BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PACIFICORP for Approval of a 2009 Request for Proposals for Flexible Resource	) Docket No. 05-035-47

BEFORE: COMMISSIONER CAMPBELL

COMMISSIONER ALLEN

COMMISSIONER BOYER

November 3, 2006 * 9:30 a.m.

Location: Heber Wells Building
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Salt Lake City, Utah 84111

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P R O C E E D I N G S

CHAIRMAN CAMPBELL: Let's go on the record. Docket number 05-035-47 in the matter of the Application of PacifiCorp for Approval of a Request for Proposals for a Flexible Resource. Let's take appearances for the record, please.

MR. BROCKBANK: Dean Brockbank for PacifiCorp.

MS. SCHMID: Patricia Schmid, Assistant Attorney General for the Division of Public Utilities.

MR. SELGRADE: Edward Selgrade for the independent evaluator, Merrimack Energy Group, Inc.

MR. PROCTOR: Paul Proctor, Assistant Attorney General on behalf of the Utah Committee of Consumer Services.

MR. DODGE: Mr. Chairman, I'm Gary Dodge for the UAE. Today I'm actually here as a witness for UAE as opposed to a lawyer. So I'll give my name, but I'm actually intending not to act as a lawyer in this proceeding, if I can do that. If I know how to do it.

CHAIRMAN CAMPBELL: All right.

MR. EVANS: William J. Evans for LS Power.

CHAIRMAN CAMPBELL: All right. Thank you. It's my understanding that the attorneys would like to each provide a brief summary of their position and where they are at in this case. Following that, then we would convene a panel to begin our discussion; is that correct?

MR. BROCKBANK: Mr. Chairman, I think the understanding is that we would move right to the panels. There is a time constraint. I will let Ms. Schmid speak.

MR. SELGRADE: The independent evaluator does have a time constraint. He is trying to make --

CHAIRMAN CAMPBELL: Mr. Selgrade, you are going to need to pull that microphone closer to you.

MR. SELGRADE: Is this better, Mr. Chairman? Am I being heard now?

CHAIRMAN CAMPBELL: That's better.

MR. SELGRADE: Thank you.

Mr. Oliver has a time constraint. He is trying to make his first parents weekend at his first child's freshman year at college, and he will be leaving at 11:30, if that's possible.

CHAIRMAN CAMPBELL: All right.

MR. SELGRADE: And we do have one preliminary matter to bring up. It is ours, the independent evaluator's, and if you don't mind I will take a minute to do that now.

It relates to the question of waiver of liability that we brought up first in the technical conference on September 19. Among the three principal decision-makers in the RFP process, those being the Commission, the independent evaluator, and the Company, only one right now will not have the protection of waiver of liability by the participants and stakeholders in the bidding process, and that's the independent evaluator. The Company requires it through their RFP as a condition of participating from the bidders. And, of course, the Commission has a matter of sovereign immunity. And we think that that's an undue asymmetry that will expose the independent evaluator to pressure on its independence and we think the best way to assure the independence of the independent evaluator as they make tough decisions of judgment that could adversely affect the participants would be if they have the same protection as the other two parties.

CHAIRMAN CAMPBELL: All right. Well, let's hear how the other parties feel about this. Let's start with the Company.

MR. BROCKBANK: We've discussed this issue with the independent evaluator, and believe that we really remain neutral on the issue. We understand the independent evaluator's issues and we would certainly not be opposed to that, but we believe that it's an issue for the Commission to decide. And obviously the Company can't provide some kind of a waiver like that, but the Commission could and we would support that.

CHAIRMAN CAMPBELL: Ms. Schmid?

MS. SCHMID: As the Commission through its sovereign immunity, and as PacifiCorp through contract have embraced the idea of a waiver of liability, I believe that it is only just and comparable that the IE also receive such equal protection.

CHAIRMAN CAMPBELL: Mr. Proctor?

MR. PROCTOR: Mr. Chairman, you know me, I'm always the one to throw the wrench into the works. The IE is a creature of statute and the IE may have some coverage under the Utah Governmental Immunity Act. I'm pretty certain that this Commission doesn't have the authority to waive immunity -- excuse me. Waive claims for liability against anyone, honestly. The legislature only would have that.

What I would like to do is to inquire of the Assistant Attorney General who specializes in the area of governmental immunity to see whether or not that umbrella would also apply to the IE, given that he is a creature of statute and given his duties to the Commission, a recognized agency also of the state of Utah. So I think that would be the first place to start.

It also depends upon what waiver the IE is requesting. All claims? I just don't understand the nature of the liability that they are seeking to escape. I shouldn't say "escape." That's the wrong word. To limit. So I think that would be a better approach to do it.

There is a confusion between a private commercial contract and the work of this Commission, and we need to define where one ends and one begins, and then address it. I agree that they ought not to be subject to lawsuits for their work on behalf of the Commission. It's just, how do we get that result?

CHAIRMAN CAMPBELL: Okay. Mr. Evans?

MR. EVANS: Mr. Chairman, we don't have any view on that.

CHAIRMAN CAMPBELL: All right. Mr.

Selgrade?

MR. SELGRADE: I welcome the inquiry of whether we are already covered under Utah law or not, and would be satisfied if a definitive opinion were available on that. My suspicions, although I'm not, obviously, a Utah lawyer, is that that sort of grant of extension to third parties is seldom given by matter of state law and probably never given by implication. And that's why we think that it would be useful to have it specifically incorporated into the approval order.

What the approval order would simply say is that it would be a condition of the participation by bidders and others in the RFP process that they agree that they waive their claims against the independent evaluator. It is modelled or could be modelled readily upon Attachment 15 to the RFP, which is the language that PacifiCorp is using with respect to the bidders.

CHAIRMAN CAMPBELL: And that is -- this issue is not something that has to be decided today.

MR. SELGRADE: It does not have to be decided today, Mr. Chairman.

CHAIRMAN CAMPBELL: All right. Do you have any questions?

COMMISSIONER BOYER: I agree with Mr. Proctor that we ought to look either under the terms of the statute, the fact that it is a statutorily created position with all of these indicia of neutrality built in, and the fact that you are also under contract directly with the Commission, there might be something to that. But I think it bears looking at more closely.

MR. SELGRADE: Right. And I have reviewed the contract we have with the State and I have reviewed the statute from this perspective, and they are both silent.

CHAIRMAN CAMPBELL: All right. Let's move on. Thank you for raising that, and we will certainly explore that issue.

MR. SELGRADE: Thank you.

CHAIRMAN CAMPBELL: Now, how are we going to get all these panelists here? How do you propose this? As I read this, we have over ten panelists.

MR. BROCKBANK: Mr. Chairman, PacifiCorp has four witnesses that will hopefully be offering brief summaries. The other two witnesses will only be participating to the extent questions arise to their expertise. The seventh witness that we put on our list will not be participating as a witness. So we thought that -- and we discussed this with the parties before, that our recommendation, at least, would be to have the witnesses that have summaries to provide those up front. And to the extent we need to pull up additional chairs we can do that. And the independent evaluator has asked that we address the issue of comparability first because of schedule constraints.

CHAIRMAN CAMPBELL: All right. Instead of -- and I don't know what the summaries entail, but it would be my intent that we only go issue by issue. I don't want to sit here and hear a summary of all their positions over all the positions. I'd like to address comparability first. Those witnesses that are going to speak to it can do a brief summary of comparability and we'll discuss that issue and move on to the next issue.

MR. BROCKBANK: That's fine, Mr. Chairman. I would make a request that if it's possible, one of our witnesses, Mr. Bill Fehrman, is the president of PacifiCorp Energy and is sort of our overarching witness on all issues, policy. If we could have him provide his summary first and then turn to our witness on comparability and defer the others until we go issue by issue.

CHAIRMAN CAMPBELL: Are the other parties okay with that?

MR. PROCTOR: That's fine.

MS. SCHMID: Yes.

MR. SELGRADE: Yes.

CHAIRMAN CAMPBELL: Could we have the witnesses of the other parties, as well, come forward that are here to talk to the comparability issue? Let's get all of the witnesses that are going to talk about comparability up here and we will swear you all in at the same time.

MR. PROCTOR: Where will we put them?

CHAIRMAN CAMPBELL: I have no idea where we are going to put them.

Let's go off the record a minute.

(Discussion off the record.)

CHAIRMAN CAMPBELL: Do we have all of our witnesses here that are going to speak to the issue of comparability? Are they all up there?

MR. BROCKBANK: Mr. Chairman, as I mentioned before, we have other witnesses that, depending on the question -- I mean, we have a primary witness on comparability. But depending on questions that may arise, we may need to defer that to another witness. So I would suggest that we also swear in, at the same time without providing any summaries, the other witnesses that may speak to this from PacifiCorp.

CHAIRMAN CAMPBELL: All right. Let's have all the witnesses stand that are going to be here today. Can we go by name so we know who we are swearing in. Let's start here. Speak, loudly and clearly, your name.

MR. WILLICK: Lawrence Willick with LS Power.

MR. DODGE: Gary Dodge. UEA.

MR. DUVALL: Greg Duvall with PacifiCorp.

MR. KLEIN: Mark Klein with PacifiCorp.

CHAIRMAN CAMPBELL: I'm sorry, Mark. I didn't hear your last name.

MR. KLEIN: Klein.

MR. PAPOUSEK: Chris Papousek for PacifiCorp.

MS. KUSTERS: Stacey Kusters, for PacifiCorp.

MR. FEHRMAN: Bill Fehrman with PacifiCorp.

MR. LARSEN: Jeff Larsen with PacifiCorp.

DR. POWELL: Artie Powell with the Division of Public Utilities.

MS. COON: Andrea Coon with the Division of Public Utilities.

MR. OLIVER: Wayne Oliver, Merrimack Energy's independent evaluator.

MS. KELLY: Nancy Kelly. Utah Division of Consumer Services.

CHAIRMAN CAMPBELL: All right. Let's swear you in.

(All witnesses were sworn.)

CHAIRMAN CAMPBELL: Thank you. Please be seated.

Now, before we move on, we also have some individuals on the phone and I'd like to know who those are. Could you please identify yourself, those that are on the phone.

MR. GULBRAITH: Maury Gulbraith with the Oregon Public Utility Commission Staff.

CHAIRMAN CAMPBELL: All right. Thank you. Anyone else? Thank you.

Let's go back to you, Mr. Brockbank.

MR. BROCKBANK: Mr. Chairman, I believe PacifiCorp did, at one point, have an employee on the phone. She must be away from her desk. Just in the spirit of disclosure, in case someone comes who didn't introduce themselves.

CHAIRMAN CAMPBELL: Let's proceed with Mr. Fehrman's summary.

MR. BROCKBANK: Mr. Chairman, let me ask Mr. Fehrman a couple of questions.

Mr. Fehrman, could you please state your name and business address and title for the record.

MR. FEHRMAN: Bill Fehrman, 1407 North Temple, President of PacifiCorp Energy.

MR. BROCKBANK: And can you please -- are you familiar with this request for proposals that the Company is requesting approval from?

MR. FEHRMAN: I am.

MR. BROCKBANK: Do you have authority to speak on behalf of the Company on this request for proposal?

MR. FEHRMAN: I do.

MR. BROCKBANK: Please provide your summary.

MR. FEHRMAN: Thank you.

First, thank you very much for hearing us today. We value the Commission's approval of the RFP and appreciate the engagement of all the parties in this process. We obviously want the RFP to be as well designed as possible.

Our position throughout this regulatory

review process was that the RFP was a work in progress, and that's very evident as we sit here today. As this Commission is very aware, Utah customers benefit from being a part of the six-state integrated system. We are respectful of the policy choices the state has made and are seeking very hard to accommodate them.

We are, however, concerned that if, in the event there is a breakdown among our states, that leads to a suboptimal resource mix, that that is not in the best interest of our customers. However, the direction we head today and in the future is really your choice, as you all set the policy and we implement it in the very best way that we can.

As PacifiCorp has received and incorporated stakeholder feedback, the RFP has evolved to what it is before you today; an RFP that we believes meets the Commission's RFP approval standards as set forth in ERP 26. It means the RFP must be in compliance with the Act and in the public interest, taking into consideration the following factors:

Whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of an affected electrical utility located in the state;

Long-term and short-term impacts;

Risk, and reliability, and financial impacts on the affected electrical utility, which is important to us as we strive to be creditworthy, and continue to be a strong player in the state of Utah;

And then, of course, other factors as determined by the Commission to be relevant to this proceeding.

The IE and stakeholders have raised comparability as an issue. Responding to the IE's concern, PacifiCorp has already modified the RFP to allow bidders who make the initial shortlist the option to refresh or update their pricing before the final shortlist evaluation occurs.

Due to the long lead time of these resources, PacifiCorp has incorporated flexibility which will allow bidders to propose deferral and acceleration options, as well as buyout options.

And under the evaluation process, PacifiCorp has added a Step 4 to the process which is intended to address the issue that certain differences may exist between the Company's benchmark resources and resource alternatives provided through the solicitation process due to the inherent differences between costs of service-regulated entities, such as PacifiCorp, and market-based entities. These differences may create different risk profiles for the resources covered by the RFP and should therefore be considered in the evaluation process.

In responses to the Division's comments that were just recently filed on November 2, the Company wants to further clarify that the amount of resources the utility is soliciting has benchmark requirements of 340 megawatts in 2012, and 500 or 575 megawatts in 2013.

The 2012 resource of 340 megawatts is what the Company can feasibly bring on line to meet the need. However, the Company has two options for the 2013 benchmark resources to fill the resource need. And the point here is that even though the need is greater than the benchmark resource, we were providing what we reasonably believe we can bring on line in those dates. There's no reason for us to offer other alternatives and other benchmarks that cannot be built, in our view, which is the fundamental reason we are having an RFP, which is to see if there are other people out there who can help provide the need.

This would not preclude us, however, from procuring additional megawatts to the extent it receives proposals that are cost effective for customers and which address risk and provide reliability on a portfolio basis. In other words, we are very "wanting of" proposals to the RFP. We believe we know what we can get built during that time frame, but we are also very interested to know what others can do for us to help serve this need. All of this information, by the way, is available on page 6 of the RFP with regards to the need.

The Division has identifies the need for the period 2012 to 2014 with a 15 percent planning margin to be approximately 2000 megawatts and recommends that the Company solicit this level of resources through this RFP.

In their comments, the Division assumes that the Company is required to procure resources from 2012 to 2014 on a system-wide basis for a total of 2000 megawatts.

Our position is that we reduced the term of the RFP by one year in order to respond to stake-holder concerns about the magnitude of the resources procured through one RFP and in order to make the process more manageable for the Company, the stake-holders, and the customers. In addition, the Company will await the results of 2006 RFP and in turn will implement the plan derived from the preferred portfolio.

We are obviously very concerned about the process and the time that it is taking to complete the process. With regards to our overall need to get resources built, we are evaluating the difference in 12 percent planning margin and 15 percent planning margin within the FRP. However, for this RFP we have landed on 12 percent as a way to help get concurrence across states so we can move forward. As you are well aware, for us to move forward we must get concurrence from all the states, which is the process that we are under. So that is why you are seeing modifications to our submittal such as what is in the most recent version of the RFP.

While the Company has reduced the level of benchmark resources and shortened the term of the RFP, we have not reduced our need. Again, our need is the same. What we are providing are benchmark resources that we believe we can get built as a company. Essentially the need is 808 megawatts in 2012 and an additional 300 megawatts in 2013, for a total of 1109 megawatts for the term of the RFP for the east side.

We're proposing the following benchmark resources: For 2012 it will be 300 megawatts IPP3.

In 2013 there's two alternative benchmarks: One is 500 megawatts IGCC benchmark resource, and an alternative is 575 megawatt Hunter 4 plant.

We are also not done. We know that our load will continue to grow and this is not our last RFP. We know we will continue to issue RFPs as time goes on and/or amend this one once we get it through the process.

Finally, credit is an extremely important issue for the Company and our customers. We have approached credit in a way that allows investment grade and noninvestment grade entities in the RFP. Not having defined credit requirements up front is not acceptable for us. We will not place our customers at risk by allowing noninvestment grade companies to be counter-parties to our business. We have allowed for and created mechanisms for those parties to buy their way up to credit worthiness. But based on the current history in the industry, we believe it to be inappropriate to subject our customers to a higher level of risk by reducing our credit requirements.

And finally, we have worked hard and we have worked interactively with the parties to produce an RFP that we believe is fair to bidders and is consistent with the public interest, and we respectfully request that the Commission recognize this and approve our RFP. I appreciate your time this morning.

CHAIRMAN CAMPBELL: All right. Thank you. Now are we moving to the comparability witnesses?

MR. BROCKBANK: Yes.

CHAIRMAN CAMPBELL: To discuss comparability. And who is your witness on that issue?

MR. BROCKBANK: Jeff Larsen for PacifiCorp.

CHAIRMAN CAMPBELL: Do you want to go ahead and qualify him?

MR. BROCKBANK: Thank you, Mr. Chairman.

Mr. Larsen, please state your name and title and business address for the record.

MR. LARSEN: My name is Jeff Larsen, managing director of regulatory affairs. I reside at 201 South Main, Suite 2300, Salt Lake City, Utah.

MR. BROCKBANK: Are you familiar with this draft request for proposals?

MR. LARSEN: Yes, I am.

MR. BROCKBANK: And are you authorized by the Company to speak on behalf of the Company with respect to the issues that you will discuss?

MR. LARSEN: Yes.

MR. BROCKBANK: Thank you, Mr. Larsen. Can you please provide your summary.

MR. LARSEN: Certainly. It's a pleasure to be here today, Commissioner. Appreciate this opportunity.

It seems like many of the issues of comparability have come down to the difference between cost-based and market-based alternatives and so I'm happy to be here to provide my background in regulatory and rate making concepts to the discussion.

The Company's purpose is to find least cost risk adjusted resource that is in the public interest, and beneficial to customers. The Company has no desire to have a process that is not fair or reasonable. If it were otherwise, the Company would only be exposing itself to additional pressures of cost under recovery or increased rate shock to its customers. We want to see a process that is fair and results in the least cost resource.

Consistent with the CCS's position, the Company is uncomfortable with the recommendations of UAE and the IE, which would result in shifting risk from the developers to customers in an attempt to create a level playing field. The recommendation deviates from the principle that risk should follow reward and is at odds with the intent behind competitive bidding, namely customer benefits.

Consistent with UAE's position, the Company also does not have an inherent bias in favor of the utility-built resources or bids from the market. However, the Company disagrees that comparability can be met by amending the RFP because we believe that comparability will remain an issue, because we are comparing inherently different approaches: Cost-based versus market-based alternatives.

These differences may create different risk profiles for the resources covered by this RFP due to the issues such as, one, regulatory lag versus market lag; two, risk and reward differences from cost plus versus market alternatives; three, opportunities for additional capital recovery; or four, cost recovery through rates versus through contracts; and five, other regulated versus market differences that may exist. For example, the benchmark option would face allocation issues, MSP price cap issues, and those types of risks understands regulation.

It seems that the comments to date have been aimed at addressing the risk faced by the bidders. However, the benchmark options have, from the Company, also carried additional risks that haven't been considered. Just as an example, a PPA seller will receive one check from the Company shortly after invoicing the Company. The Company, however, has to receive its payment from six states through the regulatory recovery process and associated issues with allocation as I mentioned, price caps on the MSP, timing issues, or power cost normalizations.

Although the Company does not believe what has been proposed by the IE and UEA creates comparability, for example indexing the capital costs is not cost-based, it continues to be indexing to market. The Company has made several revisions to its RFP in response to the IE's suggestions in an attempt to address issues of comparability. For example, bidders who make the initial shortlist will be provided the option to refresh or update their bid and their pricing before the final shortlist evaluation occurs. And bidders are being encouraged to propose deferral and acceleration options as well as buyout options at different milestone dates.

Parties have acknowledged the practical difficulty associated with developing and assigning reasonable risks -- reasonable values to these risks in the evaluation process. We have had a number of discussions through settlement processes and could never come to an amenable way to handle this. However, the Company has added a Step 4 to the evaluation process to make an attempt to address this.

The Company intends to address this issue that certain differences may exist between the company's benchmark resource and market-based resources due to these inherent differences that I've discussed between cost-of-service regulated entities and market-based entities. In this final step, Step 4, the Company will take into consideration, in consultation with the IE, certain other factors that are not expressly or adequately factored into the formal evaluation process but that are required by applicable law or Commission order to be considered. Those other items are covered and also called out in the Resource Procurement Act.

With respect to cost recovery, the Company believes that IE's proposal is based on a flawed assumption that all cost increases incurred by the utility will be fully recoverable as prudent costs. As we know under the Act, the Company will seek approval for resource, and the Commission must include findings in its approval order as to the total projected costs for construction or acquisition of that approved resource.

Without going back to the PSC for additional pre-approval on any additional cost increases, the Company would be subject to review of any cost overruns through a normal rate hearing in the normal regulatory process, and therefore the Company continues to be exposed to risks associated with regulation, rate recovery risk, prudency, and so forth.

Moreover, the IE assumes that the Company will be able to receive recovery for that specific asset with no regulatory lag and perfect regulation. As the Commission knows, that's not the environment that we currently operate in. With that, the Company can't move to a market option because we are a cost-based utility and the benchmark would need to reflect that. But the Company is prepared to allow cost-based proposals that adhere to the same regulatory regime as the utility. In other words, we would be allowing bids to come in at a cost-based level that would be subject to our rate of return, our depreciation rates, and the recovery process that we are subject to, along with open book audits to verify the costs. That's not currently in the RFP, but we would develop a cost-based contract to address such an issue. Thank you.

CHAIRMAN CAMPBELL: Thank you. Let's move to the Division. Do you have a comment on this issue?

MS. SCHMID: Chair Campbell, the Division does not have comments on these issues but wonders if the Commission would like the Division to qualify its witnesses so that they may answer questions on this issue, if appropriate. And also, we'd like to notice that Mr. Eric Guidry has joined us and wonder when you would like him to enter his appearance.

CHAIRMAN CAMPBELL: Right. Mr. Guidry, did you have comments on the comparability issue?

MR. GUIDRY: No, I do not.

CHAIRMAN CAMPBELL: So we will bring you up when we address a panel that you have comments on. Let's go ahead and qualify the Division witnesses.

MS. SCHMID: Thank you very much.

The Division is presenting Ms. Andrea Coon as a witness, and she has been sworn in this docket.

Could you please state your name and business address for the record.

MS. COON: My name is Andrea Coon and my business address is 300 South 160 East in Salt Lake City, Utah.

MS. SCHMID: By whom are you employed and in what capacity?

MS. COON: I am employed by the Division of Public Utilities as a technical consultant.

MS. SCHMID: Have you participated on behalf of the Division in this docket?

MS. COON: I have.

