the facility to allow the plant to be  
5        financed in the capital markets.

6                MMC will provide the equity. But as you  
7        know, these projects typically will have project  
8        finance debt from any number of project finance banks  
9        or other lenders in the marketplace.

10                So it's absolutely critical that this  
11        Power Purchase Agreement be resolved such that the  
12        project can get brought back into the construction  
13        status and completion as soon as possible, and any  
14        changes in the current pricing structure that is  
15        basically documented in the contract today will  
16        technically render the project non-financeable. And  
17        I'll let the principals of Desert Power certainly  
18        speak to that in more detail. I will give you MMC's  
19        position on that.

20                So we are in negotiation to sign a  
21        definitive purchase and sale agreement, which is very  
22        close to be executed. MMC has had its own engineers  
23        evaluate the project. Our engineers are Worley  
24        Parsons, a very reputable, large, global engineering  
25        firm. We have met with the current design engineers  
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1 and the contractors who have been working on the  
2 facility and we have done our own analysis and we  
3 believe that the facility is viable and can be  
4 completed and be a productive facility in the system  
5 and also in the State of Utah.

6 But I want to stress that the premise and  
7 the key condition of MMC becoming the owner and  
8 operator of this facility is based on the  
9 preservation of the PPA that's before this  
10 Commission, and I assume that will be continued to be  
11 discussed.

12 We would like to see, frankly, settlement  
13 discussions advance. MMC is more than willing to sit  
14 down with the stakeholders and try to resolve any  
15 lingering issues that are outstanding that the  
16 principals, and Steve will certainly outline, because  
17 we believe that's the best for all parties. We don't  
18 believe that prolonged Commission process is in the  
19 best interest of the stakeholders or the project or  
20 anybody.

21 We believe that basically the project has  
22 got a relatively high amount of capital already  
23 expended. There are assets on the ground, there are  
24 commitments that have been made, and we believe that  
25 it can be brought back to fruition in very short  
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1 order if all parties sit down and negotiate. MMC is  
2 willing to do that and we would offer that up as part  
3 of our ongoing involvement in this process.

4 COMMISSIONER CAMPBELL: Mr. Brockbank?

5 MR. BROCKBANK: Just a question. Is MMC a  
6 current equity financier in the project or is there  
7 any relationship previous to this acquisition?

8 MR. MILLER: No. MMC has no capital,  
9 prior capital to the project. We are new capital.  
10 We would bring new equity and new debt to the project  
11 to complete it.

12 COMMISSIONER BOYER: Is the proposed  
13 structure of the transaction a stock purchase or an  
14 asset purchase?

15 MR. MILLER: I think ultimately we will  
16 acquire all of the assets of the project. There may  
17 be some structuring for tax purposes, but that's  
18 really irrelevant. MMC will be, as contemplated, 100  
19 percent owner of all the assets affiliated with the  
20 Desert Power project.

21 MR. GINSBERG: Michael Ginsberg. Under  
22 the terms of the current existing contract, does  
23 PacifiCorp have any role in either dealing with the  
24 asset transfer or purchase like this, either  
25 approving it or any other fashion, or can this just

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1 occur without any interaction directly with them?

2 MR. MILLER: I'll defer the question to  
3 Mr. Mecham as regards the PPA, but as far as the  
4 other -- the ancillary assets that are related to the  
5 facility, i.e., the turbines and all of the equipment  
6 on the site. I don't believe, unless I'm missing  
7 something, that there is any involvement in that part  
8 of the transaction. I think the only involvement may  
9 be regarding the PPA, and I'll let Mr. Mecham address  
10 that.

11 MR. MECHAM: My recollection is is that  
12 there's an assignment provision in the existing  
13 contract for PacifiCorp's involvement.

14 COMMISSIONER CAMPBELL: We're going to  
15 need to speak up for our reporter to hear.

16 MR. DARLING: I think -- I mean, obviously  
17 we would review this with PacifiCorp, but I think  
18 where you sell all or substantially all of your  
19 assets, I think we have the right to make that  
20 assignment.

21 MR. BROCKBANK: That's my understanding of  
22 the reading as well. But we would expect to do --  
23 conduct due diligence to make sure that MMC was able  
24 to perform, provide the collateral and other issues.  
25 We would want to conduct due diligence and have

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1 discussions, obviously.

2 MR. MILLER: And MMC is certainly willing  
3 to enter into discussions and speak to those issues.

4 COMMISSIONER CAMPBELL: Other questions  
5 for Mr. Miller?

6 MR. ELMONT: Mr. Chairman, it may or may  
7 not be the appropriate time to reiterate what I said  
8 off the record, but just so we're clear and there's  
9 no misunderstanding.

10 I appreciated Mr. Miller's willingness to  
11 answer data requests, but I would just state at this  
12 point that if there is difficulty in getting  
13 participation, given the fact that MMC is not  
14 currently a party, that PacifiCorp would object to  
15 any use of Mr. Miller's testimony or Mr. Miller's  
16 statement, I should say, with regard to the  
17 Commission's decision, if there ends up needing to be  
18 a Commission decision here. So I just say that at  
19 the outset in the hopes that we can work through it.

20 COMMISSIONER CAMPBELL: Any other  
21 discussion about MMC?

22 All right. Thank you.

23 Ms. Coon, Andrea?

24 MS. COON: I believe PacifiCorp is saying  
25 they have some questions for MMC. I'm sorry, Mr.

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1 Chairman, if we can wait for just one minute.

2 COMMISSIONER CAMPBELL: Mark, this isn't  
3 formal. If you just want to ask your questions  
4 yourself we can identify it.

5 MR. MOENCH: Well, I hate to speak from  
6 the back of the room, but I do have a couple and I've  
7 articulated them to Dean. And if he wants to go  
8 forward he can do that, or if he would rather I do  
9 it, I'll do it.

10 MR. BROCKBANK: Well, I'll take the first  
11 one. The press release indicated that it was a stock  
12 purchase agreement, I believe, if I remember  
13 correctly, or at least the piece in the local paper  
14 that I read. And you had mentioned an asset  
15 purchase.

16 MR. MILLER: Well, what we released was  
17 the fact that we are acquiring the project or the  
18 intent of the parties, which will be documented in a  
19 formal purchase and sale agreement, which is very  
20 close to completion. The transaction surrounding  
21 that purchase and sale agreement would be structured  
22 very simply as cash and stock whereby MMC would give  
23 Desert Power cash, some portion in cash, and we would  
24 also give them some shares in MMC, the public  
25 company. So that was what the announcement, the

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1 public announcement was.

2                   So we are going to acquire that, but  
3 that's the compensation to Desert Power. And then  
4 there are really two others pieces to that. The  
5 second piece is, we didn't put a number to it, but of  
6 course we're going to put additional equity into the  
7 project and then of course additional debt financing  
8 into the project to complete it. So in addition to  
9 what's already in the capital structure, if you will,  
10 we will bring new equity and debt to the project to  
11 complete it.

12                   So there are two pieces. One is what  
13 we're paying Desert Power, which is a combination of  
14 cash and stock in MMC, and then we're buying all of  
15 the assets of the project companies and then we, of  
16 course, are going to put new equity and debt into the  
17 facility.

18                   MR. BROCKBANK: So MMC will not become the  
19 owner, if you will, of Desert Power, LP, the  
20 partnership?

21                   MR. MILLER: MMC would have a special  
22 purpose company, one of MMC's direct affiliates or  
23 subsidiaries. The way we operate our business is the  
24 holding company has a subsidiary called MMC Energy  
25 North America. And today we have under North America

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1 several power plants in California, another one we  
2 just announced in the Bakersfield area, and this  
3 would fall under that. It would be owned by FULCO  
4 North America, which is the operating company, and  
5 8-Power, a special purpose company that would own the  
6 LP.

7 MR. BROCKBANK: So the agreement would  
8 have to be assigned then, I imagine? Again, we're  
9 not looking at that question now, but it sounds like  
10 -- my initial understanding was that MMC or some  
11 affiliate of MMC would acquire Desert Power, LP, the  
12 entity, the partnership, and it sounds like that's  
13 not --

14 MR. DARLING: That's just in structuring  
15 right now. So that's what we're working through  
16 right now.

17 MR. BROCKBANK: Okay. And one other  
18 question. MMC is obviously aware of the dispute and  
19 hopefully familiar with the issues and the  
20 correspondence going back and forth. If MMC were to  
21 step in and finish the project, would they be willing  
22 to provide the security that PacifiCorp has claimed  
23 Desert Power is late on providing? I mean, is that  
24 something MMC is willing to do?

25 MR. WILLIAMS: Well, I think we would like  
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1 to talk to you about that, that and everything else  
2 that's on the table to resolve. Our intent would be  
3 to sit with PacifiCorp and to resolve the matter in a  
4 negotiation as quickly and expeditiously as possible  
5 to get you comfortable and us comfortable that all  
6 parties are moving forward such that the plant will  
7 be commissioned, we will commission the plant into  
8 the PPA and we will abide by, in essence, the terms  
9 of the current PPA with the exception of the  
10 extension.

11 And I will also add that we would probably  
12 seek a co-COD to rate the project and then alleviate  
13 the letter of credit at that time. But during the  
14 construction and commission phase that we would agree  
15 to, obviously, honor per the PPA the letter of credit  
16 and the departments that are in the document, in the  
17 PPA.

18 MR. BROCKBANK: Okay.

19 COMMISSIONER CAMPBELL: Is that it for  
20 questions to MMC?

21 MR. PETERSON: Actually, I just thought of  
22 a question. Chuck Peterson from the Division.

23 When you mentioned you were talking about  
24 the current PPA and there's a proposal to extend it  
25 to June 1st, 2007, are you saying or are you not  
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1 saying that you would commit to target the June 1st,  
2 2007 date at this point?

3 MR. MILLER: What I'm saying, what MMC is  
4 saying is that under the current terms of the PPA, if  
5 nothing else changed other than the COD date which  
6 would be pushed to June 1, 2007 per the prior  
7 discussions with PacifiCorp and I believe the  
8 consumers and even others, and MMC would endeavor to  
9 complete the project at that date.

10 So I guess your question is, do we believe  
11 we can do that? And my answer would be, we believe  
12 there's a high probability that that date can be met  
13 subject to I believe three factors. One is, when can  
14 the project be preengaged, i.e., when can the parties  
15 agree that we were back on track. Number two, there  
16 are two issues that obviously, as good as all energy  
17 companies are, that are always a factor especially in  
18 the mountain areas, weather and labor. We will  
19 endeavor to mitigate the labor problem by basically  
20 trying to reengage the project as quickly as possible  
21 with our engineers. The weather, obviously, we can't  
22 predict. But those are the two factors that I have  
23 to deal with as an owner and operator.

24 MR. PETERSON: That would be your  
25 intention?

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1                   MR. MILLER: That would be our intention,  
2     yes.

3                   MR. BROCKBANK: If I may, Mr. Chairman,  
4     along the lines of Chuck's question, you're obviously  
5     aware of the stipulation that the parties have  
6     entered into and that the Commission has approved  
7     that has June 1, 2007 as a cutoff for pricing? Your  
8     thoughts on that?

9                   MR. MILLER: Well, my thoughts are,  
10    unfortunately, they're pretty factual. If the  
11    pricing under the current PPA does not stand the  
12    project isn't financeable, simply put.

13                  MR. GINSBERG: Doesn't stand after June 1,  
14    '07?

15                  MR. MILLER: Well, if it doesn't stand  
16    today to bring the project back, such that new debt  
17    and equity can be brought -- really, the equity can  
18    take a risk. You know, equity can always decide it  
19    wanted to take a risk on the contract structure  
20    price. It's the debt capital market that will step  
21    in and dictate whether they will step into the breach  
22    of the balance.

23                  And as it stands today, if the pricing in  
24    the contract doesn't hold today to move the project  
25    forward, the project will not receive debt financing.

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1 And that's just, I think, a factual matter. That's  
2 been borne out in the market. So that is the first  
3 comment.

4 And I think that is what MMC would like to  
5 see hold is that the parties reach a mutually  
6 agreeable extension, which is on the table as June 1,  
7 2007, and to the extent that MMC and PacifiCorp can  
8 get comfortable on any collateral questions that  
9 arise in between that, today and that time, that's  
10 what we're targeting.

11 MR. BROCKBANK: I mean, obviously  
12 PacifiCorp's concern will be the ratepayer  
13 indifference standard to make sure that we're only  
14 paying avoided costs so that ratepayers aren't harmed  
15 more than --

16 COMMISSIONER CAMPBELL: So let me ask  
17 this. If the debt markets can't support it, is there  
18 enough room in the agreement or in the sale price  
19 that you put less equity in to be able to make it  
20 work?

21 MR. MILLER: Well, less equity would  
22 require more debt because, I mean, it's just a  
23 balance of debt and equity. So what MMC has looked  
24 at is, what is there today, what equipment has been  
25 ordered, what equipment is still in inventory and

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1       warehoused on site and is available, and we basically  
2       calculated the number to complete the plant with a  
3       variance.

4                       And so of that number to complete, if we  
5       put less equity in that number to complete the  
6       difference is, you know, one over. We're got to go  
7       to the debt market to finance the balance. And  
8       without the current pricing structure that's in the  
9       contract today holding, the ability for us to take  
10      that -- move that leverage around in any form is  
11      really non-existent. So it doesn't matter whether we  
12      put a dollar of equity in or 50 percent equity in or  
13      more, the debt markets -- the project wouldn't  
14      economically be viable is the answer. That's the  
15      short answer.

16                      COMMISSIONER CAMPBELL: I mean, at some  
17      price and at some time the project is viable, right?

18                      MR. MILLER: It's viable under the current  
19      PPA if all parties can see clear to move forward  
20      quickly.

