

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the) Docket No. 06-035-21

Application of)

PacifiCorp for) TRANSCRIPT OF

Approval of its) PROCEEDINGS

Proposed Electric Rate)

Schedules and Electric)

Service Regulations)

)

August 28, 2006 * 9:00 a.m.

Location: Public Service Commission

160 East 300 South, Hearing Room

Salt Lake City, Utah

Commissioner Richard M.Campbell

Commissioner Ted Boyer

Commissioner Ron Allen

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E X H I B I T S

EXHIBIT NO.	OFFERED	ADMITTED
PacifiCorp 1	10	10
DPU-2, 2.1, 2.2, 2.3, 2.4	23	53
DPU-3	52	53
DPU 4, 4.1	52	53
CCS-1DRR	40	40
CCS-2RR	44	

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

2 COMMISSIONER CAMPBELL: Let's go on the
3 record in Docket Number 06-035-21 In the Matter of
4 the Application of PacifiCorp for Approval of its
5 Proposed Electric Rate Schedules and Electric Service
6 Regulations. Let's take appearances for the record.

7 MR. HUNTER: Mark Moench and Edward Hunter
8 for PacifiCorp.

9 MR. GINSBERG: Michael Ginsberg for the
10 Division of Public Utilities.

11 MR. PROCTOR: Paul Proctor on behalf of
12 the Committee of Consumer Services.

13 MR. FORSGREN: Thomas Forsgren and Dale
14 Gardiner for AARP.

15 MR. DODGE: Gary Dodge for UAP.

16 MR. BALL: Roger Ball on my own behalf.

17 COMMISSIONER CAMPBELL: All right. Thank
18 you.

19 We are here today to -- Mr. Reeder?

20 MR. REEDER: Sitting on the first row in
21 the audience, I'm Robert Reeder for an industrial
22 group known as UIEC.

23 COMMISSIONER CAMPBELL: Do we have someone
24 on the phone who is a party to this case?

25 MR. BOEHM: Yes. This is Kurt Boehm for
26

1 Kroger.

2 MR. GRIFFITH: This is Bill Griffith with
3 PacifiCorp in Portland.

4 COMMISSIONER CAMPBELL: Thank you.

5 We're here to consider a stipulation that
6 has been entered into by some of the parties to this
7 case. How did you -- which witnesses did you want to
8 proceed with?

9 MR. HUNTER: Mr. Chairman, what we were
10 proposing was that we qualify these witnesses that
11 filed Direct Testimony and then take questions as a
12 panel.

13 COMMISSIONER CAMPBELL: All right.

14 MR. HUNTER: I should mention that Mr.
15 Taylor is going to adopt Jeff Larsen's prefiled
16 testimony.

17 MR. GINSBERG: Each witness would also
18 present their summary of their testimony if they have
19 one.

20 COMMISSIONER CAMPBELL: And we have read
21 the testimony so I assume the summaries are brief?

22 MR. GINSBERG: Yeah. We do have ours in
23 written form, if that would be helpful. But if not,
24 we'll go ahead and present it.

25 COMMISSIONER CAMPBELL: Well, shall we
26

1 swear Mr. Taylor in?

2 MR. GINSBERG: Should we swear them all in
3 at once?

4 COMMISSIONER CAMPBELL: How many witnesses
5 do we have?

6 MR. GINSBERG: The Division has Thomas
7 Brill and Charles Peterson.

8 COMMISSIONER CAMPBELL: All right.

9 MR. PROCTOR: The Committee has two
10 witnesses, Mr. Reed Warnick and Ms. Deronne.

11 COMMISSIONER CAMPBELL: All right. Is
12 that the extent of it? Why don't the witnesses all
13 stand.

14 (All witnesses standing and sworn in as
15 follows.)

16 COMMISSIONER CAMPBELL: Do you swear that
17 the testimony you're about to give in this proceeding
18 is the truth, the whole truth, and nothing but the
19 truth, so help you God?

20 (Witnesses in unison, "I do.")

21 COMMISSIONER CAMPBELL: Thank you. Mr.
22 Hunter.

23 DAVID L. TAYLOR,
24 called as a witness, was examined and testified as
25 follows:
26

1 DIRECT EXAMINATION

2 BY MR. HUNTER:

3 Q. Mr. Taylor, please state your name and
4 business address for the record.5 A. My name is David L. Taylor. My business
6 address is 201 South Main, Salt Lake City, Utah. I'm
7 employed by Rocky Mountain Power as a Manager in the
8 Regulation Department with responsibilities for
9 regulatory affairs of the State of Utah.10 Q. And were you involved in the discussions
11 that led to the Stipulation that's coming before the
12 Commission?

13 A. I was.

14 Q. And you're familiar with the terms of that
15 Stipulation?

16 A. I am.

17 Q. On August 17th, the prefiled Stipulation
18 testimony of Jeff Larsen was filed with the
19 Commission. Are you familiar with that testimony?

20 A. Yes, I am.

21 Q. Does it consist of 10 pages of narrative?

22 A. Yes.

23 Q. Are you adopting that testimony as your
24 own?

25 A. I am.

26

1 MR. HUNTER: We ask that that testimony be
2 marked as PacifiCorp Exhibit 1.

3 COMMISSIONER CAMPBELL: All right.

4 Q. (BY MR. HUNTER) Are there any corrections
5 you would like to make to that testimony?

6 A. Other than replacing Jeff Larsen's name
7 with mine, I think there are no additional
8 corrections.

9 Q. If I were to ask you the questions
10 included in that Prefiled Testimony, would your
11 answers be the same as printed in that testimony?

12 A. Yes.

13 MR. HUNTER: We offer PacifiCorp
14 Exhibit 1.

15 COMMISSIONER CAMPBELL: Are there any
16 objections?

17 MR. PROCTOR: No objections.

18 MR. GINSBERG: No objection.

19 MR. DODGE: No objection.

20 COMMISSIONER CAMPBELL: All right, we'll
21 admit it.

22 Go ahead.

23 Q. (BY MR. HUNTER) Have you prepared a
24 summary of that testimony?

25 A. I have. The purpose of my testimony is to
26

1 provide some background material that led up to the
2 filing of the Stipulation and to walk through the
3 terms of the Stipulation and explain why, in our
4 view, they're just and reasonable and in the public
5 interest.

6 Just in terms of background, March 7 of
7 2006, PacifiCorp filed an application in this case
8 for a rate increase of \$197.2 million. It was based
9 on a forward-looking test period for the period 12
10 months ending September 30th of 2007.

11 On April 5 of 2006, in compliance with
12 provisions of the interim C transactions, the Company
13 filed Supplemental Testimony that reduced that rate
14 request from \$197.2 million down to \$194.1 million.
15 And from that date until the latter part of August
16 the parties in this case have participated in a
17 series of Technical Conferences and settlement
18 negotiations that led to the agreement on a revenue
19 requirement and rate spread that was filed with this
20 Commission and reflected in the Stipulation that was
21 presented before this Commission on July 26 of 2006.

22 Under the terms of that Stipulation, the
23 customer rate will increase by \$115 million for 9.95
24 percent. The rate increase shall be implemented in
25 two steps, \$85 million, or 7.35 percent, on December
26

1 11 of 2006, and by an additional \$30 million, or 2.6
2 percent, on June 1 of 2007.

3 Before I go over the specifics of the
4 Stipulation, let me just discuss a few of the driving
5 forces that led to PacifiCorp's request in this
6 proceeding.

7 I think as everybody is aware, the key
8 driving factor behind this rate increase request is
9 low growth and the cost associated with being in low
10 growth. Across the PacifiCorp system, and in Utah in
11 particular, we have seen and continue to see
12 significant growth in the number of customers, total
13 energy consumption and peak demand. And meeting this
14 growing demand from its growing customers require
15 that we add new plant additions, both a generation
16 plant and a transmission and distribution facilities
17 to be able to meet the needs of those customers.

18 Between September 2005, which is the
19 historical period upon which this case was based and
20 September 2007, which is the end of at least the
21 Company's projected test period, the Company projects
22 that they'll spend over \$2 billion in additional
23 capital investments with about \$1.3 million of that
24 being spent here in the State of Utah.

25 And obviously with that growth there's
26

1 associated growth in O&M costs to the Company and
2 growing energy usage also has an increasing impact on
3 net power costs. So these things together really are
4 the drivers behind the filing of this rate case.

5 Now, let me walk through the key elements
6 of the Stipulation. I'll do this quite briefly, but
7 I'll go through the significant paragraphs.

8 Paragraphs 1 through 6 of the Stipulation just lay
9 the foundation for us, and I've walked through most
10 of those elements already.

11 Starting on paragraph 7, paragraph 7
12 through 11 detail the revenue requirement and rate
13 spread elements of the Stipulation. Paragraph 7, in
14 particular, deals with the rate increase. It
15 identifies that under the terms of the Stipulation
16 that the rates will increase, the tariff rates will
17 go up by \$115 million and with an effective date of
18 December 11th. Because different parties relied upon
19 different test period assumptions and different
20 adjustments there's no overall agreement in this
21 Stipulation as to either test period or to specific
22 adjustments.

23 The rate increase itself, as I mentioned,
24 will be implemented in two steps. A net increase of
25 \$85 million in December of this year and an
26

1 additional \$30 million in June of 2007. Tariff rates
2 will be designed to collect the full \$115 million
3 from out tariff customers, but as a result of a
4 compromise on a number of issues, and primarily
5 consideration mitigating the impact of this rate
6 increase, \$30 million of that increase will be
7 delayed.

8 And paragraph 8 explains how that will
9 happen in that there will be a rate credit that's
10 applied on customers' bills. That rate credit will
11 be somewhat different depending on the rate schedule
12 the customers are on and in direct relation to the
13 rate increase that's being applied there. This rate
14 credit then will be in place which reduces rates by
15 an annual \$30 million. In June 1 of 2007 that rate
16 credit will go away and then the full \$115 million
17 increase that's in the tariff will remain in effect
18 starting on that date.

19 Paragraph 9 in the Stipulation specifies
20 that the parties agreed to a 10.25 percent ROE,
21 return on common equity, but it didn't specify any
22 other portion for the capital structure, either the
23 percent of the capital structure that's debt equity
24 or preferred stock. It doesn't lay out any of the
25 other cost components in the cost of capital, just
26

1 the 10.25 percent on that return.

2 Paragraph 10 talks about the rate spread
3 and how this \$115 million will be apportioned between
4 customer groups. Exhibit 1 to the Stipulation goes
5 through this in great detail. But just in brief,
6 there's kind of a standard uniform increase of 10.3
7 percent that will come from residential schedules,
8 General Service Schedules 8 and 9. General Service
9 Schedule 6 and 23, based upon the cost of service
10 results, will receive an increase 1 percent lower, or
11 a 9.3 percent increase, and some lighting schedules
12 and Rate Schedule 25, again, based on cost of service
13 results, will get an increase 2 percentage points
14 higher than the standard uniform increase.

15 Because of previous commitments the
16 irrigation class will get the overall State average
17 of the 9.95 percent increase and two schedules, the
18 Electric Furnace Schedule Number 23, and the Metered
19 Outdoor Lighting or the Ballpark Lighting portion of
20 the schedules will see no increase at all as a result
21 of this rate case.

22 COMMISSIONER CAMPBELL: Mr. Taylor, what
23 is the schedule for the electric furnace?

24 MR. TAYLOR: I think it's Rate Schedule
25 21.

26

1 COMMISSIONER CAMPBELL: I think I heard
2 you say 23. But is it 17?

3 MR. TAYLOR: Well, let me look.

4 COMMISSIONER CAMPBELL: No, you're right,
5 it's 21.

6 MR. TAYLOR: It's 21. And then a part of
7 the lighting, metered outdoor lighting won't see any
8 rate increase.

9 As I mentioned earlier, the \$115 million
10 rate increase will be collected from tariff
11 customers, but special contract customers will
12 eventually see their prices go up as a result of this
13 rate case as well. But because of the provisions in
14 some of those contracts the full impact of that may
15 not be as seen for as much as two years from the
16 effective date of these rates. And in one case
17 negotiations are ongoing with one of those contracts
18 so we don't know at this point what the final price
19 for that customer will be.

20 But the price increases for these special
21 contracts when they occur will be in addition to the
22 \$115 million coming from tariff customers. And
23 everyone was in agreement with that application of
24 the rate increase.

25 Paragraph 11 specifically states that the
26

1 projected loads for IM Flash will be included in the
2 low forecast for the State of Utah and the retail
3 load will be included for ratemaking purposes.

4 Moving on, paragraphs 12 through 17
5 discuss some of the regulatory commitments that the
6 Company is making. In particular, paragraph 12
7 identifies a stay-out provision. As part of that
8 Stipulation, PacifiCorp agrees it will not file
9 another Utah general rate case before December 11,
10 2007. And based upon a normal extension period -- do
11 I need to move this closer?

12 MR. HUNTER: You do.

13 MR. TAYLOR: I'm sorry, I can do that.
14 Would you like me to start over?

15 COMMISSIONER CAMPBELL: No.

16 MR. TAYLOR: Hopefully not.

17 Paragraph 12 talks about the stay-out
18 provisions of the Stipulation. In essence, the
19 Company will not file another general rate case
20 before December 11, 2007. And based on a normal
21 suspension period it's anticipated that tariff prices
22 shouldn't increase any earlier than August 7, 2008.

23 Paragraph 13 is where we've agreed to
24 withdraw the PCAM application, or the Power Cost
25 Adjustment Mechanism application, and have agreed

26

1 that we will not file any form of a PCAM, or the
2 Power Cost Adjustment Mechanism prior to December 11,
3 2007.