MS. SCHMID: Thank you very much.

The Division would also like to qualify Dr. William Powell as a witness in this matter. Dr. Powell has been sworn.

Dr. Powell, do you also sometimes go by the name Artie Powell before the Division? But you are the same person?

DR. POWELL: Same person.
MS. SCHMID: Could you please state your business address for the record.
DR. POWELL: 160 East 300 South, Salt Lake City.
MS. SCHMID: By whom are you employed and in what capacity?
DR. POWELL: The Division of Public Utilities, and I'm the manager of the Energy section.
MS. SCHMID: Have you been involved on behalf of the Division in this docket?
DR. POWELL: Yes.
MS. SCHMID: Thank you very much.
That's all.
CHAIRMAN CAMPBELL: All right. Thank you. I think what I'd like to do now is go to the Committee and have your witness speak to the issue, since your position, I think, is similar to the Company's. Then we will hear the opposing side from the other two witnesses. So Mr. Proctor, let's go to you.
MR. PROCTOR: Thank you, Mr. Chairman.
Ms. Kelly, would you state your name and business address, please.
MS. KELLY: Nancy Kelly. 9463 North

Swallow Road, Pocatello, Idaho, 83201.

MR. PROCTOR: On whose behalf are you appearing here today?

MS. KELLY: Committee of Consumer Services.

MR. PROCTOR: Have you had an opportunity to review the RFP that was filed with this Commission on November 1 of this year?

MS. KELLY: Yes.

MR. PROCTOR: And have you been involved, also, in earlier conferences and discussions pertaining to the development of that request for proposals?

MS. KELLY: Yes. One technical conference, two settlement conferences.

MR. PROCTOR: Have you prepared a summary of your analysis of the comparability issue as defined by this Commission, and which is now before the Commission?

MS. KELLY: Yes, I have.

MR. PROCTOR: Would you provide that, please.

MS. KELLY: I'd be pleased to.

The Committee believes the RFP contract language, as written, complies with the Energy

Procurement Act. We do not agree with the suggestion to change the contract language of the power purchase agreement to make their risk profile be the equivalent of an asset purchase and sales agreement. In addition, we oppose the indexing of components of capital cost. Both are measures considered necessary by the IE and supported by UAE to make the risk profile of the Power Purchase Agreement the equivalent of the Asset Purchase and Sales Agreement, and to make coal bids the equivalent of company-proposed benchmarks. Both have the effect of shifting risk and/or cost to customers.

We are uncomfortable with these recommendations for several reasons. First, we question whether the full risk or cost would be passed forward to customers in the case of a company benchmark. One, we question the assumption that all cost increases will be considered prudent. This ignores the rate setting process and the ability of parties to effectively question the legitimacies of certain categories of costs. And we think it also ignores the disciplining effect of the competitive bidding process itself.

For example, it's been suggested that if there were cost overruns or time delays in the rate setting process, the Company would bring those costs in and they would most likely be considered prudent and passed forward to customers. And we are just not convinced that that's the case. We think, particularly in light of the competitive bidding process, if after winning a competitive bid a benchmark were delayed or had cost overruns, the interveners would seriously question the legitimacy of those costs and suggest disallowance, and it would be up to the Commission to decide. But we don't think that it just an automatic pass-through.

Another reason that we are not convinced that the full risk or costs would be passed forward to customers is because a large, vertically integrated utility may have the ability to internalize risks that a developer cannot because of the integrated utility's size, its diverse portfolio of resources, inventories, coal supplies, et cetera, so that the cost of these risks are not automatically shifted to customers. Or if so, at a reduced cost.

However, if the contracts are changed to reduce the risk to bidders offering PPA agreements, or cost adders are included, customers definitely will bear these risks and costs without the opportunity for review during a regulatory proceeding since these contracts will be pre-approved under Utah Code 54-17-303.

More fundamentally, we disagree with these proposals because they deviate from the principle that risk should follow reward, and they focus only on risk and not on benefit. The proposals do not consider the benefit or reward side of owning a facility. When a co-owned project is constructed, customers may bear a significant share of the risk of increased construction costs, et cetera. But over time, customers receive the benefit of a depreciated facility that continues to provide power at cost of service. So the reward follows the risk.

In the case of a power purchase agreement, after the contract expires there is no continuing benefit to customers. Instead, the facility owner reaps the reward. The owner possesses an asset that can be sold or has the ability to produce power to be sold at the then-prevailing market rate. The load-serving utility has to contract for additional power, or build or acquire a new facility at then prevailing rates. So to shift the development risk of a power purchase agreement to customers is inappropriate. Customers should not bear the risk if the asset owner is to reap the reward.

In conclusion, we note a possible tension between the two goals of the competitive bidding process. One goal is creating a level playing field and the second goal is creating rate payer benefit. We do not presume that the first goal automatically leads to the second. The Commission will have to assure that these goals are balanced appropriately. We believe that the RFP, as written, strikes the appropriate balance between the two, as required by the Resource Procurement Act.

CHAIRMAN CAMPBELL: That concludes your statement?

MS. KELLY: Yes, it does.

CHAIRMAN CAMPBELL: Mr. Selgrade, let's turn it over to you.

MR. SELGRADE: My witness is Mr. Oliver.

Would you please state for the record, Mr. Oliver, what your name and title and business address is.

MR. OLIVER: I'm Wayne Oliver. I'm a principal of Merrimack Energy. 727 Lafayette Road, Seabrook, New Hampshire.

MR. SELGRADE: Is this the same Merrimack Energy that has been engaged as the Independent Evaluator pursuant to the Energy Procurement Act in this proceeding?

MR. OLIVER: Yes, it is.

MR. SELGRADE: And in that capacity as the Independent Evaluator are you familiar with this record?

MR. OLIVER: Yes.

MR. SELGRADE: And have you spent considerable time reviewing all of the documents in the record?

MR. OLIVER: Yes, I have.

MR. SELGRADE: Could you just briefly explain approximately how many RFPs in the last 15 years or so that you have been engaged to work on?

MR. OLIVER: Yes. I have participated in over 25 RFP processes over the past 15 years, approximately 20 of which we've served as the independent evaluator, monitor, or observer on these processes, including serving as independent consultant for all of Hydro-Quebec's power supplies. Recently working for Southwestern Electric Power Company, and Public Service of Oklahoma, two affiliates of American Electric Power, and also working in the past for Duke Power, Carolina Power and Light, Commonwealth Edison, and a number of other utilities.

MR. SELGRADE: Can you explain what your testimony on comparability is in this proceeding?

MR. OLIVER: Yes. The issue on comparability and primarily a suggestion on index pricing really involves the transition in the market from gas-fired RFP's, primarily, to some of the recent trends to coal-based resources and coal-based RFPs which are filling a new process.

What we have found in some of these processes we have been involved in recently is that coal-based resources have unique characteristics that gas projects obviously don't have. One, the lead times from the time you start planning a project until completion is quite extensive, up to and sometimes exceeding five years.

Second of all, the capital cost of a coal-based project is substantially higher than a gas project. An example being that on a dollars per kilowatt basis, coal projects are about three times the cost of a gas project, strictly on a dollars per kilowatt basis.

The high capital costs and the long lead times create a lot of price uncertainty in the marketplace, not only for third-party bidders, but also for utilities. And I do want to state that our proposal in this case was actually driven or suggested by a utility self-build option in another RFP we have worked on and has been used in a couple other RFPs. And maybe it's worthwhile to explain that indexing concept in a little bit more detail because I don't think it's been really addressed. There's been a lot of talk thus far about the prudency issue and that type of thing, but maybe I can explain the concept.

The indexing concept, basically, is that when a bidder submits a proposal, the bidder, under a traditional gas-fired RFP, would lock in its capacity price. That capacity price would be in effect, once the contract is signed, the project is developed maybe three years later, that capacity price is locked in and is either fixed or could be escalated by some fixed index throughout the term of the contract.

In this case, with all the uncertainty I mentioned in the coal market, and the fact that EPC contractors, the Engineering Procurement and Constructors that the bidders of the utility would hire to construct the project, at this time because of the uncertainty in the market and because of the demand for their services, they are not likely to lock in an EPC contract up front. So when a bidder submits a proposal or when the utility submits or develops its benchmark, they don't know what those prices are going to be. They might have an indication of what they will be, but the EPC contract is basically saying, "There's too much uncertainty. Once we sign the contract then we will lock in that price."

And what we have recommended as a result of that is that not only would a third-party bidder have the option to index its capacity price until the time they lock in or execute their EPC contract, but the utilities benchmark would also have that option. That would basically then allow several things to happen. One is that the pricing formula would have an index built in, and part of the pricing could escalate by steel index or as steel prices go up or down, the price would reflect what the steel costs would be. It might reflect an inflation index for labor costs. But the price then, once the EPC contract is executed, would be locked in.

In our view what this would do is it would give the bidder, the third-party bidder, two things. One is at least some certainty that their prices would track their costs. And second of all, it would at least provide the opportunity for that bidder to be able to submit a reasonable proposal. Our fear is that if that's not the case, then bidders are either going to price in that risk -- and again, our concern is that risk could be substantial. They are either going to price in the risk to the bid price, or they are not going to bid at all.

So that's the concept, in short; that we feel this is an approach that does put third-party bids and utility projects on more of an equal footing, but also provides the utilities benchmark with some opportunity to also index their pricing to reasonably known indices to allow their project to be on a more equal footing with third-party bids, as well.

Q. Does that conclude your statement on comparability?

A. Yes, it does.

CHAIRMAN CAMPBELL: Ms. Schmid, would you ask Mr. Dodge a few questions so we can get him qualified on the record?

MS. SCHMID: I would be glad to.

Mr. Dodge, I believe that you are here as a witness for UAE in this proceeding; is that correct?

MR. DODGE: I am.

MS. SCHMID: I have been given the pleasure of qualifying you as a witness, so here we go.

Could you please state your name and business address for the record.

MS. DODGE: Yes. It's Gary Dodge. 10 West Broadway, Suite 400, Salt Lake City, Utah, 84101.

MS. SCHMID: By whom are you employed and in what capacity?

MR. DODGE: I'm employed by Hatch, James, and Dodge, a law firm in town. And in this capacity I'm the witness for the UAE in regard to the RFP.

MS. SCHMID: And although I'm sure that most people are familiar with what "UAE" stands for, could you spell it out for the record?

MR. DODGE: Yes. Utah Association of Energy Users. An organization consisting of 40 to 50 of the largest energy users in the state.

MS. SCHMID: And on behalf of UAE you have participated in this docket and you are familiar with the documents that have been filed, the RFPs that have been discussed, and other related matters?

MR. DODGE: Yes, I have been UAE's primary spokesperson, witness, and consultant on the RFP process since the time before the Senate Bill 26 process began and through that entire process.

MS. SCHMID: Thank you very much.

CHAIRMAN CAMPBELL: All right. Thank you. Please proceed with your summary.

MR. DODGE: Thank you, Mr. Chairman. I'd like to start by saying that I really do appreciate PacifiCorp's handling of the RFP process to this point. I think we have had doubts, at times, whether all the effort that we put in on the Senate Bill 26 process was worth it, whether the results would end up any better. The process to date has convinced me and my client that it is a good process and was worth the effort. The utility has been very receptive on most issues to recommendations. There were literally dozens, probably hundreds of them that they have accepted. And the presence of an independent evaluator has been valuable, in my experience or in my view. And we very much do appreciate the time, effort, and work that's gone into it by all parties, and we think the product is much better.

We are down to where, from UAE's perspective, there are only a couple issues left we care about very much. And the first one is this comparability one. The long history and significant fight we went through to get an IE you're aware of. And again, I think it was worth it. And frankly, we need to listen to the expertise of the IE on this issue. With all due respect, there's nobody in this room, at least as a witness, I believe, other than the IE and PacifiCorp who have enough expertise to claim the ability to say what the market will -- and perhaps maybe some bidders. I didn't mean to exclude them. Other active participants.

But most of us are not sufficiently expert on the issue of how the market is going to react to things, how we create an even playing field to get a vibrant RFP response. We put in too much effort not to listen to the IE on this issue. And PacifiCorp, with all due respect, cannot help but be somewhat biased in favor of the companies they have built. They say they are not and I take them at their word that they are trying hard. But the biases are inherent and can't be overcome because they have plenty of money to invest. It's one of the reasons we welcome the new owner. And they only get a return on this money by investing. I welcome their investment in areas where there's no market to discipline that. We need it in the distribution area and a lot of others. I even welcome it in the generation, or we welcome it in the generation area if they are honestly the best option.

What we are looking for is comparability so you'll know that a year or so from now when you are asked to approve a resource or portfolio of resources.

The issue has been, frankly, not intentionally but people have misunderstood what the IE and, I believe, UAE are arguing. There's no effort to shift risks. I don't want that and I represent the largest ratepayers in the state. We are very cost sensitive. What we want is to bring market discipline to the process, so that we have an as-close-as-you-can-get comparability between the self-build and the bids, and then you, with the help of the IE, can then choose what is, in fact, the lowest risk, lowest cost combination of resources for the benefit of the ratepayers.

If we just get a bunch of bids that are overpriced because we forced them to bear a two-year risk in a very volatile supply market, materials market, what have we done? We have insured that the self-build will win. That doesn't help us. So what we are asking is not to shift risk, because if we let it go forward as it is you are pretty much predisposing the outcome and we will never know what the right number was or what the market discipline would have brought to the process.

What we are saying is, what the IE has suggested is let the utility and bidders choose, if they want to, to index some portion of their fixed capacity cost to some index so that they can give you a more legitimate, if you will, projection of what they think the cost will be.

If all we do is say to the bidders, "You have to lock in today and live with that for two years --" I'm involved right now in an RFP process for a power plant at the Bonanza site. It's a small one. Our EPC contractor will not commit for more than 60 days. We have two refreshed bids but we haven't been in a position, because we are waiting on environmental permit and other things, we haven't been in a position to lock down. But until we are prepared to sign the check and say, "Go for it," they won't lock down with more than 60 days advance notice. They say, "When you are ready to tell us 'go,' we will give you a real number." And that's because the materials markets are just wildly fluctuating today. Steel prices, they have been up.

They are back down some. All of the inputs that go into the construction process -- for goodness sakes, labor is crazy right now in this industry. If you are trying to build a power plant right now you are struggling to find labor - if you are the EPC contractor - qualified labor, because everyone is busy right now looking at projects, bidding on projects. So if you make a bidder take that risk inherent, their only choice if they are prudent is to bid it very high to account for these things.

Now, what some say is, "Well, but then they are taking the risk, so the ratepayers aren't." But we are not, if we are not getting a comparable look at the utilities' bid, because they have the luxury of making a realistic, what they believe currently is a realistic proposal. Because under the statute, if later they start down the process and find their costs are higher because steel markets went up or whatever, they have the right to come in and say, "Our costs are higher. You either approve it and we will go ahead with the higher numbers or don't approve it and we can stop and recover all of our costs today." That's what the Act gives them. I approved that and we helped negotiate that Act, but it gives them the ability to be more realistic.

They won't have an EPC contract, either. They will just be using their best judgment. But they can be more realistic. If you don't solve that comparability problem, then you predispose the outcome.

The confusion is neither the IE, as I read the IE's comments, nor the UAE, as we intend our comments, are saying, "Make the risks of the market bidders the same as the utility." The focus should not be - and is not, in my comments, and is not in the IE's comments - on the risk of the utility versus the risk of the bidder; but, rather, the risk to the ratepayer of those two options.

And so when they talk about regulatory lag versus market lag, and cost plus contracting versus fixed bid contracting, those are differences between utility self-build and the bidder, but that's not relevant to me. What I care about is risk to my clients, the ratepayer risks. And as I said in our paper, there's some benefits to the benchmark, including what Ms. Kelly talked about; that you own instead of rent at the end of the period if you assume value 35, 40, 50 years from now in a resource, which is a big assumption. But if you assume value, there's some value there, and that ought to be recognized.

But there are a whole bunch of risks that get shifted away from ratepayers and to bidders that drive the different ROE expectations of the two entities and that we, as ratepayers, want you to consider in some manner when you look at these two side by side.

Like I say, theoretically -- and I'm disappointed with all the brilliant Ph.D. economists in the state that we haven't come up with a way to do that in a model that works well. But I haven't found anyone willing to tell me they know how. So what the IE came up with instead was, "Well, then eliminate some of the artificial price escalation people have to build in if they hold it up for a long time."

The utility's response, in part, is we will let them refresh. I don't know to what extent that might help, but I don't quite understand that. In the first place, in the RFP in two places it says "may refresh," "may be allowed to." It doesn't say "will" in the version I have read. Two places I found "may be allowed." But it doesn't say what that means. Does that mean they will then be able to up their bid or reduce it, depending on what is happening, and a new evaluation goes through? I don't even know exactly what that means.

If that's an honest offer that they will be allowed to refresh bids, and if they will explain what that means and if the IE says that's good enough, we would be content with that. But short of that, I think you need to listen to the IE, build in the ability for bidders to do the same thing the utility will be doing in their self-bid, and simply index the something that eliminates the need to overprice the market bid.

CHAIRMAN CAMPBELL: Thank you. Having heard each other speak, do any of the witnesses wish to respond to the points made by other witnesses before we ask questions?

Does anyone wish to respond?

MR. BROCKBANK: Could we have just a moment, Mr. Chairman?

CHAIRMAN CAMPBELL: Yes. Let's go off the record for a minute.

(Discussion off the record.)

CHAIRMAN CAMPBELL: We are going back on the record. Our intent is after each panelist has offered the summary, to go back through the panelists, let them respond, and then the Commission will begin to ask our questions.

Let's go back to PacifiCorp for your response.

MR. BROCKBANK: Mr. Chairman, I would like to introduce Mr. Mark Klein and Ms. Stacey Kusters, who will be responding to some of the issues that were raised by some of the other parties. So if I could ask them a few questions to qualify them as witnesses.

CHAIRMAN CAMPBELL: Go ahead.

MR. BROCKBANK: Mr. Klein, please state your name and title and business address for the record.

MR. KLEIN: It's Mark Klein, vice-president, Commercial and Trading, PacifiCorp. My address is 1825 Northeast Multnomah, number 600, Portland, Oregon, 97232.

MR. BROCKBANK: Mr. Klein, are you familiar with this RFP, this draft RFP and the discussions and negotiations with the third parties to come up with an acceptable RFP?

MR. KLEIN: Yes, I am.

MR. BROCKBANK: Are you authorized to speak on behalf of the Company on these issues?

MR. KLEIN: Yes, I am.

MR. BROCKBANK: Thank you.

And we will turn to Ms. Kusters.

Ms. Kusters, please state your name, title, and business address for the record.

MS. KUSTERS: Stacey Kusters. Director of Origination, 825 Northeast Multnomah, 600, Portland, Oregon, 97232.

MR. BROCKBANK: And you are employed by PacifiCorp.

MS. KUSTERS: Yes, I am.

MR. BROCKBANK: Are you familiar with this RFP?

MS. KUSTERS: Yes, I am.

MR. BROCKBANK: And are you authorized to speak on the Company's behalf with respect to matters discussed today?

MS. KUSTERS: Yes, I am.

MR. BROCKBANK: You can go ahead, Mr. Klein and Ms. Kusters.

MS. KUSTERS: I just want to respond to Gary's question with regards to qualifying what "may" means, in order to insure that we can move forward.

Currently the way that the structure of the pricing is put in place is that after the initial shortlist, any of the parties that are then qualified to the final shortlist would look to be refreshing their bids. The reason it says "may" in the two places that Gary has recognized is that we don't want gaming to occur within the RFP, and the bidders would actually come in at a really low price in hopes to get onto the initial shortlist, qualify for the final shortlist, and then come in and refresh their bids at a much higher price.

So I think what the Company would like to do is put some qualifiers around that, so to the degree we will put "will refresh," and then put a qualifier that it has to be plus or minus 15 percent of their initial bid so that we don't encourage parties to come in with low bids and then get onto the final shortlist and then put up their bid to a large price. If that would be acceptable.

CHAIRMAN CAMPBELL: How do you feel about that, Mr. Dodge?

MR. DODGE: Again, I don't profess to have the best expertise in the room for how to make it comparable. I'm interested in Mr. Oliver's response. I hope they won't limit it to minus 15 percent.

MS. SCHMID: Is your microphone on?

MR. DODGE: I apologize.

CHAIRMAN CAMPBELL: We're okay. Would you respond to this concept of changing the "may" to "will" with a plus or minus?

MR. OLIVER: Yes. It is common in other RFPs that a utility will put a "may" in as a qualifier for the reason Ms. Kusters has mentioned; and that is that you really don't want to be in a situation where a bidder would come in and game the system by -- if the bidder knows that it will have the option to refresh at some point, it could increase its price later on. So it may put in a very low price up front and increase that price if it knows it can refresh the bid once it is on the shortlist. So that may really does provide an indication that there's an opportunity, there's a potential opportunity down the road. And I think it encourages the bidder to put in its best price up front. That's the intent. You want the bidder to put in their best price in the original bid, not wait until they refresh their bids.

CHAIRMAN CAMPBELL: So the "may" doesn't bother you?

MR. OLIVER: "May" doesn't bother us.

CHAIRMAN CAMPBELL: Mr. Klein, next issue?

MR. KLEIN: Thank you, Mr. Chairman. I want to address the indexing issue raised by the Independent Evaluator. The Company recognizes the difference between coal assets and gas assets. Coal assets are generally higher capital costs. But with that comes lower fuel cost and lower fuel cost variability. Gas resources, lower capital costs but, again, there are higher risks and generally higher prices, at least recently with gas resources.

The Company feels that the indexing provisions recommended by the Independent Evaluator will take away the least cost benefit back to the ratepayers for coal plants by introducing more variability on the fixed cost component. So to the extent that we've arrived at a preferred portfolio that suggests coal plants or a coal resource is in the best interest of customers, the indexing portion we feel will take away that benefit.

CHAIRMAN CAMPBELL: All right. It looks like -- Mr. Fehrman?

MR. FEHRMAN: Just one additional point to Mr. Dodge's comments with regard to the premise of the company must refer to do self-build options. I'd like to point out again that in our needs versus our benchmarks, our needs outweigh the benchmarks that we have placed into the process. And if we were overwhelmingly aggressive to self-build, you would have seen additional benchmarks in there, in the purpose of meeting the need.

Essentially we are very favorable towards getting RFP proposals in to help address the difference between our benchmarks and projected need, and I wanted to make sure that the Commission and the other parties recognize where we stand in that matter.

CHAIRMAN CAMPBELL: All right. Thank you. The Division has a comment?

DR. POWELL: Even though the Division didn't take a position on this particular issue, I'm responding to a couple of the comments that were made.