21                      COMMISSIONER CAMPBELL: So you're  
22      basically saying that under a different avoided cost  
23      calculation that there would have to be some sort of  
24      debt write-off to make this project viable under a  
25      different avoided cost price?

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1                   MR. MILLER: Well, there's two ways to  
2 look at it today. If somebody were to take the  
3 project on today at a lesser economic contract value,  
4 you would have to look at several things. One is  
5 face value of all payables and debt and equities and  
6 say what is going to be required to complete the  
7 project, and you could look at 12 to 14, 15 percent  
8 return as a variance, which construction would sort  
9 of be the first piece.

10                   And today what I'm saying is that probably  
11 is where you are in this project. I mean, you don't  
12 have a very -- the project is not an aggressively  
13 priced project from the capital market perspective.  
14 But to complete the project with current debt on the  
15 books today, which is \$28.5 million, which is under  
16 it by one lender, with the current payables that are  
17 outstanding and the equity and capital commitments  
18 that are already on the ground, plus the new money  
19 required to complete and the risk that you factor in  
20 there because there will be variances, you don't have  
21 much room. The project doesn't really have really  
22 any room at all.

23                   And MMC would step into the breach and  
24 take on that risk and we would use our own equity to  
25 take on that risk , it's our own equity. But the  
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1 debt capital markets will not take that risk meaning  
2 if the price of the PPA changes from what it is today  
3 to some lower avoided cost, there really is no head  
4 room and so that would render the project  
5 non-financeable today.

6           If you're saying if everybody took a  
7 haircut today, meaning the current debt took some  
8 discount to what they were owed and all the vendors  
9 and payables were haircutted to some level such that  
10 the project was brought down to almost a zero  
11 outstanding balance and then you lowered the avoided  
12 cost and started from scratch, well, the question  
13 mark is what that number is and there would have to  
14 be something else.

15           But the short answer is the vendors are  
16 not going to take that kind of a haircut. The bank,  
17 I don't believe, is going to walk into the project  
18 and say, we're going to give up all of our  
19 outstanding payables. And that would also require  
20 many, many months of laborious negotiations which  
21 would kill the project as well.

22           So even if you tried to go down that  
23 root, or if the Desert Power principals were willing  
24 to try that, by the time we cleared that out of the  
25 system so that there was some number that we could

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1 say, let's start renegotiating and rebid the project  
2 from an economic standpoint, the time gap would have  
3 been too long and the project would be pushed out  
4 well beyond June of '07. So that's unfortunately  
5 where the project is today.

6 So what we're saying is the project has  
7 the ability to be completed, I think to be a very  
8 useful project under the current PPA if all parties  
9 can see their way clear to basically just agree to  
10 move forward with the time extension and potentially  
11 with a collateral discussion with PacifiCorp.

12 MR. BROCKBANK: How much equity is MMC  
13 planning to put in versus how much debt is necessary  
14 to make the project viable?

15 MR. MILLER: Don't hold me to the exact  
16 number, but we think this project will probably  
17 require 30 to \$35 million to complete in I believe  
18 working capital, and of that MMC is probably going to  
19 put in 70 percent then of true equity. The balance  
20 will be debt.

21 And, obviously, there's some variables in  
22 there as to what the final cost of certain items are,  
23 but the majority of that variance will be labor in  
24 the contract.

25 And Charles can speak to more accurately

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1 what's been put on the ground today, but the  
2 investment in the project today has been very  
3 significant. I mean, it's not a Greenfield project.  
4 You've got hard investment on the ground, you've got  
5 a simple-cycle facility for the conversion efforts to  
6 move the plant into a combined cycle mode, and the  
7 numbers are compelling. The plant has some true  
8 investment in it.

9 COMMISSIONER CAMPBELL: All right. Thank  
10 you very much.

11 MR. MILLER: Thank you for letting me  
12 speak.

13 COMMISSIONER CAMPBELL: I appreciate that.  
14 Andrea?

15 MS. COON: Thank you, Mr. Chairman.

16 I sent out documents to the parties and  
17 various participants in this workshop or for this  
18 technical conference today. I did make a very  
19 limited number of additional copies for those who  
20 were not included on that list. If we are in need of  
21 further copies we can, of course, make them. I  
22 believe Questar is going to need a copy for their  
23 files.

24 And what I had in mind was to specifically  
25 try and address the issue of the force majeure claim

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1 and the events surrounding it, which would be  
2 specifically transmission interconnection-related  
3 events. And most of the questions that I distributed  
4 go to that area.

5           And my idea was since Desert Power was the  
6 original filer in this docket, they filed the  
7 original pleading to open this docket back up, I  
8 would allow them to answer questions first, followed  
9 by PacifiCorp. And I would just request from the  
10 parties, due to time limitations that we have this  
11 afternoon, to try and stay as close to topic of the  
12 actual question as possible and perhaps we can move  
13 into a discussion from there. But please, on your  
14 original answer, please confine to as close to the  
15 original topic as we can get on these questions.

16           And what I would like to do first is start  
17 with the four general questions that the Division  
18 laid out. And again, we would like to start with  
19 Desert Power as they were the original filer and  
20 allow PacifiCorp also to answer these questions. So,  
21 if you please, Steve, is there going to be someone on  
22 your team that's going to be addressing each of these  
23 or are you going to be assigning them as we go?

24           MR. MECHAM: Well, I'll probably address  
25 the general ones and then those that are addressed to  
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1 specific testimony are likely going to be answered by  
2 those whose testimony it is.

3 COMMISSIONER CAMPBELL: Go ahead, question  
4 one.

5 MS. COON: All right. Question 1, and I  
6 will read it for you who don't have the benefit of a  
7 document for the moment. "What specific decision is  
8 the PSC being asked to make in this docket?"

9 MR. MECHAM: Thank you.

10 What we would like to see come from this  
11 docket, and Carl has indicated most of it, frankly,  
12 we would like to see the contract extended a year.  
13 We would like the commercial operation date delayed  
14 until June 1st of '07. And with respect to the issue  
15 of what avoided cost rates apply post that time, we  
16 would ask the Commission not take action on that at  
17 this time.

18 MR. GINSBERG: Can the Commission  
19 determine to extend the contract without determining  
20 that there was a force majeure event?

21 MR. MECHAM: If there are reasons to find  
22 it in the public interest I suspect they could.

23 MR. GINSBERG: Isn't this board just a  
24 contract dispute proceeding? In other words, you  
25 think they can avoid that answer?

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1                   MR. MECHAM: I think they can under their  
2 generic powers. But if they conclude that they need  
3 information on the force majeure, we're prepared to  
4 answer that today, as well as the 8th of September.  
5 That was not our approach in the petition. We  
6 thought it was much simpler, still can be much  
7 simpler, particularly with MMC in the picture. So  
8 that is what we ideally would like to see come out of  
9 this proceeding.

10                   MS. COON: Thank you.

11                   Dean?

12                   MR. BROCKBANK: I'll address the general  
13 questions. PacifiCorp is asking the Commission to  
14 decide, first of all, that there has not been a force  
15 majeure event as Desert Power claims there has been.  
16 If the Commission decides that there has been, we  
17 would ask the Commission to define the scope.

18                   PacifiCorp would like the Commission to  
19 decide that and find that PacifiCorp was justified in  
20 requesting the assurances that it has requested and  
21 it had the contractual right to do so.

22                   And finally, PacifiCorp would ask the  
23 Commission to decide that if there is an amendment,  
24 any such amendment would be consistent with the  
25 Stipulation approved by the Commission so that if

26



1 Desert Power is not on line by June 1 of '07, that  
2 then current avoided costs would apply as opposed to  
3 contract prices.

4 COMMISSIONER CAMPBELL: Dean, why does  
5 that decision have to be made today?

6 MR. BROCKBANK: Well, obviously, it  
7 doesn't have to be. We think it should be because  
8 we've seen so many red flags going up to where we  
9 question the viability of the project. And if I were  
10 an oddsmaker, I would say that seven, eight, nine  
11 months down the road we're going to be having very  
12 possible similar conversation to today. And we just  
13 have wanted -- we have made that a condition of our  
14 negotiation with Desert Power so that everybody is  
15 clear of what the 10,000-pound gorilla in the living  
16 room is. It's really the pricing of this contract.

17 COMMISSIONER CAMPBELL: Do you see a  
18 reason to extend the contract without the force  
19 majeure discussion? I mean, does PacifiCorp have  
20 reasons why they would be willing to move the  
21 contract a year without going through the force  
22 majeure today?

23 MR. BROCKBANK: So if I understand, Mr.  
24 Chairman, hypothetically there was no force majeure,  
25 would we still want to consider moving forward and

26

1 amending the agreement?

2 COMMISSIONER CAMPBELL: I mean, I saw --  
3 at least in the testimony there's discussion that  
4 there was a term sheet being sent back and forth  
5 that had an extension of a contract. And my question  
6 is, why is PacifiCorp willing to do that? I mean,  
7 what --

8 MR. BROCKBANK: PacifiCorp was willing  
9 to -- PacifiCorp and Desert Power negotiated in good  
10 faith to come up to some kind of a resolution of the  
11 PPA, and including an extension, but we wanted as a  
12 condition the price cutoff. We were willing to do  
13 that for a number of reasons. Mr. Griswold might be  
14 more appropriate to answer that. But I will say that  
15 one of the reasons was because we had a contract.  
16 We've tried to demonstrate that we've been willing to  
17 work with Desert Power in the parameters of the  
18 contract, and we've tried to make this contract work.  
19 And frankly, I think you'll see as we proceed through  
20 this, we've tried to bend over backwards, and that  
21 was one of the steps we took to help to make sure  
22 that this project would be viable.

23 COMMISSIONER CAMPBELL: It's clearly in  
24 your interest and continues to be to have 100  
25 megawatts come on line next summer to serve load,

26

1 right?

2 MR. BROCKBANK: Yes, if it's there.

3 MS. COON: The second question, "If the  
4 Commission finds no force majeure event or contract  
5 breach by PacifiCorp, is the docket at an end?"  
6 Steve.

7 MR. MECHAM: It could be. But as I  
8 intimated in my first answer, I don't think that it  
9 has to be. Because I think there is a general  
10 jurisdiction and a possible finding of the plant  
11 being in the public interest irrespective of these  
12 issues. So that's how I would respond to that.

13 MS. COON: Thank you.

14 MR. BROCKBANK: From our perspective, the  
15 docket could be at an end. Obviously, either party  
16 could appeal any Commission decision in District  
17 Court or to the Supreme Court. If it were decided  
18 that there was no force majeure in this situation it  
19 very well could be that the docket was over because  
20 PacifiCorp would hold, as it has, it has notified  
21 Desert Power that it was in breach of contract.

22 COMMISSIONER CAMPBELL: And then what  
23 would the company do? I mean, you have a partially  
24 completed plant, you have a potential of the power  
25 coming on line June 1st that you could use? I mean,

26

1 do you know if you would continue to negotiate to try  
2 to get that --

3 MR. BROCKBANK: I don't know for sure,  
4 Mr. Chairman. I'm not the one that makes those  
5 decisions. What I do know, based on Mr. Griswold's  
6 testimony and a data request issued by the Division,  
7 that the avoided cost is materially lower today than  
8 it was when the stipulation was entered into. And  
9 frankly, the company, as a regulated company, it  
10 comes as no surprise, we do what the Commission tells  
11 us to do. But our prudent analysis right now is  
12 telling us that yes, we do need a resource, but under  
13 our PURPA obligations we are only required -- in  
14 fact, we're only allowed to buy PURPA-qualifying  
15 power at an avoided cost so ratepayers are  
16 indifferent.

17 MR. GINSBERG: You've already given a  
18 notice of default and that has to be cured within 60  
19 days; is that right?

20 MR. BROCKBANK: Essentially. We gave them  
21 a notice, yes. I forget exactly, but it's 60 days, I  
22 believe. And the bank has the ability to come in and  
23 cure the default. Desert Power has the ability to  
24 cure the default. To my knowledge, we have not heard  
25 from Desert Power's lender or an interest in curing

26

1 that default.

2 MS. COON: Question number 3. "Is the PSC  
3 decision in this matter final or does each party  
4 believe they can take this dispute to district court  
5 for resolution de novo?" Steve.

6 MR. MECHAM: Well, I think the district  
7 court is going to ultimately determine that, but I  
8 would just draw your attention to Section 21 of the  
9 PPA, the mediation section. And down about five  
10 lines up from the bottom of that paragraph it says,  
11 "Each of the parties irrevocably consents and agrees  
12 that any legal action or proceedings with respect to  
13 this agreement must be brought for mediation and/or  
14 decision before the Commission prior to the filing of  
15 any action in the courts of the State of Utah, and  
16 that by execution delivery of this agreement each  
17 party accepts the primary jurisdiction of the  
18 Commission to resolve disputes concerning this  
19 agreement." We're following that section.

20 MS. COON: But by it saying "primary  
21 jurisdiction," that does not preclude you from taking  
22 it to another court if you are unsatisfied with the  
23 resolution.

24 MR. MECHAM: It does not preclude us from  
25 going to another court.

26

1                   MR. ELMONT: I think from PacifiCorp's  
2 position, the prospect of what might be considered a  
3 loss, if you were to think of things in terms of a  
4 win and loss, that you would need to have to deal  
5 with either an appeal or to deal with a new case in a  
6 district court. That likelihood just doesn't seem to  
7 be there at this point.

8                   I mean, what would happen if the  
9 Commission reached a resolution and it was in Desert  
10 Power's favor so that nothing changed in the contract  
11 except for the extension, then PacifiCorp is dealing  
12 with what the Commission is telling it to do going  
13 forward and the issue, frankly, at that point is as  
14 Dean says, what do we do in terms of making sure that  
15 the pricing is appropriate if things don't happen by  
16 June 1 of '07, and what do we do to make sure that  
17 ratepayers aren't harmed and that company  
18 shareholders aren't harmed by problems that might  
19 arise if we don't get it on line by that date. Those  
20 seem like Commission issues, in my opinion, anyway,  
21 rather than things that we end up dealing with in a  
22 district court.