4 Paragraph 13 goes over some filing
5 requirements. And as you'll recall as part of this
6 case, that the Company agreed to submit additional
7 information that was presented as part of the case.
8 We have agreed to continue discussions with the
9 parties about what appropriate filing requirements
10 and master data request requirements are appropriate
11 for filing in rate cases and hopefully will come to a
12 consensus of what we should use going forward. In
13 the case that a consensus is not reached, PacifiCorp
14 agrees that in the next general rate case we'll file
15 the same basic information that was provided with
16 this case.

17 Paragraph 14 is just standard language
18 that indicates that the regulatory assets are
19 preserved and in compliance with accounting
20 standards.

21 Paragraph 15 lays out some spending
22 commitments that the Company is committed to doing.
23 And basically what it says is for the period of
24 October 2006 through September 2007 that our
25 expenditures on distribution maintenance will not be
26

1 less than 97 percent of \$67.5 million, the amount
2 that was included in the Company's projection in this
3 case.

4 Second, during that same period, the
5 capital costs, or tolling prices, will not be any
6 less than \$5.1 million. And in the event that the
7 spending on those two elements falls below that
8 projection, then the shortfall will be deferred for
9 treatment in a future rate case.

10 Paragraph 16 lays out some reporting
11 requirements that we've agreed to provide summary
12 results of operations for the entire Rocky Mountain
13 Power Company. Those include Utah, Idaho and
14 Wyoming, so summarized at that level.

15 Paragraph 17 describes the rate design, or
16 really it describes that we did not come to a
17 stipulated agreement on rate design issues. Those
18 discussions are ongoing. We hope we'll be able to
19 bring before this Commission on some or all of the
20 rate schedules stipulated agreements prior to the
21 completion of this case and prior to hearings on
22 those issues.

23 We have submitted last week a Stipulation
24 on General Service Schedule 6 that lays out several
25 agreements on the rate design as well as some items
26

1 on further discussion going forth.

2 And then paragraphs 18 through 22 just
3 cover the obligations of the parties that relate to
4 the Stipulation.

5 So finally, just a statement as to is this
6 Stipulation fair and in the public interest? And the
7 answer to those is yes. This Stipulation was reached
8 only after the parties had fully analyzed the
9 Company's request, and I think that the testimony of
10 the DPU and the Committee of Consumer Services covers
11 their work in this area in some detail. The \$115
12 million is significantly less than the amount that
13 was requested by the Company. It's a very
14 conservative projection of the costs and assets that
15 will be in service to meet our customers' needs
16 across this time period.

17 Again, as I indicated, we have
18 unprecedented growth, particularly here in the State
19 of Utah, and the \$115 million is really the minimum
20 level of revenues necessary to cover the costs of
21 building new assets and the operating costs of the
22 Company to meet customers' needs during that time
23 period.

24 Particularly we don't have a Power Cost
25 Adjustment Mechanism in this state. So across this
26

1 time period of nearly two years, the Company will
2 absorb all of the price normal risk associated with
3 net power costs, fuel purchase power and wholesale
4 sales that go into our rates, we'll absorb all of the
5 risk on those issues across this time period.

6 Also, the Stipulation provides a stay-out
7 period. The customers' rates shouldn't change
8 through at least August of 2008. That's nearly one
9 year beyond the period of cost projections that were
10 used to establish these rates. And then I've also
11 talked about the spending and reporting commitments
12 that the Stipulation includes.

13 Finally, I would just like to point out
14 that even with the rate increase coming in in this
15 case and from this Stipulation, prices in Utah will
16 be lower than they were 20 years ago and remain some
17 of the lowest prices in the West and in the country.
18 And for all those reasons, I conclude that the
19 Stipulation is just and it's reasonable and in the
20 public interest and should be approved by the
21 Commission.

22 And just one final note. I would just
23 like to acknowledge that in the process of this case
24 there was really a tremendous amount of cooperation
25 among all the parties that participated in the case.

26

1 We accelerated what some of those normal schedules
2 would have been in processing the case. All of the
3 parties worked very hard and did their analysis and
4 came to the table in good faith and I believe we
5 reached an agreement that's in the best interests of
6 all parties involved. And that concludes my summary.

7 COMMISSIONER CAMPBELL: All right, thank
8 you.

9 Mr. Ginsberg?

10 MR. GINSBERG: The first witness will be
11 Thomas Brill.

12 THOMAS C. BRILL,
13 called as a witness, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. GINSBERG:

17 Q. Would you state your name for the record?

18 A. Thomas Clare Brill.

19 Q. And you have prepared Direct Testimony
20 that's been marked as DPU Exhibit 2.0?

21 A. That's correct.

22 Q. And that consists of some 40 pages?

23 A. That's correct.

24 Q. Do you have any corrections you want to
25 make to that testimony?

26

1 A. I have one hopefully minor correction. On
2 line 710 after the words "regarding" should appear
3 two words, "any specific." And after --

4 COMMISSIONER CAMPBELL: Just a minute.

5 MR. BRILL: Line 710, please.

6 COMMISSIONER CAMPBELL: All right.

7 THE WITNESS: After the word "regarding"
8 should appear two words, they are "any specific."
9 And then after the word "spread" should appear one
10 word "methodology." So it's "a finding regarding any
11 specific rate spread methodology."

12 Q. (BY MR. GINSBERG) Attached to your
13 testimony you have four exhibits; is that correct?

14 A. That is correct.

15 Q. 2.1 is basically your resume, your
16 background?

17 A. That's correct.

18 Q. And do you have any corrections to make to
19 any of those exhibits?

20 A. No, I do not.

21 MR. GINSBERG: With that we would ask that
22 the testimony and exhibits be admitted into evidence.

23 COMMISSIONER CAMPBELL: Are there any
24 objections?

25 MR. BALL: Yes, Mr. Chairman. The
26

1 testimony and exhibits were not properly served on
2 all parties in this case.

3 COMMISSIONER CAMPBELL: Were you aware of
4 that, Mr. Ginsberg?

5 MR. GINSBERG: No, I was not. Who was not
6 served?

7 MR. BALL: Well, I certainly wasn't. I
8 can't speak for anybody else.

9 MR. GINSBERG: I'm certainly not aware of
10 Mr. Ball not being served. I mean, do you not have
11 the testimony?

12 MR. BALL: I was able to look at the
13 Commission's website yesterday and see a considerable
14 amount of material. I have no idea whether that
15 record is complete. Usually in this particular
16 circumstance, Dr. Brill's testimony and exhibits were
17 not forwarded to me by Commission staff. They
18 usually do a very good job of duplicating service of
19 a lot of this material.

20 In this particular instance, I did not
21 receive the material from Dr. Brill. I believe that
22 the Certificate of Service said that it was, at least
23 on the Commission's website, said that it had been
24 distributed electronically. That did not arrive. I
25 searched my e-mail very, very carefully and it simply

26

1 did not come.

2 MR. GINSBERG: All I can say is that
3 our Service List that is provided as part of the
4 testimony does have him on there,
5 ball.roger@gmail.com.

6 MR. BALL: I don't dispute that, the
7 e-mail address is correct, but it did not arrive. So
8 I first became aware yesterday evening that Dr. Brill
9 had even filed testimony in this matter.

10 COMMISSIONER CAMPBELL: Why don't we hold
11 off on our decision whether to admit until a bit
12 later and let's just proceed.

13 MR. GINSBERG: Okay.

14 Q. (BY MR. GINSBERG) Would you go ahead and
15 provide a summary of your testimony?

16 A. Yes, I will. I have a brief summary.

17 I manage the Division's team that
18 investigated PacifiCorp's general rate case
19 application and developed and assigned teams of
20 Division employees to work on the case. I served as
21 the liaison with the Company and was actively
22 involved in all stages of the audit and the analysis.

23 Our auditors and investigative teams were
24 able to complete a sufficient audit that allowed the
25 Division to make what we view as firm and prudent

26

1 adjustments where needed, and to come to a consensus
2 with the parties on the revenue requirements, rate
3 spread, and other matters specified in the
4 Stipulation.

5 Our auditors traveled twice to Portland to
6 examine documents and to ask further questions. The
7 Division sent out and reviewed 16 sets of data
8 requests to the Company totaling approximately 253
9 questions and examined responses to data requests
10 made by other parties. The Division participated in
11 preliminary negotiations as early as April that
12 established a settlement framework. Among other
13 matters, the parties agreed to an expedited audit and
14 settlement schedule. In addition to auditing
15 adjustments, the Division investigated those
16 forecastings and net power cost assumptions.

17 As described in the Stipulation, the
18 settlement allows the Company to increase its
19 revenues by \$115 million over rates currently in
20 effect. The increase will be implemented in two
21 phases; \$85 million effective December 11 of this
22 year, and an additional \$30 million on June 1st of
23 next year. There is no overall agreement as to the
24 test period or revenue requirement adjustments except
25 return on common equity that led to the stipulated

26

1 revenue requirement increases due to the fact that
2 the parties relied on different test periods and
3 adjustments in supporting the agreed-upon \$115
4 million increase.

5 The Stipulation also addresses other
6 Division concerns. By agreeing to a one-year
7 stay-out, the Company will not file another Utah
8 general rate case before December 11, 2007. The
9 Company also agreed to withdraw its Power Cost
10 Adjustment Mechanism application and not file another
11 before December 11, 2007. The Company agreed to make
12 distribution and maintenance expenditures not less
13 than 93 percent of \$67.5 million, as well as
14 distribution pole replacement and capital costs not
15 less than \$5.1 million. The Company will also report
16 on, and the Division will monitor, the status of its
17 compliance with these commitments. While the
18 Stipulation does not cover rate design, the parties
19 agree to continue to negotiate in good faith.

20 With regard to the test year period, the
21 Division believes that a future test year is
22 appropriate and defensible in this docket with
23 mitigating measures in place. The Division's support
24 for this test period was based on a recognized need
25 by the Company to recover the costs of large plant
26

1 additions during or just preceding the rate affected
2 period.

3 In addition to the Stipulation, the
4 Company issued a letter to the Division and the
5 Committee dated July 21, 2006, which I refer to in my
6 testimony as Exhibit 2.2. In the letter the Company
7 makes several commitments that mitigate risk factors
8 that may otherwise arise using a fully forecasted
9 test year.

10 Exhibits 2.3 and 2.4 show the calculations
11 for high and low ends of the Division's settlement
12 range. The Division considered each adjustment for
13 both settlement and for testimony purposes. For the
14 settlement negotiations the Division went through
15 many detailed procedures in order to evaluate the
16 settlement offer and in order to properly support the
17 terms of the settlement.

18 In particular, the return on common equity
19 of 10.25 percent agreed to in the Stipulation leads
20 to an adjustment of \$37.5 million. The Division also
21 considered the uncertainty in the values of the
22 stay-out and in adopting adjustments by other
23 parties.

24 The high end of our settlement range
25 adopted an additional \$3 million in adjustments by
26

1 other parties and set the value of a stay-out also at
2 \$3 million while the low end of our settlement range
3 used \$10 million for each of these. The settlement
4 range the Division used was approximately 108 to \$124
5 million. The Division used this procedure in its
6 assumptions in the context of settlement
7 negotiations. The Division concluded that the \$115
8 million as specified in the Stipulation was
9 reasonable and well positioned within our settlement
10 range of 108 to \$124 million. The Division concludes
11 that the proposed Stipulation balances the interests
12 of all parties in this matter and therefore is just
13 and reasonable and in the public interest. The
14 Division recommends that the Commission approve the
15 Stipulation.

16 Q. Does that conclude your summary?

17 A. Yes, it does.

18 MR. GINSBERG: The next witness is Mr.
19 Charles Peterson. Did you receive his testimony?

20 MR. BALL: Not from the Division. It was
21 not served. I did receive partial testimony of Mr.
22 Peterson via Commission staff. When I went searching
23 yesterday in final preparation for this I discovered
24 that there was considerable material in Mr.
25 Peterson's testimony that was not included in what
26

1 had been sent to me by Commission staff. Commission
2 staff sent me that information I believe a week ago
3 on Friday.

4 MR. GINSBERG: All I can say is that,
5 again, he's listed on the Service List and if he
6 didn't get it, I can't explain the reason.

7 COMMISSIONER CAMPBELL: Do you have the
8 electronic copy saved so that you can look at it?

9 MR. GINSBERG: Someone is actually trying
10 to find out what -- if there is some type of
11 electronic record.

12 COMMISSIONER CAMPBELL: We'll look at that
13 later then. Go ahead and we'll proceed with the
14 summary.

15 CHARLES E. PETERSON,
16 called as a witness, being previously duly sworn, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. GINSBERG:

20 Q. Would you state your name for the record?

21 A. Charles E. Peterson.

22 Q. And can you state your position with the
23 Division?

24 A. Yes. I'm a Technical Consultant in the
25 Division of Public Utilities.

26

1 Q. And you've prepared Prefiled Stipulation
2 Testimony which has been marked as DPU 3.0?

3 A. Yes.

4 Q. And do you have any corrections to make in
5 that testimony?

6 A. I'm unaware of any.

7 Q. And your testimony relates to your rate of
8 return analysis?

9 A. Yes.

10 Q. You've attached to that Exhibit 3.1
11 through Exhibit 3.14; is that correct?

12 A. Yes.

13 Q. And any corrections to make to those
14 exhibits?

15 A. None.

16 Q. Those exhibits were prepared by you and
17 under your supervision?

18 A. Yes, they were.

19 Q. Again --

20 COMMISSIONER CAMPBELL: We'll deal with
21 the admission later after we explore this other
22 stuff.

23 Q. (BY MR. GINSBERG) Could you go ahead and
24 provide the summary of your testimony?

25 A. Yes. As part of the Division's evaluation

26

1 of PacifiCorp's proposed electric rate schedules and
2 service regulations I was asked to review the issues
3 surrounding authorized return on capital and to
4 propose any adjustments that might be appropriate in
5 this case.