I'm uncomfortable with the Company's position of refreshing the bids, whether it's a plus 15 percent or not. I think gaming will still go on. I think you are giving the bidders the incentive to underbid in the first or initial rounds, knowing that they will be able to refresh that bid. I think trying to qualify refreshing their bids in some manner is going to be very difficult.

I think Ms. Kelly said it correctly, that there's probably some conflicts here in some of the incentives that are going on in trying to provide the best resources and benefits to ratepayers. But at the same time, you need to have some kind of comparability. I don't think the IE or Mr. Dodge are suggesting that you are going to get perfect comparability between the Company's self-build options and any bids that come in. And it may be that this is an issue that has to be addressed in some manner.

But at least I can say I think the IE's concept of having some portions of the bids indexed, where those indexes were specified in the RFP, then gives the bidders the incentive to compete knowing that those portions of their contracts or bids are going to be treated comparably not only between the Company but between themselves.

CHAIRMAN CAMPBELL: All right. Mr. Oliver?

MR. OLIVER: Yes. A couple things. One is, as Mr. Powell had mentioned, our proposal - and I had drafted the proposal in more detail in responsive comments - does reflect not the whole capacity price escalating by an index, but portions. I think we identified 50 percent would have to be fixed and possibly the other 50 percent would be indexed. And those indices have to be clear and defined indices. It's not some random index that can be used that you know is going to be very volatile.

Second, I want to make a point about the whole issue of risk being pushed to the ratepayers and that type of thing, and the associated costs and benefits associated with this concept that we have talked about. Certainly I think when you are indexed prices as opposed to locking-in prices, there will be risk potentially pushed forward. Locked-in prices minimize or eliminate risk. So for that two-year period or year and a half period, whatever it is, there would be some risk.

Offsetting that is the fact that if you have a more competitive process and you have a process that reduces the risk to the bidder, whether that bidder is a self-build option or a third-party option, that those bidders should reflect that lower price in their bid. So all in all, I think we probably are looking at a balance here. I'm not sure if that risk to the ratepayer is any more significant than the potential reduction in price that we would see from hopefully a more competitive marketplace and lower prices that bidders would submit because they can reflect that risk element from their bid price that they would normally include if they had to price in the uncertainty of labor costs and equipment costs and that type of thing.

CHAIRMAN CAMPBELL: All right. Mr. Proctor, are you making a legal argument?

MR. PROCTOR: No. May I ask that the IE address a particular issue or question?

CHAIRMAN CAMPBELL: Go ahead.

MR. PROCTOR: Mr. Oliver, in your experience have provisions allowing indexing or refreshing bids, or not allowing it, had a tendency to determine the number of bids that you receive?

MR. OLIVER: It's difficult to say. I mean, this issue of indexing has come up really, I think, as we have moved more towards high capital cost type projects; not only with coal projects but in one of the RFPs we worked on with Hydro-Quebec for wind resources. Hydro-Quebec allowed wind bidders to index a portion of their capacity price to different indices at the request of the bidders. And in that case, it was a thousand megawatt RFP and we received over 250 bids with different components.

So I'm assuming, based on the fact that the bidders asked for that option, that that had an impact on bidders submitting proposals. On one of the coal RFPs we have worked on, we did allow that, that indexing was allowed as part of the process.

And there was -- it wasn't a huge amount of bids but there was a balance between self-builds and third-party bids submitted in response to that RFP. I can't tell you whether or not the third-party bidders submitted bids because that option was in there. I don't know that.

MR. PROCTOR: Thank you very much.

CHAIRMAN CAMPBELL: Ms. Kelly, do you have a response to anything you have heard here?

MS. KELLY: No.

CHAIRMAN CAMPBELL: Okay. Go ahead, Mr. Larsen.

MR. LARSEN: Just one comment on the indexing. Under the law, the Company would be bringing forward in the proposal an amount for approval by the Commission. With the indexing, it would be difficult to do, in that we wouldn't know what we were actually receiving approval on; not an amount but an amount plus an index.

CHAIRMAN CAMPBELL: All right. Any other final responses from witnesses? Mr. Dodge?

MR. DODGE: I guess just in response, I forget what Mr. Oliver's proposal was but at some point the bidders have to make it firm. It is really during the process, the lengthy process of RFP evaluation, even some portion of the approval process before this Commission. And maybe Mr. Oliver could address that. But I don't think it's that we are forever at risk of an index. It's trying to eliminate that lag, if you will, that long lead-time problem.

CHAIRMAN CAMPBELL: Mr. Oliver, can you remind us when it is made firm?

MR. OLIVER: The capacity pricing would be made firm at the time the bidder executes the EPC contract. And that's probably going to be anywhere from, I'd say possibly a year to a year and a half from the time they execute the contract.

MR. DODGE: So I guess Mr. Larsen is right: When it comes before you, it would be still with an index. But again, the Company's numbers are going to rely on some kind of projection on those indexes. And you certainly rely on those all the time.

CHAIRMAN CAMPBELL: I suspect we are going to explore that a little bit more here.

MR. BROCKBANK: Mr. Chairman, I do have a couple of questions for Mr. Dodge. Most of them are related to legal issues so I can either ask the questions or I can just make some legal points myself. However the Chairman would prefer.

CHAIRMAN CAMPBELL: On this comparability issue?

MR. BROCKBANK: Yes.

CHAIRMAN CAMPBELL: Go ahead.

MR. BROCKBANK: Okay. The first one is not a legal issue so I'll ask the question. A few minutes ago, Mr. Dodge, I believe you said, and correct me if I mischaracterize you, that the Company will not have an EPC contractor in place either, referencing "either" as similar to the bidders; but that the Company, I believe you said, will be more realistic in making its bids. Am I characterizing that correctly?

MR. DODGE: I think that's pretty close, yes.

MR. BROCKBANK: Why do you think the Company would be more realistic than the bidders?

MR. DODGE: I think both will be realistic but what I mean to say is the Company will have the luxury of being more conservative. If you were to ask -- and we could use this on a home. I'm trying to get a home remodeled right now. When I ask contractors, "Give me a fixed price bid," they will say "X," and I will say, "Is that really what it's going to cost?" And they say, "No. But things are going up so fast, if you expect me to take that risk then I'm going to add in a real healthy premium." And almost to a person they have said, "If it were my house, I'd do it on time and materials because then I don't have to build in that risk premium."

Now, you might get burned but you might not. But you have the luxury, if it's time and materials, to use what you think is your best guess. If you are locking in a price to last for two years, you don't have that luxury. You have to take your best guess and add a risk premium to it or you are going to be out of business soon.

MR. BROCKBANK: Under that logic, isn't a more realistic bid going to be higher to take into account?

MR. DODGE: Yes.

MR. BROCKBANK: So if the Company is going to make a more realistic self bid, the Company's self bid would presumably be higher than the third-party bidder's, wouldn't it?

MR. DODGE: No. I misunderstood your question before that, and I apologize.

The more realistic bid that the Company has the luxury to provide is likely to be lower than the one that the bidders have to assume. Again, steel has fluctuated wildly, and at the time you ask for bids it may or may not be down but they can't take the risk it won't go back up, because it has just within the last year. It's not down way low. But when you have the luxury of using your best judgment based on what you see in the market, et cetera, it's likely to be lower than if you take that best judgment and then add the risk premium in case things go crazy.

MR. BROCKBANK: And if I could make a few legal points, then, Mr. Chairman?

CHAIRMAN CAMPBELL: Go ahead.

MR. BROCKBANK: Mr. Dodge has referred frequently to the fact that the Company, if their bid is off, can then go in at a later date and request additional -- if the Company's self bid is accepted and is prevailing in the RFP, the Company could then go in and seek approval for cost overruns. And the point I want to make is that's just the way the statute is written. I believe the statute contemplates that there is inherent differences between independent power producer bidders and a regulated cost-based utility. The legislature, in their wisdom or lack of wisdom, depending on the way you look at this, acknowledged that the utility should be able to go back in if there's a cost overrun. The legislature did not make any such provision if you are a third-party bidder.

And the second point I want to make that's a legal issue focuses on Mr. Dodge's position statement. It says Position Statement of the Utah Association of Energy Users on PacifiCorp's Draft RFP. It was filed, I believe, two days ago. And I'll definitely let Mr. Dodge respond to this. But he refers to -- first of all, he cites as, I believe, his authority for what he says is "Utah law," draft rules in this RFP. And the point I would like to make is that we don't have draft rules in this RFP. There's been a working group that has tried to come up with recommendations to the Commission, but there has not been a notice of proposed rule making. There are no draft rules in this proceeding.

The second point is Mr. Dodge quotes, I believe -- and before I say this, I don't want to minimize the importance of comparability, because the Company, I think, has tried to insure that the bidding process is comparable. But this is not a statutory mandate, this comparability issue. We keep hearing the term "fair and comparable basis," and nowhere in the statute will you find the words "fair and comparable." At least that I'm aware of.

So Mr. Dodge says, "Given these significant differences," and I'm quoting now, "in benefits and risks, bids and benchmarks cannot be evaluated against each other on a 'fair and comparable basis,' as required by Utah law, unless something is done." I don't think Utah law requires this comparability issue. The Commission obviously has the discretion to ensure the fairness of the process. But this notion that comparability has been enacted by the legislature is just not there. Thank you.

CHAIRMAN CAMPBELL: Mr. Dodge?

MR. DODGE: With respect to the first point, it is absolutely true, and again we supported it, that the statute is what gives the utility the ability to come back in at any time and say, "Costs have gone up," and try and make a showing that that was not their fault, and get an order from this Commission either saying, "Don't proceed, then," and then they recover their costs, or, "Go ahead and proceed and you will recover your increased costs." That was built in and we supported it.

We don't begrudge the utility that, but we will not offer that to bidders. That's the benefit to ratepayers of a bid. Once they lock the price, cost overruns are their issue. The fact that the statute provides that opportunity doesn't reduce the need to ensure comparability so you can choose which is the best option.

And I'll be honest, it is very troubling for me to hear Mr. Brockbank say he doesn't think "fair and comparable" is part of Utah law requirements. It is true those words were not put in the statute. The words in the statute are "public interest" and then several elements including a catchall for this Commission to determine what is in the public interest.

But we spent probably over a year developing draft rules, and on this issue there's no dispute. There are issues before you right now, they have been submitted by the task force for consideration. And on the issue of requiring a fair and comparable evaluation of bids and benchmarks, nobody disagreed with that. And if the utility is now disagreeing with that, we have more trouble than I think we do.

And what the statute didn't say was because the rules won't be implemented, perhaps, by the time we first face this, you have to adopt the rules as you go, or the procedure. And I strongly urge you to insist upon that as a requirement of this process, that bids and benchmarks be treated in a fair and comparable matter. I'm pretty sure Oregon law matter does require that, based on what I have read in the RFP. And I surely hope that Utah law does.

MR. BROCKBANK: If I could just respond because I think Mr. Dodge put words in my mouth. The Company absolutely supports the "fair and comparability" of the evaluation process. The point I wanted to make is that the statute, as you referred to Utah law, is subject to interpretation.

Second point is the working group that looked at the rules talked about the Questar issue. Not until we got into evaluating this draft RFP did we hear from Mr. Dodge and others that comparability, in their minds, means absolute exact identical treatment. We believe that utilities are inherently different, they are cost-based regulated. They are subject to disallowances. They make less return than independent power producers. I'm glad we are having this discussion. It is helpful to discuss what does "comparability" mean. And I think we just think it means different things, looking at it from different angles.

CHAIRMAN CAMPBELL: All right.

MS. SCHMID: May I respond to the legal point brought forth by Mr. Brockbank and discussed by Mr. Brockbank and Mr. Dodge?

CHAIRMAN CAMPBELL: Go ahead.

MS. SCHMID: I believe that the comparability issue is one that the Commission may examine if it chooses to in light of 54-17-201-2 (C)(ii), and then the underlying elements presented therein, because the Commission and the process is designed to look at whether or not the process will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the residential or the retail customers, et cetera, et cetera. And as part of that, the Commission may choose to examine how bids should be compared, and comparability then would be a part of that. Thank you.

CHAIRMAN CAMPBELL: Thank you. Mr. Selgrade?

MR. SELGRADE: Well, now that the lawyers have gotten involved, I hope this non-Utah lawyer gets a chance to comment.

We have interpreted comparability as an element of fairness. Fairness does appear in the statute in particular with respect to the role of an IE who must offer an opinion at some point in the process as to whether the solicitation is fair. And we see comparability as an avenue to effect fairness. And the way we look at comparability is that you don't have to have things exactly identical. That's one way to achieve and only one way of achieving comparability. If they were identical, then you could use the same set of rules on identical processes and be assured that there should be identical results for identical projects.

But another way to achieve comparability is to allow differences, inherent or otherwise, in the two bids to remain but then in the evaluation process make sure that different bids are scored differently, meaning with appropriate adjustments to assure fairness in the ultimate results. This is what I believe the Company is now doing with Step 4, which we consider progress.

But in order to achieve comparability, I think you could look at it this way: Identical projects should be scored identically and different projects should be scored differently with appropriate adjustments to fairly account for the differences in the two projects.

CHAIRMAN CAMPBELL: All right. Commissioner Allen?

COMMISSIONER ALLEN: Thank you, Mr. Chair.

Mr. Selgrade, Mr. Dodge, you have asserted that indexing is a tool that can be used to help solve this problem. It would be very helpful to me if you could give me some examples of what we could see as perhaps practical, reliable, or even traditional forms of indexing so I can see some examples. How this is not going to be an arbitrary process in itself?

MR. DODGE: I'd invite Mr. Oliver to go first.

MR. OLIVER: When we say "indexing," the bidder would have an option, for example, as I mentioned before, our proposal was that 50 percent of the capacity price would have to be fixed at the time that -- well, throughout the term of the whole contract, but that a bidder would define different components of that price.

So assuming -- say my capacity price is $200 a kilowatt year; $100 of that would be fixed throughout the term. Maybe $50 of that would escalate by a steel index or a producer price index that reflects different materials that would reflect the components that are built into that project. And maybe another $50 would be indexed to GNP deflator; for example, that might reflect labor costs. So the price in year one would be $50, the index in that first year would be 1.00. And then however that index changes over the next two years, or year and a half or whatever time between the time the bid is submitted and the time that the EPC contract is executed, the actual price would then be locked in at the time the EPC contract is executed.

COMMISSIONER ALLEN: Real quickly, if I may. You use the example and say "perhaps" or "may." Are there historical examples or industry standards for these type of indexes?

MR. OLIVER: Industry standards. I would say somewhat we are seeing some utilities are using these concepts and others are not. So if you say it's an industry standard, it is not purely an industry standard because not everybody is doing it. But a good example would be if you are looking at another RFP that used this concept, it would be Public Service of Oklahoma. They issued an RFP in late 2005 for base-load coal resources, and they included a table for pricing in the RFP that did allow bidders to index their price. And as I mentioned, that suggestion was initiated by the self-build team, not by the third-party bidder.

MR. DODGE: If I could just briefly.

The RFP as currently drafted does allow indexing for the variable cost components. And as I recall, it calls for a specified type of index and then even invites the bidders to consult with the IE about the acceptability of indexes. And I would strongly encourage similar language on the capacity cost; that the RFP identify some acceptable widely known indexes as examples, and then require basically clearing it with the IE before they submit it so that we have some comfort. None of us wants indexes that don't make any sense. They have got to be widely established and reliable indexes so that everyone can kind of rely on the same thing.

CHAIRMAN CAMPBELL: I'm going to ask a follow-up while we are on the topic.

Mr. Oliver, when you talk about this index, would it apply to the NBA, to the Next Best Alternative, or "the benchmark" is the term we are using in the hearing.

MR. OLIVER: That was our recommendation, that it apply not only to the third party bids but also to the benchmarks.

CHAIRMAN CAMPBELL: So if it's a 50 percent fixed, the benchmark would be 50 percent fixed and they would be indexed in like manner to the PPA. Is that your --

MR. OLIVER: That would be an option. It wasn't a requirement. It would be an option. So they could lock in the price, bid a fixed price at the time they submit their bid, or they could index.

As I mentioned, in one of the cases we worked on it was actually the utility self-build who was actually trying to negotiate an EPC contract who came back to me, as the independent monitor, and said, "We can't lock in here. We have some difficulties because of the uncertainty of cost. Do we have a solution? Is there a solution in there that we could think about implementing?" And I took it back to the evaluation team and we came up with this concept about allowing a portion of the cost to be indexed. So from the very beginning we had suggested that that would apply to all bids, including the benchmarks.

MR. BROCKBANK: I have a question. Should I hold it?

CHAIRMAN CAMPBELL: No, go ahead.

MR. BROCKBANK: Mr. Oliver, you mentioned that you worked on many, many RFPs. Have you seen fair and successful RFPs that did not have an indexing mechanism?

MR. OLIVER: Yes.

MR. BROCKBANK: Thank you.

CHAIRMAN CAMPBELL: Commissioner Boyer?

COMMISSIONER BOYER: Well, we all seem to be moving in the same direction. Most of my questions have been asked and answered, so I guess I'm following along fairly well here. My question, and I suppose the answer for this question -- and it's for Mr. Oliver so you can be preparing yourself. It depends on whether you believe the utility has the right to come back and is virtually assured of getting cost recovery from overruns and the like.

But my question is does the indexing or partial indexing that you've proposed, does that actually provide real benefit to the utility, as well? I mean, I can see how it would help with the PPA. I'd like to hear your comment on that.

MR. OLIVER: In the case I mentioned before, where the utility actually initiated the move toward the indexing, their concern was if they did come in with a lower price that they might be required to live with that price. So their concern was they wouldn't be able -- they wouldn't guarantee getting recovery of the costs. I think if those costs demonstrate to be brilliant, good, and the utility did all they could to manage the costs, then they would get recovery. But in this case the utility in that jurisdiction was considering that they may not get recovery so, like I said, they were the ones that initiated that movement to the index, because they felt it would be a way for them to at least put in their benchmark price or self-build price that best reflected their costs.

COMMISSIONER BOYER: Thank you.

CHAIRMAN CAMPBELL: Let me ask a few questions. With this indexing idea, I guess my question is what are we evaluating and how much of the evaluation do we just defer or default to index?

MR. OLIVER: When the bids come in, the indexes -- we would have a projection of the indices. I think as Mr. Dodge mentioned generally, the utilities would only allow an index to be utilized that they could project. So a GNP deflater, for example, or a specific producer price index, they would be able to develop a forecast or outsource or someone could develop a forecast for that index. If it's a random index, it wouldn't be allowed. We have been involved in a number of cases where bidders have proposed indexes where we basically said no because you can't project those indices or you can't manage the risk of those indices.

So in this case, only indices that could be projected, and I would assume that the IE and the Company together would make that decision. It wouldn't be the IE's decision, but obviously the Company has to -- the Company would have a big influence on that decision. And then if those indices could be -- if we could develop forecasts of those indices, then in doing the evaluations of the bids you would basically forecast the components of the bid price just as you would if it's the gas components or the fixed and variable O&M components and they escalate by inflation. So it would basically be similar to how you would evaluate the bids under the other components of the bid prices.

CHAIRMAN CAMPBELL: Is what you are suggesting, if the benchmark alternative also uses indexing, that we are really just evaluating half a plant on both sides because the indexing will be the same for both?

MR. OLIVER: Well, the cost components may be slightly different. And the technologies -- if there's different technologies, the cost components would definitely be different. But it would put bids, both the benchmarks and the third-party, bids on a more equal footing.

CHAIRMAN CAMPBELL: Okay. I have a question for the Company. Perhaps it's a hypothetical. I'm trying to understand what it means to lock in an NBA under the statute where you come in for additional costs. Let's say, for example, that we go out and do this process and the -- I keep calling it an NBA. That's what we called it last time. We are calling it "benchmark resources" in this docket.

Let's say the benchmark resource is the best alternative under the analysis. You go, you build your benchmark resources, costs go up, and you come in for those additional costs, and those additional costs are greater than the best bid. How would that scenario unfold?

MR. BROCKBANK: Let me start and then others that need to chime in, please do.

The statute provides specifically, and I will -- it's in Section 54-17-303 (1) (b), Permits.

And I'll just read that. "Except to the extent that the Commission enters an order under Section," blank, "an increase from the projected costs specified in the Commission's order issued under Section," blank, "shall be subject to review by the Commission as part of a rate hearing under Section 54-7-12."

So under your hypothetical, Mr. Chairman, if the Company's benchmark were selected, and the Company was proceeding with construction, nearing construction, and there was -- any number of things could happen; a natural disaster, something out of the Company's control, prices skyrocketed worldwide on a commodity or something. It's hard to imagine a scenario specifically but there are a whole bunch of parade of "horribles" that one could imagine. The Company would then, under the Statute, have the opportunity to come in, in a rate case, and demonstrate to the Commission the prudence of additional expenditures over and above what the benchmark bid was. The Company would have to demonstrate to the Commission, all of the intervening parties would have the ability to - as they do in any rate case - to critique the company's request, and ultimately the decision would lie with the Commission.

CHAIRMAN CAMPBELL: I understand that. I guess I didn't pose my question very well.

Understanding that potential, how do you evaluate the benefit of a PPA that gets locked in in an EPC contract today that would not have the recourse that the Company has in that situation? How do you take that into account as you evaluate these alternatives?

MS. KUSTERS: Currently the way the evaluation process is proposed is under the initial shortlist it would be strictly done on a cost, on a price and nonprice basis, taking into consideration 30 percent for nonprice and 70 percent for price. Then once we get the determined shortlist, we then take that shortlist and put it into the final IRP model and run the portfolio analysis. From that we would determine the actual rate portfolio.

Now, to address the issue that you've just asked, under Step 4 we would have to look as to what the elements of the PPA versus the self-build are with regards to how that aligns with the statute. There isn't something that is outside of our current evaluation in aligning the RFP with the IRP that deals specifically with PPA versus benchmarks.

CHAIRMAN CAMPBELL: I'm trying to decide

if I need to take a break now or how long we should go. One more question and then we will take a break.

Is this the section we are also addressing the indexing of variable costs, this comparability section? Is that understood? Is it my understanding that the Committee has a different opinion than everyone else on this issue? I haven't heard that articulated.

MS. KELLY: Not on the variability costs.

CHAIRMAN CAMPBELL: So the Committee is okay with indexing variable costs?

MS. KELLY: Yes.

CHAIRMAN CAMPBELL: Okay. That wasn't clear from the things I read. Let's go ahead and take a 15 minute break.

(A break was taken.)

CHAIRMAN CAMPBELL: Let's go back on the record. Turning to Commission Boyer, who has an additional question.

COMMISSIONER BOYER: Not to pick unduly on Mr. Oliver, but I think this is probably for you, as well. A variation on the indexing theme. How would you feel about tying the right to refresh a bid to movement in the indices rather than their volitional decision to do it, in an attempt to avoid gaming. If the Producer Price Index moved by 5 percent plus or minus or something like that, how about tying it to that. Does that have any merit?