23                   MS. COON: Thank you.

24                   MR. MECHAM: May I say one more thing? It  
25 was really our judgment that these sorts of issues  
26

1 could be resolved quickly at the Commission, whereas,  
2 other forms of litigation take longer. And we didn't  
3 think we would be putting it to the test, but here we  
4 are, so...

5 MS. COON: Fourth general question. "If  
6 the PSC finds a force majeure event did occur, where  
7 is the specific effect on each party's contractual  
8 obligations and does it automatically result in an  
9 extension of the contract to June 1st of 2007?"

10 Steve.

11 MR. MECHAM: Well, it's our view that if,  
12 indeed, the Commission finds these things that  
13 essentially it suspends all other dates in the  
14 contract. And whether or not an extension is  
15 automatic, it would certainly be natural. And  
16 frankly, that is the outcome we're seeking, as I  
17 stated, and it's the appropriate outcome under those  
18 circumstances.

19 MR. BROCKBANK: My answer is, assuming if  
20 there were a force majeure, there could be an  
21 extension in time for during the time -- for the same  
22 amount of time as the force majeure occurred.  
23 However, there is a provision in the contract that  
24 says, and I'm just looking for it right here and I  
25 can't find it right now, that says a force majeure

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1 will not excuse an obligation for payment. And I  
2 can't point to it right now because I don't have it  
3 in front of me, but I'll notify you when I find it.

4 MS. COON: Thank you.

5 Does anybody have anything to add on any  
6 of these first four questions before we move on?

7 Thank you.

8 Now, the next set of questions are  
9 specifically addressed to Desert Power based upon  
10 things that the Division found within Desert Power's  
11 testimony that we want further clarification on. And  
12 so if we can just start with the first question, and  
13 whatever witness from Desert Power chooses to answer,  
14 then they can please do so. If other members of  
15 Desert Power have more clarification on the original  
16 answer, please go ahead and do that first and then we  
17 can ask for a response and other questions regarding  
18 the issue.

19 MR. MECHAM: That first one is directed at  
20 Mr. Swenson, Roger's testimony.

21 MS. COON: Okay.

22 MR. MECHAM: Do you want to just state the  
23 question so it's clear on the record what we're  
24 talking about?

25 MS. COON: Why don't we go ahead and state  
26



1 the question so it's clear not only on the record but  
2 also to the parties in the room that may not have the  
3 list.

4 "Please explain how a one-month delay in  
5 the interaction process could be responsible for the  
6 ongoing delay in signing the QFLGIA," by which I  
7 meant the qualifying facility large generation  
8 interconnection agreement.

9 MR. SWENSON: Let me just be clear and  
10 explain what I saw as the delay circumstances so that  
11 you can see that specifically what happened wasn't  
12 something that took a month. What happened is Desert  
13 Power was moving along with PacifiCorp Transmission  
14 working through the interconnection issues the best  
15 we could. We had a completed System Impact Study, we  
16 were beginning to work through the Facilities Study,  
17 and Desert Power's electrical engineers actually had  
18 begun to create drawings and designs to meet the  
19 specific configurations that had come from those  
20 PacifiCorp studies.

21 In October, mid October, October 19th-20th  
22 of 2005, we were notified by PacifiCorp Transmission  
23 that they had made an internal decision based on  
24 operation personnel having reviewed the information,  
25 and they wanted to reconfigure the delivery system

26

1 for power to US Magnesium and Desert Power.

2 Well, we asked a lot of questions as to  
3 why. And for roughly a month we went back and forth  
4 explaining why certain things could have taken place  
5 to help their circumstance. But by the middle of  
6 November, toward the end of November and the holidays  
7 we just said, okay, let's get going and started to  
8 ask questions about how long it was going to take to  
9 redo this design. What we heard from PAC Trans was  
10 that in order to do this engineering design it was  
11 going to take many months.

12 My response that I gave back to PacifiCorp  
13 Transmission once we heard about those kind of delays  
14 was to say, can we please go outside and use outside  
15 engineering and maybe we can speed this process up a  
16 little faster? So what we had was a process that  
17 they said was going to take four or five months of  
18 engineering, we had a process that was going to take  
19 four to six months of procurement for equipment, and  
20 then we had an installation. We said, let us do  
21 everything we can to move forward faster.

22 We obtained a scope of work from  
23 PacifiCorp Transmission approximately January 11th or  
24 so. Our engineering design done by the outside firm  
25 that PacifiCorp let us go to was done in about two  
26

1 months, in mid March. We had final approval from  
2 PacifiCorp on the designs I believe sometime in May.  
3 So you can see it wasn't a one-month delay.

4           If we had stuck with the original  
5 conceptual design that didn't have new transmission  
6 lines, new steel towers that are very complex and  
7 need much engineering to make sure that they will  
8 withstand loads associated with both weather and  
9 transmission lines, we would be moving ahead much  
10 more quickly.

11           I can't imagine us having any kind of  
12 difficulty having the interconnection up by May. But  
13 with the delays in the design and the final approval,  
14 we couldn't order equipment even until we had that  
15 final design approval.

16           MR. PETERSON: And, excuse me, that was in  
17 May?

18           MR. SWENSON: Yes.

19           MS. COON: PacifiCorp, would you like to  
20 respond briefly?

21           MR. BROCKBANK: Kenneth Houston will  
22 respond.

23           MR. HOUSTON: He covered a lot of ground  
24 with the answer. I'm not sure he answered your  
25 question so maybe I could try to answer it for him.

26

1                   I think the QFLGIA, part of it has  
2 milestones, so in service, backfeed, et cetera.  
3 There are specific dates that are defined in that  
4 agreement. And since we're kind of at a standstill,  
5 I'm assuming that Desert Power has an issue in  
6 completing those dates. Other than that, I can't  
7 imagine why the LGIA wasn't signed six months ago.

8                   MR. DARLING: Well, I think there are  
9 clear reasons why it wasn't signed.

10                   COMMISSIONER CAMPBELL: Charles, you need  
11 to speak up.

12                   MR. DARLING: I'm sorry. Forgive me.

13                   There's clear reasons why there weren't.  
14 There were issues that we raised. There was, in  
15 fact, as a part of it we had an issue to do with  
16 US Magnesium and switches at US Magnesium and whether  
17 they had to be replaced, which were long lead time  
18 items in and of themselves. And in fact, we resolved  
19 it by ultimately going to the manufacturer and  
20 getting the manufacturer to sign off on it, getting  
21 US Mag to sign off on it, and getting their insurance  
22 companies to sign off on it. So there's been a lot  
23 of work going on.

24                   But quite honestly, at the same time, once  
25 the design was completed, it is not like either we or

26

1 I would say PAC Trans, sat around waiting for an  
2 agreement to be signed. We sent in a total of  
3 \$400,000 so that they could go forward with their  
4 work. We even, before the design was complete,  
5 started the engineering on it in order to speed up  
6 the process and pay for it and assumed the risk that  
7 something would be changed so that once the design  
8 was complete, and it really did not change, we were  
9 able to go out and secure bids for long lead time  
10 items.

11 For example, by virtue of what we did, we  
12 got the poles ordered shortly after May 12th and we  
13 paid -- we did not go with the lowest cost vendor  
14 because we could get a quicker delivery from someone  
15 else. But even with that quicker delivery, those  
16 poles will only be delivered early next month.

17 All of these things that we have there is  
18 by way of saying the delay in the signing of the  
19 QFLGIA in fact has not stopped the ordering of  
20 equipment and the moving forward on this agreement.  
21 What has happened, however, is that the delay caused  
22 by the change in the design fundamentally altered the  
23 design and the scope and nature of the work that we  
24 had to move forward on fundamentally.

25 MR. GINSBERG: Is this sort of the only  
26

1 event that -- is this the event that can be pointed  
2 to that you rely on to say a force majeure event  
3 occurred and so indirectly blame it on PacifiCorp?  
4 I mean, is there something else?

5 MR. DARLING: This was -- Mike, I will  
6 tell you. We -- once they changed it and once they  
7 changed the design and I began to hear about the lead  
8 times, I began to say, what can we do to speed the  
9 process up? Because I was pounding on everybody to  
10 complete to a date certain.

11 Along the way, because that was  
12 fundamentally delaying when we could come on line,  
13 indeed, in early May we had something that showed  
14 backfeed, we have an e-mail from a person at PAC  
15 Trans that says they won't be able to do backfeed  
16 until November 15th.

17 It was a way, then, with this happening to  
18 try and stimulate negotiation with PAC Trans so that  
19 we could come to an agreeable way to address the  
20 delay and move forward on a joint basis. But it is  
21 the event that triggered the force majeure letter.  
22 It is the single event that triggered the force  
23 majeure letter.

24 MR. SWENSON: You didn't mean PAC Trans  
25 when you said coming to agreement with PAC Trans, you  
26

1 meant PacifiCorp?

2 MR. DARLING: I meant coming together with  
3 the PacifiCorp merger.

4 COMMISSIONER CAMPBELL: So how many months  
5 are associated, how many months do you claim have  
6 been delayed because of the change in the design?

7 MR. DARLING: Well, there's -- and this  
8 goes to some of the other questions that are here,  
9 Mr. Chairman and Commissioners. And, that is, once  
10 these delay -- the delay was clear and the impacts on  
11 us were clear, there were other events which began to  
12 happen. And when PacifiCorp rejected the force  
13 majeure claim it started creating problems with our  
14 financing, which we'll get into later, I'm not going  
15 to try and jump the gun now, which further impacted  
16 and delayed the project, okay?

17 There is a, if we were just all going, if  
18 we would have sat down on this timeline and figured  
19 out at the point in time when the first force majeure  
20 letter came out and everybody was looking at it, and  
21 if we figured out a timeline at that point, we  
22 believe it would have come up sometime in the early  
23 fall. However, by virtue of subsequent events  
24 arising out of that, the delay became extended.

25 MR. GINSBERG: Maybe this question is sort

26

1 of for PacifiCorp, but with this change in the  
2 interconnection configuration, did the change in the  
3 lead time of the equipment that had to be ordered,  
4 would the change in configuration differ materially  
5 from the lead time of the equipment that had to be  
6 ordered under the old configuration? Was there a  
7 material change?

8 MR. HOUSTON: I think that's a very good  
9 point because the initial connection would have  
10 required an interconnection pole to start with. And  
11 whether or not it had switches on or not is a moot  
12 point. What we ended up putting in was to protect  
13 the safety of our employees and the reliability of  
14 the customers in the area and I think it was a  
15 superior design. Admittedly, it was a little more  
16 complex in the pole itself. Again, it's the right  
17 thing to do. We noticed that in October, we reached  
18 a solution with Desert Power in November, there was a  
19 one-month delay. If it -- you know, whether you  
20 order a pole with or without switches, I'm not sure  
21 what the additional delay is with that. I couldn't  
22 say. Doug might have an opinion.

23 MR. SWENSON: But going back to how hard  
24 PacifiCorp worked to help move this along, they even  
25 looked for steel surplus poles, which they found. We  
26



1       could have used one of their surplus steel poles. We  
2       didn't have enough steel poles to make this one work.  
3       We were close, we were very close, but not enough.

4                   MR. BENNION: But I think further to that  
5       one, though, there's a long laundry list of material  
6       when you're building a new power plant and you're  
7       doing an interconnection, there's switches, there's  
8       metering. And if you went through the entire  
9       material list and whatnot, you could find one piece  
10      of equipment that might not have made the original  
11      date.

12                   As an example, it would be a circuit  
13      breaker. And a circuit breaker which would have been  
14      selected for this particular project at Desert Power  
15      may have been ordered earlier in the process, but the  
16      schedule left it until ordering in May. So that's a  
17      long lead item that was outside of the things that  
18      we're talking about here.

19                   MR. SWENSON: But, you know, I believe we  
20      were so far along with the facility study and we were  
21      providing drawings for everything from Desert Power's  
22      electrical engineers that we would have known what  
23      things were there. We knew there was a switch on the  
24      one pole. We would have known to start to work on  
25      those kind of things.

26

1                   But what we had to do was we had to go  
2 through engineering for those poles that I admit was  
3 much more arduous than I understood. It was some  
4 aggressive equipment that has to be designed.

5                   MR. BROCKBANK: Can I just ask, Mr.  
6 Chairman? It sounds like if we're going to stick  
7 really close to the questions, and they each take  
8 this long, we'll be here until about 3:30 in the  
9 morning. I want -- I'm inclined to want to respond  
10 to all of these points as they're being thrown out,  
11 but I -- if the plant is to just stick to the agenda  
12 then I'll hold my tongue until we get to those  
13 specific points. But if we're going to just keep  
14 going back and forth --

15                   MS. COON: Actually, Mr. Chairman, I had  
16 anticipated, due to the time constraints, cutting  
17 some of these questions out to try and facilitate  
18 more of the immediate topic and maybe --

19                   COMMISSIONER CAMPBELL: Let's follow the  
20 questions for another 15 to 20 minutes and see how  
21 that goes. And if that's still not working for us,  
22 then let's just start at the high level, at the key  
23 points.

24                   MS. COON: Thank you.

25                   Was there anything that you needed to

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1 respond to from this last piece before we move on?

2 MR. HOUSTON: I would just like to make  
3 one more point, and Dean said it earlier. We bent  
4 over backwards from the very beginning. This came in  
5 late and it's been late every since we started. And  
6 the QFLGIA is still not signed. We typically do not  
7 start construction without that being signed, even  
8 though in this case we are willing to do it. So I  
9 just want to make that one point.

10 MS. COON: Thank you.

11 Second question for Desert Power  
12 references, again, Roger's testimony. "Please  
13 explain where in the process you feel that PAC Trans  
14 failed to follow their tariff timelines."