6 I have studied the documents filed by
7 PacifiCorp witnesses with respect to return on debt,
8 preferred stock, common stock and capital structure.
9 I've also availed myself the opportunity to submit
10 data requests to understand better the Company's
11 original filings in their application.

12 I have also reviewed the Company's
13 Securities and Exchange Commission's filed financial
14 statements and other financial information on the
15 industry available over the Internet and in the print
16 media. As a result of this analysis, I concluded
17 that the Company's request of cost of debt and
18 preferred stock were in a reasonable range. The
19 common stock was projected to be in the range of 51
20 to 52 percent of total capital by the end of 2006
21 when it was anticipated that new rates would go into
22 effect.

23 As part of the Division's evaluation of
24 different proposals during the negotiations for
25 settlement, I prepared analyses of the possible
26

1 capital structures and developed what I considered to
2 be reasonable estimates of the cost of common stock
3 for the Company. I participated in the negotiations
4 that resulted in the Stipulation that is before the
5 Commission today.

6 As outlined by Dr. Brill, the Division
7 evaluated the reasonableness of the settlement
8 represented by the Stipulation by examining a number
9 of factors. One that was specifically mentioned in
10 the Stipulation is the authorized rate of return on
11 common equity, or ROE. The Stipulation sets forth an
12 ROE of 10.25 percent.

13 My testimony filed in support of the
14 Stipulation summarizes some of the calculations and
15 estimates of ROE that I considered in my analysis of
16 ROE for settlement purposes. These data show that
17 the 10.25 percent figure is within a range of
18 reasonable values applicable to PacifiCorp. This ROE
19 figure is best supported by risk premium models I
20 examined, including the Capital Asset Pricing Model.
21 However, the Discounted Cash Flow Models I looked at
22 also included the 10.25 percent figure within the
23 upper end of their ranges.

24 I concluded, and the Division has
25 concluded as a signatory to the Stipulation, that the

26

1 10.25 percent is a reasonable ROE for PacifiCorp at
2 this time. I therefore recommend that the Commission
3 accept this part of the Stipulation.

4 And this concludes my summary.

5 MR. GINSBERG: Thank you.

6 Those are the only two witness the
7 Division has. I do have, and the only thing I
8 apparently have, is sort of the group e-mail list of
9 who it was individually sent out to and the list on
10 each testimony does give the e-mail address. I don't
11 -- as I understand it, there is no receipt back for
12 the e-mail, but I also understand there was no
13 undeliverable message that was also sent back. So
14 that's the only explanation I can give. If he hadn't
15 had it we would have been more than happy to provide
16 it as soon as we knew he didn't get it. But that's
17 the only explanation I can provide.

18 COMMISSIONER CAMPBELL: All right. Thank
19 you.

20 MR. GINSBERG: I might be able to get more
21 at a break.

22 COMMISSIONER CAMPBELL: We will take a
23 break this morning so at that point we'll decide how
24 to proceed.

25 Mr. Proctor?

26

1 MR. PROCTOR: Thank you, Mr. Chairman.

2 The Committee's first witness will be
3 Donna Deronne.

4 DONNA DERONNE,
5 called as a witness, being first duly sworn, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. PROCTOR:

9 Q. Ms. DeRonne, could you state your name for
10 the record, please?

11 A. My name is Donna DeRonne.

12 Q. Have you in this and other dockets
13 described your qualifications and experience in such
14 matters as this general rate case?

15 A. Yes, I have. And I've included appendices
16 which provide my regulatory background and
17 experience.

18 Q. In what capacity and on whose behalf are
19 you appearing today?

20 A. I'm appearing -- I'm a senior regulatory
21 analyst with the firm Larkin & Associates. We've
22 testified as expert witnesses in over 400 regulatory
23 proceedings and I have personally submitted testimony
24 in over 50 and verbally retestified in approximately
25 35 cases. And our firm was retained on behalf of the

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1 Committee of Consumer Services to review the revenue
2 requirement calculations in the filing presented by
3 PacifiCorp in this case.

4 Q. You are, therefore, familiar with the
5 general rate case application in this docket?

6 A. Yes, I am.

7 Q. Did you participate personally in the
8 audit and analysis of the PacifiCorp application and
9 evidence developed by all the parties in connection
10 with this proceeding?

11 A. Yes, I did. I prepared a significant
12 number of data requests in this case, and other
13 members of Larkin & Associates were also involved in
14 the review, and I headed the project team on our
15 behalf. And I also gathered all the information from
16 other experts retained by the Committee in this case
17 to go through the impact of their recommendations
18 with our overall revenue requirement calculations and
19 recommendations. And also checked to make sure there
20 was no overlap or inconsistencies between the various
21 experts' recommendations in this case.

22 Q. Are you familiar with and did you
23 participate in the proceedings and negotiations that
24 resulted in the July 21, 2006 Stipulation which Mr.
25 Taylor has described?

26

1 A. Yes, I did. I was here in person for the
2 settlement discussions. And prior to that point I
3 was involved both in person and by phone in various
4 meetings and conferences throughout this case.

5 Q. Have you filed testimony pertaining to the
6 Stipulation consisting of ten pages and marked as
7 CCS-1RR?

8 A. Yes, I did. That was filed August 17th in
9 this case.

10 Q. If the questions that are asked in this
11 filed testimony were asked of you today, would your
12 answers be the same?

13 A. Yes, they would.

14 Q. Do you have any changes to make to that
15 prefiled testimony?

16 A. No, I do not.

17 Q. Do you have a brief summary of your
18 testimony?

19 A. Yes. I would like to give a brief
20 overview of my summary.

21 It's the Committee's view that taken as a
22 package the Stipulation produces a fair and
23 reasonable outcome for Utah customers. While the
24 amount of increase may be higher than what we've seen
25 in recent cases before the Commission, we feel there

26

1 were strong reasons for allowing that increase and
2 that the amount is necessary in this case.

3 One concern the Committee has had and has
4 raised in other forms is the reliability of service
5 within Utah. The Company's filing included a
6 considerable amount of expenditures for new
7 generation plant and replacement and upgrade of
8 transmission distribution assets both going towards
9 meeting low growth and additional expenditures in
10 those areas and in maintenance costs to go towards
11 improving system reliability. And we do feel that
12 additional levels of prudent expenditures in this
13 area should result in future improvements and we are
14 supportive of those.

15 In evaluating the overall increase in this
16 request, the Committee did have several adjustments
17 it had made to get to the level included within the
18 Stipulation. But in doing so we did not
19 substantially adjust downward any of the capital
20 expenditures requested in this case or any of the
21 maintenance-type expenditures included because of the
22 goal of trying to improve system reliability on
23 behalf of customers.

24 The amount of increase, again, we feel the
25 package as a whole is fair and reasonable. And in
26

1 evaluating the amount of increase we also considered
2 significantly the rate stability of the outcomes
3 caused by the Company agreeing not to come in for
4 another increase prior to December 2007, with
5 increases not to go into effect from a future case
6 prior to August 7, 2008 under the normal statutory
7 timeline. And we also saw it as favorable to
8 customers to the Company's agreement in the
9 Stipulation to withdraw the Power Cost Adjustment
10 Mechanism that was also of benefit for customers that
11 the Committee did weigh in agreeing to sign onto the
12 Stipulation as a whole.

13 In reviewing this overall increase, while
14 the parties had not filed testimony on overall
15 revenue requirements, the Committee had done its full
16 review and analysis of what would be done in a full
17 rate case proceeding. Myself and many other experts
18 filed, I believe, 22 sets of data requests. We
19 reviewed the responses to those.

20 We had an on-site review and many
21 discussions with PacifiCorp personnel to further
22 question the amounts contained in the filing and how
23 those amounts were derived. And when it came to the
24 settlement negotiations, we also looked at
25 recommendations and adjustments other parties were
26

1 sponsoring to derive the overall amount of increase
2 we felt was fair and reasonable.

3 And again, taken as a whole we think the
4 Stipulation does result in a fair and reasonable
5 amount for the Company and particularly for Utah
6 customers.

7 Q. Does that conclude your summary?

8 A. Yes, it does.

9 MR. PROCTOR: With that summary, Mr.
10 Chairman, the Committee would move to admit the
11 testimony of Donna DeRonne.

12 COMMISSIONER CAMPBELL: Are there any
13 objections?

14 MR. DODGE: No objections.

15 MR. HUNTER: No objections.

16 COMMISSIONER CAMPBELL: All right, we'll
17 admit it.

18 MR. PROCTOR: Thank you.

19 The Committee's next witness would be Reed
20 Warnick.

21 REED T. WARNICK,
22 called as a witness, was examined and testified as
23 follows:

24 DIRECT EXAMINATION

25 BY MR. PROCTOR:

26

1 Q. Mr. Warnick, will you state your name for
2 the record, please?

3 A. Reed T. Warnick.

4 Q. Mr. Warnick, you are employed as an
5 Assistant Attorney General by the Attorney General's
6 Office for the State of Utah; is that correct?

7 A. That is correct.

8 COMMISSIONER CAMPBELL: We're going to
9 need to have that microphone moved over or get two
10 microphones.

11 MR. WARNICK: Sorry. Can you hear me?

12 Q. (BY MR. PROCTOR) However, for the purpose
13 of this hearing today and in the testimony you've
14 filed, in what capacity are you appearing?

15 A. I'm appearing in the capacity of Interim
16 Director of the Committee of Consumer Services.

17 Q. How long have you served in that
18 particular position?

19 A. I believe since about April and since the
20 previous director, Leslie Reberg, resigned.

21 Q. Are you familiar with the application for
22 a general rate increase filed by PacifiCorp in this
23 particular docket?

24 A. I am.

25 Q. And in your capacity as Interim Director
26

1 for the Committee, did you participate and consult
2 with the Committee's experts in the audit and
3 analysis of that application and the evidence
4 developed by the parties?

5 A. I did.

6 Q. Are you also familiar with and did you
7 participate in the proceedings and negotiations that
8 resulted in the July 21st, 2006 Stipulation which has
9 been described by Mr. Taylor?

10 A. Yes, I did participate.

11 Q. And at this time have you filed testimony
12 pertaining to that Stipulation consisting of eight
13 pages and marked as CCS-2RR?

14 A. I did, yes.

15 Q. If those questions in the written
16 testimony were asked of you today, would your answers
17 be the same?

18 A. They would.

19 Q. And do you have any changes to request of
20 that testimony?

21 A. I don't. To my knowledge, they're
22 correct.

23 Q. Do you have a brief summary of the
24 testimony?

25 A. I have a very brief summary.

26

1 The written testimony which I and
2 Committee expert witness Donna DeRonne have filed in
3 support of the revenue requirement and rate design
4 Stipulation now before the Commission in this case I
5 believe sufficiently explains the Committee's
6 position and why it is supporting the Stipulation.

7 I would just emphasize here that the
8 Committee believes the settlement terms that have
9 been reached are reasonable and in the public
10 interest. We believe the dollar amounts that would
11 go into the rates as a result of this settlement
12 represent a reasonable compromised settlement of the
13 utility's application.

14 And equally important, we believe the
15 other provisions of the settlement agreement, such as
16 the withdrawal of the PCAM application, the stay-out
17 provision and the provisions creating greater utility
18 accountability for expenditures for system
19 maintenance in Utah, which Committee witness Donna
20 DeRonne has briefly elaborated on achieve a result
21 that is fair and very much in the interest of Utah
22 ratepayers.

23 The Committee, therefore, urges the
24 Commission to approve this Stipulation as being in
25 the public interest and resulting in just and
26

1 reasonable rates.

2 Q. Does that conclude your summary?

3 A. It does.

4 MR. PROCTOR: At this time the Committee
5 would move to admit the testimony of Reed Warnick.

6 COMMISSIONER CAMPBELL: Are there any
7 objections?

8 MR. BALL: Yes, Mr. Chairman. I'm going
9 to object on two bases. First of all I'm going to
10 object on the basis that Mr. Warnick appears to be
11 participating in this case with two different hats
12 on. Up until now he has appeared in this case as
13 counsel for the Committee, and I question the
14 appropriateness of counsel for one of the parties
15 also appearing as a witness.

16 Secondly, Mr. Warnick has represented
17 himself as Interim Director of the Committee.
18 Statutorily, the only provision for the appointment
19 of a director is by the Governor with the concurrence
20 of the Committee. And I question whether, in fact,
21 Mr. Warnick has been appointed by the Governor and
22 whether, in fact, the Committee has concurred in that
23 appointment.

24 COMMISSIONER CAMPBELL: Mr. Proctor?

25 MR. PROCTOR: If I could just have a
26

1 moment.

2 COMMISSIONER CAMPBELL: That's all right.

3 MR. PROCTOR: Mr. Chairman, first of all
4 let's address the statutory argument that Mr. Ball
5 makes since I think that is the most easily
6 dismissed.

7 It is true, as Mr. Ball describes, that
8 the director, actually it's referred to as a person
9 who is to act as the conduit between the Committee
10 and activities and decisions made by the Committee in
11 implementing them, is a position appointed by the
12 Governor with the concurrence of the Committee. That
13 process of appointment, of course, can be complex and
14 it also takes place in many respects outside of the
15 day-to-day activities of the Committee for any
16 government agency.