MR. OLIVER: I guess the only thing I -- I obviously haven't thought it through in detail, but the only problem might be that the time frame from the time the bid is submitted to the time the bidders might refresh the bid is fairly short. Within two or three months. So you're not going to see a huge change in that index during that period of time.

COMMISSIONER BOYER: There's nothing magical about that. I just used that as an example. CPI or some other index.

MR. OLIVER: I'm thinking it's more the time frame of the bids would come in -- if the bids came in in February, it may be subject to -- the Company having a better idea of the schedule at this point. But it may be that when we get to the final shortlist, that may end up being sometime in April. So there's only a two-month window and it would be difficult, I think, to get a read on how things have changed within that period of time.

CHAIRMAN CAMPBELL: Perhaps raised another way, what you are saying is the real issue is the year, year and a half to the time of the winner to get an EPC contract.

MR. OLIVER: Right.

CHAIRMAN CAMPBELL: And that's the big risk that the PPAs are taking on that perhaps the Company doesn't have.

MR. OLIVER: That's right. And the Company has that risk, as well.

CHAIRMAN CAMPBELL: Right, yeah. So I understand your point as far as allowing the benchmark to also be indexed.

Let me ask you this: Why 50/50? Have you considered 75 percent fixed and 25 variable or indexed? Why 50/50?

MR. OLIVER: I guess the feeling there is that on -- it wasn't an exact number. It wasn't a study that was done. I have seen other, people I have worked with on RFPs who have proposed a 50/50 split in other cases. I think the Hydro-Quebec case I referenced had 50 percent fixed and 50 percent was allowed to vary by an index. But the intent was to at least require that a major portion had to be fixed and then the other portion could be indexed, and the bidder would know up front what the limitations were.

I mean, you could do -- there's variations around this theme. You could put even a cap on the indices. Maybe that's a solution, just saying that the index could vary up to 15 percent escalation or something along those lines. And the bidders would have to -- the benchmarks would have to factor that risk into their bids.

CHAIRMAN CAMPBELL: What about as far as using the index; are you using it in two ways? Are you using it to forecast when you do your comparison as well as using the index to actually change the bid a year and a half down the road when they actually get an EPC?

MR. OLIVER: Well, you would have to forecast it to do the evaluations. So the evaluations of the bids would then be based on your forecast of the indices. So again, the bids come in in February so the evaluation is done in the February, March time frame or whatever that time frame is. The forecast of the index would be used at that point. But then a year and a half down the road, the price would end up being locked in at however those indices varied. They may reflect the forecast or they may be higher or lower.

CHAIRMAN CAMPBELL: So you actually use the index to lock in a price a year and a half down the road.

MR. OLIVER: Yeah. However the actual index played out.

DR. POWELL: Mr. Chairman, Mr. Oliver addressed one comment I was going to make. I was going to ask a clarification of Mr. Boyer in terms of fixing the index somehow, if you meant it as a cap, and that would be a maximum amount that the bid could move up to; or whether you were looking at it in terms of a materiality change in the index itself.

But just a general comment, the Consumer Price Index over a long period of time, and it depends on what you define as that period of time, but generally moves between about 3 and 6 percent on an annual basis. The Producer Price Index that Mr. Oliver mentioned, which would be more indicative of the prices that a bidder or the utility would face, is generally lower on a percentage basis than the Consumer Price Index. And so a cap may be one way of mitigating the risk that Ms. Kelly talked about a little bit earlier. That would be one way of looking at it. I don't know if that's what you meant in terms of the maximum amount.

COMMISSIONER BOYER: What I was trying to get at is a way to minimize the opportunity to gain by an independent producer coming in, low-balling to get on the shortlist, and then marking the price up. And so I was thinking more in terms of tying the right to refresh to some range of movement within whatever indices you select, whether it's labor or PPI or something like that. That would take the third party's control out of it. Neither the Company nor the third-party bidder can control the movement of these indices, presumably. That's what I was asking about.

MR. OLIVER: Just a follow-up, Commissioner Boyer. In other RFPs, sometimes the utilities will say the opportunity to refresh doesn't allow the bidder to increase its price. It only allows the bidder to decrease the price or to keep the price fixed. A provision like that in combination with the indices may be an option. But I still think having in there that the Company may allow the bidders to refresh I think is probably the way to go, and some clear signal that bidders should put their best price out on the table when they submit their bids.

CHAIRMAN CAMPBELL: Let me ask you one other question. I don't want to belabor the point but we have had problems with forecasts and using forecasts, or at least -- maybe "problems" is the wrong word, but we have had disagreements over forecasts and how forecasts are used. In your experience as you look at using a forecast index, as you compare bids, who are the winners and losers? What type of bids win under that scenario and what type of bids lose under the scenario of using a forecast or an index?

MR. OLIVER: In terms of the self-builds versus the third-party bidders or just any --

CHAIRMAN CAMPBELL: All. Different types of PPAs, throw in the self-build, as well. I'm interested in hearing in using a forecast index for 50 percent of the potential cost, can you provide us an idea of who the winners and losers are with that approach? What types of bids benefit from that and what types of bids lose out because of that?

MR. OLIVER: Not offhand. I mean, I would say I think that the ability to index would benefit a bid or a resource that has more variability and uncertainty in its cost structure. I wouldn't think that for a gas-fired RFP process, that indexing of this nature would be necessary because of the fact that the capital costs are so much of a smaller component of the overall price. And the technology is more standardized. You don't have the variation in technologies that you would have in the coal side. So I think for a coal-based resource, I would say a coal-based resource would be more applicable or would benefit with indexing if you had coal versus gas, for example. And we may have that in this case. We may have a situation where people bid gas projects at the Company's existing sites. So I would say in that case, a coal-based resource would probably have a competitive benefit because they would be able to index.

CHAIRMAN CAMPBELL: All right. Any follow-up by any of the parties? All right. We'd like to thank this panel. Let's move on to the next issue, which is?

MR. BROCKBANK: Mr. Chairman, I believe that LS power, due to travel constraints, has asked that we evaluate the credit issue next.

CHAIRMAN CAMPBELL: All right. Fine with me.

MR. BROCKBANK: And PacifiCorp has a separate witness to talk about credit, so if I could introduce him at that time.

CHAIRMAN CAMPBELL: Go ahead.

MR. BROCKBANK: Mr. Chris Papousek is his name.

Chris, could you state your name, and record -- sorry, your name and title and address for the record.

MR. PAPOUSEK: Certainly. It's Chris Papousek. I'm director of credit risk for PacifiCorp; 825 Northeast Multnomah, Portland, Oregon.

MR. BROCKBANK: Mr. Papousek, I didn't mean to imply that you might have a record. I apologize.

Are you familiar with the credit issues, the credit matrix and such that has gone or that is in this draft RFP?

MR. PAPOUSEK: Yes, I am.

MR. BROCKBANK: Are you authorized to speak on behalf of the Company regarding these credit issues?

MR. PAPOUSEK: Yes, I am.

MR. BROCKBANK: Thank you, please make your summary now.

CHAIRMAN CAMPBELL: Let's hold for just a second.

Mr. Oliver, have we addressed all the issues that you needed to address before you leave today?

MR. OLIVER: Yes. And I would assume if, at some point, we would be required to provide a final assessment of the review of the whole RFP process to date and whether the RFP should be issued, I would assume that that would take place when we submit comments on the 13th?

MS. SCHMID: If that request is granted.

CHAIRMAN CAMPBELL: We haven't decided that yet, but we will discuss that later today.

MR. SELGRADE: It would be our intention to make some appropriate filing at the time that you are looking for it from us. But he really has to catch the plane and doesn't want to get started orally on doing that.

CHAIRMAN CAMPBELL: You're excused and free to go. Thank you for being here today.

MR. OLIVER: Thank you.

CHAIRMAN CAMPBELL: Okay. We are back.

MR. BROCKBANK: We are just wondering if Mr. Oliver, do you need to leave right now or is it 11:30? We are just wondering whether it makes sense to have you here for at least the amount of time that you have available.

MR. OLIVER: I have to leave at about 11:25.

CHAIRMAN CAMPBELL: Have you made statements on any other issues that are pressing that we need to get you on the record for?

MR. OLIVER: Yes. We have made statements on a number of issues. But this was really the only issue we had disagreement on at this point.

CHAIRMAN CAMPBELL: Do you see the IE having any input on --

MR. BROCKBANK: It would be helpful to know what the IE's position is. Again, there are disagreements among the parties of what the credit requirements should be. Perhaps the IE could just -- if the IE is familiar with those disagreements, perhaps he could just lead off on that. I want to be sensitive --

CHAIRMAN CAMPBELL: If you would indulge us, would you make a statement on your position as it relates to the credit issue?

MR. OLIVER: We have no disagreements with the Company's position at this point. We do think the Company has moved significantly on the credit side. Noninvestment grade entities can compete in the process which is, I think, a positive solution. And I think overall, at this point we have no disagreement with the Company on credit.

CHAIRMAN CAMPBELL: All right. Is that what you were looking for?

MR. BROCKBANK: Thank you.

CHAIRMAN CAMPBELL: Thank you, Mr. Oliver.

Please proceed.

MR. BROCKBANK: My apologies to Mr. Oliver to make you stand up and sit down again.

Mr. Papousek, could you please provide your summary of the Company's credit position.

MR. PAPOUSEK: Certainly. PacifiCorp has included in this RFP what it deems to be very reasonable and transparent credit requirements. As Mr. Fehrman said, PacifiCorp is not willing to extend credit to noncreditworthy bidders unless adequate security is provided. It's our aim to shift credit risk away from the ratepayer and not burden them with it. Our past experience has shown us that including credit requirements up front will help the bidders factor into the economics of their bid any credit related costs.

Lastly, there is a -- what was my last statement? There was a direct relationship between credit rating of a company and its probability of default. One has to look no further than Calpine and more recently Desert Power to understand that relationship.

CHAIRMAN CAMPBELL: All right. Does that conclude your summary?

MR. PAPOUSEK: It does.

CHAIRMAN CAMPBELL: Does the Division intend to comment on this or just answer questions?

MS. COON: The Division's issues that we outlined earlier have been adequately addressed by the Company, so we will be available to answer questions.

CHAIRMAN CAMPBELL: All right.

MR. PROCTOR: The Committee has nothing.

CHAIRMAN CAMPBELL: Nothing from the Committee. Mr. Dodge, did you have anything on the credit issue?

MR. DODGE: I would just be very brief. I appreciate the Company addressing many of our credit-related concerns. We do think it's a better process to let bidders know up front what will be looked at. They have, I think, attempted to address our concerns as to QF or customer-based initiatives not having the same credit requirements. Those will have to be dealt with if there are any bids in that category.

I guess the only remaining question we had, and this is another one where I have to defer to others with more expertise like potential bidders, we know that there's a broad range of market participants out there, many of which project-finance units in the market and they are building every day. And what we don't want is a level set so high that it misses that appropriate balance between ratepayer protection and a good diversity of bids. And we have several times said we are not sure where that level is, and we have invited the IE and bidders to speak up on that. We are a little troubled by a requirement that is just a, "We will not, because we want to protect our ratepayers." I think that's really the Commission's role to decide where the appropriate tradeoff between risk to ratepayers and viability of the process gets drawn. As ratepayers, we don't want it to be drawn the wrong place but also don't want it to preclude market participants that are throughout the rest of the country if they are participating in things and successfully building projects on a project-financed basis.

So we are here mostly to say we encourage you to listen to those who are better equipped than I to opine on that issue and get to a comfortable place. And if where it's at isn't that comfortable place, then add some flexibility. We propose some very minor flexibility. These are our basic requirements but if you want to propose something alternative, propose it. And then if the IE and the Company reject it, they reject it. But not to absolutely cut off someone proposing something that might be workable. That's kind of what we would like to avoid.

CHAIRMAN CAMPBELL: Okay. Let's get specific now, if we could.

MR. DODGE: What my language was -- and again, I don't claim to necessarily have the best language. If someone could help me to get to where we are at. I think I added in two places "or proposed alternative credit arrangements."

Yes. If you are looking at my submission with the red line, it's on page 26 of the RFP that's attached. There are a couple of red line changes there. I think the Company made the proposed "to demonstrate the ability to post credit assurances." I just added "or otherwise establish credit worthiness." I have since been told that's probably the wrong word, and I wasn't using it as a term of art. But if there's a market participant out there who is building plans and has been deemed a partner by others and they think they have a way to satisfy the IE and PacifiCorp and this Commission as to credit, don't necessarily cut them off or say that the only way to do it is by posting assurances. Let's invite creativity in meeting credit standards. We don't want there not to be credit standards, but let's invite creativity. That's what I was trying to get at.

CHAIRMAN CAMPBELL: We will come back to the Company at that point. Let's go to LS Power.

MR. EVANS: Should I qualify him for the record?

CHAIRMAN CAMPBELL: Yes. Would you, please.

MR. WILLICK: Lawrence Willick, vice-president with LS Power Development, LLC, 400 Chesterfield Center, Suite 110, St. Louis, Missouri, 63017.

MR. EVANS: Mr. Willick, have you been involved in this docket since the outset?

MR. WILLICK: Yes.

MR. EVANS: Has LS Power filed comments in this docket?

MR. WILLICK: Yes.

MR. EVANS: Are you familiar with the draft RFP that has been submitted to the

Commissioners?

MR. WILLICK: Yes.

MR. EVANS: Do you have a summary prepared?

MR. WILLICK: Yes. Our position is pretty similar to the Company's. We agree that ratepayers should be protected from the credit worthiness of the bidders, and we agree that noninvestment grade entities should be able to buy up with security. Our issue is with the level of security, because credit -- and security has a very real cost to the bidders that needs to be incorporated into the proposal, and there's a balance between having the lowest bid possible and overcharging the Company and ratepayers for a level of security that we think might be too high.

Our proposal is just that if a bidder does propose alternative security arrangements, it's not automatic grounds for rejecting the bid but it should be subject to review of the IE. I think it's certainly within the scope of the IE to review and provide input in rejecting nonconforming bids, and we do have some proposed language for implementing this.

CHAIRMAN CAMPBELL: Could you point me to that?

MR. EVANS: If I might, Commissioners.

CHAIRMAN CAMPBELL: Yes. Please.

MR. WILLICK: There's three pages. The first page starts with the number --

CHAIRMAN CAMPBELL: Do we have copies for everyone that needs a copy? All right. Go ahead.

MR. WILLICK: It starts with number 3, and it's from, actually, Section 2(h) of the RFP, Item 3. On the second page there's item "N." We propose the following additions to that. "We recognize bidders are put on notice that failure to address satisfactorily both the price and nonprice factors," and we propose adding, "including security requirements can serve as grounds for rejection of a bid, subject to IE review."

CHAIRMAN CAMPBELL: All right. Then you have another suggestion, as well?

MR. WILLICK: Yes. The other suggestion -- and this is mislabeled. It's from Section 6 of the RFP. It's item, actually "B." And we propose again making it explicit that bidders are allowed to negotiate final contract terms including security requirements.

CHAIRMAN CAMPBELL: All right. Are you done?

MR. WILLICK: Yes.

CHAIRMAN CAMPBELL: Let's hear from the Company.

MR. PAPOUSEK: We sort of went down this path with the 2003 RFP. And the evaluator at that time said we --

CHAIRMAN CAMPBELL: Is your microphone on or can you draw that closer to you?

MR. PAPOUSEK: Is that better?

CHAIRMAN CAMPBELL: Much better.

MR. PAPOUSEK: So the independent evaluator at that time said it would be using credit as a screen up front, and we had a bidder come through who wanted to get creative and at the very end couldn't end up performing and we went down the path way too late in the game at that time. So I think using credit as a screen up front is actually valuable and helps all the bidders evaluate how they are going to price into their bids the credit relationships they need to get in place. I think it's fair.

CHAIRMAN CAMPBELL: And I think that's a given. I think we have pretty much agreement there that we can use credit up front. Could the Company comment on these two specific proposed changes; the one by Mr. Dodge as well as the one by Mr. Willick? Just flat out reject them or is there some way to change them?

MS. KUSTERS: Can I ask a question? Are you, by the addition of this language in Number 3, that is, looking at "including security requirements," is that as the RFQ or are you suggesting that you will be allowed to provide a proposal and then to the extent you haven't addressed security then the IE has the ability to reject your proposal?

MR. WILLICK: That's right. We are not proposing any changes to the RFQ or any changes to screening potential bidders for credit worthiness. This is only in the evaluation of the proposals themselves.

MS. KUSTERS: Let me give an example, then. You would come through the RFQ, you would meet the requirements under the matrix, and then after you met the requirements under the matrix, then what would you do?

MR. WILLICK: You know, we would have the flexibility to be able to negotiate. For example, the credit requirement is based on, you know, current expectation of prices in 2013 being about $66 a megawatt hour, with the potential, 84 percent probability of being $155 a megawatt hour. And you are asking bidders to cover off the exposure between the two for a summer period. And we might be able to get an out-of-the-money call option on power in 2013 at $80 a megawatt hour and that might be cheaper to us than posting the security that's been requested. So we are just looking for alternative ways to keep our price as low as possible but still provide either security or other assurances that protect the Company and its ratepayers.

CHAIRMAN CAMPBELL: I'm going to interject a quick question so I can follow this discussion. Does the credit matrix identify the level of security required?

MS. KUSTERS: Yes, it does. So the bidder would know up front what their costs are and therefore could essentially price in that cost in order to buy themselves up to an investment grade entity.

I guess the issue that we have with your proposal is that it's a long lead time period between the time that you're selected as the successful party and when, in fact, you actually will bring that facility on line. And to the degree that you decide, "Oh, it costs me less to do or I'll hedge my credit exposure differently than what the Company is expecting me to hedge it," then what happens if you become bankrupt and go in default? Then what does the Company do? We are not covered off on a credit standpoint between the time that we have selected you as a bidder and the time that you were supposed to come on line but didn't because you defaulted and went bankrupt.

MR. WILLICK: Right. There's certainly different levels of security. The proposed amount is based on six years out. And as you come closer in time to the credit exposure, the amount of security posted might be able to come down to reflect power certainty in market conditions. And then at the point where a bidder might default, there would be that amount of security posted that the Company could draw on.

MR. PAPOUSEK: If I might add to that, we are also not going to be asking you for additional security if prices, in fact, move higher up beyond what our expectation is. So we wear the risk on the upside of that.

MR. WILLICK: I recognize that.

MS. KUSTERS: And I think I will take you back to Chris's original point with regards to our lessons learned from a Company standpoint. When we issued the 2003 RFP and did not use credit as a pre-screening, we did end up negotiating with a counter-party very far along and then ended up or that counter-party ended up going into bankruptcy. And not having had the screening up front basically put us in a position of allowing that bidder to participate when, in fact, that entity was never creditworthy.

MR. WILLICK: Right. And I'm still proposing to screen bidders on creditworthiness. I'm just proposing to allow bidders some flexibility on proposals. And I recognize if we are completely out there on what we bid, we will be thrown out. As long as the IE concurs that, "Well, this is not satisfactory, this doesn't protect the Company," then that's the risk we take in trying to manage the balance between the lowest price we can offer and the highest amount of assurance we can provide.

CHAIRMAN CAMPBELL: It seems to me -- it's a given we are screening credit up front. I have heard that several times. The question is to what level? What level? And my understanding is LS Power, you are not proposing a change necessarily to the credit matrix and the level of security within that matrix; you are just saying that you don't want it to be just ruled noncompliant if there's another creative approach on that issue.

MR. WILLICK: That's right.

CHAIRMAN CAMPBELL: And then the Company has an added degree of subjectivity trying to figure out -- well, I guess without actually seeing the proposal it's hard to envision how much flexibility ought to be granted.

MS. KUSTERS: It also doesn't provide --

CHAIRMAN CAMPBELL: I think I understand the issue. I just don't see a clear --

MS. KUSTERS: The transparency aspect of the RFP has been one of the areas that we focused on and one of our lessons learned, as well. Not having a transparent process for all bidders, bidders don't want to participate. And so if what you are suggesting is everybody has a credit matrix and everybody goes through the prescreening pieces. But then, "Oh, by the way, when we get to actually determining you as the best resource, we will allow you some other opportunity to adjust your credit requirements," it doesn't provide for the transparency that is essentially one of the items that we have been trying to focus on with regards to this RFP and one of the things that the bidders are really requesting of us.

And as far as the level goes, in having our discussions with the independent evaluator they have concurred that the levels that we currently have in place are industry standard. So as much as I appreciate your comments, I really want to make sure that we do have and hold a very transparent process to encourage bidders to participate.

CHAIRMAN CAMPBELL: So we have a transparency argument here and a flexibility argument here, is what I'm hearing. Commissioner Boyer has a question. We will keep exploring it.

COMMISSIONER BOYER: Would one solution be to restrict the time frame in which that creative negotiation can be completed?

CHAIRMAN CAMPBELL: And there's really two issues. There's the negotiation aspect and we need to answer this question. The other aspect is even getting to that point, getting through the matrix.

Go ahead and answer the question, then.

MS. KUSTERS: It doesn't provide for the transparency for bidders to the degree that we even suggest that, you know, from the time we get a viable resource going forward, if we are going to give them two months, for example, to negotiate the credit terms and credit instruments within that particular proposal, then other bidders may feel that that wasn't something that was provided up front and what the criteria was and how was it evaluated and what seems to be fair and comparable. So I guess I just go back to making sure that we align or making sure that we put forth all of the rules up front on how bidders are going to -- or what the requirements of bidders will be in the process. Because that's one of the things that we have gotten a lot of comment on through our last RFP and we want to assure that we deal with to the best of our ability in this RFP.

COMMISSIONER BOYER: Let me ask Mr. Willick, when would you foresee this negotiation taking place? At what stage of the process? Would it be before the short listing?

MR. WILLICK: I think we would -- bidders would submit their proposals and they would be evaluated, short-listed, and then I believe negotiations with the short-listed bidders would finalize what the credit arrangements would be.

MR. DODGE: Could I just add one thing?

CHAIRMAN CAMPBELL: Go ahead.

MR. DODGE: I think, Mr. Chairman, you identified correctly that there are two issues; the first one which I was addressing in my comment is the flexibility to be creative up front and avoid being canned right from the get-go. There seems to be less enthusiasm around that one.

The second one is what I think Mr. Willick has proposed, among others. It says at the end of the process when all price and nonprice items are up for renegotiation, including CO2 risks, I'm hoping that's not being disputed. In other words, when they said for evaluation purposes, "We are going to get the CO2 risk on the Company in all circumstances so we don't let that one issue vary the analysis." At the end, our point was if you can get a better deal if someone is willing to take that risk and they are creditworthy to take it, then even if we pay a little more for that, that may be a good tradeoff. So that's open for negotiation.