15 MR. SWENSON: And I have looked at the  
16 tariff timelines. The tariff timelines say that  
17 they're going to make reasonable efforts to do this.  
18 And that's all my testimony implied was there are  
19 specific timelines that are in the tariff that say  
20 they're going to make reasonable efforts to try to  
21 meet. There's nothing in the tariff that says that  
22 they're going to have to do anything by a certain  
23 time. If it was just what we were led to believe by  
24 looking at the tariff. And maybe we were naive or  
25 maybe I was naive looking at it in that context.

26

1 MS. COON: So the answer is that you don't  
2 believe they specifically violated any term of their  
3 tariff?

4 MR. SWENSON: I couldn't tell you that  
5 they had specifically violated a term of their  
6 tariff. It's very flexible.

7 MS. COON: Okay. Thank you.

8 MR. HOUSTON: I don't even want to answer  
9 that.

10 MS. COON: All right. "Please show a  
11 timeline of the approval's process, including  
12 documents showing when the initial designs were  
13 submitted to PacifiCorp Transmission." And this was  
14 in reference to your testimony at lines 117 through  
15 121.

16 MR. SWENSON: Right. And I think you got  
17 me to go there during the first question so I don't  
18 want to rehash that. I have e-mails that show every  
19 one of those dates I mentioned to you when I tried to  
20 answer the first question. I will be able to provide  
21 you those and I'm happy to provide them to the  
22 PacifiCorp people as well.

23 MS. COON: Thank you.

24 MR. MECHAM: They have been produced.

25 MR. BROCKBANK: I produced them.

26

1 MS. COON: Yeah. And if you could just  
2 point me to for what data request those were produced  
3 and what the title of the document being provided  
4 would be?

5 MR. SWENSON: Sure.

6 MS. COON: So that I could find those.

7 MR. SWENSON: It's in all of the e-mails.  
8 There were two or 3,000 in 1.2.

9 MS. COON: Thank you.

10 MR. BROCKBANK: Anything to add, Kenneth?

11 MR. HOUSTON: No.

12 MS. COON: All right. "Does Desert Power  
13 believe that PacifiCorp Transmission is required by  
14 law to conform to customer needed timelines? Why or  
15 why not?" And, Steve, if you want to tackle this one  
16 since it's a legal issue, that would be fine.

17 MR. MECHAM: I don't know that Roger --  
18 and obviously you're referring to his testimony, and  
19 I didn't go back to look to see precisely what he  
20 said that drew the question. Whether legal or not,  
21 obviously we expect any utility to adhere to its  
22 tariffs. Now, do you want to pipe up, Roger?

23 MR. SWENSON: I don't know that I ever  
24 implied that they broke the law. I hope I didn't  
25 imply that they broke the law because that wasn't the  
26

1 intention in my testimony.

2 MS. COON: Well, and I guess what got me  
3 at this question, and you'll have to forgive me, I'm  
4 going to be coming off the top of my head here, was  
5 that in your testimony you had basically said  
6 something that led me to believe that you believed  
7 that if you gave them a timeline, that was sufficient  
8 and they were obligated to try and meet your  
9 timeline. So I'm just wondering what led you to  
10 believe that.

11 MR. MECHAM: Well --

12 MR. SWENSON: All I did in my testimony,  
13 is I stated that we had been forthcoming from the  
14 very kickoff meeting as to what the timeline was to  
15 get the project up. We started with that in our  
16 first meeting. And that's all it was about was  
17 making sure that no one was surprised by the dates we  
18 needed to be on line by.

19 MS. COON: Okay. So you weren't  
20 necessarily implying that you believed they had any  
21 obligation to meet a timeline that was not reasonable  
22 in order for them to get the interconnection up and  
23 safe and reliable?

24 MR. SWENSON: I have no way to be able to  
25 say that they had any obligation to do besides what's

26

1 in their tariff.

2 MS. COON: Thank you.

3 MR. HOUSTON: I would just like to comment  
4 that the FERC tariff at each of the study phases has  
5 a specific statement that says that if the  
6 transmission provider, that would be PacifiCorp,  
7 cannot meet the timeline, be it 45 or 90 days, then  
8 they will communicate that to the customer and  
9 provide a reasonable timeline when the study will be  
10 completed. So it gives you an example and an  
11 expectation, but it gives us the right to extend it  
12 if we need additional time.

13 And in this case, in February when the  
14 application first came in, it was clear to us that  
15 the standard FERC interconnection procedure was not  
16 going to work. We had enough experience with it to  
17 know that it's a year and-a-half long process. The  
18 in-service date requirement was 11 months away. We  
19 needed some time to build the thing, to order  
20 material, design and build the thing. And so what we  
21 did was we decided that we've got to be done with the  
22 studies in June to get this thing down. And so we  
23 agreed to a 120-day combined study. You know, again  
24 trying to be customer friendly and meet the  
25 customer's schedule, unrealistic though it might have  
26

1       been.

2                   MS. COON:   Now, when you say you agreed to  
3       a 120-day time frame, was that some sort of  
4       contractual agreement or was that an agreement to  
5       have that as a target date?

6                   MR. HOUSTON:  I think the study agreement  
7       specified 120 days for a combined study.  We agreed  
8       to use reasonable utility efforts subject to the  
9       resources being available.  And again, when the study  
10      and the timeline was agreed to in February, and there  
11      were certain resources and engineers we had available  
12      in February, since we didn't get the detailed  
13      technical information until June, everything had  
14      changed.  You know, a lot of time had passed.  So  
15      again, in February what we agreed to maybe wasn't the  
16      same in June when we actually started.

17                  MR. ELMONT:  You're talking about  
18      information, detailed technical information you  
19      needed from Desert Power?

20                  MR. HOUSTON:  Correct.

21                  MS. COON:  Did I see you had something to  
22      say about that question?

23                  MR. SWENSON:  I just had one comment.  And  
24      I'll just say, I wish we would have known that up  
25      front you were worried about that.  Because I never  
26



1 got that communication from the kickoff meeting on  
2 because I would have explained it and expressed it to  
3 Mr. Darling as clearly and as soon as I could have.

4 MS. COON: Thank you.

5 And actually, the next question goes to  
6 something that Mr. Houston brought up, and that was,  
7 "Why did Desert Power take four months to fill out  
8 the specific information about its equipment once it  
9 made its request?"

10 MR. DARLING: I am -- we had engineers and  
11 a project manager on this. Mr. Swenson was working  
12 on this. My impression was that they were in  
13 communications and discussions on submission of  
14 materials and that there was back and forth on them.  
15 And so at this particular moment, I really can't  
16 answer that question.

17 MR. SWENSON: And my understanding of what  
18 people were waiting for, but I wasn't the one who was  
19 getting the information back and forth, was the  
20 maximum generation capabilities of the equipment.  
21 And I'm feeling like maybe what they were doing was  
22 making sure that they had it to the nth degree  
23 instead of doing something that I think Mr. Houston's  
24 testimony says, just give us some numbers that we  
25 start the study on. If we need to true it up later

26

1 we will. I think they wanted to be precise. And  
2 that's the only explanation I have. And I think that  
3 was the only -- was that the only information that  
4 you were waiting for?

5 MR. HOUSTON: Well, there's several  
6 components of the studies and the technical data that  
7 are required, you know, the generator specific data  
8 which was provided. Again, like you say, the maximum  
9 output from each generator.

10 And again, this particular installation  
11 was very unique in that there were three generators  
12 owned by Desert Power, there are several generators  
13 owned by Mag Corp, there's a large chunk of load, and  
14 it's all on the end of a radial line, and all of  
15 those pieces work together and impact one another.

16 And one of the long delays that we had was  
17 doing a Voltage Performance Study identifying what  
18 the reactive flows were going to be and what the  
19 voltages were going to be and what the settings of  
20 the generator needed to be. And those were all done  
21 in early 2006 primarily because the specific data we  
22 needed wasn't provided until November by Desert  
23 Power.

24 MR. BROCKBANK: And the point we will try  
25 to make over and over and over again is you can't  
26

1       accuse the company of a force majeure when you  
2       yourself, Desert Power, delayed, delayed, delayed,  
3       delayed. This four-month block is just one of those  
4       delays.

5                   MS. COON: All right. This is directed to  
6       Mr. Darling. "Is the five-month delay in obtaining a  
7       generator and turbine the delay in equipment  
8       acquisition that you speak of in your testimony?"

9                   MR. DARLING: Yes.

10                  MS. COON: Thank you.

11                  "In what form was the secured long-term  
12       financing, how was the lender able to cancel the  
13       loan? Were there penalties attached, et cetera?"  
14       and that's in reference to Mr. Darling's testimony.

15                  MR. DARLING: We had secured a permanent  
16       loan commitment subject to getting the transaction  
17       documented and other assorted things. We had done it  
18       when the lending markets, when the lending rates were  
19       lower. As you may recall or as you may know,  
20       beginning about October of 2005, November of 2005,  
21       rates began to increase. And so by the time we were  
22       coming to the end of our time for closing our loan,  
23       our rates were very favorable. So the lender was  
24       more than happy to cancel our loan commitment without  
25       any penalty in order to avoid a 20-year obligation at

26

1 the rate that we had locked in.

2 MS. COON: Thank you.

3 "What equipment needed to complete the  
4 interconnection has not yet been ordered by Desert  
5 Power?"

6 MR. DARLING: We have one item of which I  
7 am aware. We have a breaker that we have had set  
8 aside for us, but we have not actually placed the  
9 order for it. We have --

10 MS. COON: Now, do you have some sort of  
11 formal hold on the item?

12 MR. DARLING: No. We have an  
13 understanding with the vendor.

14 MS. COON: Thank you.

15 "Is it Desert Power's understanding that  
16 equipment has been ordered by PacifiCorp or does  
17 PacifiCorp have to wait until full payment is  
18 rendered?" Which I believe, according to documents  
19 that I have seen, is an additional \$269,000.

20 MR. DARLING: I don't know the answer to  
21 that question. We have paid PacifiCorp some  
22 \$400,000, I think. To finish it up there's an  
23 additional \$200,000. And I don't know the answer to  
24 the question.

25 MS. COON: Thank you.

26

1                   MR. BENNION: I might comment on that one.

2                   The equipment that was required by PacifiCorp to  
3                   order that was in our scope of work, which would be  
4                   the protection equipment, communications, metering  
5                   and whatnot, all of that equipment has been placed on  
6                   order as of April. So the \$400,000 payment that was  
7                   made by Desert Power gave us permission to continue  
8                   our work and we have made those orders.

9                   MS. COON: Thank you.

10                   "Before September 24, 2004, which was the  
11                   date upon which the PPA with PacifiCorp Merchant was  
12                   signed, when did you know you had substantially  
13                   succeeded in your negotiations?" And I realize I'm  
14                   calling for a rather nebulous date, but if you give  
15                   me an approximation that would be fine.

16                   MR. SWENSON: I'll answer it and you can  
17                   add anything you want to it. Once the contract has  
18                   passed its appeal date, that's the only time I felt  
19                   comfortable with what we did. It seemed arduous and  
20                   it was a long process.

21                   MS. COON: So you're saying that you  
22                   didn't necessarily think that you were successful  
23                   until I believe the date was November 9th of 2004?

24                   MR. SWENSON: Yes.

25                   MR. PETERSON: November or October?

26

1                   MS. COON: November. October 7th was the  
2 date upon which the Commission approved the contract  
3 through its Order and the 30-day period makes it  
4 approximately the 9th of November.

5                   Dean?

6                   MR. BROCKBANK: From PacifiCorp's  
7 perspective, I think your question is we had  
8 substantially succeeded in our negotiations. Desert  
9 Power had been a participant in the 03-03514 docket  
10 for at least from the beginning of '04, I'm not sure  
11 when they intervened. They were participants in the  
12 Stipulation negotiations, they were there because  
13 they had a project and they were going to develop  
14 their project into a cogeneration facility.

15                   From PacifiCorp's perspective, once the  
16 Stipulation was executed by all of the parties, we  
17 felt comfortable that because all of the players said  
18 this was a Stipulation, it was a settlement, we felt  
19 comfortable that the Commission would approve it, and  
20 the Commission did approve it, and we started  
21 negotiating in earnest of June of '04. And, you  
22 know, the parties all have the correspondence to show  
23 that from the data responses.

24                   And so from our perspective we were very  
25 close to a deal in June of '04 and we knew that we

26

1 had a deal by late August. I mean, we signed the  
2 contract in September. So I think it's disingenuous,  
3 I don't think anybody -- I haven't been doing this  
4 real long, I've been doing it for years, but I don't  
5 know that there's ever been an appeal of a QF  
6 contract order. So to say that you didn't feel  
7 comfortable, I understand for financing and things  
8 maybe it needs to run its course, but for the  
9 interconnection thing I think following the tariff  
10 would have been a good idea, Schedule 38.

11 MR. MECHAM: But as far as the  
12 negotiations were concerned, they went on for weeks.  
13 I mean, to say that somehow -- months. To say that  
14 in June somehow we nearly had a deal, I mean, Dean,  
15 we were on the telephone with one another arguing  
16 over many of these provisions months beyond June. So  
17 I think that's a little mischaracterization.

18 MR. BROCKBANK: Let me correct. I don't  
19 believe I said we had a deal in June, I said we were  
20 in earnest negotiations in June.

21 MR. MECHAM: The beauty of this is that  
22 there's a transcript and we can go back and look.

23 MR. BROCKBANK: I know. I've got to watch  
24 my tongue.

25 MR. GINSBERG: Since this was a  
26

1 development project for the -- based on the QF rate  
2 that happened to be available, was that the reason  
3 that you didn't go out to have the generator and the  
4 -- what's the other?