17 There are also certain requirements,
18 administrative and managerial requirements, that the
19 Committee has to engage in on a daily basis; budget
20 matters, personnel matters, assignment of
21 responsibilities, for example.

22 To give you an example, the 2003 version
23 of the description of the Committee director, if you
24 will, actually requires that the Committee Director
25 answer directly to the department -- Executive

26

1 Director for the Department of Commerce with respect
2 to managerial and budget matters. That work
3 continues on whether or not the Governor has made an
4 appointment. It also suggests that the Commerce
5 director has the authority to ask that someone step
6 in place of and until the Governor makes an
7 appointment in order to work through those managerial
8 responsibilities.

9 In addition, whether Mr. Warnick has
10 appeared as counsel, and this goes to the first issue
11 raised, or in this particular proceeding at this
12 particular time as a witness, is not, I would submit,
13 a matter that Mr. Ball has a standing to really
14 raise.

15 First of all, he assumes the capacity of
16 Mr. Warnick throughout these proceedings. And up
17 until today it's my understanding that there has not
18 been any litigation proceeding. So Mr. Warnick thus
19 far may very well have been advising council staff.
20 But insofar as his appearances before the Committee
21 -- or excuse me, before this Commission, the only
22 capacity is as Interim Director. That is why the
23 foundation was laid the way it was.

24 In addition, there has been no request of
25 any party, for example, that Mr. Warnick testify to
26

1 matters that would require him to assert an
2 attorney-client privilege. And without that, then,
3 it really is not for Mr. Ball at this point, having
4 not asked such questions, to raise the issue that he
5 cannot get those answers from a witness. And that is
6 the real problem. We do not want an attorney acting
7 as a witness if to do so would disclose
8 attorney-client privileged matters.

9 I believe that Commissioner Boyer would be
10 familiar with the Rules of Professional Conduct. I
11 know I am through my involvement with the office that
12 enforces them. And the counsel may be permitted to
13 act as a witness for certain matters such as those
14 that are setting policy, foundation and groundwork,
15 those that do not require the witness to disclose
16 attorney-client privileges or work product. Under
17 the circumstances, I believe Mr. Ball's objections
18 are simply not well founded and should not be
19 granted.

20 MR. BALL: May I respond to that?

21 COMMISSIONER CAMPBELL: Very well.

22 MR. BALL: I would point the Commission to
23 a petition filed on the 13th of April, 2006, a Joint
24 Motion to Amend the Scheduling Order to which Mr.
25 Warnick's name is appended as a signatory on behalf

26

1 of the Committee of Consumer Services. I haven't
2 done an exhaustive search. There may be others, but
3 that's one.

4 And I would ask that Mr. Proctor provide
5 me with a copy of the, I believe he said, 2003
6 version of something, I'm not quite clear what it
7 was, so that I can take a look at that and make an
8 appropriate response before this matter is put to
9 rest.

10 COMMISSIONER CAMPBELL: Did you want to
11 respond?

12 MR. PROCTOR: Only to that last issue and,
13 that is, that that particular document is present on
14 the Department of Human Resources Job Descriptions'
15 website readily available to anyone who wants to
16 look. But that's not the issue. The issue here is
17 whether or not it is in any way a violation of this
18 Commission's rules or the Rules of Professional
19 Conduct governing the appearance of an attorney in a
20 formal proceeding as a witness. It is not prohibited
21 by either of those rules and his objection to this
22 testimony should be denied.

23 MR. WARNICK: Mr. Chairman, may I comment?

24 MR. PROCTOR: May I have a moment with my
25 client?

26

1 MR. WARNICK: On advice of counsel I'll
2 remain quiet.

3 MR. REEDER: Mr. Chairman, if I may for a
4 moment?

5 COMMISSIONER CAMPBELL: Go ahead.

6 MR. REEDER: It seems to me the question
7 before the Commission is whether or not this
8 Stipulation is reasonable. The qualifications of a
9 witness to testify, while important, probably are not
10 very material to that question today because, as I'm
11 aware, there is no opposition to the Commission
12 approving this Stipulation.

13 So I would hope that as you consider the
14 objections you would consider the materiality of the
15 objection made to the issue at hand. I would submit
16 that the qualifications of Mr. Warnick, whether he's
17 simply a representative of the party, as I am, or not
18 a representative of the party, as he might be,
19 probably are not probative of the question of whether
20 or not this is a reasonable settlement since no one
21 opposes it.

22 COMMISSIONER CAMPBELL: Mr. Ball?

23 MR. BALL: It's unlike Mr. Reeder to be so
24 insensitive. If this doesn't sound like an
25 objection, Bob, let me make it clear, it's an
26

1 objection.

2 Let me get back as well to Mr. Proctor's
3 last remarks. It seems to me that I started by
4 making it clear that there were two quite separate
5 grounds for objection, and in his last remarks it
6 sounded to me as if Mr. Proctor was obfuscating the
7 distinction between those two objections.

8 One of the objections has to do with
9 whether or not counsel of record can properly testify
10 in these proceedings. The other objection is quite
11 separate, is whether in fact Mr. Warnick is what he
12 represents himself to be, which is a properly
13 appointed Interim Director of the Committee of
14 Consumer Services.

15 COMMISSIONER CAMPBELL: We're going to
16 take a recess now. But before we go to recess, Mr.
17 Ball, I would ask you, when we come back, do you have
18 questions or cross-examination of these witnesses?

19 MR. BALL: Yes, sir.

20 COMMISSIONER CAMPBELL: All right. Let's
21 take a ten-minute recess.

22 (Recess taken.)

23 COMMISSIONER CAMPBELL: Let's go back on
24 the record. Mr. Ginsberg?

25 MR. GINSBERG: I have the e-mail receipts

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1 which I would like to provide to the Commission on
2 each person's testimony.

3 COMMISSIONER CAMPBELL: All right.

4 MR. GINSBERG: It shows that for those
5 within the State system what happened to it, but it
6 shows that it was transferred to Mr. Ball and we got
7 no undeliverable message back. I believe we took all
8 reasonable steps to make sure the e-mail was
9 delivered. We all knew what the filing date was and,
10 obviously, the Division was going to file testimony.
11 And I received no calls from anybody asking for the
12 testimony.

13 We would have been more than happy to
14 immediately get it to him if he hadn't received it.
15 So I think we took all reasonable steps that we could
16 have possibly taken to make sure the testimony went
17 to him. The e-mail was correct and it was
18 transferred to him, so I don't think we have an
19 obligation to make sure it gets delivered to him. We
20 have an obligation to get it to him, which I think we
21 did.

22 MR. BALL: Mr. Chairman, forgive me.

23 COMMISSIONER CAMPBELL: Excuse me. Are
24 these for our information or do you want them to be
25 made an exhibit?

26

1 MR. GINSBERG: No. I think they can be
2 made an exhibit. We could provide Dennis Miller as a
3 witness if you want to know the system we went
4 through, but these are just records off of the e-mail
5 of each individual's testimony.

6 COMMISSIONER CAMPBELL: Let's just mark
7 them as -- let's mark them as -- it's not really
8 cross-examination but --

9 MR. GINSBERG: Just call them DPU exhibits
10 if you want and I don't think there's a problem where
11 they came from.

12 COMMISSIONER CAMPBELL: Let's just call
13 them DPU Exhibit --

14 MR. GINSBERG: Four.

15 COMMISSIONER CAMPBELL: -- four. We'll do
16 the Thomas Brill testimony as DPU Exhibit 4 and the
17 Mr. Peterson testimony as 4.1.

18 MR. GINSBERG: That's the best I can do.

19 COMMISSIONER CAMPBELL: All right, Mr.
20 Ball.

21 MR. BALL: Mr. Chairman, I question the
22 probative value of these exhibits. My name doesn't
23 appear anywhere on them.

24 COMMISSIONER CAMPBELL: You need to turn
25 that over. I think you're on the second page, Mr.

26

1 Ball.

2 MR. BALL: I've got two pages here -- oh,
3 I'm sorry, I beg your pardon. I see what you mean.
4 Let me just take another look, please. Yes, I see it
5 now.

6 Thank you.

7 MR. GINSBERG: So with that, again, I
8 would ask that the testimony be admitted. I think we
9 took all reasonable steps we could take. If the
10 testimony does get lost I think the recipient has
11 some obligation to call us and we would have gotten
12 it to him.

13 COMMISSIONER CAMPBELL: Let me first ask,
14 are there any objections to DPU Exhibit 4 and 4.1?

15 All right, we'll admit them. We will
16 admit the testimony of Dr. Brill and Mr. Peterson.
17 We have decided, though, to give Mr. Ball until
18 September 6 to notify the Commission if he would like
19 us to reconvene to ask questions related to that
20 prefiled testimony.

21 All right. As far as the other issue, Mr.
22 Warnick, just one question. Is the Committee aware
23 that you have filed this testimony on their behalf?

24 MR. WARNICK: Yes, the Committee is aware.
25 The Chairman is also aware. And also aware of my

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1 position of Acting Director.

2 COMMISSIONER CAMPBELL: All right. We are
3 going to overrule the objection and admit the
4 testimony of Mr. Warnick as well.

5 MR. BALL: May I just clarify, Chairman?
6 Did I hear Mr. Warnick say that the Chairman of the
7 Committee and only the Chairman of the Committee was
8 aware of these things?

9 MR. WARNICK: I think that I would prefer
10 that counsel answer that question.

11 COMMISSIONER CAMPBELL: Go ahead.

12 MR. PROCTOR: To go back to the beginning,
13 Mr. Warnick was asked to be Interim Director for the
14 Committee by the Executive Director of the Department
15 of Commerce with the Governor's permission, with the
16 knowledge and approval of the Chairman of the
17 Committee and the Committee itself. The Committee
18 has in all respects considered Mr. -- in all of our
19 meetings in considering of matters, such as this
20 resolution, have always dealt with Mr. Warnick since
21 his appointment as Interim Director. As Interim
22 Director, not as counsel. I have been present
23 whenever those discussions have taken place and
24 matters pertaining to attorney-client matters have
25 been addressed to me.

26

1 The Committee was aware, very much aware
2 of this Stipulation, considered it, discussed the
3 matter with Mr. Warnick, Committee staff, and I
4 believe even one of the consultants was involved, and
5 approved the Stipulation and the filing of testimony
6 in regard to the Committee's direction to the
7 Committee Director, Mr. Warnick, for the purpose of
8 presenting it to this particular Commission. That is
9 Mr. Warnick's position as Interim Director, that is
10 what he's supposed to do statutorily. So in all
11 respects it has been done with the approval and
12 knowledge of the Committee.

13 MR. BALL: May I ask, Mr. Proctor, does
14 there exist written evidence that Mr. Warnick was
15 appointed by the Executive Director of Commerce with
16 the approval of the Governor?

17 MR. PROCTOR: I don't believe it's
18 appropriate for me to get involved in an exchange
19 with Mr. Ball.

20 COMMISSIONER CAMPBELL: And we've already
21 admitted the evidence, Mr. Ball. So I don't know
22 what value that line of questioning has as it relates
23 to his testimony or to our decision on that issue.
24 But we will turn the time over to you, Mr. Ball, for
25 any cross-examination you have of any of these

26

1 witnesses.

2 MR. BALL: Well, before I go there, Mr.
3 Chairman, first of all, may I say that I have with me
4 a single copy of a printout from my e-mail. It shows
5 all mail, in other words, incoming and outgoing, and
6 it shows an item on August the 16th that shows the
7 range of transactions on August the 17th and August
8 the 18th, 19th and 20th, and makes it quite clear
9 that, as I have said, I did not receive the testimony
10 of the two Division witnesses. I can't account for
11 that. But I think that those who are suggesting that
12 -- I think Mr. Ginsberg's suggestion that the onus is
13 on me to be looking for these things that are
14 supposed to be served is unreasonable. I would be
15 happy to allow anyone who would like to to make a
16 copy of this document. I would be happy to pass it
17 to you, Mr. Chairman, to enter it into evidence to
18 support what I'm saying. Unfortunately, I don't have
19 copies to share with the other parties.

20 COMMISSIONER CAMPBELL: We have accepted
21 your word on that point and in an effort to be as
22 fair as possible have granted you until September 6th
23 to let us know if you need to question the witnesses.

24 MR. BALL: And I appreciate that, Mr.
25 Chairman.

26

1 With regard to Mr. Proctor's assertions, I
2 have been completely unable to validate what he has
3 said from any public record on the Committee's
4 website with regard to any action the Committee may
5 have taken either with regard to Mr. Warnick being
6 the Interim Director or with regard to approving the
7 Stipulation or the filing of this particular
8 testimony.

9 May I begin cross then by addressing Mr.
10 Taylor.

11 DAVID L. TAYLOR,
12 recalled as a witness, was examined and testified
13 further as follows:

14 CROSS-EXAMINATION

15 BY MR. BALL:

16 Q. Mr. Taylor, you asserted that the
17 Stipulation was just, reasonable and in the public
18 interest. I wonder if you would be kind enough to
19 tell us, please, what criteria you used in
20 determining that this settlement is in the public
21 interest.

22 A. I think I walked through those at the end
23 of my summary of my testimony. I walked through four
24 or five points as to why I felt this Stipulation was
25 in the public interest, not the least of which it was

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1 fully analyzed by fully trained representatives and
2 auditors of the Division of Public Utilities and the
3 Committee of Consumer Services.

4 In addition, I explained that it was the
5 minimal level of revenues necessary for the Company
6 to run the business and provide safe and reliable
7 service to our customers. I talked about a part of
8 the Stipulation was withdrawal of the Power Cost
9 Adjustment Mechanism which was agreed would be a
10 benefit to the customers from many parties'
11 perspectives.