I would certainly hope that at least on that second point, credit in lieu of an LC posting some kind of a financial instrument that actually provides a call option on the power, that would just be in the form of creative negotiation that would benefit customers, I would think. So I'm hoping the

Company isn't rejecting that one. Am I misunderstanding?

MS. KUSTERS: No, you are not misunderstanding. I mean, essentially what we don't want is when we are doing the evaluation on the price and nonprice and trying to select a resource in the initial stage and it then goes to the final stage, that during the evaluation process that all the parties are treated equally. To the extent there's a party that actually is selected at the end as part of the final resources, you have the ability and opportunity to submit marked-up versions of any of the underlying agreements that deal with all of the credit instruments that are currently into play. And that would be the portion that would be negotiated.

So I don't disagree with what you are saying, but I think that comes into the part of being able to provide the Company with the markup of your underlying agreements, as we have encouraged, that basically deal with any of the credit instruments; whether it's step-in rights, paying off the debt, those components as part of the final negotiations which is after the Step 4.

MR. WILLICK: So under the current process, if a bidder puts together a proposal, takes exceptions in the model agreements to the credit provisions, they could still be carried forward and short-listed.

MS. KUSTERS: No. We are not --

MR. WILLICK: How do we let you know that we have exceptions to the credit requirements? You are saying we need to, in our proposal, say, "We accept this credit matrix and these credit requirements," but then once we are short-listed we can come in and say, "By the way, here is a list of issues that we have."

MS. KUSTERS: You would actually do that when you submit your proposal. You would be submitting your proposal and it would be evaluated on the price and nonprice issues.

But as Gary has stated, even if you submit a markup of the underlying agreement, to the degree that it is not accepted by the Company or the IE, then no, you would not be selected. But you wouldn't be changing what your credit requirements are between the time that you are short-listed and the time that the final resource is selected.

CHAIRMAN CAMPBELL: I think we understand the disagreement. Mr. Willick, are you prepared to argue against the default security requirements in the matrix today, or you really don't want to go down that path; you just want flexibility?

MR. WILLICK: Right. I just want flexibility. I don't know that we would be able to negotiate an alternative credit amount that would be satisfactory to all the parties. Our position is that the loss of objectivity in the process is made up from the flexibility and the creativity that bidders can have to minimize the price.

CHAIRMAN CAMPBELL: Okay. I'd like to get the Company's response to Mr. Dodge's suggestion as far as what you object to there or if you would modify it or just reject it outright.

MS. KUSTERS: Can you repeat it?

CHAIRMAN CAMPBELL: Do you have a copy of his red lined version where you can look at it?

MR. BROCKBANK: I don't.

MR. DODGE: I just added the words "or otherwise establish credit worthiness" in two places on page 267 of my markup.

MS. KUSTERS: And this is where they actually provide something other than the matrix, Gary? I mean, essentially you are encouraging them to provide or demonstrate something that they would provide the Company that isn't buying themselves up to being an investment grade entity?

MR. DODGE: An alternative to just posting an LC to buy up the creditworthiness.

MS. KUSTERS: And this is what we provided in our 2003 RFPs where we did not prescribe the matrix as a screening or fixed amount with regards to prequalifications, and it led us to where we have already said: Essentially negotiating with a counter-party that wasn't creditworthy.

MR. DODGE: But the difference is I don't think anyone has proposed that you not do an initial screening on credit and cut out those that aren't going to meet yours and the IE's idea of adequate security. It's simply if there are creative proposals that are presented that could reasonably lead to a secure counter-party other than just posting the LC that you have in the matrix, why not consider that? If you are not persuaded, you ax them. So it is still done as a screening tool but you don't have just one answer for meeting the requirement.

MR. PAPOUSEK: I think it is worth looking at what the industry does in sort of its normal day-to-day business. They specifically spell out what are security requirements; guaranteed letters of credit, cash deposits. These are spelled out in the bilateral contracts that permeate the industry. So to sort of deviate from that, we don't get into a trading contract and say, "Why don't you put up something nonindustry standard?" Because it isn't the way business gets done. So it's sort of looking towards what industry does in the day-to-day business is where we are coming from.

CHAIRMAN CAMPBELL: Let me ask this question: Is the credit matrix, are you representing that that is the industry standard? Is it on the aggressive side of the industry standard or the leniency side of the industry standard?

MR. PAPOUSEK: I think that's sort of what the independent evaluator was called in for, is what is his assessment. Don't take our word for it. What is his assessment for it? And I think he has come back and said it is industry standard.

MR. BROCKBANK: I'd like to ask Mr. Dodge one question, if I could, Mr. Chairman.

CHAIRMAN CAMPBELL: Okay.

MR. BROCKBANK: Hypothetically speaking, Mr. Dodge, if the flexibility that you and LS Power are urging here -- I mean you represent your organization, UAE represents some of the largest ratepayers in the state. If the Company in its RFP were to allow for flexibility in credit requirements, security requirements, and that flexibility varied from what the Company has proposed in its credit matrix currently but it resulted in a winning bidder and ultimately that winning bidder went bankrupt years down the road, would your large customer ratepayers be better off having the flexibility, the uncertainty, or be better off up front with the certainty of knowing the level, with the more stringent requirements that the Company is proposing, perhaps more rigid?

MR. DODGE: I'm going to take a page from Mr. Powell's book and challenge your hypothetical. Because under my scenario, you wouldn't face that risk either way. I'm not requesting that you deviate from insisting upon a credit arrangement where you will be satisfied reasonably and the IE will be satisfied reasonably, and the Commission, that this counter-party has posted adequate security that will deal with that very eventuality. That's what this is aimed at. What you have is one way to deal with it, which is post cash or a bond, which is very expensive. It's probably the easiest way to deal with it, probably also the most expensive.

I struggle a little with industry standard because I don't profess to be an expert on industry standard, but I know there's a heck of a lot of power plants being built out there, many of them project-financed that wouldn't probably have this size of an LC back it up. I'm just saying don't use, as an initial screening, an inflexible requirement. Offer a flexible one, but still screen them so that we are all satisfied there's not that risk of a default. Or if so, we have covered it with security.

MR. BROCKBANK: Thank you.

CHAIRMAN CAMPBELL: Any additional comments on this issue?

MR. KLEIN: I do have just one more comment. I think the difficulty that the Company is having on the flexibility is getting enough definition around "flexibility" to do an evaluation that's fair to the bidders and to our ratepayers. And I guess what I'd do is I'd defer back to LS Power and maybe some of the other independent power producers. When you've been contracted or approached by we'll say a noninvestment grade utility or a noninvestment grade counter-party for building a power plant or a long-term PPA, what sort of approach or flexibility has LS Power taken? Maybe you could give us an example.

MR. WILLICK: Sure. I mean, we do have one project that we finance that's under construction in Arkansas. And it was financed on a nonrecourse project-finance basis with a number of all takers and participants. And I think they were, for the large part, investment grade. And the way we view it, the obligation of the buyer is more of a payment obligation. And so the buyer, we view credit as being important and they were creditworthy entities. I don't think we required very much credit of them. As developer -- I mean, as we are developing projects and there's development risk along with performance risk, we did post security. That was negotiated at a arm's length basis with those entities, and it was much less than what is being asked here in the credit matrix. That project, as I said, it's been financed. It was a noninvestment grade project.

MR. KLEIN: If I could follow up on another question. So this is a project with several entities and some that you mentioned were investment grade. Perhaps some were not investment grade. The fact that you had perhaps a larger contingent of investment grade counterparties participating in that project, did that give you more assurance or more clarity that you could proceed forward in the event that one of the noninvestment grade counterparties defaulted?

MR. WILLICK: I think -- I'm only qualifying, but I think all the entities were investment grade. I would need to check that. Some might not be rated because they are municipalities or joint action agencies. I'm not sure that they are rated but we consider them to have investment grade characteristics.

But again, the amount of security required, if we required security of them, would be a function of the payments over a period of time that they would be obligated to make to us. And here, there aren't any payments from bidders to PacifiCorp. So it's really not an apples to apples comparison of how would you require security.

MR. BROCKBANK: So are you suggesting, Mr. Willick, that it is more important for a seller of power to be secure than it is for a load-serving entity who buys power to be secure?

MR. WILLICK: I'm saying it is different risks. I mean PacifiCorp, as buyer, wants performance. You want the power. And more than wanting to draw on the security if the entity goes bankrupt -- I mean, you have a subordinated mortgage, you'd be able to take over the project and complete construction and have delivery of the power. That is very strong security interest in and of itself.

MR. BROCKBANK: You did say a subordinated mortgage, correct?

MR. WILLICK: Yes.

MS. SCHMID: Could I ask one clarifying question before we get too far?

CHAIRMAN CAMPBELL: Go ahead.

MS. SCHMID: You and others use the abbreviation "LC." Does that refer to letter of credit or something else?

MR. DODGE: Yes. I apologize.

MS. SCHMID: Thank you.

CHAIRMAN CAMPBELL: Any additional comments to be made on this point?

MR. BROCKBANK: None from the Company.

CHAIRMAN CAMPBELL: I believe we understand it as a commission. Thank you very much.

Let's move on to one more topic perhaps before lunch. What's the next topic you'd like to address?

MR. BROCKBANK: Mr. Chairman, if we could clarify a couple of issues. The first item on the list of our matrix that the Division filed is effectiveness of bids/pricing index. I believe that that largely, in some degrees, the pricing index has been addressed, that aspect of that.

CHAIRMAN CAMPBELL: I thought we handled that under comparability. Are there additional points that needed to be made on that issue that we didn't discuss in comparability?

MS. COON: Mr. Chairman, I believe there was one more issue under comparability that sort of got overlooked, and it had to do with an environmental reopener. And I know that in the IE's comments in his reports that have been filed, the issue was mentioned. But I don't know that it was specifically outlined in the matrix. But I would just like to bring it to the Commission's attention as an issue that would be considered as a bid comparability issue.

CHAIRMAN CAMPBELL: All right.

MR. SELGRADE: And just to elaborate on that, I believe Mr. Oliver had wanted to summarize it and then just overlooked it.

CHAIRMAN CAMPBELL: Mr. Selgrade is your microphone on?

MR. SELGRADE: I believe so. Is this

better?

CHAIRMAN CAMPBELL: That's better.

MR. SELGRADE: It's another comparability issue, in that the bidders right now would enjoy very limited change in law relief compared to the benchmark. If a change in law occurs any time during a twenty-year term, the general rule for PPAs is bidders absorb that risk and there's no change in capacity pricing. What the Company has proposed with regard to CO2, however, is if there's a change in law and there is an imposition of a carbon tax, that the Company will absorb that on behalf of the ratepayers; and the contract, although it presently doesn't state that, it will be reformed to state that under those circumstances for a new carbon tax or other imposition if the PPA seller has the right to adjust its capacity price.

What we have noted is that there may be circumstances in which the law imposes a carbon tax at a level so high that the idea in mind was that it would force all the power plants to retrofit. And if they retrofit it's conceivable, at least, that they could do so at a capital cost that was 75 percent of the net present value of all the future tax they pay. And if they retrofitted they also could have environmental savings in that the emissions would go down.

But if the contract only allows a change in price for the carbon tax, it would be a perverse incentive for them just to go along and pay the carbon tax, pass the costs on to the Company, who in turn would pass it on to ratepayers. Whereas what the intent of the legislation was that what the public interest result, perhaps, might be would be to have a retrofit of the plant, reduce the carbon dioxide emitted, and pay a lower carbon tax or, in any event, lower the emissions that came out of the plant. They would have no ability to recover the capital costs for any retrofit, and therefore they wouldn't do that. They would continue to simply pay the carbon tax.

CHAIRMAN CAMPBELL: Okay. Let's go to the Committee. Did you have any additional points to make on what's labeled effectiveness of bids/pricing index, or did you address that in your comparability comments?

MS. KELLY: We combined our comments on indexing and the recommendations to change the PPA contract to reduce the risk in the same set of comments. And we did not address the CO2 aspect.

CHAIRMAN CAMPBELL: Okay. Thank you. Any other party want to address the effectiveness of bids/pricing index? I think we are in agreement that -- go ahead Mr. Fehrman.

MR. FEHRMAN: I just want to clarify, if I understood the comments, that the Company is not interested in taking change of law risk through this process. And if that's what I understood the individuals to be talking about, for instance CO2 changes down the road, that would be recovered in costs.

MS. KUSTERS: The question is for you, Ed, I think just to clarify. Clarification around whether or not what you are suggesting is essentially pushing the change of law risk on to the Company to the extent that we go forward with a third-party bidder and that third-party bidder essentially has to retrofit their specific generator to conform with different standards, and therefore your belief is that that cost should be passed through to ratepayers as opposed to having the IPP party take on that risk.

MR. SELGRADE: I call it a change in law risk and I limit it only to environmental change in law. And the reason that we bring it up as a comparability issue is because if I understand the

Company correctly or not, they may not realize that in agreeing to absorb the cost of any future carbon tax, they have accepted a very limited environmental change in law risk already. To my knowledge there's no carbon tax in effect right now. So what they have done is said, "Listen, if the law changes and a carbon tax comes along, we will absorb it on behalf of our ratepayers."

And what we are saying is, well, what if the change in law comes along and it can be satisfied best by a retrofit instead of the payment of the paying the carbon tax? The Company would make the environmental retrofit and seek to recover it under the cost of service principles, and it becomes a comparability issue that if the change in law environmental risk that they have accepted is limited only to a tax --

CHAIRMAN CAMPBELL: Let me first of all clarify. We are dealing just with CO2, right? As far as it stands right now, change in law risk is on bidders for anything but CO2.

MR. SELGRADE: That is correct.

CHAIRMAN CAMPBELL: We have that clarified. Now, the question is -- Well, I understand. I understand the dilemma you are raising.

MR. SELGRADE: It only would be with respect to CO_2. It would be a retrofit for purposes of complying with a CO_2 change in law.

CHAIRMAN CAMPBELL: So what is your solution?

MR. SELGRADE: To have it be treated the same for a benchmark and a PPA bid. In other words, you could use the same standards of fact. You could create a contract prudence review. You could make it subject to further review by the Commission or come within the purview of the federal government since the PPA is really within the jurisdiction of the FERC. But in any event, not to change the standard for recovery and to try to make the ability of a PPA seller to recover any retrofits for CO_2, the same companies.

CHAIRMAN CAMPBELL: Do you have a comment Mr. Proctor?

MR. PROCTOR: I have a question. The committee isn't certain that PacifiCorp is proposing that in any PPA contract, the Company will absorb the risk of the carbon tax changes, legal changes. We understood that that was merely an element of the scoring; if the PPA was asking the Company to accept that risk or whether the PPA was accepting the risk and of course incorporating it into its bid. That was our understanding. But maybe I misheard the parties here. But a clarification as to whether or not the Company intends to accept that risk in any event needs to be made.

CHAIRMAN CAMPBELL: Mr. Brockbank?

MR. BROCKBANK: Mr. Chairman, this is a significant issue. Could I ask the Commission that the Company and the parties be allowed, after lunch, to address this as well so that we have an opportunity to caucus and discuss that internally?

CHAIRMAN CAMPBELL: All right. We will pick it up later.

MR. BROCKBANK: Thank you.

COMMISSIONER BOYER: This is for Mr. Selgrade. Said another way, are you saying it is difficult to compare an IPP that has to bear that uncertainty, that carbon risk, and if they have their wits about them would price that into their bid; whereas the benchmark wouldn't have to do that because they have the option of coming to the Commission and getting cost recovery for any retrofit or tax?

MR. SELGRADE: Their choice would only be, as you suggested, Commissioner, they would price it into the bid. And our comparability proposal has the explicit intent and is made with design only to lower bids in this regard.

MS. KUSTERS: As a point of clarification, in the RFP the way it is currently structured, both on an asset-backed PPA basis, as well as on the asset purchase and sales agreement or the benchmark, the Company is bearing the risk on the CO2. So it's not as if the bidders have to inflate their price or look at something differently with regards to their total costs, because that cost will be passed through as a company cost as part of the evaluation.

CHAIRMAN CAMPBELL: All right. Let's go off the record and talk about a schedule for this afternoon.

(Discussion off the record.)

CHAIRMAN CAMPBELL: LS Power has introduced an exhibit. Shall we just mark it LS Exhibit 1. It consists of three pages with proposed language changes to security requirements.

MR. EVANS: Thank you.

CHAIRMAN CAMPBELL: You offer its admission?

MR. EVANS: We offer it.

CHAIRMAN CAMPBELL: Any objections?

MS. SCHMID: No objection from the decision.

MR. PROCTOR: No objection.

MR. BROCKBANK: No objection.

CHAIRMAN CAMPBELL: Let's take a lunch recess.

(The lunch break was held.)

CHAIRMAN CAMPBELL: Let's go back on the record. Are we at the point we are going to talk about needs?

MR. BROCKBANK: I think we are just about there, Mr. Chairman. A couple of parties I think wanted to make one or two points regarding CO2 issues that we were addressing before.

CHAIRMAN CAMPBELL: Okay. Who was that?

MR. BROCKBANK: I know we have one clarification to make. I don't know if anybody else did.

CHAIRMAN CAMPBELL: Go ahead.

MS. KUSTERS: I just wanted to clarify the statement that I made before lunch. If I was unclear with regards to the CO2 risk, I wanted to specifically state that it is a customer risk and that the Company will be evaluating it through, consistent with the

IRP assumptions through the IRP process.

CHAIRMAN CAMPBELL: Okay. Thank you. Next issue?

MR. BROCKBANK: The parties talked and we believe that there are just a couple of issues remaining. The need issue will be, of course, the most substantive.

MS. SCHMID: Perhaps "a few" rather than just "a couple."

MR. BROCKBANK: "A few." "A couple." What's in a word?

And there are several issues relating to need. We just kind of lumped those all in together. And if you are looking at the matrix, Needs starts on page 8, and there are -- it goes through to page 11 where we find Credit. We already crossed Credit off the list, or we addressed it this morning, I should say. And then at the bottom of page 12 there are some other issues where it starts FEED Study, that still need to be addressed.

CHAIRMAN CAMPBELL: All right.

MR. BROCKBANK: And PacifiCorp's witness for the need issue has not yet been introduced so when it's convenient, I would like to introduce him.

CHAIRMAN CAMPBELL: All right. Why don't

we begin by swearing Mr. Guidry in. I don't believe you've been sworn in, in this proceeding. So why don't you go ahead and stand.

(Eric Guidry was sworn as a witness.)

CHAIRMAN CAMPBELL: I'm going to ask, Ms. Schmid, would you please qualify Mr. Guidry for the record.

MS. SCHMID: Yes.

Mr. Guidry, would you please state your full name and business address for the record.

MR. GUIDRY: Yes. My name is Eric C. Guidry. G-U-I-D-R-Y. I'm the energy program staff attorney with Western Resource Advocates.

CHAIRMAN CAMPBELL: I don't know if your microphone is turned on.

MR. GUIDRY: Let me try that again. My name is Eric C. G-U-I-D-R-Y. I am the energy program staff attorney with Western Resource Advocates. We have offices in Nevada, Utah, and Colorado. I work out of our Colorado office, which is 2260 Baseline Road, Suite 200, Boulder, Colorado, 80302.

MS. SCHMID: Have you been involved on behalf of WRA in this docket?

MR. GUIDRY: Yes, I have.

MS. SCHMID: And in what role are you here today?

MR. GUIDRY: I am here as a policy witness on behalf of WRA.

MS. SCHMID: Thank you.

CHAIRMAN CAMPBELL: All right. Thank you.

Let's go back to the Company, and why don't we begin with your summary of the -- are we going to do all the need issues together? Okay. Why don't we go ahead and get your witness who is going to be part of this panel qualified and then go ahead and offer the summary.

MR. BROCKBANK: Thank you, Mr. Chairman. Our witness will be Mr. Greg Duval.

Mr. Duval, can you please state your name, title, and business address for the record.

MR. DUVAL: My name is Greg Duval. I'm the director of integrated resource planning for PacifiCorp. My address is 825 Northeast Multnomah, Suite 600, Portland, Oregon.

MR. BROCKBANK: Mr. Duval, are you familiar with this RFP, and specifically the issues relating to resource planning and resource needs?

MR. DUVAL: Yes, I am.

MR. BROCKBANK: Are you authorized to speak on behalf of the Company on these issues?

MR. DUVAL: I am.

MR. BROCKBANK: Do you have a summary to share with the Commission on your presentation?

MR. DUVAL: Yes, I do.

MR. BROCKBANK: Please provide it.

MR. DUVAL: Okay. Well, the need that the Company is seeking to fill with this RFP is 1109 megawatts of base load resources in 2012 and 2013. And that's shown on page 6 of the draft RFP. There's a table at the bottom of the page that lists those numbers. This is consistent with the 2004 IRP load and resource balance using a 12 percent planning reserve margin. And Mr. Brockbank handed out a sheet, a spreadsheet or a sheet of the load resource balance that you should all have.

MR. BROCKBANK: Excuse me, Mr. Duval. May I approach the Commission? I passed it out to the parties but not the Commission.

CHAIRMAN CAMPBELL: Go ahead.

MR. DUVAL: Let me explain where the need comes from. The table on page 6 shows 808 megawatts in 2012 and 1109 megawatts in 2013. This table is from the 2004 Integrated Resource Plan. It's in fiscal year so what's labeled 2013 fiscal year is really calendar year 2012. The numbers we have chosen are off the East Side because this is looking for East Side base load resources. So the number for the 2012 summer would be 808, a deficit of 808 or a need of 808, as shown on the line called East Position. And in 2013, the summer of 2013, which is fiscal year 2014, is the 1109 megawatts.

This is identical to the chart that's in the published 2004 IRP with the one changed to Planning Margin, to change it to 12 percent. In the book it is 15 percent. So these numbers would be a little bit bigger if you looked at the book.

You can see from the table, as well, that it's assumed wind, in the middle of the page there on the top middle, says RFP Wind, it shows front office transactions and QFs. So there's an assumption that the deficits or the needs that we're identifying are after the 1400 megawatts of system-wide wind, and after 700 megawatts of east side front office transactions. So that's the basis of the need numbers in our revised RFP.

We expect that that need will be filled with a combination of benchmark resources and RFP bids. The exact amount that we will acquire may be more or less than 1109 megawatts, really depending upon the economics and the size of the resources. So that's how the RFP is aligned with the IRP in terms of need.

In addition to that, the RFP is aligned with the IRP on bid evaluation and modeling. This is the first RFP that we have actually incorporated the Integrated Resource Planning models as part of the evaluation. So we will be using the same models and evaluating these bids in the RFP as we are using in our Integrated Resource Plan.