5 MR. SWENSON: HRSG.

6 MS. COON: The turbine and the HRSG.

7 MR. GINSBERG: At the time already? I  
8 mean, is that why there was a five-month delay in  
9 getting that equipment?

10 MR. DARLING: In identifying the  
11 equipment. As I said in my testimony, Mike, we had,  
12 because of the heat rate considerations in the  
13 contract, and because of the lead times on new  
14 equipment, it wasn't like we could go to GE and  
15 specify a particular set of equipment and have them  
16 build it. We looked at many different kinds of steam  
17 turbines of various sizes and ilks and ran several  
18 studies to try and figure out how that would allow us  
19 to operate and I think that we would take on heat  
20 rate and what would be required to get us there.

21 And I can tell you the size of those  
22 generators ranged all over the lot. Some of them we  
23 looked at whether or not we could do some kind of  
24 repowering on, modification, how that would impact.  
25 And basically, as I said, it really came down when we  
26



1 finally identified in January and then ran our  
2 studies into February, that there was really only one  
3 generator out there. But that took us time to find  
4 it. We had people traveling to different places to  
5 examine different equipment. We looked at buying a  
6 couple of power plants to get at their generators.  
7 We looked at equipment that was on standby. We  
8 looked at equipment that was mothballed. We looked  
9 at surplus new. We sent people a lot of places to  
10 look at a lot of things before we came up and found  
11 this one particular steam turbine that we ultimately  
12 settled on.

13 COMMISSIONER CAMPBELL: Before we move on,  
14 "substantially succeeded," what's the significance of  
15 those words? I can tell there's an issue here.

16 MS. COON: Substantially succeeded, the  
17 issue that we were trying to get at is was there a  
18 point at which it would have been possibly reasonable  
19 prior to the signing the Order from the Commission or  
20 waiting past the 30-day period at which it would have  
21 been reasonable to submit an interconnection request  
22 or make other movements in that direction.

23 MR. DARLING: We, in fact, submitted a  
24 letter to Dave Cory in June of 2004 after the  
25 approval of the Stipulation to say that we were going  
26

1 to be looking at expanding our facility and would be  
2 seeking an amendment to our existing interconnection  
3 agreement thereafter. I actually called him and  
4 talked to him and he said, send me a letter so that I  
5 have it here.

6 And so we had contacted PacifiCorp at the  
7 commencement of the negotiations. But then until we  
8 had identified the specific turbine so that we could  
9 -- and long before we acquired it. I mean, I -- the  
10 process of acquiring that turbine was an extended  
11 one. But long before we had acquired it. But once  
12 we had identified it, I had the papers started -- I  
13 had the interconnection request, I directed that it  
14 be done so that we could begin to get everything on  
15 the table.

16 MS. COON: Thank you.

17 MR. HOUSTON: Can I make one quick  
18 comment? We have anywhere from 25 to 30 people in  
19 our interconnection queue all the time and it's very  
20 common for a developer to be in our queue well ahead  
21 of a signed PPA, specifically those bidding into  
22 PacifiCorp's IRP. They're in there very early.

23 MS. COON: Thank you.

24 MR. BROCKBANK: And to the Chairman's  
25 question, the reason that's significant from my  
26

1 perspective is Schedule 38 has language that says it  
2 is recommended that a party qualifying facility  
3 seeking interconnection pursue that process in  
4 parallel with negotiating the Power Purchase  
5 Agreement. That's why the June of '04 kind of seems  
6 to solidify when they knew they were moving forward.  
7 At least they were trying really hard to move  
8 forward.

9 MR. DARLING: But this is just a question  
10 so I understand it. On these requests, do they give  
11 you all the specifics that you require on your  
12 interconnection request?

13 MR. HOUSTON: Some do, have some already  
14 acquired their turbines and have their equipment.  
15 Others, specifically wind developers, give us typical  
16 -- a lot of times they don't buy their turbines until  
17 the PPAs are signed.

18 MR. DARLING: But they have typical --

19 MR. HOUSTON: Yes.

20 MS. COON: And this next question is  
21 actually a three-part question. "When following the  
22 October redesign did you first seriously consider  
23 that you might have to invoke the force majeure? Was  
24 there a particular event subsequent to the  
25 announcement of the redesign that precipitated your  
26

1 realization, and what was that event?"

2 MR. DARLING: The February 3rd letter from  
3 Larry Soderquist.

4 MR. SWENSON: E-mail, I believe.

5 MR. DARLING: Or e-mail saying that there  
6 was going to be further delay in the study. We had  
7 already hired Sargent & Lundy at that point. We had  
8 already had design work going forward to try and  
9 short-circuit the process and see if we couldn't get  
10 it done. But when I saw the delay, further delay and  
11 heard the timeline that we might be on, is when I  
12 decided that I really had no option at that point but  
13 to send the force majeure letter.

14 MS. COON: Thank you.

15 "When did you discuss with your financial  
16 backers the problems related to your force majeure?"

17 MR. DARLING: I was on the phone with my  
18 lenders almost every week. And the schedule,  
19 progress on the interconnect, progress in getting the  
20 studies, it was an ongoing discussion with them.

21 MS. COON: So your financial backers were  
22 being apprised on a regular basis of the progress on  
23 the project?

24 MR. DARLING: Oh, yes. We had -- we had  
25 weekly or biweekly telephone conferences.

26

1 MS. COON: Thank you.

2 COMMISSIONER CAMPBELL: We're going to  
3 take a five-minute break.

4 MR. MECHAM: If Mr. Miller leaves that  
5 will be fine.

6 COMMISSIONER CAMPBELL: Thank you.

7 (Recess taken.)

8 COMMISSIONER CAMPBELL: Back on the  
9 record.

10 MS. COON: All right. We're still  
11 continuing questions for Desert Power. "Aside from  
12 PacifiCorp Transmission's refusal to recognize Desert  
13 Power's invocation of force majeure," and that should  
14 probably actually be PacifiCorp Merchant's refusal,  
15 "are there other specific terms of the contract you  
16 are referencing on lines 46 and 47 of your testimony  
17 that you believe PacifiCorp is not abiding by?"

18 MR. MECHAM: You better look at the  
19 testimony.

20 MR. DARLING: In response to that is that  
21 the -- as you know, we believe that the force majeure  
22 was valid and so, therefore, its rejection was not  
23 contractually based.

24 MS. COON: Okay.

25 MR. DARLING: That, in turn, impacts upon  
26

1 their obligation to cooperate with us in our  
2 financing, which has been adversely impacted. And in  
3 addition, as we set out -- as I set out in my letter  
4 of August 25th, 2006, I believe there are -- they  
5 have imposed on us as a condition of honoring the  
6 contract extra contractual obligations. And so  
7 that's what I would list there as set out in that  
8 letter.

9 MS. COON: Thank you.

10 "What is your understanding as to when the  
11 interconnect design issue was resolved and work could  
12 have otherwise continued forward?"

13 MR. SWENSON: You go ahead.

14 MR. DARLING: We ordered the poles in May  
15 for a September delivery. I think getting the poles  
16 would probably have been the point. That would be my  
17 best guess. I don't know.

18 MR. SWENSON: Yeah. If that's what you  
19 mean by work could have otherwise continued forward,  
20 that was the critical path.

21 MS. COON: Yeah, sorry. Talking two at a  
22 time.

23 Basically I'm asking, at what point do you  
24 think, if there wasn't the financing issues and other  
25 problems going on, at what point the event that  
26

1       caused you to declare the force majeure, at what  
2       point it actually would have ended?

3                 MR. DARLING:  Basically, I mean, on the  
4       timelines that we were under at that point in time,  
5       with the arrival of the poles and other assorted  
6       things, I think we showed that being installed in  
7       September and backfeed somewhere September or early  
8       October time frame, is what I think it was showing at  
9       that point in time.

10                MS. COON:  Okay.

11                MR. HOUSTON:  In our opinion, Desert Power  
12       is notified of the redesign on October 17, 2005.  
13       Desert Power came back with a counterproposal, a  
14       different suggestion on November 8th.  We held a call  
15       on November 15th and agreed to -- we both jointly  
16       agreed to what it was going to look like.  So to me  
17       at that point that issue was resolved.

18                MS. COON:  Thank you.

19                MR. GINSBERG:  So from that point could  
20       the June '06 date have been met?

21                MR. HOUSTON:  Yes.  If the material had  
22       been ordered soon thereafter, yes.

23                MS. COON:  All right.  Thank you.

24                Roger, did you have something to say?

25                MR. SWENSON:  Yeah.  We couldn't have  
26

1 ordered the material without doing the engineering  
2 and getting PacifiCorp's approval for the  
3 engineering. PacifiCorp hires everything that we had  
4 outside engineered to be approved. So we had to go  
5 through the whole process of first identifying which  
6 contractors that we could use, that PacifiCorp would  
7 allow us to use, contracting with that entity,  
8 getting the specific scope, and then going through  
9 the engineering, and then having the approval done.

10 MR. MECHAM: Before you could order?

11 MR. SWENSON: Before any orders took  
12 place.

13 MS. COON: Thank you.

14 Now, the original letter applying for this  
15 interconnection agreement I believe was sent on the  
16 22nd of February. PacifiCorp responded in written  
17 form on the 24th of February. "At what point did you  
18 finally provide PacifiCorp Transmission with the  
19 details of your specific turbine and when did you  
20 finally purchase and take possession of that  
21 turbine?"

22 MR. DARLING: The details of when the data  
23 was provided would be in the documents that we  
24 provided in response to discovery. I know the  
25 kickoff meeting was in April --

26



1 MR. SWENSON: April 27th.

2 MR. DARLING: And I think my understanding  
3 is whenever PacifiCorp proposed a time for a meeting  
4 we always tried to take the soonest one we could get.  
5 But I think those dates as to when we provided things  
6 would be in the discovery.

7 As to when we actually purchased and took  
8 possession of the steam turbine and generator set, we  
9 purchased it in August of 2005. It was located in  
10 Mobile, Alabama. So we had to go down there and  
11 disassemble it and move it to site. And we did that  
12 during September and October of 2005. That operation  
13 was impacted by a certain hurricane that came up  
14 right beside the site.

15 MS. COON: Thank you.

16 MR. HOUSTON: I would add that the data we  
17 needed to start the load flow and Fault Duty Studies  
18 was provided June 10th. The data we needed to do the  
19 Voltage Performance Studies was provided on December  
20 12th. And finally, in our April 4th Final Facilities  
21 Report we note that we're still waiting on data  
22 that's necessary for the WEC modeling specific to the  
23 generator. We have yet to get that.

24 MR. SWENSON: And I might say, I have  
25 always read that in the reports and we've always

26

1 questioned what that meant in the reports all the way  
2 along. And Mr. Soderquist's answer always was, well,  
3 that data you get when you have the whole project  
4 complete and you give it to us then. That last  
5 remaining bit of data was always told to us, once  
6 it's completed you'll have that.

7           The voltage information that you mentioned  
8 in December that was a request in October, I believe,  
9 and it was a request to go get data from US Magnesium  
10 about how they want to run. And it's always  
11 difficult -- well, it's not always difficult, it's  
12 not easy to get information sometimes out of somebody  
13 who isn't a participant in a project. And it took a  
14 little time. It took a few weeks to get their  
15 engineer to dig into his file to get his information.

16           MS. COON: Thank you.

17           "On lines 192 and 193 of Mr. Darling's  
18 testimony you indicate that PacifiCorp Transmission  
19 told you that Desert Power would be incurring delays  
20 due to the interconnect design. What were the  
21 specific delays and the time frames you were told you  
22 would be facing and what documents do you have to  
23 support these time frames?"

24           MR. DARLING: Well, the -- we received the  
25 letter on February 3rd in particular that I know of,

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1 and that we were advised that because PacifiCorp  
2 engineering or PAC Trans -- anyway, the engineers,  
3 the Engineering Department was very backed up in  
4 terms of being able to do the engineering that was  
5 required.

6 In addition, we were informed that there  
7 was an internal review process that was required to  
8 be gone through, that preliminaries then were  
9 reviewed and sent out for final and back for review.  
10 And accordingly, that's when -- that's when we went  
11 out to do something else. But even when we looked at  
12 hiring our own engineers with all of that together,  
13 we saw that we would be -- the time when we would  
14 start to receive a backfeed was significantly  
15 extended. And it was at that point that we had to  
16 begin examining how we were going to manage our  
17 schedules, how we would start staffing up or not  
18 staffing up, as the case may be, and how we would go  
19 forward on our project. So I guess that's the delays  
20 that I'm talking about.

21 MS. COON: Okay. Thank you.

22 MR. HOUSTON: Just one comment about the  
23 staffing backed up comment. You know, our  
24 engineering staff does all our queue projects. We're  
25 obligated to do those in queue order. So if there's

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1 someone ahead of you that has a higher priority we  
2 have to do them first.

3 And secondly, those same people do all the  
4 system expansion projects, load serving projects for  
5 all our customers. So they continually have  
6 priorities that distract them. They can't just stop  
7 everything and work on one project all the time.

8 MR. DARLING: Believe me, I wasn't being  
9 critical. I was just recounting the facts as I was  
10 told them and then as we tried to deal with them.  
11 That's all I was talking about.

12 MR. HOUSTON: Okay. Thank you.

13 MS. COON: "On lines 220 through 226 you  
14 discuss the withdrawal of support by your financial  
15 backers. Your permanent financing backer apparently  
16 withdrew only 10 to 14 days after you invoked force  
17 majeure, within a couple of days of Mr. Brockbank's  
18 February 26, 2006 letter questioning that force  
19 majeure. What documentation can you provide that the  
20 invocation of force majeure and PacifiCorp's initial  
21 skepticism was the only reason for that backer's  
22 withdrawal? Why wouldn't this financial backer give  
23 Desert Power any time to work out the problems with  
24 PacifiCorp? And what documentation can you provide  
25 that supports the withdrawal of your bridge loan

26

1 financing was solely or substantially due to your  
2 force majeure dispute with PacifiCorp?"