12 I addressed that there were stay-out
13 provisions that provided a period of rate stability
14 for customers. I went through the provision where we
15 had spending commitments to ensure that we spent
16 every dollar that we had requested in this case and
17 the areas related to distribution, maintenance and
18 pole replacement. And so, you know, for all of those
19 reasons I had concluded that the Stipulation was just
20 and reasonable and in the public interest, as did the
21 witnesses for the other parties in the case.

22 Q. Would you agree with me that the exhibit
23 to the Stipulation shows that residential ratepayers,
24 such as I, will pay on average 10.3 percent more when
25 this -- when the rate increases arising from the
26

1 Stipulation, if they are, are implemented than we're
2 currently doing?

3 A. Come June of 2007, that's correct.

4 Q. Would you agree with me that since the
5 last fully litigated rate case, residential consumers
6 such as I, in two settled rate cases have been paying
7 9.4 percent more than previously?

8 A. Subject to check, I would agree with that.

9 Q. So that being the case, would you agree
10 with me that if this Stipulation is approved by the
11 Commission, the Commission will have put into effect
12 a 20.67 percent rate increase since the last time
13 that they fully heard a rate case for your Company?

14 A. Since the time of a fully litigated rate
15 case. I won't say that they haven't heard these
16 cases, but the Stipulation has been presented to them
17 with evidence and they ruled upon it.

18 Q. But fully litigated you do agree with me?

19 A. That's correct.

20 Q. What steps have you taken or have your
21 colleagues and those under your supervision taken to
22 educate the public about the details of this
23 settlement and inquire what it thinks about it?

24 A. Well, I can certainly tell you that we
25 engaged in discussions with representatives of the
26

1 public, including those who have participated in this
2 rate case, even prior to the time the case being
3 filed. We had meetings with a number of parties and
4 we explained the cost drivers for the case, what was
5 the driving force behind putting the case together,
6 and the general magnitude of what we expected the
7 case to be.

8 And so we published -- you know, we've
9 published press releases describing the case, the
10 terms of the case and what the impact would be on
11 customers, including specifically residential
12 customers. So I think we've had a significant amount
13 of discussion with the public about this case.

14 Q. What I've heard you say, Mr. Taylor, is
15 that most of the discussions that you've had have
16 been with the other parties in this case. Would that
17 be accurate?

18 A. And one of those parties is the Committee
19 of Consumer Services who represents residential
20 customers and the public at large. Another party is
21 AARP that represents the older residential customers.
22 We've had discussions with you, I believe, who
23 represents at least one of the public at large. And
24 so, again, I think the parameters of this case have
25 been discussed with the public at large probably in
26

1 greater detail than any case the Company has ever
2 filed.

3 Q. Wow! I'm not sure that I've described
4 myself as being at large, incidentally. I tend to
5 see myself as being rather captive, but that's
6 another story.

7 So have you, for example, made a point of
8 taking adverts in the media to explain the details of
9 this settlement?

10 A. Yes. We provided a press release to the
11 media that walked through --

12 Q. No, no. Press release, sir. Have you
13 taken adverts, have you paid for adverts?

14 A. I don't know the answer to that question.

15 Q. Have you sent out bill stuffers?

16 A. I don't believe we've sent out bill
17 stuffers that walk through the terms of the
18 Stipulation.

19 Q. Have you conducted any sample survey of
20 public opinion?

21 A. I don't know the answer to that question.

22 Q. I'm going to suggest to you, Mr. Taylor,
23 that in fact when you represent this as being in the
24 public interest, you don't really know whether it's
25 in the public interest because you haven't informed
26

1 the public at large about it and you haven't
2 consulted them about their opinion. You're merely
3 representing this because it's a formula approach
4 which in the past has succeeded in persuading the
5 Commission to sign off on stipulated agreements; yes
6 or no?

7 A. I disagree with that statement. Again, we
8 have met with the representatives of the residential
9 communities, the Committee of Consumer Services, who
10 by statutory requirement are the representatives of
11 residential customers, and we have participated with
12 every customer who has expressed an interest in
13 participating in the rate case have been included in
14 the discussion. So I would disagree with your
15 statement.

16 Q. What proportion of residential customers
17 is the Committee statutorily required to represent in
18 cases such as this?

19 A. Well, not being an attorney, but I believe
20 they're required to represent them all.

21 Q. Okay. If I said to you that the statute
22 requires them to represent a majority, would you
23 agree with me?

24 A. I won't disagree with you on that fact.

25 Q. As you understand it, Mr. Taylor, has the
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1 Commission or any member or members thereof expressed
2 an interest in seeing this case settled?

3 A. My experience with the Commission is that
4 they always encourage parties to settle issues to
5 expedite the regulatory procedure. Whether they have
6 expressed a specific interest in this case, I don't
7 know.

8 Q. At what point do you think it becomes
9 appropriate for the Company and other parties to
10 fully litigate a rate case before the Public Service
11 Commission, bearing in mind, again, two past settled
12 cases totaling 9.4 percent, this third litigated case
13 now, and all of this since the 1st of April, 2002,
14 all together representing 20.67?

15 At what point does it become appropriate
16 for the parties to a case such as this to say, enough
17 is enough, there is a public interest in the Public
18 Service Commission carrying out a thorough
19 investigation of the rates and charges of a public
20 utility here in Utah?

21 A. I think when you get to a point where
22 those parties who express interest in the cases go
23 through the time and effort to intervene and
24 participate in rate cases, when it comes to a point
25 where those parties all together cannot come to a
26

1 reasonable agreement as to what they think is fair
2 and reasonable in the public interest, then it's time
3 to take the issue before the Public Service
4 Commission to litigate it.

5 If all of those parties to the case, or at
6 least a significant majority of the parties to the
7 case can come to an agreement that this is in the
8 public interest, and they present that to the Public
9 Service Commission then they can make a decision, yes
10 or no, as to whether or not it is. So I don't think
11 there's been any restriction of the process here.

12 Q. So what I think I hear you saying is that
13 as long as the Company can persuade the Division, the
14 Committee, large consumer representatives and so on,
15 that it's more in their interests to reach a
16 settlement than it is to take the matter fully before
17 the Public Service Commission, you think that's
18 appropriate, do you?

19 A. Well, I've explained what I think is
20 appropriate. If the Commission has a different
21 perspective they can certainly share it.

22 MR. BALL: Thank you very much.

23 Let me switch to Dr. Brill and Mr. Taylor,
24 if I may. And I really don't mind which of the
25 Division's witnesses responds to these questions.

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1 MR. GINSBERG: Did you say Mr. Taylor?

2 MR. BALL: Pardon me?

3 MR. GINSBERG: Peterson?

4 MR. BALL: Did I say Taylor? I do
5 apologize. I meant Mr. Peterson, of course.

6 THOMAS C. BRILL,
7 recalled as a witness, was examined and testified as
8 follows:

9 CROSS-EXAMINATION

10 BY MR. BALL:

11 Q. What criteria does the Division use in
12 making a recommendation that a settlement is in the
13 public interest?

14 A. As you know, the Division represents all
15 parties, the utility, the large industrial consumers
16 and the smaller residential and commercial consumers
17 as well. An important criterion that we had
18 considered was, in assessing the \$115 million
19 phased-in Stipulation and so on, was the type of
20 quality deal or package that was, and had this gone
21 to litigation what the alternative would have been.
22 And we felt that because the way the Stipulation was
23 put together, that 85 plus \$30 million phased in when
24 the plants come online and so on, that it was an
25 excellent overall package and the total price tag

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1 would have been considerably higher without it.

2 Q. Have you considered the percentage of what
3 PacifiCorp asked for in this case that you are now
4 recommending the Commission should approve, and have
5 you considered that against the percentages of what
6 was initially asked for were agreed upon in the last
7 two cases, and have you considered that in the
8 context of the percentages that were awarded to
9 PacifiCorp out of earlier litigated cases, fully
10 litigated cases?

11 A. Yes, we considered that.

12 Q. Could you tell us about that, please?

13 A. We felt that if this case had gone -- if
14 the current case had gone to litigation that it would
15 have fallen significantly more expensive than
16 previous cases. I'm aware of the last few
17 settlements and so on, and I'm aware of a price
18 increase that adds up over several of these
19 settlements. I also am aware that when we go back 10
20 or 20 years, what the real cost of electricity is and
21 I find this package reasonable.

22 Q. In the last settled case, what percentage
23 of what PacifiCorp asked for did they get?

24 A. I would say roughly 50 percent.

25 Q. And what did they get this time?

26

1 A. More than 50 percent, there's no question.

2 Q. What about the case before last that was
3 settled, what did they get?

4 A. That was before my time, but I would
5 speculate that maybe that was 50 percent as well.

6 Q. What about the last fully litigated case,
7 what percentage did they get of what they asked for?

8 MR. BRILL: Charles, can you help me with
9 that one?

10 MR. PETERSON: No.

11 MR. BRILL: I don't know.

12 Q. (BY MR. BALL) If I suggested that they
13 got about \$100 million out of somewhere between 3 and
14 \$400 million, does that sound ballpark?

15 A. For several cases added together?

16 Q. No, for one.

17 A. I can't --

18 Q. Well, there was a number of dockets
19 involved, but they were essentially all rolled
20 together.

21 MR. HUNTER: I will object at this point,
22 I think that misstates the record. I don't believe
23 the Company has ever filed a rate case for 3 or \$400
24 million.

25 MR. GINSBERG: Plus, the way the question
26

1 is asked, there's no way to check it. I think if he
2 provides the documents and so on, the Commission's
3 public record of what was asked and what was
4 granted --

5 MR. BALL: I remind the Commission that
6 Dr. Brill answered my initial question about making
7 comparisons of percentages in the affirmative. It
8 appears that that may not have been entirely
9 accurate.

10 COMMISSIONER CAMPBELL: I think Dr. Brill
11 was expressing where he made those and where he did
12 not, and it appears he did not make them in every
13 instance that you are raising.

14 Q. (BY MR. BALL) Would you have a concern,
15 Dr. Brill, if you saw that in fully litigated cases
16 the percentage of the rate request that the Company
17 filed that they got was considerably lower than the
18 percentage that they were getting on a trend basis in
19 the last two settled cases, and in particular in this
20 case?

21 A. Of course I would have a concern. But I
22 had to look at the facts of the current case, the
23 situation of the Company, the large investments, the
24 growth in load and electric demand, and I had no
25 doubt as soon as the application was filed in March

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1 that this was going to come in most likely for more
2 than 50 percent, again, using very round numbers.
3 It's because of the unique aspects of the current
4 filing.

5 Q. Now, the statutory, or one of the
6 statutory responsibilities of the Division of Public
7 Utilities is, and I apologize, I'm unable to quote it
8 absolutely precisely, but what it boils down to is
9 that the Division is required to make all of the
10 information available to the Public Service
11 Commission so that the Public Service Commission can
12 make a determination.

13 What proportion of all of the information
14 in this case has the Division of Public Utilities in
15 fact made available to the Commission at this point?

16 MR. GINSBERG: I guess I'm not sure what
17 statutory provision you're referring to, but -- and I
18 guess I'm not sure what the question really goes to.
19 I mean, the testimony that was filed is the
20 information that's being provided. Is there some --
21 I don't know how somebody could answer that kind of
22 question, but --

23 MR. BALL: Well, let's see if Dr. Brill
24 would like to try or Mr. Thompson.

25 MR. BRILL: I'll give it a try. Thank
26

1 you.

2 Of course there's different levels of
3 confidential information that the Division has access
4 to. There's confidential information, there's double
5 confidential information. Sometimes we can only look
6 at things in Portland or across the way over at
7 PacifiCorp. I don't believe that type of information
8 would be going to the Commission.

9 Q. (BY MR. BALL) You don't think that the
10 Public Service Commission is entitled to see
11 confidential or even super confidential information?

12 A. They would have to make confidentiality
13 arrangements with the Company.

14 Q. I'm stunned. I think you ought to have a
15 chat with your counsel about that.

16 MR. GINSBERG: Obviously, confidential
17 information could get provided to the Commission if
18 it's needed. But in this case we've provided a
19 rather detailed summary of the audit that was done by
20 the Division.

21 Obviously, the testimony of each
22 individual witness wasn't individually filed, but in
23 this particular settlement the Division provided more
24 detailed testimony of the audit that was done to
25 support the terms of the settlement than has been

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1 done in the past, providing not only a detailed
2 explanation of the accounting audit, but also a
3 detailed explanation of the rate of return analysis
4 that was done in order to aid us in providing
5 information to the Commission as to the
6 reasonableness of the settlement.

7 MR. BALL: Mr. Chairman, I thank the
8 Division's counsel for testifying so effectively.

9 COMMISSIONER CAMPBELL: Well, Mr. Ball,
10 you are asking certain legal questions.

11 MR. GINSBERG: I think he's perfectly free
12 to ask questions on the testimony that's been filed.
13 It provides detailed information in a summary fashion
14 of the audit that was performed. In any proceeding
15 there's data requests and information that is there.
16 So what we've provided is what we've provided, which
17 is --

18 MR. BALL: Unreasonable.

19 MR. GINSBERG: I'm sorry, Mr. Ball, which
20 in this case we believe is significantly more the
21 analysis that was performed than many other
22 settlements. Particularly we did that in light of
23 the testimony of each individual party not yet having
24 been filed.

25 Q. (BY MR. BALL) I would like to return to
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1 my first question in this round of inquiry. I would
2 like to ask Dr. Brill to take another shot, if he
3 will, please, at estimating for us the proportion of
4 all of the information that's available in this case
5 that the Division has provided to the Commission.