And finally, and most importantly, RFP is aligned with the primary goal of the Integrated Resource Plan, which is to acquire least cost, least risk resources on behalf of our customers. Thank you.

MR. BROCKBANK: Mr. Chairman, PacifiCorp moves to enter Mr. Duval's Exhibit and label it PacifiCorp Exhibit Number 1.

CHAIRMAN CAMPBELL: All right. Any objections?

MS. SCHMID: No objections.

MR. PROCTOR: No objection.

MR. SELGRADE: No objection.

CHAIRMAN CAMPBELL: All right. It's admitted. Let's go to the Division for a summary statement.

MS. SCHMID: Dr. Powell will provide a summary statement for the Division on this issue.

DR. POWELL: Maybe I could ask the Commissioners, my intent this morning was to just read the issue and recommendation on the memo that we submitted yesterday. I know that everybody has read that memo. The only purpose I was going to do that was for people that were on the phone that may not have seen the memo. If there's nobody on the phone, I don't think there's any reason for us --

CHAIRMAN CAMPBELL: Even if they are on the phone, we can get them a copy of this without actually reading it.

MS. SCHMID: Perhaps you could just provide a --

DR. POWELL: Just a very brief statement, then, is as we read the IRP update it appearances that the changes that have been proposed or the actual filed RFP that is before the Commission today is not adequate to meet the needs of the system and do not meet the needs especially of the Utah side of the system, or the east side; and therefore we have some serious questions about whether or not the RFP meets either the statute under the Procurement Act or is consistent with the 2004 IRP.

CHAIRMAN CAMPBELL: Okay. Does the Committee have a statement they want to make on this issue?

MR. PROCTOR: Mr. Chairman, as you know, the Committee was taken aback to some extent when we received the October 27th version of the RFP in connection with the reduction in the base load, or excuse me, the benchmarks. And for that reason we would request the opportunity to address that issue in relationship to the IRP/RFP alignment. So at this point, it's our motion that we would very much appreciate having been granted -- because it's in that context that we would like to address this particular issue. And I note that the Division said essentially the same thing in the matrix; that it was a bit of a surprise and certainly there wasn't time since Monday of this week to provide that.

However, we have reviewed, at this point, the Division's memorandum and would agree that the Division's recommendations and their assessment of the need certainly parallels that which Ms. Kelly has developed and has been encouraging the Company and the other parties to accept now for some time. In fact, throughout this process.

We have questions about the reasonableness of a 12 percent planning reserve margin. The Company itself has questions about the 12 percent reserve margin and has committed to continue to address that issue through the 2006 IRP process. And they made that commitment in the Oregon proceedings. So we would agree at this time that the Division's recommendations should be accepted and we may differ to some extent with respect to the precise nature of the need and how that need would be filled, but that's what we would like to address in the subsequent comments.

CHAIRMAN CAMPBELL: Okay. And we will take up your motion at the end of the hearing today.

MR. PROCTOR: Thank you.

CHAIRMAN CAMPBELL: Comments on need by WRA or UAE?

MR. GUIDRY: Thank you, Mr. Chairman. First of all, I would like to note that WRA, in our comments, did raise some very serious objections to the previous drafts of the company's RFP in terms of how it incorporated the public interest factors under the Energy Resource Procurement Act. We also raised some issues about consistency with the benchmark options under the IRP and the company's commitments both to the letter and intent of the Mid-American acquisition commitments on IGCC. I do want to thank the Company for taking our comments seriously and for addressing them. We do think that those issues have been resolved to WRA's satisfaction.

With that said -- and also, I did want to thank the independent evaluator for their participation in the process. I think they have been very helpful.

With that said, WRA does have a policy objection to the use of polarized coal technology at IPP 3 and at Hunter 4 in terms of its balancing of cost, risk, and impacts under the Energy Resource Procurement Act. WRA, in our opening comments, detailed the status of the signs of climate change and the risk involved, and the impacts in our opening comments, if you look at pages 5 to 11. I'm not going to repeat those here, though. Just to simply note that that is in the record, to my understanding.

We do understand the parties' concerns about short-term transactions and the market risk that that presents. However, WRA believes that it is imprudent to hedge short-term market risk through the development of potentially much riskier 40 to 50 year investments in high CO2 mini technology with limited flexibility for addressing CO2 over the long term.

WRA would also note that IPP 3 faces significant air permitting risk and multi-state approval risks that may impact its ability to meet its 2012 in-service date.

When viewing the projected resource deficit in the 2012 to 2013 time frame, we think it is important to distinguish between two separate issues. First is identifying the appropriate level of fiscal assets versus front office transactions for meeting that deficit. The second issue, though, is for that portion to be met through physical assets, what are the appropriate types of physical assets in terms of fuel use and technology for meeting that need?

On pages 2 to 3 of our reply comments, WRA noted our concern regarding the use of high capacity factor resources to meet what is essentially a growing summer peak in Utah on the east side of the system. We note that based on some discovery submitted in this case, the addition of a single large base load unit would result in considerable surpluses during the off-peak hours.

WRA recommends that a more advisable strategy would be to limit the scope of the RFP to the 500 megawatt Jim Bridger unit and focus on increased investment in DSM, distributed generation, renewable combined power, until coal technology is better able to address long-term CO2 risk and polarized coal can be deployed. We believe that represents a better balancing of the cost, risks, and impacts under the Energy Resource Procurement Act.

CHAIRMAN CAMPBELL: Thank you. I'm trying to see, quickly -- UAE, it looks like you also raised some issues, at least on our matrix.

MR. DODGE: At this point, I think UAE is satisfied, with this caveat: We think -- we are not quite sure if there's a dispute or not over this. We think that the RFP should be clear, if it isn't, that more than just the minimum amounts could be considered if it's economical. But we don't think the Company could be expected to add more benchmarks than they realistically think they can get done. I think all that's left is they put the benchmarks out, let's see what the market brings back. And if there's more than this amount that meets a perceived need, that can be dealt with down the road when they are looking at resources being selected.

CHAIRMAN CAMPBELL: Thank you. Let's go back to the Company. Your response?

MR. DUVAL: I really wanted to address the

Division's calculation of the 2000 megawatts, and given that the Committee also agreed and recommended that in terms of what our need is. And I would draw you to the Division's comments. On page 3 they have a table that shows basically how you can derive the 2000 megawatts they have recommended. And it's essentially -- it's described in the first paragraph of the first page. But what they have done is they have looked at total system-wide need in 2014. And so if you look at this table you look at the line, the row labeled 2014, the east side shows a deficit of 1326 megawatts, the west side shows a deficit of 699. Together that's what makes up the 2000 megawatts of need they have recommended that you order that we go after.

The difference between that and what the Company is recommending is the Company is recommending looking at the need on only the east side and only through 2013. So looking at the same table, if you look at east side 2013, that number would be 1000 megawatts. What the Company has in the IRP, request for proposal, is 1109. So the difference between those two, now that we have it at the same year and just the east side, the remaining difference between those two is that our numbers are based on the 2004 IRP at 12 percent planning margin and this table uses the IRP update at 15 percent planning margin. They are within 100 megawatts of each other and they are for the time period that we are recommending that this RFP be focused on.

CHAIRMAN CAMPBELL: Any other follow-up comments from the parties on the issue of need?

MS. SCHMID: I, at some point, have some questions I'd like to ask PacifiCorp whenever you feel that is appropriate.

CHAIRMAN CAMPBELL: Go ahead.

MS. SCHMID: And I appreciate your explanation, sir, and please bear with me. As we noted earlier, the draft we received on the October -- at the first of this week was significantly different in terms of the numbers than the drafts that we have been working from. And in terms of going from the 15 percent planning margin down to the 12, just to lay a little bit of groundwork, if I look at your 2004 IRP at page 54, PacifiCorp states that, "Therefore PacifiCorp concluded that a 15 percent planning margin level insured adequate resources will be procured to meet load requirement with a high level of reliability, avoiding physical short exposure to markets, and providing for safe, reliable, low-cost energy for the consumer.

MR. BROCKBANK: Ms. Schmid, are you reading from the IRP or the RFP?

MS. SCHMID: The 2004 IRP at page 54.

MR. BROCKBANK: Okay.

MS. SCHMID: And today and recently you've talked about a 12 percent planning margin. Could you explain the rationale and any studies that you have done to justify that departure from the 15 percent?

MR. DUVAL: We are in the process of evaluating that in the 2006 IRP, which is in progress. But the use of the numbers we have here, I guess there's a lot of numbers that are floating around. And if you look at a 15 percent on the 2004 IRP, I think that would raise our number, the number that we have, the 1109, by about 250 megawatts.

As the Division has done, they went to the 2004 IRP update, the need was actually less so a 15 percent planning margin with a 2004 update gives 1000 megawatts of need on the east side. So I think 1000 megawatts is generally supportive of the 1109 that we have in the IRP. So, I mean, while we have used 12 percent here, I guess probably one of the reasons that we did that was we are trying to get an RFP that can be approved by both the Oregon and Washington

Commission. The Oregon Commission specifically did not acknowledge the 15 percent. They have indicated that they have acknowledged 12 percent for the other large utility in Oregon, which is Portland General. So to, I guess, kind of remove one issue from the table, by using 12 percent to get to that conclusion.

MS. SCHMID: To follow up, it seems to me that more than just perhaps the 12 percent versus 15 percent issue was removed from the table, as you put it. When I look at the October 25, 2006 filing that you made in Oregon in docket number UM 1208, you seem to be revising the RFP to meet the needs of Oregon, and I know you did address why. But I still don't understand the rationale completely and it seems that Oregon perhaps is -- and this may sound like a loaded phrase and maybe it is and maybe it isn't, but Oregon seems to be driving the process perhaps to the detriment of Utah ratepayers who need energy.

MR. BROCKBANK: Is that a question?

MS. SCHMID: Yes. So to put it more bluntly, is Oregon driving the process?

MR. FEHRMAN: No. The answer to that question is no. What is driving the process is a company's need to get an approved RFP so we can actually go try and begin building something to meet everybody's needs. And as you know, for us to do that, we will have to be compromising on some of this to try and get commissions' approval of this RFP so we can begin to go out and move the process along. I don't believe that making a change from 15 to 12 percent in the RFP is a major issue for us because, as Greg pointed out, it's not a lot of megawatts. And when you are forecasting that far out, a difference of a hundred or so megawatts is really immaterial in the arena of forecasting.

To your point of changing the size and length of the RFP, very frankly, we have taken a look at what we believe we can get built. And in 2012, because of where we are at right today with this process, we have no other options that we believe we can get done other than IPP 3, so we moved it to 2012.

With regards to 2013, we felt that as an industry there was a need to bring IGCC forward because there was a significant amount of discussion with regards to IGCC. And for us to really test the market and find out if it's a viable resource or not, we wanted it in this RFP with the understanding that if it doesn't come through we would have an alternative of plant of Hunter 4 that we are ready to move forward.

So we moved 2014 from the RFP at this point in time because simply there's a lot on their plate. You are looking at billions of dollars of expenditures. And from my view it would be better for us to get going on 12 and 13, reassess where the market is at, understand what comes in through the RFPs, and then make a decision what we want to do with 2014, 15, and 16 through either an amended RFP or a new RFP that would probably come out next year for which your additional resources would be included in if, in fact, the need continues to be there.

MS. SCHMID: But to come back, notwithstanding what PacifiCorp itself can or cannot build, PacifiCorp has an obligation to meet the needs of its Utah ratepayers in a manner consistent with its statutory obligation; is that correct?

MR. FEHRMAN: That is correct and I'd ask how you believe we are not.

MS. SCHMID: I am just concerned that with the revisions, that it may not happen. And the Division again renews their request to submit the comments on the 13th.

MR. FEHRMAN: I guess I would have to understand specifically on where you believe we are not meeting the intent.

MS. SCHMID: I believe that Dr. Powell probably could address that more fluently.

CHAIRMAN CAMPBELL: That's why we have a panel. Go ahead.

DR. POWELL: Okay. I agree with Mr. Duval. I mean, if you just look at the numbers here, you see that maybe they are not that much different. But I would point out that it's not just simply 100 megawatts. If you look at the numbers under 2013 it says 808, and the IRP update in the information that I pointed out in table 1 of our memo is 1000 megawatts. The footnote on that particular page, I did some calculations and reported there that the difference between the 15 percent and the 12 percent planning margin in 2014 was approximately worth 400 megawatts. And not too surprisingly, if you look down under 2012 on the west side, the company's exhibit that they handed out shows the west side being in a surplus of about 11 megawatts. And if you look again at table 1 on the west side for 2012, you'll notice that the IRP update had the west side at a deficit of about 407 megawatts.

So I'd have to study the numbers a little bit more. I'm not quite sure -- I'm not ready to agree that we are only talking about 100 megawatts. My calculations show we are talking more about something in the range of 300 to 400 megawatts, which we are talking about a gas plant. Our concern has several facets to it; not only the change in the planning margin itself but, as I pointed out in the memo of the filed RFP cut the resources by more than half, the benchmark resources.

I'm not disputing whether or not the Company can build those resources. We are disputing or questioning whether or not the intent of the RFP is to go after enough resources to fill the needs that especially the Utah side is projected to need over the next few years.

The other aspect was that they shortened the RFP time frame from three years to cover 2014 to only cover two years up through 2013. Again, we run into, if I dare say it, some issues that were brought up in previous cases where, as we postponed these decisions, we put ourselves in a circumstance where we actually limit the choices that we have. And if we postpone the resources, decisions out in the 2014 frame too long, then we are going to be subject to a limited number of choices that basically boil down to building two or three or four gas plants. And we are concerned about the increasing reliance or dependence on gas-fired generation.

So again, that's just a summary of our memo where we think that the RFP is falling short of meeting the criteria set out in the statute and the IRP.

CHAIRMAN CAMPBELL: Let's go to the Committee.

MR. PROCTOR: Ms. Kelly does have some additional comments.

MS. KELLY: Our counsel is passing out an exhibit that I think is helpful in putting this issue of need and size into perspective. When you receive a copy, what it has is it has the load and resource -- the deficit coming out of the load and resource balance tables from the IRP 2004, the IRP 2004 update, and the load and resource balance from the IRP 2006. And it shows the size of the deficit on the east, the west, and for the system in years 2012 through 2016. We only have those full years for the IRP 2006. They roll over each time.

What you also see is that we have created two columns here. One is labeled FOT. That means with front office transactions in. 1200 megawatts of front office transactions for the system, 700 megawatts on the east side, 500 megawatts of flat energy product on the west side. And then you will see what the deficit is with the front office transactions removed.

This is a double-sided exhibit. One side of the exhibit shows the two benchmark resources that we are looking at. It's called the current benchmark size. It's the third column from the right. And on the other side it says the original benchmark size. And then it shows what happens as a result.

And so what we can see is off the current load and resource balance, if you include the front office transactions and IPP, then we would still be short 123 megawatts. Now, I'm working with a 15 percent planning reserve margin, and the reason I'm working with 15 percent planning reserve margin is because that's what was in the last acknowledged IRP. The action plan was not acknowledged by this Commission, but the IRP was.

PacifiCorp had done what I thought was a good study to determine what the planning reserve margin should be. And one in eight probability showed up as being about 15 percent. So those numbers will differ a little bit from using a 12 percent planning reserve margin.

But what you also see is that if you remove the front office transactions, the size of the deficit is much larger. And one of the Committee's issues that we have been reiterating rather continually now for a number of years, I know at least since our Ramp 6 comments, and the Division has expressed concern in that time frame, too, was in the wisdom in relying on the shorter term market to meet capacity needs. And the Committee is still very concerned about this.

As we look forward to the changing western market, this does not seem to be the time to be relying on the market for capacity. The surplus in the west is disappearing. The only area that has any surplus left is in the Washington/Oregon area. The rest of the west is in balance and is projected to be deficit in the 2008 to 2009 time period. So we believe this is risky and our IRP comments have pointed out that past evaluations didn't even include this risk; that the way the front office transactions were modelled, they had no risk. They had less risk than gas resources or coal resources. And PacifiCorp is doing a lot in their IRP and I believe that they are capturing that risk in the current planning process. So that remains a big concern to us.

I'd like to address one other comment. Eric Guidry points out correctly that the additions that he talked about create an energy surplus on the east side. But I would say that these are system resources and it's incorrect to think in terms of east control area, east side resources, and west side resources. They are for the system. And the west right now needs energy badly. And although the transmission may not be there to send power from the east to the west, what can be done is this energy can be sold into the system market, which I believe is growing rather than shrinking. Just as it's not the time to be buying in the capacity market, it's not a bad time to be selling excess energy. You sell on the east side, you buy on the west side, and those costs offset one another. And so I would just say let's not bifurcate the system and lose those benefits when we are looking at system planning. I think that's good. Thanks.

MR. PROCTOR: And Mr. Chairman, if I might, we realize that of course the RFP that is before you is with the two benchmarks. But I think it exemplifies the frustration that the Committee has. When you look at the original benchmark size and the numbers that flow as far as their deficits or surplus from that, and then in the space of a weekend we change to very different numbers when the two benchmarks are used. And there seems to have been a disconnect, then, also with respect to the front office transactions which were completely out of the first or of the original benchmark, and now suddenly are inserted back in. So these are some of the issues that we want to address as far as the intertwined character of this RFP in face of the IRP issues that still exist.

Also, if I might, the Committee would, in fact, offer CCS-1 if we could mark it that way into evidence.

CHAIRMAN CAMPBELL: All right. Any objections?

MS. SCHMID: No objection from the Division.

MR. BROCKBANK: No objection.

CHAIRMAN CAMPBELL: We will admit it.

I have some good questions forming in my mind but let's finish the discussion and maybe it will answer it along the way. Let's go back to you, Mr. Fehrman.

MR. FEHRMAN: A number of issues have been raised. First of all, it's a more difficult situation than it's maybe being portrayed here. You can't build resources in the east and just automatically move them to the west and have off-system sales appear for these types of units. And with the significant issues we have with transmission, adding additional power plants exacerbates that issue. So when we address the issue around all system sales, all system markets, and build more and move it out at night, that's not inherently possible during this time frame until there is additional transmission development being made. And so there are plants being designed, plants being built. But as a part of that we also have to get the transmission to not only deliver it to the native load but to then deliver it beyond the native load; for instance, out of southern Utah, which are plants and wires that simply have not been designed or pursued.

To the point of planning margins and why we changed, again very frankly, we reserve the right to be smarter today than we were yesterday. When we were going through this process, and as we looked at the amount of time this process is taking it became very clear to us that we were not going to be able to get all of the plants built in a time frame that we had in our original draft RFP. There was simply no way to get that amount of megawatts built by 2012.

So instead of bringing something to this Commission that was not accurate, we decided to go ahead and make our change and put it out for people to comment on. That's ultimately why we ended up with IPP 3 in 2012. I don't think that's wrong. I think it's, in fact, the exact right move, which is why we have an RFP. We know what we can get done. But we are sending an RFP out to try and find out if maybe there's other things out there that other people can do. And we stated very clearly in the RFP that if those options are cost effective then we will go ahead and fill up with those options as we go forward. The top of page 6 if anybody would like to read it.

With regards to the planning margin issue -- again, this is an RFP. This is not an IRP. We have made a selection in our RFP to go out and try to find resources such that we can fulfill a certain need based on certain assumptions. As we are going forward with this, we are also going through the 2006 IRP process wherein we are evaluating 12 percent versus 15 percent. And as an outcome of that, we will make a recommendation on what we believe will be the appropriate level of planning margin for everybody to have their shot at debating and finally a decision will be made. And if it means an increase, we will address it in our next RFP.

With regards to 2014 and the 400 megawatt proposed shortfall that has been noted, we are not talking about 2014 here. We are talking about 2012 and 2013. We stated earlier in the proceedings that we will be coming out with another RFP for 2014 and perhaps 2015 to begin addressing those needs.

As far as our planning work on this, we have aggressively gone forward and have another super critical pulverized coal plant on the drawing board and are ready to move forward with it as a benchmark resource in the next round. But it simply cannot be put into the ground as a part of this process.

So we are not sitting back waiting. We are continuing to spend money, continuing to work to go forward to make sure we have the resources we need to address the concerns.

With regards to CO_2 capture, obviously IGCC is one of the best technologies for doing that. We will continue to research IGCC but I'd also like to make the Commission and the parties aware that the industry is aggressively going after CO_2 capture on super critical pulverized coal projects. In fact there is a pilot program being initiated that will be installed at the Pleasant Prairie Power Plant in Wisconsin. If this technology looks to be successful it will make super critical units as good or better at CO_2 capture technology as IGCC. So I'm not convinced that IGCC is the only opportunity for us to do carbon capture. The industry will be very aggressive in trying to solve the issues going forward with the types of technologies that are available to us.

And finally, with regards to our overall intent on why we believe that our need for front office transactions should continue during that period, again it comes down to bridging. It comes down to our ability to get power plants in the ground. We are also in agreement that making gas plants baseload units probably is not the best alternative to go forward as a benchmark.

We are looking at coal-fired plants and we continue to look at coal-fired plants. And I would hope that as we go forward with this process, that we can at least get approval to get an RFP on the string so we begin to see what it is we have options for coming forward.

CHAIRMAN CAMPBELL: All right. Thank you. Mr. Guidry?

MR. GUIDRY: I would first like to comment on the PacifiCorp Exhibit 1, and make a couple observations on that.

If you look at the DSM projections during the east side of the system, you can see it rises to 131 megawatts in 2007 and stays constant through the remainder of the years listed.

As you are aware, the Commission did -- the Company is in the midst of a DSM market potential study where they were looking at additional cost effective DSM. I would suggest that this decision about the planning reserve in terms of going from 15 to 12 percent, it may be the case that DSM can more cost effectively meet that summer peaking need than 90 percent capacity baseload resources.

Likewise with the wind resources, the Company has agreed to re-evaluate the 1400 megawatt wind target. It may be the case that, as a result of that evaluation, additional wind is available that could contribute towards planning reserves. The same goes for distributed resources like QF.

So I think the point I'm making is that it goes back to this point again of us jumping immediately to baseload resources to fill the resource deficit when there are these other options available that may be able to target that summer peak need more cost effectively.

What I would like to do is, if I could, I think it has been queued up pretty well by the Committee's questions, but this is a two-page excerpt I propose to introduce as an exhibit from Oregon's Stats Reply Comments and the companion docket to this one in terms of the RFP approval. And I think it illustrates the summer peaking nature of the Company's resourcing need.

CHAIRMAN CAMPBELL: All right.

MR. GUIDRY: It's a double-sided page, as you will notice. On page 12 there's a chart; labeled PacifiCorp Eastside Monthly Average Energy Positions. And then on page 13 there's a chart labeled PacifiCorp System Monthly Average Energy Position. My understanding is this is the projected monthly average interview position, presuming a 15 percent planning reserve margin using existing assets.