3 MR. DARLING: I would say, as I mentioned  
4 earlier, that there were exogenous events that I  
5 think assisted the permanent financing, when they had  
6 a window of opportunity that, because we could not  
7 show the -- we could not show the suspension of the  
8 contract and with the events on the interconnection  
9 not being available, that they did not use that as a  
10 basis for withdrawal. I'm not impugning their good  
11 faith at all, I am just saying that under their loan  
12 commitment they had an opportunity failing which our  
13 ability to prove the in-force effect of our contract  
14 provided them a basis to terminate that obligation.

15 The documentation we provided on our  
16 bridge loan financing, and I think we've provided you  
17 all of our documentation and correspondence that we  
18 had with our loan during the course of the discovery.  
19 And the documentation on our bridge loan was that  
20 memorandum to us with their finance committee of  
21 LaSalle that specifically said that we're behind you,  
22 we're with you to the end, but -- and we will get you  
23 the additional funds required to complete this  
24 project except if you're not able to get the force  
25 majeure dispute with PacifiCorp resolved by May 1,  
26

1 further funding will terminate until you do.

2 MS. COON: Thank you.

3 MR. PETERSON: I have a follow-up question  
4 on the long-term financial backing. This lender  
5 apparently showed no interest in renegotiating or  
6 Desert Power had no interest in renegotiating or what  
7 was that situation?

8 MR. DARLING: Basically they said, once  
9 you have everything resolved, we like your project,  
10 come back and talk to us.

11 MS. COON: Thank you.

12 "Besides PacifiCorp's refusal to recognize  
13 the force majeure claim of Desert Power, what  
14 specific acts of PacifiCorp have made it impossible  
15 for Desert Power to perform under its contract?"  
16 Roger.

17 MR. SWENSON: I don't know if that's  
18 really my question or whether it's something closer  
19 to Mr. Darling's testimony.

20 MS. COON: I referred it to you because it  
21 came out of your testimony.

22 COMMISSIONER CAMPBELL: It's part of your  
23 testimony.

24 MR. SWENSON: I was going to give him a  
25 chance to expound on it, but my understanding of it

26

1 was the freezing of the financing was exactly what  
2 stopped us from doing anything else, period.

3 MR. DARLING: Once we could not resolve  
4 the force majeure, then we had our financing,  
5 particularly as the one that shut down the project  
6 was the termination of funding under the bridge loan.  
7 And that's what, after May 1, when we were not able  
8 to remove it by May 1, commencing May 6 we began to  
9 demobilize the site, we stopped construction and  
10 began to demobilize the site because we were out of  
11 funds.

12 MS. COON: Thank you.

13 "Beginning on line 47 of Mr. Swenson's  
14 testimony you discuss the Impact and Facilities  
15 Studies and seem to imply they should be completed no  
16 more than 180 days from the start day. With your  
17 reference to an April 27, 2005 meeting on line 57 you  
18 also seem to imply that the start date should have  
19 been no later than April 27, which would total the  
20 180 days at the end of October 2005. Is this a  
21 correct characterization of your testimony on these  
22 points?"

23 MR. SWENSON: Yes. I read their tariff,  
24 that's what it looked like.

25 MS. COON: Thank you.

26

1                   MR. BROCKBANK: I think Mr. Houston has a  
2 response.

3                   MR. HOUSTON: I'm not sure how you get to  
4 180 unless you add two of the three studies together  
5 and ignore all the intervening steps and all the  
6 negotiation processes and scoping meetings. Our read  
7 of the tariff is it takes 180 days from start to  
8 finish. That's been our experience.

9                   MS. COON: Well, and actually all I was  
10 trying to get at with that question is was that what  
11 Roger was trying to say in his testimony. Not  
12 whether it was fact based, tariff based, anything  
13 else, just whether or not I had read the testimony  
14 correctly. So thank you.

15                   "Documents indicate that PacifiCorp was  
16 still seeking information on Desert Power's turbine  
17 in August 2005. Why would that need for information  
18 not push back the expected end date for these studies  
19 perhaps into early 2006?" Roger.

20                   MR. MECHAM: What's the source for that  
21 August of '05? Is this the piece on your timeline  
22 that says, "Follow-up letter from PC indicating all  
23 necessary information had not been received?"

24                   MS. COON: That's correct. And that was  
25 included in the documentation provided by PacifiCorp  
26



1 under DPU 2.2.

2 MR. MECHAM: Okay. We asked about that in  
3 a data request and I think you may have a copy of it  
4 by now. And in response to Desert Power Data Request  
5 3.6 it says, "The August 19, 2005 letter from  
6 PacifiCorp Transmission to PacifiCorp's merchant  
7 function concerned a transmission service request,  
8 not a generation interconnection request issue.  
9 That's not a Desert Power issue."

10 MR. SWENSON: We don't know what the issue  
11 is on the August letter.

12 MS. COON: Okay.

13 MR. MECHAM: On the August 19th letter.

14 MS. COON: Thank you.

15 MR. HOUSTON: I know what that is. The  
16 merchant function had made a network resource request  
17 basically wanting it, the resource to be  
18 contractually designated as a valid resource under  
19 the tariff. And we have to do a separate study for  
20 transmission service requests. One of those is a  
21 System Impact Study. We had to do the same voltage  
22 studies that ended up showing up in the System Impact  
23 Study for Desert Power.

24 So we were again asking for the technical  
25 data specifically related to the Voltage Performance

26

1 Studies that we had yet to receive. Since our  
2 merchant had made the transmission request, we were  
3 asking them for the same data. They would have had  
4 to ask Desert Power for that information.

5 MS. COON: So was this the data, then, the  
6 voltage data that you were saying that you did not  
7 receive until December 12?

8 MR. HOUSTON: Yes.

9 MS. COON: Is that the data you were  
10 asking for?

11 MR. HOUSTON: Yes.

12 MS. COON: Thank you.

13 "What documents or other evidence do you  
14 have that the interconnection design was essentially  
15 finalized in September 2005 and then some weeks later  
16 PacifiCorp simply decided to change that design?"  
17 And I would ask you to focus your answer in on the  
18 "essentially finalized" aspect. Thank you.

19 MR. SWENSON: And I guess what do you mean  
20 by "essentially finalized"?

21 MS. COON: Well, that's basically a quote  
22 out of your testimony.

23 MR. SWENSON: Right. I just wanted to  
24 make sure --

25 MR. PETERSON: That's Mr. Darling's term,  
26

1 phrase.

2 MR. DARLING: Well, I mean, we had a draft  
3 final study in September.

4 MR. SWENSON: A draft interconnection?  
5 An impact study.

6 MR. DARLING: And a design.

7 MR. SWENSON: Right.

8 MS. COON: But my understanding, based on  
9 the correspondence between the two parties, suggested  
10 that the impact study at that point was just a draft,  
11 not a finalized version. Is that correct?

12 MR. SWENSON: That's correct. And they  
13 asked for comments.

14 MS. COON: Okay. Thank you.

15 MR. HOUSTON: Our records show a draft was  
16 issued on September 23rd and then we did raise the  
17 redesign in October.

18 MS. COON: Thank you. And the final  
19 question may actually be directed to your counsel.  
20 "Isn't it true that Desert Power has failed to comply  
21 with Section 2.3.2 of the contract as written which  
22 specifically laid out the obligation of Desert Power  
23 to inform PacifiCorp of fuel source issues?"

24 Mr. Mecham, would you like to --

25 MR. MECHAM: I'm looking at 3.2.2.

26

1 MS. COON: Thank you.

2 MR. SWENSON: I can say perhaps in the  
3 meantime while they're thinking about this, I was  
4 getting requests from Mr. Paul Clements of PacifiCorp  
5 to do this. And what I gave him was the gas supply  
6 agreements that I think have been produced in  
7 discovery for that answer.

8 MS. COON: Okay.

9 MR. SWENSON: And he indicated to me that  
10 that was good enough.

11 MS. COON: Thank you.

12 MR. SWENSON: He didn't ask for anything  
13 else.

14 MS. COON: Thank you.

15 MR. BROCKBANK: I would just add, I think,  
16 in answer to your question, I would say that the  
17 answer is yes, they have -- or they did not follow  
18 Section 2.3.2. I would also add that according to  
19 our timelines they did not follow 2.3.3. They were  
20 nine months late on providing copies of permits and  
21 construction information, they were nine months late  
22 on complying with Section 2.3.4 which requires to  
23 provide evidence of construction financing. So 2.3.2  
24 is just another one of those mismanaged submissions  
25 that we were required to get early on and we didn't.  
26

1                   MR. MECHAM: Well, of course, there was no  
2 interchange that I'm aware of indicating that you had  
3 a problem or that we had missed any of these dates.

4                   MR. BROCKBANK: But there was a contract  
5 approved by the Commission requiring you to provide  
6 them.

7                   MR. DARLING: When we were asked for them  
8 we provided them.

9                   MR. MECHAM: Well, okay.

10                  MR. BROCKBANK: I mean, only so much hand  
11 holding can go on. I mean, it's a pattern.

12                  MR. MECHAM: It's not hand holding.

13                  COMMISSIONER CAMPBELL: Let's not use  
14 terms like that, please.

15                  MS. COON: Thank you counsel and counsel.  
16 Okay. Thank you, Desert Power. Let's move on to the  
17 questions for PacifiCorp.

18                  Starting with the first, "Please explain  
19 what deadline was missed according to DPU timeline on  
20 10-27-05, what remedies were undertaken and when was  
21 the reference document actually produced?" And that  
22 line on the timeline reads, "Internal PacifiCorp  
23 Transmission communications showed that PacifiCorp  
24 Transmission missed Facility Study deadline."

25                  Mr. Houston.

26

1                   MR. HOUSTON: We signed the 120-day  
2 Combined Study Agreement. We think we initially got  
3 the data we needed to start on June 10th. So if you  
4 add 120 days to that date, that gets you to the  
5 October 27th date. So that was referencing the 120  
6 days from the start date of the study.

7                   Typically we would notice a customer,  
8 similar to our tariff, that we're not going to meet  
9 your date. Here's the date that we think we can meet  
10 it. Since that was right in the middle of the  
11 redesign and we were communicating with Desert Power  
12 over redesigning the interconnection, I think it was  
13 clearly obvious we weren't going to meet the date.  
14 So I can't say we gave them the formal notice other  
15 than the back and forth communications.

16                   MS. COON: And then the last bit was "When  
17 was the referenced document actually produced?" So  
18 at what point was the Facility Study completed?

19                   MR. HOUSTON: Drafts went back in  
20 September for part of it. Some of the other drafts  
21 for the Facility Study piece didn't come out until  
22 January, February, and then the final was issued on  
23 April 4, 2006.

24                   MS. COON: Thank you.

25                   "Please explain why there are so many  
26

1 drafts of the GISIFS exchanged."

2 And actually, I have to admit, once I  
3 started looking at some of the drafts, it looked like  
4 I misunderstood what was being sent. And so we can  
5 withdraw that question because that actually had to  
6 do with the Qualifying Facility Large Interconnection  
7 Agreement rather than the System Impact Study.

8 MR. DARLING: Just for clarity, can you  
9 tell me what the GISIFS is or whatever?

10 MS. COON: Yes. It's the Generation  
11 Interconnection System Impact and Facilities Study.

12 MR. BROCKBANK: Say that ten times fast.

13 MS. COON: Well, apparently I didn't even  
14 want to write it once. So let's move on to the next  
15 question.

16 "Please provide reference to tariff  
17 language that sets out timelines for each step in the  
18 interconnection process."

19 MR. HOUSTON: I can go on all day on that  
20 one. I guess specifically it's Section 38 through 40  
21 something in Chapter 4 of the tariff. And generally  
22 there's three basic studies. There's a Feasibility  
23 Study, System Impact Study, and a Facility Study.  
24 And each one has very similar steps.

25 There's a completed application, we  
26

1 acknowledge the application. Within five days, we  
2 submit -- I'm sorry, we hold a scoping meeting within  
3 30 days. Within five days of the scoping meeting we  
4 submit a Study Agreement for the next step. The  
5 customer has 30 days to execute and fund the Study  
6 Agreement and then there's a certain time to complete  
7 each study. For the Feasibility Study it's 45 days,  
8 for the System Impact Study it's 90 days, and for the  
9 Facilities Study it's either 90 or 120 days depending  
10 on how accurate the customer wants the cost estimate  
11 to be conducted. So if I could, I would just stop  
12 there and reference you to Chapter 4, Section 38  
13 through the end, 40 some odd.

14 MS. COON: Thank you.

15 MR. HOUSTON: It's very detailed and very  
16 explicit.

17 MS. COON: "At this time, have all dollars  
18 necessary to pay for equipment procurement been paid  
19 and what, if any, expense amounts are still  
20 outstanding to PacifiCorp Transmission?"

21 MR. BROCKBANK: You mean paid by Desert  
22 Power?

23 MS. COON: Yes, correct.

24 MR. BENNION: I'll take that one. We have  
25 received \$400,000 from Desert Power to engineer and

26



1 procure the equipment that was in our scope of work.  
2 So we have received that particular money. We have  
3 also placed orders for all of that equipment with our  
4 vendors. We have not paid those vendors at this time  
5 until the equipment has been received.

6 MS. COON: Thank you.

7 "What is the usual lead time for  
8 substation equipment?"

9 MR. BENNION: Well, substation equipment  
10 involves a variety. I'll start with probably on the  
11 low end, you're usually looking at 8 to 12 weeks for  
12 most of the key equipment that's in there, and it can  
13 go as high as 52 weeks. The 52 weeks would be for a  
14 transformer. Substation breakers and whatnot would  
15 be in the 30-week range, and metering PTCTs would be  
16 in the 30-week range as well.