6 A. I would be unable to estimate that number.

7 Q. Would it be a quarter or more than a
8 quarter?

9 MR. GINSBERG: I think he already answered
10 the question.

11 MR. BRILL: That's a guess and I couldn't
12 estimate that.

13 COMMISSIONER CAMPBELL: The question has
14 been asked and answered.

15 Q. (BY MR. BALL) At what point, Dr. Brill,
16 do you think that the Division compromising the
17 outcome of a case such as this, in fact, acts as a
18 barrier to the Commission fulfilling its statutory
19 duty to determine just and reasonable rates?

20 A. I don't believe the Division compromised
21 this case.

22 Q. Oh.

23 A. I think you used that word. I don't
24 understand that.

25 Q. Would you like to expound on that?

26

1 A. No. You're the one that asked the
2 question.

3 Q. Well, isn't it right that the Division
4 gave up on some positions that it would have adopted
5 in a fully litigated proceeding?

6 A. Within the context of settlement
7 negotiations there was an audit, an expedited
8 schedule, probably at least a dozen near all-day
9 settlement meetings or negotiations. There was a
10 settlement and we felt it was a good one.

11 Q. But isn't it right that the Division gave
12 up some of the positions that it would have advocated
13 in a fully litigated proceeding?

14 A. The settlement was fundamentally different
15 than a fully litigated proceeding, that's correct.

16 Q. Would you please tell me whether or not
17 you gave up some positions that you would have
18 advocated in a fully litigated hearing?

19 A. That's very difficult to determine because
20 our auditors had suggested significant adjustments,
21 downward adjustments against the Company, and had the
22 audit continued on for a few more weeks there would
23 have been small adjustments found and so on. But in
24 assessing the overall package, I think the settlement
25 was timely and was well thought out.

26

1 Q. Isn't it the case that in the course of
2 settlement discussions parties were quite open with
3 one another that they were giving up positions that
4 they would have adhered to in litigated hearings in
5 order to find a settlement?

6 MR. GINSBERG: I think it's inappropriate
7 to ask questions about --

8 MR. BALL: This is procedural, Chairman,
9 not detail.

10 COMMISSIONER CAMPBELL: Well, Mr. Ball, as
11 I read 54-7-1(2)(b), "The Commission shall reserve to
12 the parties the right to maintain appropriate
13 confidentiality in the negotiation process even when
14 the Commission uses the settlement process to resolve
15 a disputed matter."

16 And the questions you're asking really,
17 I'm getting the feeling, could violate the
18 confidentiality that's required in a settlement
19 process. I think as a Commission we are aware that
20 when parties enter into settlement negotiation
21 compromises are made and positions are relinquished
22 as they get something on the other side. I mean,
23 that's the nature of a bargain. So go ahead with
24 your next question.

25 MR. BALL: Thank you, Chairman.

26

1 It sounds as if you accept that the
2 Division at least has moved away from positions that
3 it would have held in order to settle. In other
4 words, the Division has compromised in order to
5 achieve a settlement.

6 MR. GINSBERG: Commissioner, I think he
7 should ask questions rather than make speeches to the
8 Commission. You already ruled on the objection.

9 COMMISSIONER CAMPBELL: Go ahead and
10 continue with your cross-examination, Mr. Ball.

11 MR. BALL: Thank you.

12 Q. (BY MR. BALL) Dr. Brill, as you
13 understand it, has the Commission or any member or
14 members thereof expressed an interest in seeing this
15 case settle?

16 A. I am not aware of that, nor have I heard
17 directly or indirectly from anyone.

18 MR. BALL: Thank you, Dr. Brill.

19 Chairman, I would like, if I may now, to
20 move to the Committee's witnesses. Again, I don't
21 mind whether these answers come from Ms. Deronne or
22 from Dr. Warnick.

23 REED T. WARNICK AND DONNA DERONNE,
24 recalled as witnesses, were examined and testified
25 further as follows:

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1 CROSS-EXAMINATION

2 BY MR. BALL:

3 Q. What criteria does the Committee use in
4 making its recommendation that this settlement is in
5 the public interest, please?

6 MR. WARNICK: I'm not sure if I'm
7 responding being recognized as the Interim Director
8 by Mr. Ball or not, but I will respond anyway.

9 The Committee is guided by statute and the
10 Committee is set up by members appointed by the
11 Governor. And as Mr. Ball knows when he was Director
12 of the Committee staff, these issues and questions
13 are presented for final decision to the formal
14 Committee, which by appointment of the Governor
15 represents the diverse interests of residential and
16 small commercial ratepayers in Utah.

17 And so that decision is a collaborative
18 one made between Committee staff and the members of
19 the Committee appointed by the Governor.

20 Q. (BY MR. BALL) Thank you, Dr. Warnick.
21 Could you in fact answer my question? What criteria
22 did you use?

23 MR. WARNICK: Well, the statute says we're
24 to take a position that represents the majority of
25 residential consumers.

26

1 Q. (BY MR. BALL) But what criteria do you
2 use to judge whether or not something is in the
3 public interest?

4 MR. WARNICK: We listen to the Governor
5 appointed and committee -- Governor appointed members
6 of the Committee.

7 Q. (BY MR. BALL) Are there, in fact, any
8 criteria?

9 MR. WARNICK: Beyond that, no. I think
10 there's quite wide discretion, I think appropriately
11 so, given to a group of individuals who have become
12 somewhat educated on the complexities of utility
13 regulation and make what I believe are informed and
14 enlightened decisions in that respect.

15 Q. (BY MR. BALL) Can you tell us at which of
16 its meetings the Committee voted to approve this
17 Stipulation?

18 MR. PROCTOR: Excuse me, Mr. Ball. Just
19 one moment. I believe that Mr. Ball invited both
20 witnesses to respond to his questions and Ms. DeRonne
21 does have -- would like to respond to his question
22 pertaining to the criteria utilized to come up with
23 just and reasonable rates.

24 COMMISSIONER CAMPBELL: Go ahead.

25 MS. DERONNE: If I may, I would like to
26

1 add to what Mr. Warnick has just said. When you're
2 looking at the overall rates and the calculations and
3 requests filed by the Company, we look a great deal
4 into what is included in that request, how those
5 amounts were derived. And you've got two goals. One
6 is to make sure customers -- that rates are at a
7 level -- you balance the amount ratepayers are
8 paying, but also you have to consider the overall
9 quality of that service and the reliability of the
10 system.

11 So you can't look at just the overall
12 dollar amounts of increase in a vacuum, you have to
13 also consider the amount the Company actually needs
14 to provide that service at a reasonable level.
15 That's why we go through the cost of capital
16 calculations, to see what kind of return on
17 investment is fair and reasonable for the Company,
18 along with making sure the Company can recover its
19 costs that it does need to serve those customers.

20 So just and reasonable rates would be
21 those rates that allow the Company a reasonable
22 opportunity to earn a fair rate of return on its
23 investment in the system and also allow for a
24 reasonable level of service quality to customers.

25 MR. BALL: I'm going to think about that

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1 for a moment, Ms. DeRonne, and maybe want to come
2 back on it.

3 Q. (BY MR. BALL) But in the meantime, if I
4 could go back to where I was heading before. Dr.
5 Warnick, what steps has the Committee taken to inform
6 and educate the public about this Stipulation and to
7 inquire what the public at large thinks about it?

8 MR. WARNICK: Well, I believe that we do
9 post items on our website, but I think principally we
10 are following the directives of the statute, that we
11 present the information to the appointed
12 representatives of the public in this case, seek
13 their advice and consultation and govern ourselves
14 accordingly.

15 Q. (BY MR. BALL) Did the Committee at any
16 point in this process ask that the Company take steps
17 to ensure by purchasing advertising in the media that
18 this information would be disseminated to the public?
19 Did it ask at any point that the Company send out
20 this information in the form of a bill stuffer?

21 MR. WARNICK: No, it did not. I think
22 your questions are really going to the purposes of
23 the statutory arrangement of the Committee and that
24 was determined by the Legislature. In other words,
25 we looked to the Committee members to give us

26

1 guidance on what a majority of residential ratepayers
2 in Utah need and deserve.

3 Q. (BY MR. BALL) That brings me back to the
4 question that I asked before that Mr. Proctor
5 intervened to give Ms. DeRonne an opportunity to
6 speak. At which of the Committee's meetings did the
7 Committee vote to support this Stipulation?

8 MR. WARNICK: I think I address that in my
9 written testimony. It was in the last Committee
10 meeting and I --

11 Q. (BY MR. BALL) Was that early July, to
12 your recollection?

13 MR. WARNICK: July 18th, 2006.

14 Q. (BY MR. BALL) Thank you.

15 Now, at that particular time you commented
16 earlier that the Committee relies upon the growing
17 expertise of its members. Isn't it a fact that at
18 that meeting, two of the members of the Committee
19 were newly appointed and attending their first
20 Committee meeting?

21 MR. WARNICK: That is correct.

22 Q. (BY MR. BALL) Thank you.

23 Did any of the members of the Committee at
24 that meeting, or at any other time, suggest that the
25 Committee should ask the Company to arrange paid
26

1 publicization of the details of this Stipulation or
2 put something in bills or anything of that kind?

3 MR. WARNICK: Not that I recall.

4 Q. (BY MR. BALL) Has the Committee or any
5 part thereof at any point in this proceeding
6 suggested that in establishing a public witness
7 hearing in connection with this proceeding today,
8 that there should be wide publicity given, either
9 through the media or through bill stuffers, and that
10 there should be -- the thing should be timed in such
11 a way as to ensure that the broadest possible
12 selection of the public would have an opportunity to
13 look into the matter and decide whether or not they
14 wanted to come and speak?

15 MR. WARNICK: Well, I know that the
16 Committee is generally aware of the provisions for
17 public witness day as it has operated in the past. I
18 think if you were to ask them, are there any possible
19 improvements that could be made, some might say yes.
20 But I haven't detected any deep-felt concern or a
21 need to change that procedure.

22 Q. (BY MR. BALL) Does the Committee have any
23 concern that in joining a Stipulation such as this
24 one it may be usurping the Commission's role in
25 determining rate cases such as this?

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1 MR. PROCTOR: Excuse me, Mr. Chairman, but
2 I have to object. He's calling for a legal
3 conclusion with respect to the relationship between
4 the Committee in connection with litigation and the
5 Commission's ultimate decision. So therefore, I
6 don't believe it's an appropriate question.

7 MR. BALL: My understanding, Chairman, is
8 that Dr. Warnick is not only an attorney by
9 profession, but is appearing here as the Committee's
10 policy witness. This is a policy question that I'm
11 asking, I think.

12 MR. WARNICK: I can respond. I think it
13 doesn't matter in what form evidence or material is
14 submitted in the hearing to the Commission. They
15 always have the obligation to determine that whatever
16 is to go into rates are just and reasonable and in
17 the public interest, whether that's in the form of a
18 fully litigated hearing or whether that's in the form
19 of a stipulated settlement. I will add that to my
20 knowledge the parties that have participated in
21 settlements, one of their primary concerns is to make
22 sure that enough evidence is presented in the record
23 that the Commission can make that determination.

24 MR. BALL: I would like to revisit Ms.
25 DeRonne's response earlier to the question about
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1 criteria.

2 Q. (BY MR. BALL) Ms. DeRonne, what I heard
3 you talking about were the balance, for example,
4 between revenue for the utility company and its
5 ability to assure reliable service. I heard you
6 talking other than that about the ability of the
7 Company to make a particular rate of return, whatever
8 that might be.

9 Did you have anything at all to add in
10 terms of criteria that might address the question of
11 the interest of members of the general public in this
12 issue?

13 MS. DERONNE: Yes. And briefly, if I
14 could state, I said to allow the Company a reasonable
15 opportunity to earn a rate of return. There's no
16 guarantee, just the opportunity to --

17 Q. (BY MR. BALL) I didn't mean to
18 misrepresent what you said. If I did, I apologize.

19 MS. DERONNE: Now, with regards to your
20 question with regard to whether or not an increase is
21 fair and reasonable for consumers?

22 Q. (BY MR. BALL) No. The question is about
23 criteria and the question is about assessing whether
24 or not members of the public at large would consider
25 that criteria have been met to ensure that the

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1 Stipulation is in their interest.

2 MS. DERONNE: To some degree. My
3 experience in many states is that consumers don't
4 typically represent themselves in rate cases, they
5 depend on Commission staff and consumer groups such
6 as the Committee to either internally have experts or
7 to retain outside experts to look at that filing to
8 ensure that the costs for which the Company is
9 seeking recovery are reasonable and prudent costs and
10 are needed to provide that reliable level of service
11 to those customers.

12 Typically you don't have consumers
13 individually look at the filing. They can be very
14 detailed and a lot of information that perhaps your
15 average customer would not know how it all ties
16 together in determining a reasonable revenue
17 requirement. Here in Utah you have the Division, you
18 have the Committee of Consumer Services, AARP, UAE,
19 UIEC, many parties all looking at these filings to
20 ensure that the cost included in those filings are
21 needed and are reasonable and prudent expenditures.

22 Q. (BY MR. BALL) So are you suggesting that
23 if all of these different folks that you have just
24 listed consider that the public interest is met that
25 inevitably the public interest is met?

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1 MS. DERONNE: In my opinion, that is the
2 goal of those parties representing those customers,
3 and the Committee represents the residential and
4 other customer groups. And their goal in this end
5 and being involved in both their review of the filing
6 and the settlement discussions is to represent those
7 customers' interests. And that's the overall driver
8 and role of our position and in our acceptance of the
9 settlement in this case.