So I think this does show, to address Ms. Kelly's issues, that in terms of the -- you are seeing that you are still having a peaking utility in aggregate under both the eastside and the system-wide positions. So I still have this strong reluctance to develop or support developing baseload resources all the way up to a 15 percent planning reserve margin, given the summer peaking need and what I stated previously about the opportunities for DSM, wind, and distributed resources to help meet some of that resource need going forward.

That's it for now. I would request admission of this exhibit.

CHAIRMAN CAMPBELL: Let's mark it WRA Exhibit 1. Any objections to its admissions?

MR. PROCTOR: No objection.

MR. BROCKBANK: No objection.

MS. SCHMID: No objection.

CHAIRMAN CAMPBELL: It's admitted.

MR. GUIDRY: In fact, if I have just a second. I want to collect my notes on additional issues.

CHAIRMAN CAMPBELL: We will come back to you. Mr. Dodge, anything?

MR. DODGE: Very briefly. I guess I would just make a couple three points. One is I think it is important for the Commission to be sensitive to the fact that this is a six-state utility and we need to find consensus with the northwest, or divorce.

One of the two. And if we are not prepared to go through the divorce, we need to move forward in a way that maximizes our chances of getting system buy-in, if you will.

CHAIRMAN CAMPBELL: Can I stop you there? Haven't they already filed papers?

MR. DODGE: Sort of.

CHAIRMAN CAMPBELL: I was sitting next to Commissioner Lewis in another meeting. And I think her perception is similar to mine that if I'm reading the papers right, I got to something like they were stating they will never accept polarized coal. So on the one hand I'm sympathetic to a certain extent of what these parties are feeling. I don't know yet if I agree with it, but I'm sympathetic with the idea that I think what they are expressing is they see the Company trying to get, as Mr. Fehrman has said, an approved RFP. And to do that they are making concessions on coal plants to Oregon. Yet these folks are saying, "But Oregon will never approve a coal plant anyway, so why are you backing off on coal plants when you are not going to get that anyway?" And, I mean, at some point I think we live in this fiction that we still have this agreement going forward.

MR. DODGE: A couple points in response. One is that the Oregon Commission has not yet spoken. And I guess I would be reluctant to assume the position of Oregon until the Commission does so.

The second thing is that even if ultimately the paths must diverge, we can't let that slow down essentially meeting the needs, the projected needs for Utah. And so at this point we have got what we've got and we have to try and be sensitive to the multi-state needs until someone figures out how we could do it on our own.

My point is simply it's one thing to have an idealistic notion of what is best for the state. But given our realities, you've got to temper that with the multi-state reality that we live with, and have to live with at least for the foreseeable future until someone changes that.

And then the only other point -- the second point I'd make is timing. I haven't heard the Company address this yet, but I don't know when the earliest they could possibly get the RFP on the street in light of schedules in other states and the like. But I would urge us, whatever we do, to not be the thing that holds us up. Let's meet the earliest possible deadline so we at least don't hold it up.

And then the third thing is I'd certainly agree with Dr. Powell that going forward we don't want to find ourselves in a squeeze where we don't have time to efficiently evaluate and timely evaluate other resources. When I first saw the 2014 resource drop off, I was opposed to that. But basically Mr. Fehrman assured me they would follow up with additional RFPs in a timely enough manner to make sure we don't get squeezed. And I accept that as his representation. But I certainly hope the Commission will expect that of the Company; that by dropping off that resource in this RFP, it doesn't mean we are going to find ourselves without a timely RFP to address that need. That's all, thank you.

CHAIRMAN CAMPBELL: Okay.

MR. FEHRMAN: If I can answer the question.

CHAIRMAN CAMPBELL: Go ahead.

MR. FEHRMAN: Oregon makes their final hearing on November 17, depending on what the schedule is for this Commission, we would be ready to issue an RFP very shortly after that.

CHAIRMAN CAMPBELL: What happens if you have conflicting orders?

MR. FEHRMAN: Then we have to make a

risk-informed decision on what to do.

CHAIRMAN CAMPBELL: Dr. Powell?

DR. POWELL: Just going along with what Mr. Dodge was saying, the Division's recommendation wasn't intended to try to delay this process or delay issuance of an RFP. That's why we couched our recommendation in terms of a limited amount of additional time to make further comments if we felt it was necessary, and suggested that it may be just addressing our issue in terms of the need, and aligning the RFP and IRP in statute may be as simple as changing the language, just making it more explicit that the Company's intent out of this RFP is -- it's a recognition of the need especially on the east side, and that the intent is to try to fill that need through this RFP.

The 2014 is not being discussed here because the Company took it off the table when they filed what, in our mind, was a dramatically revised RFP than what we had been looking at before. And just going along with what Mr. Dodge just reiterated is we don't want to be caught in a position or be perceived to be caught in a position where our choices are very limited on how we are going to fill those needs beyond 2013.

MR. BROCKBANK: Can I ask Dr. Powell a follow-up question? I appreciate the comments because your memo, the November 3 memo, does not say what you just said. And what you just said was we don't want to delay, we want to just try to revise this in a way that moves things along quickly. Your memo said, "Absent these modifications in the filed RFP, the Division recommends that the Commission reject the filed RFP as not being in the public interest." To me that's got "delay" written all over it. So could you clarify your position?

DR. POWELL: Well, it does. And the intent of the last sentence there, which by the way I'll make a comment. This recommendation is a lot more mild than what I originally thought about it. It's if we can reach some kind of resolution of this issue, then fine. But if the Company is refusing to address the concerns that the Division has raised in a way that we think is appropriate or adequate, then I think we are left with no alternative but to make that recommendation. It's not our first recommendation. That's why it's the last sentence in the memo, or in the paragraph, or however you want to put it. Depending on which part of the memo you are looking at.

CHAIRMAN CAMPBELL: At some point I was going to ask the Company how you felt about that last sentence in the memo, up to. That would address Dr. Powell's concern. I want to go ahead and ask that now.

MS. KUSTERS: As opposed to -- on page 6 of the RFP on the top of the page, the Company has inserted a paragraph that, to the extent it needs to be clarified or expanded upon, we would be happy to do so. It reads, "The Company may opt to contract for more or less power depending, among other things, on the quality of the bids received in response to the RFP, updates to the Company's forecast, regional transmission availability and timing, and changes in the wholesale energy market conditions."

MS. SCHMID: Pardon me. Is that on page 5?

CHAIRMAN CAMPBELL: Page 6 of my copy.

MS. KUSTERS: Page 6 on the top. So depending on how you printed it, it might be on the bottom of 5, or the top. I'm not sure.

The intent is, as Mr. Fehrman has stated, we have put the resources that we, the Company, believe we can get in place for 2012 and 2013 with regards to the benchmarks. However, we are in the process of issuing an RFP that will solicit from the market potentially other opportunities that other parties can actually put in place in those same time frames. Those proposals will all be evaluated. And based on that, it will also depend upon whether they are cost effective, whether our L & R balance has changed. All the other items that I have previously read to you. So I'm not sure if that meets the Division's needs or if, in fact, we want some more clarification in that language to support what their comments have represented; that essentially we want to make sure that they have the ability to contract for more than what the benchmarks are in the RFP, or how they would like us to address that issue.

CHAIRMAN CAMPBELL: Are you prepared now to respond or do you want to think about it?

DR. POWELL: Well, I think at least this part of the memo I thought was fairly clear. If you look at page 7, I believe, of our memo, that's exactly the language I was quoting from. "The current draft" meaning the filed draft that's before the Commission, says that the Company may contract for more, blah, blah, blah. And we thought that that language was not explicit enough, and so we were asking for a statement that was stronger than that.

And I proposed one alternative, meaning that it's just an idea. It's not the one that we are saying has to be in the RFP.

But if the Company is willing to think about the wording there, then I think we could probably reach a resolution as far as that's concerned to make it more explicit. The need -- and again, like I said earlier, I'm not disputing whether or not the Company can or cannot build four benchmark resources versus the two benchmark resources that are in the prior RFP. If they say they can't, I'm taking their word for that that they can't. But our concern was that the two benchmarks in the filed RFP would not meet the needs of the east side, and that the Company would have to acquire resources beyond that capacity.

CHAIRMAN CAMPBELL: And if they can't build them, aren't they in the same situation they have been in the last ten years; that they haven't planned far enough ahead to cover their need and bring it up in a rate case?

DR. POWELL: Perhaps that's true. Again, as I stated in our memo, we were under the impression until late Friday or Monday, however you'd look at it, that we were looking at benchmark resources in the neighborhood of 2000 megawatts. It's an issue that we haven't had enough time to contemplate. Again, that goes back to the Committee's request for some limited additional time to make further comments, if necessary.

CHAIRMAN CAMPBELL: Let me ask a clarifying question on this issue, and I apologize to my fellow Commissioners for jumping in early here.

Is it a no-starter for the Company to reference the 2004 IRP update? Is there an Oregon requirement that it has to be based on an acknowledged 2004 IRP? And let's just be open. Isn't that one thing that is driving this?

MR. DUVAL: Well, their requirement is yes, to be based on an acknowledged IRP.

CHAIRMAN CAMPBELL: Which is the 2004?

MR. DUVAL: The 2004.

CHAIRMAN CAMPBELL: As I have watched this debate go back and forth, in the back of my mind that's one of the reasons behind the debate. You are trying to comply with the Oregon requirement, and the Utah parties are trying to protect Utah customers based on the most recent information they think they have, and those two items don't agree.

MR. DUVAL: But if you use the 2004 IRP

update and looked at the east side through 2013, it wouldn't be 2000 megawatts. It would be 1000 megawatts. The 2000 megawatts does not reflect the time frame of our RFP, nor the scope of the RFP. The scope is east side baseload through 2013.

CHAIRMAN CAMPBELL: What's your basis -- sorry.

MR. DUVAL: 2000 is derived as a system-wide load through 2014. So the ride number would be 1000 megawatts, if you want to refer to the update.

CHAIRMAN CAMPBELL: Do you reject that as a premise?

DR. POWELL: No, I'm not rejecting that. Again, I would say that the reason we are not talking about 2014, which we thought we were until last Friday, was because the Company filed an RFP that was dramatically different than what we had previously been looking at. They took 2014 out of the RFP.

Again, we would have to look at the numbers. It's true that the memo that I wrote was geared towards the difference between what we had been looking at and what the Company filed. And so there is an emphasis on 2014 in some sense of the memo. I'd have to step back and look at the numbers again for the 2013 time frame. But the 1000 megawatts there on the east side is clearly part of that 2004 IRP update, as Mr. Duval pointed out. And I'm not -- I would defer to Ms. Coon on this somewhat, since she is our IRP expert. I'm not hung up on whether we are using the update or whether we are using the IRP. I don't think that was the issue that I was trying to emphasize. Like you said, it was just the latest piece of information we had, and I believe the outcome -- and again this is where Ms. Coon can clarify if I'm not right. The outcome of the IRP docket itself was that we would address the update and acknowledgement and all of that in this particular proceeding. I don't know if I have mischaracterized that or not.

CHAIRMAN CAMPBELL: Ms. Coon?

MS. COON: Yes, sir.

CHAIRMAN CAMPBELL: Do you want to respond?

MS. COON: Yeah. Dr. Powell is right in that -- and again, I don't have the order in front of me, but the order for the acknowledgement of the 2004 IRP did specifically state that the action plan was not being acknowledged and that it would be addressed in the docket with the RFP where the Commission stated that that might be a more appropriate place to address the issue.

As far as the resource needs in the IRP versus the update, I don't know that I'm hung up on using either of the two in particular, either, because of course load and resource balances are continually changing, and of course the exact numbers being used are going to be somewhat different in the upcoming 2006 IRP, which is supposed to come out in the next month or so. So I agree with Dr. Powell; it wasn't necessarily the exact numbers, and we are not trying to get down to the exact megawatt because, of course, this many years out that's just not possible.

What we were more trying to point out is the vast difference in what was being offered and the fact that we had so little time to examine it; that it was a little hard to even tell whether or not it fit within the statute, fit within the requirements that we had to use in order to make a determination to make a recommendation to the Commission of whether or not this RFP is in the public interest. And so more than anything, what we were trying to show is that what was originally out there until -- I think my copy came in at 10:22 Friday night. 10:22 p.m. I think was a lot different than what we had in front of us when I came to work Monday morning in terms of the size and timing of the resources.

And also, the other thing that we really wanted to point out, and we are kind of, if you'll excuse the expression, harping on 2014 is due to the fact that we all know that coal resources are very long lead time items, and we don't want to get into the situation that we are now, even on this IRP, where we are looking at 2012 and the Company is telling us there's only one resource that we can actually conceivably get built. Our other benchmark is no longer feasible. We don't want to get to the point for 2014 where we are also in a bind and we no longer have more than one option.

And so the Division is very concerned about these types of issues and wants to make sure that the Commission is aware of the possible problems.

CHAIRMAN CAMPBELL: Okay. I'm going to go to just two more people and then I want to let my colleagues here ask some questions. You have --

MR. PROCTOR: I have one comment, Mr. Chairman. We have got to realize that this RFP is a commercial document that bidders are going to look at and they are going to say, "Well, what exactly can my bid be?" And that's why I believe Mr. Powell's statement clearly up to 2000 megawatts sends a signal that they are truly out for a broad market. The language at the very top is very cautious and I don't believe truly gives the signal that an RFP should give. So we would support Dr. Powell's recommendation, or something very, very close to it.

CHAIRMAN CAMPBELL: Mr. Fehrman?

MR. FEHRMAN: A couple of points. First, I think the comments that the other parties just found out about this is not quite accurate. I personally attended the last settlement conference that was held and I went through all of this information with the parties. So I think it's not quite fair to say that they just found out about it at 10:22 on Friday night. That's when it was in writing but it was discussed at the settlement conference.

Secondly, to your question earlier, Mr. Chairman, about using the 2004 IRP update. If you used the IRP update as shown in the Division comments of 1000 megawatts, and we go forward with our two benchmarks of 340 and 500, we are at 840. And generally when you build power plants that are repped for guaranteed reps and warrantees there is extra generation in those that come to light after you get the plants on line. So I would submit to you that with the resources we have on the table right now, we are very close to 1000 megawatts to begin with. And so I guess I don't see the fact that this is a significant change, other than we reduced one year in the '14 previous submittal. It was IGCC in '14. We simply brought that forward so we can begin to test the market on IGCC. We don't see that as a really significant change to us. We are meeting, to the degree possible, the needs from the L & R balance.

So again, I think that our communication has been open. They have been spirited but we have been to settlement conference. We went over this. And from there I guess we are still waiting. I'm personally waiting for the question I asked earlier which is specifically what are we not meeting in intent on this document from the Division? I have not heard an answer to that question.

COMMISSIONER ALLEN: To step back just a minute from that, I have a quick question of clarification from Ms. Kelly. You went quickly when you said you preferred not to see the east and west split or bifurcated and that was after you acknowledged there was a problem with transmission.

Can you state what you meant by that? I didn't quite follow it.

MS. KELLY: Sure. One of the resources that has been removed from this RFP was the 2013 750 megawatt plant at Bridger. And that would provide a lot of energy, as well as meeting -- it would provide system energy as well as providing capacity to the east side. Bridger is kind of unique because it's controlled out of the west control area but it resides in the east, and the existing units are transferred to the west. There's probably not enough existing transmission moving west through Idaho to actually transfer additional power from Bridger on a firm basis. I don't know what that is. That's something that would need to be explored. But my point was that on the west side in Oregon they are quite energy short right now. And there are two transmission expansions going on between Utah and L.A. that would help out this selling market. There's the Mona Oquirrh line that is part of the merge agreement, I believe. And there's also a Palo Verde-Devers line that goes from the Palo Verde hub into southern California. And it's going to increase transmission expansion by about 1200 megawatts.

It's looking like southern California has a big energy need right now. Given their emissions performance standard, they are not going to be able to buy long-term contracts over, say, more than five years. But they can buy shorter term power that is sold, you know, the shorter term market. So what can be done with excess energy is it can be sold on the east side south. The revenues from those sales can be used to offset purchases in the mid C area. And so that when the system is being optimized, it's not looking at optimizing each control area separately. It's optimizing the system and doing what's best for the system so that a Bridger unit that is located in the east does provide benefits to customers living in Oregon and Washington by offsetting the cost of the energy that has to be purchased in those markets. Did that help?

CHAIRMAN CAMPBELL: Go ahead, Mr. Fehrman.

MR. FEHRMAN: I don't disagree with anything she said other than the fact that the wires to do all that are not in place and are not scheduled to be in place for a number of years. And as you know, there was a significant risk with siting and installing thousands of miles of transmission line. So I don't disagree with anything she said other than the fact that the infrastructure is not there today to do it, which replaces the Bridger plant. One of the reasons we moved Hunter 4 in as the alternative was that the transmission risk at Hunter 4 was less to us than the significant amount of transmission that would have to be built from the Bridger 5 unit if, in fact, we built up in that direction for transfer out.

CHAIRMAN CAMPBELL: Having said that, you are actively working on that Bridger transmission line down in Utah.

MR. FEHRMAN: Absolutely. Very much so. But when you are looking at risk and commitments, we have to balance the opportunities for which of those have the highest success ratio of getting done in the time frames that we are looking at.

CHAIRMAN CAMPBELL: Commissioner Boyer.

COMMISSIONER BOYER: Actually, this last little exchange leads into my first question. Kind of following up on a question that Ms. Kelly raised on this supply as it relates to the 700 megawatts of front office transactions. And I think you've talked enough about that.

But here's my question. I remember in the last two certification proceedings, Current Creek and Lakeside, that we were told that Utah resides in a bubble and that we are transmission constrained and at one hearing we were told that you can't squeeze another megawatt through the wires. And another time you are saying, "Well, we found 75 megawatts of capacity to transmit," and so on and so forth. So where do you get the energy and how do you get it here during this period of multiple years in which we are relying on 700 megawatts of front office transaction? That's question number one. I guess that's for Mr. Fehrman.

MR. DUVAL: From a planning perspective, we have looked at what we have done historically and we do have capability of bringing some in from the Four Corners area and buying some from Mona. The planning assumptions that we have in our IRP are that we buy 500 megawatts from Four Corners and 200 megawatts at Mona, and these are Q 3 products so they are July, August, September. And we do have the transmission capability to do that.

COMMISSIONER BOYER: Thank you. Then a question following up on what Mr. Guidry said about perhaps looking at other alternatives for shaving that peak or working on that peak. And I noticed that you do have DSM saving something like 131 megawatts across the board from '07 into the future.

I'm wondering why that number is flat, based on the experience in Utah with Cool Keeper, for example. I'm understanding that this past year, by utilizing Cool Keeper, the Company was able to shave in excess of 50 megawatts off the summer peak. And the program is still ramping up. So is it realistic to leave that a flat number or can we realize more conservation through that and other DSM programs in the future?

MR. DUVAL: This was out of the 2004 IRP. We are in the process of the 2006 IRP and we have identified some more, so there will be some more as we move forward.

COMMISSIONER BOYER: My last question, I guess, Chairman Campbell has suggested candor and we are talking here "mano a mano." Would it be fair to say that the companies -- and we understand that you operate in multiple states and we understand the philosophical differences between us and our friends in the northwest and how we both want to maximize or optimize the resources with which we have been blessed, and wish we had more water but we don't and all those sorts of things.

Is it fair to say, though, that the restructuring of this RFP here in recent hours, days, is an attempt to both placate the Northwest and also develop a bridging strategy to give these new technologies an opportunity to mature IGCC, I'm thinking of in particular, but also this ammonia process and some of these other technologies that may hold great promise for capturing and sequestering CO2?

MR. FEHRMAN: Well, certainly we are trying to adjust the RFP and trying to get something on the street that is approved by Utah and Oregon. So to that direct question, yes, we are trying to make adjustments just like we are looking at some of those other comments in this regard.

With regards to bridging resources, obviously there is successful technology development in the industry. This type of approach where we look at shorter time periods allows us to be smarter on those decisions going forward. But that said, as I testified earlier today, we are looking at going right out again with the '14 RFP sometime next year. And I don't think that by then we will have necessarily new technologies to look at by that period of time. But certainly we want to be very forthright in our look at new technologies. We understand the issues around CO2. We are actively engaged in Wyoming with the Wyoming infrastructure authorities RFP for an IGCC plant. We are actively trying to reduce our footprint. So by going in smaller steps, it makes us smarter for the next decision.

COMMISSIONER BOYER: Thank you. I said I had two questions and now I'm going on my fourth, but I'm wondering if that last exchange assuaged any of the concerns of the Division in terms of the revised RFP, the elimination of the two benchmarks, and moving into 2013 instead of 2014 resource and so on and so forth.

DR. POWELL: It does. I mean, I understand a little bit better what the Company's position is and what they are trying to do. And as we were writing our memo, obviously we are not ignorant of the differences in philosophy between us and them to the northwest, our friends to the northwest. And I think Mr. Duval pointed out that if you limit the time frame in which you are looking to 2013, then we are looking, from our position or from the Division's point of view, it was 1000 megawatts; somewhat a little bit less if you are looking at the 12 percent margin and what the Company's analysis was showing.

You can change that 2000 megawatt in our recommendation to approximately 1000. We were looking at the system, and it's not quite clear to me why we can only look at the east - I mean, this is a system-wide RFP - and say that there's 1000 megawatts on the east in 2013 that we are concerned about, but yet the system deficit is somewhat larger than that 1000 megawatts. So again, some of the comments that Mr. Fehrman just made, this is information that is not in the RFP. It wasn't information that was presented to us. And so we would have to have -- some of the transmission comments and things that he was making. We would have to have some time to think about those and formulate an opinion or recommendation on them.

COMMISSIONER BOYER: Thank you.

CHAIRMAN CAMPBELL: Mr. Guidry, I have a few questions for you. The first is clearly you line up more closely with the viewpoint of the Northwest staff in how you see the future. I want to ask you how familiar you are with this new technology to sequester CO2 on pulverized coal units using ammonia. How familiar are you with that? Do you still place all your eggs in the IGCC basket? I just don't know how familiar you are with that technology.

MR. GUIDRY: From a technical standpoint, the IGCC working group was the first I'd heard of it. I do have some kind of big picture policy observations on that technology that I'd be happy to share.

CHAIRMAN CAMPBELL: Can you do it in 30 seconds?

MR. GUIDRY: Given what is going on in the world in terms of the existence of a pulverized coal fleet, of course it would be spectacular if we could figure out a way to address the CO2 issues with pulverized coal in a cost effective way, looking at what's going on in China and India, for example.

With that said, IGCC is currently being offered, by some major multi-national corporations like GE, Shell, and CONOCO Phillips. This technology is still very much -- the ammonia technology is still very much in the development stage. I submit that PacifiCorp, in a certain extent, because their existing fleet is so heavily dependent upon pulverized coal, that it still makes sense to diversify technologies to begin a serious examination of IGCC. It's much further along and we already have significant risk because of the existing resource fleet in terms of exposure to the cost.