17 MS. COON: Thank you.

18 Desert Power originally made their  
19 application on the 22nd of February in 2005, I  
20 believe.

21 MR. DARLING: Excuse me, Andrea.

22 MS. COON: Yes.

23 MR. DARLING: Could I just say that on our  
24 breaker equipment, just so that you know, our  
25 availability has been in the 16 to reserve one and we  
26

1 have an alternative at 24 weeks on a new breaker.

2 It's pretty consistent with what you said, but we

3 have been able to negotiate shorter lead times.

4 MS. COON: Thank you.

5 "Given that the application was made on

6 February 22nd, 2005, on what date did PacifiCorp

7 transmission deem the application to be complete and

8 was the scoping meeting held within ten days of this

9 date?"

10 MR. HOUSTON: I think this is another

11 example of us, PacifiCorp, trying to do things to

12 meet Desert Power's aggressive schedule. The FERC

13 procedure requires us to deem an application complete

14 prior to even issuing a System Impact Study or

15 Feasibility Study Agreement. In this case, we did

16 not get the technical data until June 10th which

17 would have deemed the application complete. Desert

18 Power was issued a combined Impact and Facility Study

19 Agreement on February 24, two days after their

20 application. Again, following the procedure it

21 shouldn't have been issued at all until June.

22 We did hold a kickoff meeting on April

23 27th. Again, well ahead of the normal timeline. Not

24 ten days after, but a month before.

25 MS. COON: Thank you.

26

1                   "Did PacifiCorp Transmission meet their  
2           deadline for the impact study and what dates were  
3           used to determine whether that deadline was met?"

4                   MR. HOUSTON: Again, our goal was to issue  
5           a combined study, an Impact and Facility Study within  
6           120 days. We didn't do that. There were several  
7           issues, the redesign, the voltage studies and  
8           multiple other factors that came into play that  
9           initiated those delays. We did provide a draft  
10          System Impact Study in September, as mentioned  
11          previously. Again, the finals were issued April 4th,  
12          2006.

13                  COMMISSIONER CAMPBELL: When was the 120  
14          days up, was that the October date?

15                  MR. HOUSTON: That would have been  
16          October --

17                  MS. COON: 27th-ish.

18                  MR. HOUSTON: -- 27th, I believe.

19                  COMMISSIONER CAMPBELL: So you agree that  
20          there was a delay from October 27th to April?

21                  MR. HOUSTON: Yes.

22                  MR. ELMONT: But commercially reasonable?

23                  MR. HOUSTON: Yes. And again, I think we  
24          were trying to ensure the safety of our employees,  
25          the reliability of the system and do the right thing.

26

1                   COMMISSIONER CAMPBELL: We understand your  
2 reasons.

3                   MR. MECHAM: Isn't there a -- I may be  
4 wrong, but the final study came out like June 28th.  
5 Am I wrong about that?

6                   MR. HOUSTON: The document I have, that  
7 issued Final Impact Facility Study that I read this  
8 morning, is dated April 4, 2006.

9                   MR. MECHAM: Well, in the documents  
10 produced there's a document entitled "Final Revised  
11 Interconnection System Impact and Facilities Study  
12 Report" dated June 28, '06. I think it's -- I could  
13 be wrong, but I think it's marked as Desert Power  
14 1.22-61. Now, I didn't get a chance to read that  
15 entire study, but I believe June 28th of '06 is on  
16 that and I don't quite understand -- I can't  
17 reconcile April to June.

18                   MR. HOUSTON: Well, I'm not familiar. I  
19 don't know the difference. The one I have is dated  
20 April 4th.

21                   MR. MECHAM: I don't either.

22                   MR. HOUSTON: Again, I think there were a  
23 lot of scope changes going on. The scope is a part  
24 of the Facility Study. There were some efforts to  
25 have Desert Power procure certain equipment to

26

1 expedite the process. That could have been the  
2 reason for the change later. I would have to do some  
3 research to answer that question.

4 MS. COON: And actually I am remembering,  
5 when going through the volumes of documents, that I  
6 have a reference here to May 18th of '06 where a  
7 study error was found and a remedy discussed, and  
8 perhaps that's the reason for the new final document.

9 MR. HOUSTON: I've tried to find that  
10 document reference and I couldn't. And all I can  
11 think of, it may be, subject to check, that we shared  
12 the final document with US Mag Corp, US Mag owns the  
13 Rally Substation, they're an impacted system, we're  
14 obligated to have their comments, input. They may  
15 have seen something that they wanted changed and made  
16 those comments back to us and we would have then  
17 changed the documentation and reissued the study.

18 MR. DARLING: I remember what it is now.  
19 We had questioned some fault loading in that final  
20 study on the US Magnesium switches, part of which was  
21 the reason for requiring the changing out of the  
22 US Magnesium switches. And when our engineers went  
23 through it, they went and said, we can't come up with  
24 the same numbers you guys do. And then PAC Trans  
25 reran those numbers and said, yeah, there was an

26

1 error in them and they came down. And that was, I  
2 think, probably the May kind of thing.

3 But with the numbers coming down like  
4 that, we then went to them, we said -- well, as you  
5 know, we have always been resistant about replacing  
6 those US Mag switches, and we got the elements of the  
7 US Mag switches and we went to the manufacturer and  
8 we said, "With this fault loading, are these switches  
9 adequate?" And they said, "Yes, we will guarantee  
10 them to this fault loading."

11 And I think that's what led to the June  
12 28th because I think that's been withdrawn now  
13 because it had to go through some sign-offs and  
14 sign-offs. But they were Mark 5 switches, not Mark 2  
15 switches. And so there wasn't a whole lot of things  
16 there where it is all agreed now that those switches  
17 are just fine for the fault loading of the facility.  
18 So I think it's all -- we've been working through  
19 that whole US Mag issue and what was the fault  
20 loading and what was the switches, what were the  
21 switch capabilities.

22 MR. HOUSTON: That's the very reason the  
23 procedure requires us to issue draft studies and  
24 requires 30 days for comment so the customer can  
25 point out those types of things.

26

1                   MR. DARLING: I think we've been working  
2 on that. And I think based on our last phone call  
3 with our last back and forth that's where we are.

4                   MS. COON: Thank you.

5                   Now, the next two questions on your list  
6 for PacifiCorp, you have already answered those. So  
7 unless you have something further to add, then we  
8 will move on to the next one in order to speed things  
9 up a little.

10                  MR. ELMONT: Before we get too far along,  
11 I wanted to make one comment to Chairman Campbell's  
12 question about missing the deadline. Just to  
13 clarify, that 120 days is to use commercially  
14 reasonable efforts to make the 120 days. That's what  
15 the deadline was.

16                  COMMISSIONER CAMPBELL: That was within  
17 your agreement?

18                  MR. ELMONT: Right.

19                  COMMISSIONER CAMPBELL: Which was shorter  
20 than what your OATT requires?

21                  MR. ELMONT: Right.

22                  COMMISSIONER CAMPBELL: I think I  
23 understand.

24                  MS. COON: Thank you.

25                  "What would PacifiCorp Transmission say is  
26

1 the average length of time between the date at which  
2 interconnection is requested and the required on line  
3 date of this facility requesting interconnection, not  
4 necessarily the in-service date?"

5 MR. HOUSTON: I think our experience over  
6 the last three or four years, projects have averaged  
7 20 and-a-half months. We've had three that have been  
8 as short as 16 months and several as long as 27  
9 months. Two years.

10 MS. COON: Thank you.

11 COMMISSIONER CAMPBELL: Let's take another  
12 minute on this question because it seems like this is  
13 where a huge disconnect occurred from a prior  
14 experience versus this experience. What has changed?  
15 Why was the company able to do the first Desert Power  
16 in a shorter period of time, was it six months, if my  
17 memory is right, and now the standard is two years?  
18 What's changed over that course of time?

19 MR. HOUSTON: Well, I think the FERC 2003  
20 interconnection procedure was developed and  
21 implemented, mandated. I think that was done to  
22 bring some structure to these types of studies. It's  
23 been my experience in another place where people who  
24 request interconnection are given the lowest priority  
25 in the work and aren't dealt with accordingly, and  
26



1 that happened a lot. And FERC stepped in and said,  
2 that's not going to happen anymore, here's your  
3 procedure, here's the steps you have to take and the  
4 timeline to follow. Unfortunately, it's a year  
5 and-a-half long. And that's about the best you can  
6 do.

7 COMMISSIONER CAMPBELL: So I can tell my  
8 fellow commissioners at FERC they really messed up by  
9 doing this? That we had a six-month experience and  
10 now it's an 18-month experience?

11 MR. HOUSTON: Well, I'm not sure. I think  
12 things could have been done quicker in the past if  
13 there wasn't a lot of work to do and you just allowed  
14 the generator to run hot taps to a line and hook it  
15 up you didn't study the impacts very closely.

16 I think if you read the April 4 study or  
17 the June study you will see very clearly that this  
18 particular installation where you've got five  
19 generators on the end of a radial line, there's a  
20 bunch of interactions between the generators that can  
21 create very serious reliability issues. And by doing  
22 a detailed study we have identified those and we have  
23 made some recommended settings and operating  
24 requirements that hopefully will keep the system  
25 stable.

26

1                   COMMISSIONER CAMPBELL: And you didn't do  
2 that the first time around?

3                   MR. HOUSTON: I'm sure. There's no way  
4 that could have been done. And if you just hook it  
5 up and hope it works you can do it fairly quickly.  
6 But if you do it right and you study it and you set  
7 the requirements fairly clearly it takes some time to  
8 do.

9                   MR. DARLING: Well, we had been hooked up  
10 and it didn't work.

11                  MR. HOUSTON: You were adding a big  
12 40-megawatt generator.

13                  COMMISSIONER CAMPBELL: We understand the  
14 difference.

15                  MS. COON: Thank you.

16                  "The redesign apparently took place  
17 between approximately October 18, 2005 and November  
18 15, 2005. Was there any work that had to be done or  
19 redone due to the redesign that took place outside of  
20 this window? And if so, what tasks had to be redone  
21 and during what period were these tasks  
22 accomplished?"

23                  MR. HOUSTON: Again, at that point in the  
24 study process we're very early in the scoping  
25 process. And so I believe the only work that we had  
26

1 to redo is to redo the one lines in our Study  
2 Agreement and basically just hand that off to the  
3 engineers to start their engineering design work and  
4 the pricing work that would have come afterwards. It  
5 was just very minimal reporting.

6 MS. COON: So very minimal that came  
7 outside of this window that I identified?

8 MR. HOUSTON: Yes.

9 MS. COON: Thank you.

10 "What effect on the on line date did the  
11 error discovery of 5-18-06 have? And that, of  
12 course, was the US Mag discussion we've been having.  
13 Did that have any impact on the date at which that  
14 facility could come on line?

15 MR. HOUSTON: No. If Mr. Darling is  
16 correct, the only difference would have been the  
17 switch changeouts that would have been required were  
18 eliminated from the requirement. So everything else  
19 was normal course of business. We just removed that  
20 changeout requirement in the study. Again, I'm  
21 basing that on what Mr. Darling's memory is because I  
22 don't know.

23 MS. COON: Thank you.

24 "What was the cause of the delay in the  
25 Impact and Facilities Report on 01-03-06?" So

26

1 February 3rd of this year.

2 MR. HOUSTON: Part of the Facility Study  
3 is once a design is complete, our estimating team  
4 will look at that and come up with a cost estimate.  
5 They will go out and get some quotes and look at the  
6 last breakers they ordered and determine those  
7 pricing and they'll add up the price for the various  
8 components of the study. And our records show that  
9 the pricing estimate was not complete on February  
10 3rd, that wasn't completed until February 15th, it  
11 was inserted into a draft report that was sent to  
12 Desert Power on February 20th.

13 MS. COON: Thank you.

14 "PacifiCorp appears to have first  
15 responded to Desert Power's invoking of force majeure  
16 in a letter dated February 21, 2006, perhaps with  
17 20/20 hindsight, what is PacifiCorp's opinion  
18 regarding the course of action Desert Power should  
19 have taken beginning February 26, 2006 to resolve the  
20 difficulties it faced in completing its project?"

21 MR. BROCKBANK: That's a tough question.  
22 I'll say that if we're looking at hindsight,  
23 hindsight should have -- they should have made the  
24 request six months earlier than February of '05. But  
25 I would look to the engineers to see if there's

26

1 anything from February '06 forward that they could  
2 have done to accelerate it from that point on.

3 MR. HOUSTON: I believe there was some  
4 delay in getting the E&P agreement signed and funded.  
5 Obviously, the sooner we start design and  
6 procurement, the sooner we get finished.

7 COMMISSIONER CAMPBELL: Let me see if I  
8 understand this disagreement here. So it's the  
9 company's position, PacifiCorp's position that the  
10 interconnection request should have been made before  
11 they purchased the turbine?

12 MR. BROCKBANK: It should have been made,  
13 yes. It should have been made consistent with  
14 negotiating the Power Purchase Agreement.

15 COMMISSIONER CAMPBELL: And Desert Power's  
16 position is that you wanted to be comfortable you had  
17 a turbine and knew the parameters around that before  
18 making the request?

19 MR. DARLING: That we wanted to have the  
20 reasonable definition of the turbine parameters  
21 before we made the request.

22 COMMISSIONER CAMPBELL: I just want to  
23 make sure I understand those two different viewpoints  
24 on that date. Okay.

25 MR. SWENSON: And I can say one thing just  
26

1 to follow-up on what Mr. Houston said. On the E&P  
2 agreement, we did get an E&P agreement that was sent  
3 to Desert Power, and its engineering and procurement,  
4 and that was sent to Desert Power on November 29th.  
5 We internally looked at that document. We redlined  
6 it, sent it back asking for things like -- well, I  
7 can't remember all the details, but it's in the  
8 produced document.