10 Q. (BY MR. BALL) You don't think, then, that
11 when the Company -- and I totally agree with you
12 about the size of the task in this case, and in
13 numerous other ones -- when a Company makes -- in
14 fact, whenever it was, March/April time, an
15 application for a rate increase that takes up 12
16 lateral inches on my bookshelf, when that's rapidly
17 followed by many days of private negotiations, which
18 I believe it was Mr. Ginsberg reminded us not too
19 long ago, we aren't supposed to even talk about in
20 this public forum, that there might be a significant
21 number of members of the public out there who really
22 question whether all of these folks who have so many
23 conflicting interests -- for example, in the case of
24 the Committee, a relatively small budget compared
25 with the budget of the utility company, a relatively
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1 small number of people to work on it -- you don't
2 consider that members of the public, residential
3 customers, small business customers in particular,
4 with regard to the Committee might legitimately and
5 genuinely have questions about whether or not a deal
6 has been struck here because the Committee is afraid
7 that it will do even worse if it fully litigates
8 because it doesn't have the resources to do the job
9 adequately?

10 MR. PROCTOR: Excuse me, Mr. Chairman, but
11 I have to object to that question in particular.
12 One, it's based upon assumptions that are not in
13 evidence, for example, that a majority of the public,
14 whether they be customers or not, have expressed any
15 interest level on a position. But also it becomes
16 argumentative with respect to his characterization of
17 the Committee's actions as well as the public's.
18 It's, in addition, a compound question. And if
19 perhaps Mr. Ball could restate it question by
20 question in a more appropriate manner that would
21 help.

22 COMMISSIONER CAMPBELL: Could you try
23 again, Mr. Ball?

24 MR. BALL: I would love to. Thank you.

25 Q. (BY MR. BALL) Ms. DeRonne, to your
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1 understanding, are there restraints on the Commission
2 -- on the Committee of Consumer Services' resources?

3 MS. DERONNE: I think the Committee
4 themselves would have to answer that. I know our
5 budget in this case I thought was sufficient for the
6 task at hand. It's actually pretty good in Utah
7 compared to some other states' budgets that are
8 available for the review of these filings.

9 In addition to their budget, they also
10 have in-house staff that looks at these matters
11 year-round. So my view for this case, and again the
12 other experts retained by the Committee, I haven't
13 heard any complaints, but I cannot speak to the
14 budget constraints internally within the Committee.
15 But perhaps Mr. Warnick can address that.

16 MR. BALL: I'll take your advice and
17 address the question in a slightly different form to
18 Dr. Warnick.

19 Q. (BY MR. BALL) Dr. Warnick, would you
20 agree with me that the Committee has about \$1.00 to
21 spend in representing residential and small business
22 consumers compared to about \$7.00 spent by the
23 utility?

24 MR. PROCTOR: Mr. Chairman, I hate to cut
25 off an examiner in the middle of cross-examination,

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1 but I think we're now far afield from the issue at
2 hand. And if there can be some tie perhaps to the
3 reasonableness of this Stipulation in Mr. Ball's
4 current line of questioning that perhaps should be
5 stated and then he can be permitted to go on. But
6 other than that, I think I would have to object to
7 the relevance of it.

8 MR. BALL: I think if I can have a little
9 latitude after the answer to this one the tie will
10 become apparent.

11 MR. WARNICK: I can respond. Mr. Ball, as
12 you and I both know when you were Director, I think
13 we both discussed on several occasions that the
14 Committee is somewhat constrained on the funds it has
15 available. I don't think that's a condition that's
16 unique to the Committee today.

17 That being said, the Committee has always
18 had -- has always regarded major rate cases as very
19 important proceedings for review and careful
20 consideration. We've always had the funds to
21 allocate to the procedure of reviewing those major
22 rate cases adequately. And so it has not been my
23 experience since I've been associated with the
24 Committee in one capacity or another that we have not
25 had sufficient funds to perform our function in a

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1 general rate case. And in particular a very large
2 PacifiCorp general rate case.

3 Q. (BY MR. BALL) Dr. Warnick, isn't a factor
4 in your decision to enter into settlements in cases
5 like this always that the outcome of fully litigated
6 proceedings might be worse than the settlement?

7 MR. WARNICK: Yes. I would say that is
8 generally a factor, yes. I mean, first of all I
9 would point out that we are encouraged by statute to,
10 where appropriate, enter into negotiations. And
11 having said that, I guess one of the considerations
12 that we have an obligation to make is whether we
13 would be or whether our constituents would be better
14 or worse off in pursuing litigation or in reaching a
15 settlement.

16 Q. (BY MR. BALL) Wouldn't you have gone for
17 a much lower overall number if you were litigating
18 this case?

19 MR. WARNICK: I think our opening position
20 in litigation unquestionably would have been lower
21 and more aggressive. Having said that, as obvious by
22 the settlement that we reached, it's understood that
23 not all of those initial positions we might have
24 taken in litigation would have prevailed or have had
25 serious consideration by the Commission.

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1 Q. (BY MR. BALL) How many witnesses,
2 approximately, do you think you would have mustered
3 in a fully litigated case?

4 MR. WARNICK: That we would have brought
5 on our side?

6 Q. (BY MR. BALL) Yes.

7 MR. WARNICK: I'm just trying to recall
8 offhand. I think we had, I would say, four or five
9 witnesses that worked on this. Ms. DeRonne may have
10 a better tally at the moment.

11 COMMISSIONER CAMPBELL: While they're
12 working on that, Mr. Ball, a lot of your questions
13 deal with, frankly, the general nature of the statute
14 as to what a regulation would hold. So after they
15 answer this question, if you could just perhaps
16 narrow your question to be more specific to the
17 Stipulation before us, I would appreciate it.

18 MR. GARDINER: In the meantime, Mr.
19 Chairman, we would remind the Commission --

20 COMMISSIONER CAMPBELL: I can't hear you.

21 MR. GARDINER: Dale Gardiner. In the
22 meantime, Mr. Commissioner, public witness day is
23 supposed to start at 11:30, just to remind the
24 Commission.

25 COMMISSIONER CAMPBELL: We're aware of
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1 that and I'm looking to a show from the Committee to
2 tell me when someone shows up and we would go
3 directly to public witness day.

4 MR. WARNICK: Just in answer to the last
5 question, we had seven to eight witnesses that
6 perhaps would have participated in a fully litigated
7 proceeding.

8 Q. (BY MR. BALL) And how many witnesses
9 would you have expected the Company to put up?

10 MR. WARNICK: I really can't answer that.
11 They had -- in their application they had several
12 witnesses that filed initial testimony. The number I
13 don't recall exactly.

14 Q. (BY MR. BALL) That number is a good
15 starting point perhaps and there are quite a few
16 there, aren't there?

17 MR. WARNICK: Right.

18 Q. (BY MR. BALL) Lots more than the
19 Committee were thinking about bringing forward?

20 MR. HUNTER: Again, that misstates the
21 record.

22 COMMISSIONER CAMPBELL: Mr. Hunter, we
23 can't hear you.

24 MR. HUNTER: Objection, that misstates the
25 record. Again, the Company's prefiled testimony was

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1 12 witnesses, 11, 12.

2 MR. BALL: Great. Okay. Thanks, Mr.
3 Hunter for that clarification:

4 I'm going to try and comply with your
5 request, Chairman. I need a minute's thinking time
6 to try and bring that together.

7 Q. (BY MR. BALL) Given the fact -- I guess
8 I'm back with Mr. Warnick -- Ms. DeRonne because this
9 is rather more of a policy question, I think.

10 Given the fact that the Committee is
11 recommending as in the public interest a settlement
12 that is larger than it would have applicated in
13 litigated proceedings, given the fact that the
14 Committee is significantly resource limited compared
15 with the utility and perhaps some other parties, is
16 it not in fact the case, Dr. Warnick, that what the
17 Committee is recommending here may very well not be
18 in the public interest in terms of the dollar and the
19 percentage amounts, but that it seemed to the
20 Committee to be in its interests to be able to put
21 this case behind it and move on?

22 MR. WARNICK: No, I really don't believe
23 that describes the Committee's motivation or
24 perspective. We take seriously, as you know when you
25 were on the Committee, or Director of the Committee,

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1 to represent ratepayer interests. And I think had we
2 concluded that the -- that our constituency would
3 have been better off taking this case through
4 litigation, at least in my own mind, I have no
5 question whatsoever that we would have done that.

6 I would also mention a couple of other
7 aspects. By the -- and I fully agree with you. I
8 think there are times when it's better that disputes
9 go to litigation. There are times where maybe the
10 full size of the dispute be placed before the
11 Commission despite also their limited resources.
12 However, in this case, in addition to the dollar
13 aspects of the settlement, we believe that we
14 achieved some other aspects that probably would not
15 have been achieved had we gone through litigated
16 hearing. And one of those was the withdrawal of the
17 utility's PCAM application and the second was what
18 we've been referring to in Mr. Taylor's testimony, a
19 stay-out. We believe those are very desirable
20 features.

21 And the third item that Ms. DeRonne
22 discussed is we were able to build into the
23 settlement what we feel is greater accountability on
24 the part of the utility for how it intends to spend
25 the money that has been budgeted for better
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1 maintenance of the distribution system here in Utah.

2 So we think those were very desirable
3 objectives that the settlement process facilitated us
4 being able to achieve.

5 Q. (BY MR. BALL) At what point, Dr. Warnick,
6 do you think that it becomes desirable as a matter of
7 public policy, and in particular a policy on the part
8 of a Committee that's mandated to represent the
9 interests of a majority of residential and small
10 business consumers to say, enough, settlement is
11 enough?

12 If I may remind you of the numbers that I
13 talked through with Dr. Brill earlier, since the 1st
14 of April 2002, two settled cases totaling a 9.4
15 percent increase in the average residential bill, a
16 10.3 percent increase here for a total since '02 of
17 20.67 percent.

18 As a second question related to that, is
19 there a point at which it becomes evident that the
20 Company's tactics in asking for much, much more than
21 it is prepared to settle for in bringing forward
22 cases such as the PCAM case and being willing to
23 trade it away, being willing to trade away a
24 stay-out, isn't there a case in which this becomes a
25 question of just how far can a Committee of Consumer
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1 Services stand up to the 800-pound gorilla?

2 MR. WARNICK: Well, I guess I would be the
3 first to say that the Committee's responsibility is
4 not an easy one. I think it's a heavy
5 responsibility. Having said that, I think the
6 Committee has done remarkably well. I don't
7 necessarily disagree with your point that it's always
8 -- that there is a problem just to settle and settle
9 and settle if that, in fact, denies the Commission
10 the opportunity to make better informed decisions.

11 And I think that's, in this case and in
12 other cases that we have recently looked at, I think
13 that's been one of the concerns of the Committee is
14 that is this a case where the public is better served
15 by laying the issues before the Committee? Are they
16 in such a format -- or before the Commission that the
17 Commission can deal with them and effectively make
18 policy decisions? Or is this a case because of the
19 complexity, or whatever it is, and the risks of going
20 to litigation, settlement is more appropriate?

21 Those tend to be ad hoc case-by-case
22 decisions. I'm not sure it's really best to simply
23 say because the last two or three have been settled
24 that therefore we have a problem. I think Dr. Brill
25 mentioned these cases are all looked at and analyzed

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1 on their own merits. So I, at least, would be
2 reluctant to try to draw some broad general
3 conclusion as to whether or not too many are being
4 settled or not enough are being settled.

5 MR. BALL: Well played, sir.

6 Thank you very much, Chairman.

7 COMMISSIONER CAMPBELL: Thank you.

8 MR. HUNTER: Mr. Chairman, just a couple
9 of questions.

10 COMMISSIONER CAMPBELL: You might want to
11 hold your redirect until after we ask our questions
12 and that way you can do it all at once.

13 Are there any other parties that intend to
14 provide testimony at this proceeding?

15 All right. Commissioner Boyer?

16 COMMISSIONER BOYER: Thank you, Mr. Chair.

17 I have just one or two questions that go
18 to the substance of the Stipulation. And the first I
19 would like to direct to Mr. Taylor.

20 In your summary testimony at the beginning
21 of this hearing you referenced the reporting
22 requirements under the Stipulation and you talked
23 about reporting for the entire Company and also
24 breaking out for the Rocky Mountain states.

25 Is this requirement to report for the
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1 Rocky Mountain states in addition to the types of
2 reporting that the Company has historically provided
3 the Commission?

4 MR. TAYLOR: Yes. This is in addition to,
5 not in replace of.

6 COMMISSIONER BOYER: Thank you.

7 And my second question, also going to the
8 substance of the Stipulation, I'll address to any of
9 our panelists, our four experts here. And, that is,
10 -- well, it's represented that some of the increased
11 cost that is being recovered or asked to be recovered
12 in this case is a direct consequence of the necessity
13 to add resources. We have load growth, people
14 putting in air conditioners, building larger houses
15 and those sorts of things. And in the Stipulation
16 we've contemplated the addition of some of these
17 resources, for example, Lakeside and also Desert
18 Power.

19 Does the Stipulation contemplate the
20 possibility that one or more of these resources may
21 not come online when projected? What happens, for
22 example, if Lakeside, for some unforeseen reason, is
23 delayed and does not come into operation?

24 MR. TAYLOR: Let me address that to begin
25 with. The Stipulation just lays out dates upon which

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1 price changes will occur. There are no provisions in
2 there for other specific events, such as the
3 in-service date of the Lakeside Power Plant as a
4 condition of those rates going into effect. And I
5 can't speak for the other parties as to what they
6 took into consideration in agreeing to those dates.
7 But the Stipulation itself does not have any
8 requirement of the specific resource coming online.