CHAIRMAN CAMPBELL: You mentioned air

permitting risk at IPP 3 and I'd like to understand in your view what that risk is. We have clearly seen the letter back and forth from air quality, which suggests that they don't feel that they need to do any additional permitting with a change to super critical. What risk were you talking about when you talked about air permitting at IPP 3?

MR. GUIDRY: As you may be aware, I may have the name wrong but I believe it was the Utah Environmental Appeals Board, their decision granting permit by IPP 3 is currently pending before the Utah Supreme Court. The appeals board determined that the Grand Canyon Trust and Sierra Club do not have standing in that case, and that decision has been challenged. I am not the attorney working on that case but I -- obviously we do believe that the standing should have been granted in that instance.

In terms of the letters you reference, I don't think there's anything I am -- I'm not the attorney in the case and I don't think there's anything I can disclose on that.

CHAIRMAN CAMPBELL: I just wanted to understand if there were other risks out there that we weren't aware of.

MR. GUIDRY: And I don't believe I can

answer that question.

CHAIRMAN CAMPBELL: I think we are aware of the ones you have mentioned.

DR. POWELL: Mr. Chairman.

CHAIRMAN CAMPBELL: Go ahead.

DR. POWELL: Just in terms of this ammonia technology, I was not at the IGCC workshop that was held here recently. But several staff members from the Division were there and they briefed me on this and I would just emphasize that our staff people have some very serious concerns about whether that technology is going to be viable or not. It does raise its own environmental and health and other risk issues that may or may not have been addressed at this particular workshop. Mr. Fehrman, I think, indicated if they do turn around with an RFP this next year, that it's unlikely, and I would agree that that technology or any new technology would be available for the 2014 time frame.

CHAIRMAN CAMPBELL: Right. I think he indicated that, as well. Let's take a break. We will reconvene in 15 minutes, start at 20 after 3:00.

(A break was taken.)

CHAIRMAN CAMPBELL: Back on the record. Dr. Powell.

DR. POWELL: A little bit earlier I made a statement that I need to clarify. I'll say clarify as opposed to retract. It sounds better. In my enthusiasm I said that the RFP was a system-wide RFP, and that is incorrect as it stands. It's a system-wide RFP in the sense that it has to be approved by all of the states. But this is an RFP that is looking for resources for the east side of the system. And that was the exchange between Mr. Duval and I earlier. Our recommendation says up to 2000 megawatts. If you look at 2014 that is the deficit from our perspective. If you look at it on a 2013 basis, it's about 1000 megawatts. And that was the point of that debate or exchange between us a little bit earlier today.

CHAIRMAN CAMPBELL: Thank you for that clarification. Mr. Guidry?

MR. GUIDRY: Mr. Chairman, I was hoping I could briefly address Ms. Kelly's observations about the unique strategic position of the Jim Bridger resources.

CHAIRMAN CAMPBELL: I'm having a hard time hearing you. You need to draw that closer.

MR. GUIDRY: Mr. Chairman, I was hoping I could very briefly address the observation Ms. Kelly made about the unique strategic position of the Jim Bridger resource.

CHAIRMAN CAMPBELL: Go ahead.

MR. GUIDRY: She mentioned, first off, the possibility of selling off peak energy to the northwest side of the system and then also the possibility of selling into California. And just maybe clarify your position.

CHAIRMAN CAMPBELL: Go ahead and make your statement, and if you have misunderstood something she can respond.

MR. GUIDRY: Just the observation that given the reaction of the northwest groups and given the direction California is heading, I don't believe that could be a politically realistic strategy from a pulverized coal unit.

CHAIRMAN CAMPBELL: All right. I think I understand the difference. She was very precise in the way she phrased it to meet the California requirements of less than five years.

MR. GUIDRY: What I'm saying is making a 50 year investment decision based upon that five year requirement being in place is not politically realistic. May not be politically realistic.

CHAIRMAN CAMPBELL: Right. And I would

assume she would say that she wasn't assuming that Jim Bridger would sell the energy for 50 years, either. It was a short-term strategy. Thank you for that statement. I'm not going to argue. I think I understand both parties' positions. Thank you. I shouldn't be sitting here clarifying your position, Ms. Coon.

MS. COON: A little bit earlier I believe Mr. Fehrman asked a question regarding what the Division found to be potentially a deficit as regards the statute. And basically I would just like to offer a very specific example, and that is where it possibly could affect reliability. Reliability is one of the specific requirements that we are required to look at when making a recommendation to the Commission on public interest. And if you look at PacifiCorp's 2004 IRP, which was the last place that the Division is aware that a loss of load probability study was done to determine an appropriate planning margin, that study specifically stated that 15 percent was necessary to even get to a 2 in 10 loss of load probability.

In order to get to a 1 in 10, which they represented to be more of the standard among some of the other entities in the WEC, then you would have to go up to an 18 percent planning margin. So the Division is concerned about the drop in planning margin to a 12 percent without any sort of backup study to show that reliability would not be injured in any significant way.

CHAIRMAN CAMPBELL: Mr. Fehrman?

MR. FEHRMAN: Well, I think we have talked about planning margins specifically and I appreciate that clarification. I would just point the Commission to the Division's own document where, again, with a 15 percent planning margin, the most recent information we have, it shows a 1000 megawatt deficit. We are putting in nearly 850 megawatts of new generation, so I think from a reliability standpoint we are in good shape as we go through the analysis in the actual IRP which is where that's done. This is the RFP. We are actually doing the planning studies for the 2006 IRP, which will be completed in January.

CHAIRMAN CAMPBELL: We look forward to that IRP and the discussion of planning margin, if that is still an issue at that point.

Let's go to Mr. Guidry. You've got three additional issues on my list of unresolved issues, and we will let you summarize those at this time.

MR. GUIDRY: The first issue we would like to raise is the level of the base case CO_2 at $8 per ton of CO_2.

Before I do that, I do want to say that in terms of addressing CO_2 risk, it is much better to be looking at a range of CO_2 values and soliciting the information from bidders on addressing CO_2 risk than it is to simply try to have better forecasting of future CO_2 prices. I think we recognize that's an imperfect exercise. And I do want to commend the Company for significant improvements in that area in the RFP document.

But with that said, WRA still believes that the $8 per ton CO_2 adder is too low. We raised this comment in the IRP comments and I wanted to raise it again at the hearing. What I propose to hand out as WRA Exhibit 2 is a chart of historical emissions costs in Europe over the past year.

CHAIRMAN CAMPBELL: Go ahead. Although I didn't realize CO_2 actually was an issue. I showed FEED study, innovative bid proposals, and IPP 3 as a benchmark as your three remaining issues. Let's go ahead and deal with this issue, as well.

I assume you are offering WRA 2.

MR. GUIDRY: Yes. WRA Exhibit 2.

CHAIRMAN CAMPBELL: Are there any objections to the admission of WRA 2?

MS. SCHMID: No objection.

MR. PROCTOR: No objection.

MR. BROCKBANK: No objection.

CHAIRMAN CAMPBELL: All right. It's admitted.

MR. BROCKBANK: Could I ask a question of Mr. Guidry before he goes -- is this basically a statement from Western Resource Advocates or is it an outstanding contested issue? I just want to understand, before you provide it. I mean, does this have -- I'm just trying to understand does this have to do with something in the -- and I'm not opposing what you are saying. I just want to understand.

CHAIRMAN CAMPBELL: It's a fair question. In our matrix this does not show as an unresolved issue, so we need to know if this is something you want the Commission to explicitly address. The matrix shows that you still do not agree with the $8, but there was language -- I'd have to find it. Language that you weren't going to -- that led us to believe that it was resolved as it related to the RFP.

MS. KUSTERS: Page 24.

MR. GUIDRY: My recollection was that I had included it as a contested issue.

CHAIRMAN CAMPBELL: Go ahead with your comments related to this issue.

MR. GUIDRY: If you look on page 24, the very top line of the Party's position.

CHAIRMAN CAMPBELL: Right. Well, go ahead and make your summary statement and we will allow the other parties a chance to respond.

MR. GUIDRY: This is a chart of the historical emissions cost under the European Cap and Trade program. And it has been converted to U.S. dollars per ton. Obviously it is sold in Euros in Europe. And making the observation that the price has fluctuated dramatically, but it has consistently remained above $8 per ton.

CHAIRMAN CAMPBELL: While they are working on their response, go ahead and address your other three issues, unless you are prepared to talk on it.

MR. FEHRMAN: I have my response. My response is in the IRP we are evaluating various scenarios from $8 to $40 a ton, and it's an IRP issue from our perspective.

CHAIRMAN CAMPBELL: Any other parties want to respond to the $8 a ton issue?

MR. PROCTOR: Mr. Chairman, I understood that bidders were being asked to assume an eight dollar per ton price in their bids. Did I misunderstand that? Because if that's the number that a bidder is asked to give, then that's going to be the number that is considered. And when it comes to an evaluation, certainly missed the opportunity to review the true cost through the IRP evaluation or IRP process. So did I misread your RFP?

CHAIRMAN CAMPBELL: No. I think Mr. Guidry is raising the question that perhaps that should be a different number.

MR. PROCTOR: And I think, yeah, I think that's the question. But the Company is saying it's an IRP issue, but it's not. Because if you set that -- if you tell bidders just think about it in terms of $8, that's what you are going to get. And that may or may not be the true cost, even according to the company's calculations in the upcoming IRP process.

So I guess I would have to agree with WRA on behalf of the Committee that if you are trying to get the real cost, then if a cost other than $8 should be determined in the IRP process, that needs to be inserted back into this RFP. And I believe that's what Mr. Guidry's suggested language does on page 24.

CHAIRMAN CAMPBELL: Mr. Fehrman?

MR. FEHRMAN: If I may. Go ahead.

MR. GUIDRY: As I stated previously, WRA does agree that the Company's range of CO2 sensitivities is adequate. What we are objecting to specifically is the definition of the base case assumption at $8. We are saying in terms of the most likely expected value outcome, we believe $8 is too low.

CHAIRMAN CAMPBELL: Okay.

MR. FEHRMAN: You don't have to agree or disagree. That's the number that we are using as the number that has been used, and we are doing evaluations of the numbers as Mr. Guidry states. But for now, that's the number that we stand by.

CHAIRMAN CAMPBELL: Okay. I think that issue, the differences are understood. Let's move on to the next issue.

MR. GUIDRY: The next issue, while I look for it, had to do with our recommendations on innovative bid proposals in terms of flexible ownership arrangements. I think we offered that in the way of suggestions to the Company. We are not in a position to advocate for specific language changes. We would just encourage the Company to consider that proposal in an appropriate form.

CHAIRMAN CAMPBELL: As it relates to IGCC?

MR. GUIDRY: Yes. That had to do with bifurcating ownership between the syn-gas unit and the balance.

CHAIRMAN CAMPBELL: Okay.

MR. GUIDRY: The next issue that we did want to address and raise for the Commission has to do with the FEED study or the Front End Engineering and Design study. Western Resource Advocates supports the Company's decision to provide an IGCC benchmark at Jim Bridger. We are concerned, however, whether the Company can meet a 2013 in-service date if it waits until after the winning bids are selected to begin the FEED study.

The March 3, 2006 Amendment to Stipulation in Docket Number 05-035-54 states at paragraph 16 that the parties agree to support recovery over a reasonable time of prudent cost incurred with the IGCC studies and U16, consistent with Utah law and regulatory practice. In the IGCC technical conference the company rejected the construction lead time for IGCC as shorter than for a super critical pulverized coal unit by approximately six months. However, if the Company waits until after the resource approval process is completed to begin the Feed studies, then IGCC is potentially placed at an artificial timing disadvantage relative to pulverized coal.

So our request is to have the Company clarify its intent with respect to the IGCC FEED study for Jim Bridger 5 in terms of its ability to meet the 2013 in-service date.

CHAIRMAN CAMPBELL: Mr. Fehrman?

MR. FEHRMAN: With regards to IGCC, we are in the process now of working with three different vendors on getting their proposals for the IGCC technology. We are in the process of taking those proposals and submitting those into the Wyoming infrastructure for this RFP process for partnering with them for the development of a new IGCC process.

The results of that competition, if you will, will be on January 30 of next year. At that time if we are the selected vendor to partner with them, then we will begin working with specific vendors to negotiate FEED studies. Same way for the RFP work here. But our concern, frankly, is cost recovery of expending $20 to $30 million on a FEED study without being able to get some ability to have preapproval on that. And I understand that there are certain opportunities for deferred accounting or other types of approaches to this that we certainly would be willing to investigate so that we could move ahead with our FEED studies.

So we are not in disagreement. We are in the process. From a timing perspective we are not even ready to start a FEED study today, but we would be ready to start a FEED study within a number of weeks to a couple months.

CHAIRMAN CAMPBELL: Any questions from any of the other parties on the FEED study issue?

MR. PROCTOR: No.

CHAIRMAN CAMPBELL: Okay. Mr. Guidry, your last issue?

MR. GUIDRY: No more issues.

CHAIRMAN CAMPBELL: We have the IPP 3 as a benchmark for -- well, you don't want to address that.

MR. GUIDRY: I addressed that within the context of the needs discussion.

CHAIRMAN CAMPBELL: Okay. Thank you. All right.

COMMISSIONER BOYER: I just have a general question and it's both procedural and substantive. As I look at the statute, we have three alternative ways of dealing with this request. One is we can deny it, we can approve it, or we can make suggestions. I wanted to get reaction from the parties if we were to suggest, if the Commission were to suggest adding language to the RFP designed to solicit as many and as broadly diverse bids as possible.

I mean it was talked about using the language "up to 2000 megawatts." We talked a moment ago about merging technologies in ammonia IGCC. But if language were incorporated in the RFP that would be designed to solicit the broadest range of resource alternatives possible up to that threshold. Any reaction?

Let me give a specific example while you are pondering there. What if we included the language to solicit resources that could be easily retrofitted to capture and/or sequester carbon? I don't believe the RFP specifically includes that at the moment. What I'm thinking, I'm thinking out loud here, the bidders are going to give the Company what the Company wants. They are going to target their bids to the solicitation, to the RFP. And the broader signal that they can be given in the RFP, I think, the broader range of responses you are going to get. I may be wrong, but that's what I'm thinking at the moment.

MR. FEHRMAN: I think we would be happy to entertain suggested language. I mean, we will entertain the Division's -- I think the concern we have is putting some number in there, for instance that we will intend to award 2000 megawatts. If it was something less specific than that, I think it would be more helpful.

CHAIRMAN CAMPBELL: You're up, Dr. Powell.

DR. POWELL: Again, I think that was the intent of our recommendation. And whether it's 2000 megawatts or something less I think depends on whether you accept that it's only an RFP for 2013 or whether you think that the Company should begin now to procure resources for 2014.

CHAIRMAN CAMPBELL: But the gist of the suggestion was include language that would solicit a broader range of resource bids.

DR. POWELL: Yeah, I think it needs to be broader language than just addressing specific issues like CO2. I think it needs to address the entire need that the east faces.

MR. GUIDRY: I do think that the Company has incorporated some language which has helped in that direction. It doesn't mean there can't be more.

In terms of resources that we highlighted in our testimony, DSM removals, combining power, given the market conditions for the construction lead time for those kinds of resources and the expectation of a base load, I'm not sure if that would necessarily address the concern that we have raised, by itself.

CHAIRMAN CAMPBELL: Anyone else on this issue? Okay. Let's go to the motion.

MR. DODGE: Mr. Chairman, at some point I was going to point out the areas in my RFP still alive. Do you want to do that after the motion discussion?

CHAIRMAN CAMPBELL: Why don't we do that now.

MR. DODGE: It can be very brief. Again, if you look at the UAE position statement and at the attached RFP, on page 25 is where we have our comparability language that we already discussed. On 26 is where we have the credit proposals. The only other ones where we still propose change of language is on my page 50 and 51, where we disagree with the opening paragraph under Step 4 that the RFP includes. That really is addressing the comparability issue, and so that's sort of included in the comparability discussion.

And then on page 51, we added a paragraph that we think was universal just because it would let bidders know that ultimately the other factors that don't go into the formulas for the models can be brought up before this Commission. So that was the intent of that. Of the entire red line, those are really the only four places where we still have issues.

CHAIRMAN CAMPBELL: All right. We haven't really talked about the "other factors" issue, have we? Let me look at that quickly and make sure we have what we need on our record to talk about that.

MR. DODGE: I would say, again, the first paragraph where we proposed deleting it is wrapped up in the comparability issue. The last one I think is just a language issue. We just think that that would be helpful to explain that. I don't know. The Company, I think, has a view on it.

CHAIRMAN CAMPBELL: I'd like to hear the Company's view on the page 51 language of Mr. Dodge's memo.

MS. KUSTERS: The last portion that Mr. Dodge has added to the RFP, the Company doesn't believe it's a requirement to add that particular language in the RFP because we believe we are already held to those standards. So if you look at the language, it's something that the Company believes we'll have to do anyway, so putting it into the RFP we don't believe is -- we believe it will frighten our bidders. But as a company, we do believe that we have to adhere to it.

CHAIRMAN CAMPBELL: Obviously you don't think it is going to frighten bidders.

MR. DODGE: Well, that isn't my intent. I would hope -- that's the opposite of what I hope. It was more -- models only can do so much, is I guess the bottom line here, why we are proposing it. And ultimately there will be some people here saying regardless of how the model is, you ought to give more weight to the carbon risk, more weight to this. And my intent was almost to encourage bidders that there is still the possibility that other resources will be the ones that at least the Commission likes regarding that ranging. But if the Commission thinks it will scare bidders, then I wouldn't want that. I wish the IE were here to comment on that. But if so, that isn't my intent.

CHAIRMAN CAMPBELL: Okay. On the motion of --

MR. GUIDRY: Quick comment on this, if I may?

CHAIRMAN CAMPBELL: Go ahead.

MR. GUIDRY: I would be a bit concerned that it not be interpreted as prioritizing the least cost or cost component of the modeling over the other public interest factors that should be taken into account. The way it is written in terms of specifying the burden of demonstrating is subject to these other factors, I think the burden is across the board.

MR. DODGE: I'll give on that one.

MS. KUSTERS: Thank you, Mr. Dodge.

CHAIRMAN CAMPBELL: Have we argued the motion? We have heard a lot about it. Give you a few minutes if you don't feel like you have gotten your point across. I mean, we as a Commission feel like we understand the issue. But if you feel like there's a few additional points that haven't been brought up in this hearing so far, go ahead.

MR. BROCKBANK: I'll make a point from the Company's perspective. We certainly want all of the issues to be fully vetted and parties to have the opportunity to respond. And in Mr. Proctor's motion, we highlighted a blurb from an e-mail where the Company responded to say we should address your motion as to whether the Commission thinks additional comments are necessary at the hearing. We think that the appropriate time to see whether there's additional comments is now, after you have heard all of this evidence. I stopped counting at about 14 when I heard of how many times I heard that parties found out late Friday night, late Friday night, that there's this dramatic change. And the fact is, Mr. Chairman, the parties knew that we were making changes. This is not a surprise. Granted, it was not given to them in writing but we told them we were making changes and we were responding to competing interests. The Company has a delicate balancing act here.

Having said that, I would also point out that the statute requires flexibility in this process. The IRP is constantly changing and evolving, and the statute says that this process needs to be flexible. The Company believes that the issues have all been aired today. But if the Commission believes that additional comments are needed on this change in the benchmark resources, the Company would just ask that additional comments not delay the Commission's issuance of an order, that it does not needlessly continue this process to move things forward.

CHAIRMAN CAMPBELL: All right. Mr. Proctor, do you want the last word on this issue?

MR. PROCTOR: Yes. I always want the last word. The solicitation process is more than just the language in the RFP. The statute itself requires that this Commission consider such issues as the multi-state jurisdictional implications which loom large at this point, obviously. This is the Oregon proceeding and the discussion of their October 4 version of the RFP dominates this discussion, as well as the IRP compliance in Oregon and in Utah.

And then yes, they said they were going to make some changes. But they made the dramatic changes on October 25 in a filing they didn't provide to anyone here in Utah. And they all deal with this multi-state jurisdictional issue. And the Committee does not want -- one, the Committee does not want to delay the issuance of the RFP. But what the Committee does want to do is make certain that this changing IRP, this changing needs issue which the

Company has admitted in Oregon exists, are interwoven with the ongoing solicitation process.

For example, this Commission should evaluate -- should or be informed of and have the analysis of the parties of other states' orders, particularly Oregon. If there is a possibility of disallowance answers in another state, that should be known and addressed by this Commission at the earliest possible time.

If this Commission is going to be faced in the ultimate hearing with determining Utah's share of the costs, there ought to be something from the Company as to what they believe those shares or that share must be or may be. They have said in this proceeding, and they have said several times in Oregon, that they are going to continue to consider how they perform their front office transactions and how they determine the reserve margin. And those are issues that are going to affect - as you can see from the comments today - going to materially affect the outcome of this solicitation process.

All the Committee wants to do is to recommend language in your order - not in changes to the RFP - language in your order that requires the Company and allows the parties to track and respond to those material changes as they occur in the process. That's all we want to do. We believe that's necessary in order to comply with the Act.

CHAIRMAN CAMPBELL: And your motion also talks about a post-hearing brief, right? Or did I miss that?

MR. PROCTOR: At Mr. Brockbank's request or in the course of our discussions, do you want this to be a comment or a post-hearing brief, and when I had to file my motion I just called it a post-hearing brief. But the purpose is the same, the timing is the same, and that is the 13th. And of course Oregon isn't even going to hear the matter until the 17th at the earliest.

CHAIRMAN CAMPBELL: So let me make sure I understand the motion. The motion is that the Committee and any other party by the 13th could file comment on this issue of need and the change that took place.

MR. PROCTOR: And the change that took place and means in which to manage it as the solicitation process goes forward.

CHAIRMAN CAMPBELL: All right. We are going to grant the motion and have November 13 as the date to receive those comments. Anything else we need to take up today? All right. Thank you for your time and patience, and particularly for your information. We will take the matter under advisement and adjourn.

(The proceeding concluded at 4:45 p.m.)

REPORTER'S HEARING CERTIFICATE

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

I, Diana Kent, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That prior to being examined, the witnesses were duly sworn to tell the truth, the whole truth, and nothing but the truth;

That said proceeding was taken down by me in stenotype on November 3, at the place therein named, and was thereafter transcribed, and that a true and correct transcription of said testimony is set forth in the preceding pages;

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

WITNESS MY HAND AND OFFICIAL SEAL this 21st day of November, 2006.

____

Diana Kent, RPR, CRR
Notary Public
Residing in Salt Lake County