9           And I got an e-mail back from Mr.  
10 Soderquist I believe on January 3rd or 4th, I have a  
11 copy of it with me, that says that he can't find  
12 that, can I send it again to him. So I don't want to  
13 say that we were the only persons holding up any  
14 engineering and procurement. You know, the agreement  
15 was going back and forth and we were trying to do it  
16 as fast as we could just making comments as anyone  
17 would to an agreement they're going to enter into  
18 that involves hundreds of thousands of dollars.

19           MS. COON: Thank you.

20           And in its letter to Desert Power's  
21 counsel dated May 9, 2006, PacifiCorp indicates it  
22 could be ready to backfeed Desert Power by June 1,  
23 2006. At that late date did PacifiCorp Transmission  
24 believe it might still be possible to actually have  
25 the project ready for backfeed by June 1st? And if

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1 so, what would a plausible sequence of events have  
2 been that would have resulted in PacifiCorp  
3 Transmission providing backfeed to Desert Power on  
4 June 1st?"

5 MR. BENNION: I would like to try and take  
6 that one on. At that point in time, PacifiCorp had  
7 received the \$400,000 from Desert Power, of course,  
8 and we had placed orders for our equipment back in  
9 March time frame and April. At that point in time,  
10 in order to meet the customer's timeline to make sure  
11 that we were prepared to provide our equipment, we  
12 had found a number of alternative solutions and  
13 whatnot to handle the metering and communications.

14 So from an engineering design perspective  
15 on our side, the equipment that we were required to  
16 provide we could have had available. Now, the flip  
17 side of that is cooperation on Desert Power's side,  
18 is they had elements on their substation side with  
19 control rooms and whatnot that would have to have  
20 been in place for us to perform our work and install  
21 that equipment. So in May when we saw that certain  
22 elements of their schedule didn't order the equipment  
23 and have rooms available, we knew that we couldn't  
24 meet the June 1st date for them.

25 MS. COON: Thank you.

26

1                   "Was it prudent of PacifiCorp Transmission  
2 to not perform a Feasibility Study in this case?"

3                   MR. HOUSTON: Yes. The purpose of the  
4 Feasibility Study in the OATT procedures is to give a  
5 developer a high-level estimate, interconnection  
6 requirement and timeline to get their project  
7 connected. So it's typically designed for someone  
8 who is not sure they want to proceed with the  
9 project. It was clear that Desert Power when they  
10 came in, they were in a hurry and they made their  
11 decision and wanted it done quickly. A Feasibility  
12 Study would have slowed them down significantly.

13                   MS. COON: Thank you.

14                   "We understand that PacifiCorp  
15 Transmission attempted to do the Impact and  
16 Facilities Studies simultaneously in order to  
17 accommodate Desert Power's schedule. Did the signed  
18 agreement with Desert Power indicate that PAC Trans  
19 would do both together in the 120-day time frame?  
20 And what day does PacifiCorp see this as starting?"  
21 Is that the June 10th date that you see this 120  
22 days?

23                   MR. HOUSTON: Yes.

24                   MS. COON: Thank you.

25                   MR. PETERSON: Excuse me. I thought I  
26



1 understood earlier that it was -- well, it wouldn't  
2 have been the April 27th. So the June 10th and then  
3 you were thinking that the date tolled on October 27;  
4 is that correct?

5 MR. HOUSTON: Correct, yes.

6 MS. COON: "Referring to your discussion,  
7 Ken, on lines 393 through 402, if Desert Power had  
8 applied for an interconnection agreement at the time  
9 the PPA was signed using typical data and then six  
10 months later provided the actual data for the turbine  
11 it purchased, how much delay, approximately, would  
12 the restudy have cost?"

13 MR. HOUSTON: Well, it's really hard to  
14 say. If the typical data fairly matched the actual  
15 purchase, no to the delay. If it was significantly  
16 different, you know, a lot of the load studies and  
17 load flow studies might have had to be redone. It's  
18 very unlikely it would have impacted the physical  
19 interconnection which became the issue. So an  
20 earlier request would have identified that; we would  
21 like the hole punched sooner.

22 MS. COON: Thank you.

23 MR. SWENSON: Well, and I'm just not sure.  
24 I've been looking for it in the documentation of when  
25 you got any kind of indication of generation

26

1 capability. And I know they have revised it a couple  
2 of times to get to the maximum amount that they  
3 thought that the units were going to put out to make  
4 sure you had that information. Did you not get any  
5 information from Desert Power's engineers on any kind  
6 of capability that was going to come out of the  
7 machine before that date?

8 MR. HOUSTON: I think the first data  
9 sheets that were incomplete were provided on April 4,  
10 2005. Again, there wasn't sufficient information to  
11 start the studies. It wasn't clear what the total  
12 maximum output was on all three generators and what  
13 the temperature production curves were and how those  
14 interrelated.

15 MR. SWENSON: But you've said that if we  
16 would have just sent you typical data or some kind of  
17 data you could have started. And I'm just saying, I  
18 think you got some information that you could have  
19 started something on but you decided to wait until  
20 you had that final information.

21 MR. HOUSTON: Again, we obligate the  
22 customer to tell us, here's my data. If it's  
23 typical, it's clear to the customer that they're  
24 subject to restudy if they pick a different turbine  
25 later in the process.

26

1 MS. COON: Thank you.

2 "Mr. Bennion discussed several options  
3 and/or temporary work-arounds for supply metering and  
4 communications at the Desert Power site. When did  
5 PacifiCorp first identify these options?"

6 MR. BENNION: That would have been the  
7 first part of April following the signing of the E&A,  
8 or the engineering material agreement.

9 MR. BROCKBANK: April 2006?

10 MR. BENNION: Yes.

11 MS. COON: Thank you.

12 "What remained for Desert Power to  
13 specifically do in order to meet the June 1st on line  
14 date discussed in your testimony as of March 24,  
15 2006, the date Desert Power signed the procurement  
16 agreement?"

17 MR. BENNION: As of that date since the  
18 scope of work was clearly defined between both  
19 entities, in Desert Power's position they were  
20 responsible for the steel transmission structures,  
21 the three-way switch on that, and the circuit breaker  
22 that would have been the entry point into their  
23 substation. And at that point none of those items  
24 had been procured or available to install.

25 MS. COON: Thank you.

26

1                   MR. SWENSON: And we couldn't order them  
2 until PacifiCorp had approved the engineering and  
3 told us to get -- that they were appropriate for the  
4 circumstance that was going to become part of their  
5 system. So we couldn't order anything until May  
6 12th.

7                   MS. COON: Thank you.

8                   MR. BENNION: Well, the one thing I would  
9 like to add to that too, since there were three  
10 critical items on Desert Power's list, which were the  
11 steel structures, one thing we did do is a review of  
12 our inventory. We did have four steel towers that  
13 were available on a surplus job up in Logan. One of  
14 them was capable to be the three-way switch pole with  
15 a few modifications, but they needed additional poles  
16 besides what we could do.

17                   The three-way switch we did have in  
18 inventory on another job, but when it got down to the  
19 remaining item, the circuit breaker, that just wasn't  
20 available. And at that point in time when they had  
21 to order it, that was outside that normal window. So  
22 you fall back on let's just go through the pole and  
23 the switch and the breaker ordering. So we did do a  
24 review and found other items, but it wouldn't have  
25 helped their schedule.

26

1                   MR. MECHAM: Weren't there just three  
2 poles available? Four were needed and three were  
3 available?

4                   MR. BENNION: I think that's what it was.  
5 We had three available and four were needed.

6                   MR. SWENSON: And we figured we had to  
7 order one more anyway and it was going to take just  
8 as long, was our thinking.

9                   MR. BENNION: But we had three in  
10 inventory that could have worked.

11                  MR. SWENSON: And we appreciated all the  
12 work you did in that effort. We understood that was  
13 out of the ordinary.

14                  MS. COON: Thank you.

15                  "As of May 9, 2006, as things actually  
16 stood at that time, was it still generally feasible  
17 and probable for PacifiCorp Transmission to complete  
18 its necessary work and Desert Power to complete what  
19 it had to do in order to meet the June 1, 2006 on  
20 line date?"

21                  MR. BENNION: And I think we just kind of  
22 discussed that on the material and the availability  
23 on the receiving end.

24                  MS. COON: So by May 9th you were pretty  
25 well aware that Desert Power would not be able under  
26

1 any circumstances to meet their on line date?

2 MR. BENNION: Correct.

3 MS. COON: Thank you.

4 "What is the latest date for which it  
5 remained genuinely feasible and probable for  
6 PacifiCorp Transmission to meet the June 1st on line  
7 date?"

8 MR. BENNION: Well, for us it would have  
9 been in that April time frame. Again, that's when we  
10 reviewed all of our options to meet that with the  
11 metering and so forth and we identified those and  
12 were available and in position to do that.

13 MS. COON: Thank you.

14 Mr. Chairman, that is all the questions  
15 that the Division has at the moment.

16 COMMISSIONER CAMPBELL: Do the parties  
17 have questions for each other in follow-up?

18 MR. BROCKBANK: Just one clarification.  
19 I promised when Andrea asked general question number  
20 4 regarding force majeure and I referenced in the  
21 contract the provision that says, "Force majeure does  
22 not affect a party's obligation to pay," I couldn't  
23 find that. It's in Section 13.1.

24 COMMISSIONER CAMPBELL: All right. Thank  
25 you for that clarification.

26

1                   Are there other questions that the parties  
2 might have for each other?

3                   I guess what unfortunately a meeting like  
4 this does not highlight is the cooperation that has  
5 taken place throughout this process. And clearly  
6 we're here talking about the disputes and the  
7 disagreements, but I also pick up the thread of a lot  
8 of cooperation among the parties trying to get this  
9 to happen.

10                  MR. DARLING: It's unfortunate we are in  
11 this situation, quite honestly. I will tell you from  
12 our side of the table, whatever PacifiCorp may think,  
13 we actually took the force majeure way as a way of  
14 attempting to achieve a business workout. We did not  
15 do it to criticize PAC Trans, and we do appreciate  
16 what you did. And actually, we have quite good  
17 working relationships with them. So I don't want you  
18 to walk away --

19                  COMMISSIONER CAMPBELL: No, and I  
20 understand that. Underlying all that I sense that.

21                  MR. DARLING: So at the end of the day,  
22 and that is why even we went to mediation and are  
23 here today, is to try to accommodate that workout.  
24 But we are where we are.

25                  COMMISSIONER CAMPBELL: Do the parties  
26

1 anticipate talking with each other between now and  
2 the hearing as far as any further attempt to work  
3 this out?

4 MR. MECHAM: We would like to.

5 MR. BROCKBANK: I would have to look at  
6 Mr. Griswold. My understanding is that we're always  
7 willing to talk, but we've provided certain  
8 conditions under which we would discuss that. And if  
9 those conditions were to change, I don't think  
10 anybody from PacifiCorp around this table could make  
11 that decision whether the company is prepared or able  
12 to back away from some of those conditions.

13 MR. MECHAM: Well, and, Dean, you know  
14 that at least one of the conditions Mr. Miller  
15 indicated to make the whole thing not financeable and  
16 it just blows up. So it's very difficult for us to  
17 change that condition.

18 MR. BROCKBANK: I know. I understand that  
19 that is a critical component on both sides of the  
20 table.

21 COMMISSIONER CAMPBELL: Is that the post  
22 June 1?

23 MR. BROCKBANK: Yes.

24 COMMISSIONER CAMPBELL: Anything else that  
25 we need to clarify before we --

26



1                   MR. BROCKBANK: Mr. Chairman, could we  
2 discuss, perhaps, maybe process, procedure for the  
3 hearing?

4                   COMMISSIONER CAMPBELL: Yes. We can do  
5 that off the record. So I think we'll wrap up this  
6 Technical Conference as far as what's on the record  
7 and remain here for discussions as far as scheduling  
8 the hearing.

9                   COMMISSIONER BOYER: Let me ask a  
10 question.

11                   COMMISSIONER CAMPBELL: Do you want this  
12 on the record?

13                   COMMISSIONER BOYER: Sure, stay on the  
14 record.

15                   Dean just mentioned that you're willing to  
16 talk, but only on certain conditions. Do those  
17 conditions imply that your discussions now that MMC  
18 has added that new dynamic to the process, are you  
19 willing to sit down to that with them?

20                   MR. BROCKBANK: Bruce should answer that.

21                   MR. GRISWOLD: I think we are. I don't  
22 think there's any change in our position relative to  
23 the conditions we've requested and the assurances  
24 we've requested. Having MMC participate in it, if we  
25 could reach agreement on it, would be fine. You

26

1 know, we're trying to have the assurances that if the  
2 project comes on line that it will operate reliably  
3 and there will be no harm to the ratepayers and also  
4 that the company is not going to get held in any sort  
5 of regulatory case going forward that we've overpaid  
6 for a resource. So those are our issues. But if we  
7 can work something out with MMC and Desert Power, you  
8 know, we're agreeable to do it.

9 COMMISSIONER BOYER: Thank you.

10 COMMISSIONER CAMPBELL: I guess we'll wrap  
11 up the on-the-record portion of the Technical  
12 Conference and continue your discussion about the  
13 schedule. I don't think we need to be here for that.

14 (The taking of the deposition was  
15 concluded at 4:08 p.m.)

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STATE OF UTAH )  
: ss.  
COUNTY OF SALT LAKE)

I, LANETTE SHINDURLING, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the State of Utah, residing at Salt Lake City, Utah hereby certify;

That the foregoing proceeding was taken before me at the time and place herein set forth, and was taken down by me in stenotype and thereafter transcribed into typewriting;

That pages 3 through 106, contain a full, true and correct transcription of my stenotype notes so taken.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

WITNESS MY HAND and official seal at Salt Lake City, Utah, this 5th day of September, 2006.

\_\_\_\_\_  
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