9 COMMISSIONER BOYER: Would anyone else
10 like to address my question?

11 Thank you, Mr. Taylor.

12 MS. DERONNE: Briefly, one of the key
13 target dates for the credit, the \$30 million credit
14 being lifted is June 1st. During the settlement
15 discussions that was a concern of the Committee, the
16 timing of when Lakeside comes on. And based on
17 discussions with the Company we were fairly
18 comfortable that they should meet their on date
19 targets or close thereto. There are large contracts
20 in place with regards to this project that encourage
21 it coming online on time.

22 As far as the amount of increase was
23 derived, the Committee itself, at least all the
24 parties had different methods of determining the
25 amount of revenue requirement to be allowed. The
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1 larger projects the Committee did not factor out,
2 such as the scrubbers going online, Currant Creek and
3 Lakeside plants. But we weren't supportive of that
4 \$30 million until after the projected date of
5 Lakeside coming online.

6 For some of the other capital expenditures
7 the Committee did have some concerns and as part of
8 the settlement discussions between the parties there
9 were some considerations. We did go from the \$194
10 million request to the 115. Some of the items that
11 were considered was, shall we say, the likelihood
12 that some of those latter capital expenditures will
13 come online that date, and the Committee in its
14 support of that position had considered that, that
15 the larger projects, the three largest ones,
16 specifically identified out in the Company's
17 testimony, were factored into the Committee's
18 recommendation.

19 COMMISSIONER BOYER: Thank you.

20 Mr. Brill, it looked like you wanted to
21 weigh in as well. Dr. Brill, I should say.

22 MR. BRILL: We did consider that. There
23 was a high expectation for the Lakeside plant to be
24 online at that time. By addressing aspects in the
25 two-phased approach and so on, the Division

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1 especially considered when plants are used and useful
2 and so on. So it was an important consideration and
3 ultimately I would say the Division is not precluded
4 from taking action like another rate case if an
5 unforeseen event like that occurred.

6 COMMISSIONER BOYER: That was the answer I
7 was looking for. Thank you.

8 COMMISSIONER CAMPBELL: Let me follow up.
9 And I'll follow up on a question and turn it over to
10 Commissioner Allen and then I'll come back for a few
11 more of mine.

12 Commissioner Boyer asked a question about
13 reporting. I want to follow up on that with Dr.
14 Taylor as well as Dr. Brill.

15 First of all, I think I heard from you,
16 Mr. Taylor, that the Company would continue its
17 current reporting and that item 16 was just an
18 addition?

19 MR. TAYLOR: That's correct.

20 COMMISSIONER CAMPBELL: Now, with the
21 current reporting, it's my understanding that the
22 Company no longer details adjustments, that they kind
23 of lump all type 2 adjustments together and other
24 types of adjustments together.

25 This is my question. Frankly, it goes
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1 along the line Mr. Ball was asking. This is the
2 third Stipulation, and were we to approve this, we've
3 got three Stipulations and we're in an environment of
4 forecast test years. And based on, you know, Company
5 -- my understanding, they don't spell out the
6 Commission adjustments like Questar does in their
7 semiannuals. How do you monitor earnings in that
8 environment? How do you as a Division make a
9 decision is the Company overearning or not?

10 So let me go with Dr. Brill and maybe
11 we'll come back to you. Or, Mr. Taylor, it looks
12 like you can go first.

13 MR. TAYLOR: Let me go first. I believe
14 in the semiannual filings that the Company makes we
15 do continue to lay out normalization adjustments,
16 adjustment by adjustment, to get from actual to
17 normalized results. So I don't think there's just
18 one long lump adjustment in there. So I think we do
19 lay out those specific adjustments.

20 There may be some confusion between what
21 we file in a semiannual and historical period and how
22 a forecast is projected, where in a forecast all your
23 adjustments really are incorporated in getting to the
24 forecast as opposed to relying on adjustment by
25 adjustment in the filing. But in the historical
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1 period, all of those adjustments have been laid out.
2 And I believe that's how we provide our semiannual
3 reports.

4 COMMISSIONER CAMPBELL: So on a
5 going-forward basis with your number 16 in your
6 Stipulation, you still will provide the Division
7 regulators with a historical look spelled out on a
8 disaggregated basis so that we can do allocation
9 factors between states and so forth and so we can
10 take a historical look, did the company overearn in
11 this period, as well as providing what your forecast
12 would be for a test year so that regulators can have
13 an idea whether or not they feel they ought to call
14 you in for a rate case?

15 MR. TAYLOR: Right. The agreement in the
16 Stipulation is just part of the historical reporting
17 requirement. There is a separate letter agreement
18 between the Company and the Division and the
19 Committee that says we'll also on an annual basis
20 provide forward forward-looking results that go out
21 two years beyond the historical period. And those
22 will be presented in similar format, perhaps not in
23 the exact same level of detail that the historical
24 one is provided, but they will look forward again by
25 functional group, by a FERC account, and all of that

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1 stuff will be on a forward look as well. But all of
2 the historical information that we've provided to the
3 Commission and the Division and many of the other
4 parties will continue as it's been provided in the
5 past.

6 COMMISSIONER CAMPBELL: Dr. Brill?

7 MR. BRILL: The Division was pleased to
8 get this letter dated July 21st. It was from the
9 Company to both the Committee and the Division. It
10 is found at my Exhibit 2.2. I think it's entirely --
11 and the Division, I'm certain, was encouraged to get
12 a statement from the Company on the forecasted
13 results of operations as well as more detail on a
14 variance report and so on. So I refer you to my
15 Exhibit 2.2.

16 COMMISSIONER CAMPBELL: So you're
17 confident that as a regulator you will be able to
18 track their earnings and make decisions whether you
19 ought to initiate a rate case?

20 MR. BRILL: That additional letter of
21 commitment beyond the Stipulation did help to assure
22 the Division on these matters.

23 COMMISSIONER CAMPBELL: All right.
24 Commissioner Allen?

25 COMMISSIONER ALLEN: Thank you, Mr. Chair.

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1 Just as we're talking about the data and
2 the information that's here before us, I'm reminded
3 of a question, Mrs. DeRonne, for you, please. Dr.
4 Brill, if you want to add anything.

5 In looking at the list of adjustments,
6 there are 20, 21 some odd adjustments here. In your
7 experience, Ms. DeRonne, is that a fairly extensive
8 list? I'm looking at DPU Exhibit 2.3.

9 MS. DERONNE: 2.3, I believe that was the
10 attachment to Mr. Brill's testimony?

11 COMMISSIONER ALLEN: 2.3 and 2.4, correct.
12 Is this a fairly extensive list, in your experience,
13 in dealing with these cases?

14 MS. DERONNE: I would say it's typical.
15 Typically you see anywhere from 10 to 30 to 40
16 adjustments, depending on the specific issues within
17 the case. The Committee used different adjustments
18 in deriving its amounts. Some were very similar to
19 what the Division did and some were different.
20 Some -- in some cases there was some overlap. I
21 would say we probably had around the same level of
22 total number of adjustments as the Division had with
23 overlaps.

24 COMMISSIONER ALLEN: Thank you.

25 Dr. Brill?

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1 MS. DERONNE: But, yes, I would think
2 that's close.

3 COMMISSIONER ALLEN: Thank you.

4 Dr. Brill, would you characterize that as
5 a comprehensive list? Or tell us how that expands
6 from your viewpoint.

7 MR. BRILL: That is a good question. To
8 make it very clear, those were Division adjustments
9 on that list. And Ms. DeRonne had some similar
10 overlapping adjustments. She also had many
11 additional adjustments, and that's where we had also
12 considered the possibility of adopting the
13 adjustments of other parties. And so we thought that
14 maybe we would adopt possibly a small number of
15 additional adjustments or a larger number, and that's
16 where we sought to develop the Division range.

17 I also don't look at just simply the
18 counts of 20 or 21 adjustments, but I looked at where
19 we were in the schedule. The audit began three weeks
20 before the filing was made. Our audit began on
21 February 15th because of the cooperation of the
22 Company in getting the audit started early, and I
23 think the Stipulation was signed on the 21st of July.
24 Otherwise, the revenue requirement Direct Testimony
25 date was August 9. That was about three weeks before
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1 August 9th. So there was a sense of timing as well,
2 not just the absolute number of adjustments.

3 So I think between the adjustments made by
4 other audit teams as well as where we were overall in
5 terms of how many new adjustments we were coming up
6 with in their size that this was a fairly
7 representative list.

8 COMMISSIONER ALLEN: Thank you.

9 COMMISSIONER CAMPBELL: Mr. Peterson, lest
10 you think you're off the hook, let me ask you a few
11 questions that interest me related to capital
12 structure.

13 As I look at a stipulated ROE in the
14 Stipulation it really doesn't provide much meaning
15 unless you know what capital structure that's applied
16 against. You seem to indicate that a 52 percent
17 equity structure is reasonable. What's unreasonable?

18 I mean, 52 percent, in my memory, is
19 higher than they have been historically. And so 53,
20 54, 55, 56? I mean, how do you see capital structure
21 playing out in the future, let's say, and then you
22 move to actual instead of hypothetical? So what
23 happens in year 2008 if they're at 53 percent or 54
24 percent actual? They can never overearn if they keep
25 adjusting their equity portion up.

26

1 MR. PETERSON: One of the things that we
2 were looking at or were concerned about, going back
3 to including the acquisition but also in this rate
4 case, was the maintenance of a bond rating for
5 PacifiCorp. And in that regard one of the things
6 that we were looking at or that I was looking at
7 specifically on -- with regard to capital structure
8 was what criterion or criteria were being applied by
9 the rating agencies for the bond rating that
10 PacifiCorp currently has.

11 And right now, based upon my analysis, the
12 52 percent capital structure, given the way Standard
13 & Poor, for example, evaluates capital structure
14 where they include both short-term debt, which is not
15 part of the capital structure here, and also an
16 adjustment for purchased power contracts, at 52
17 percent PacifiCorp is right on the lower end of the
18 range that Standard & Poor publishes to maintain an
19 "A" rating on their bond, which the Division felt was
20 a desirable feature.

21 You're right that the Company could
22 continue to increase capital, equity capital to a
23 point where we would start to wonder whether they
24 were going too far. I don't know what the upper
25 limit of that is. One of the things we looked at as

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1 well was, again, in conjunction with the new
2 ownership of PacifiCorp, was how they had capitalized
3 their other electric utility which had been through a
4 recent growth spurt, and I understand -- I mean
5 building spurt. And I understand that's winding
6 down. But they had their equity structure up to
7 about 54 percent and have since brought that down a
8 little bit.

9 Standard & Poor recently published that
10 they expect as they measure the capital structure to
11 be about 50 percent equity under the MidAmerican
12 ownership. If that's the case, then I don't see that
13 we would be having much of a heartburn on our end
14 with that. But like I said, as far as what the upper
15 end would be, if 54, 55, 56 percent we would say is
16 too much. I, frankly, haven't thought through that.
17 We don't seem to be there yet or likely to be there
18 any time in the near further anyway.

19 COMMISSIONER CAMPBELL: When you did your
20 list of comparable companies to come up with an ROE,
21 did you look at their capital structure as well and
22 is this 52 percent on the high end or the low end or
23 in the middle?

24 MR. PETERSON: The only -- I looked at
25 what had been provided by the Company's witness, Dr.

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1 Hadaway in that regard, and 50 percent was perhaps a
2 little bit higher than the average, is my
3 recollection. But there was a range there.

4 As I indicated in my testimony, I have not
5 finished all of the analyses that I may have done,
6 including looking at the capital structure of the
7 individual companies. And so for my list it differs
8 from the Company's guideline companies somewhat, I
9 did not look at that specifically. However, it
10 appeared that it was in the range, so to speak. I
11 was mostly focusing, as I said earlier, on the
12 criterion of the rating agency.

13 COMMISSIONER CAMPBELL: All right. Thank
14 you.

15 And in your redirect are you going to ask
16 any questions related to stipulations in the law?

17 MR. HUNTER: I'll ask one of Mr. Warnick
18 if I may.

19 COMMISSIONER CAMPBELL: Go ahead.

20 REED T. WARNICK,
21 recalled as a witness, was examined and testified as
22 follows:

23 CROSS-EXAMINATION

24 BY MR. HUNTER:

25 Q. Mr. Warnick, is there anything in this
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1 Stipulation that constitutes, that is inconsistent
2 with an existing Commission precedent?

3 A. No. Not to my knowledge, no.

4 Q. Is one of the factors that may justify
5 whether or not the Commission should hold a full
6 hearing in a case is whether or not there are issues
7 like that that need to be resolved?

8 A. Yes. I think that would be one of the
9 consideration that at least we, as the Committee,
10 would consider in going to hearing, yes.

11 Q. That isn't here in this proceeding?

12 A. That's correct.

13 MR. HUNTER: That's all I have on this
14 point.

15 COMMISSIONER CAMPBELL: Well, I'm debating
16 whether to even open this up because Mr. Ball spent a
17 lot of time on Stipulations in his cross-examination.
18 When it says, "Informal resolution by agreement of
19 the parties of matters before the Commission is
20 encouraged," how do you make a decision when to
21 stipulate or when not to?

22 MR. WARNICK: Well, I think it also says
23 it's not only encouraged, but there somewhere it says
24 "at any stage in the process." And that's, frankly,
25 one of the concerns that the Committee has wrestled

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1 with in the last couple of cases where we have
2 entered into settlements.

3 As I mentioned earlier in my testimony, as
4 I see it, and I think as the statute says, the
5 Commission has the obligation to determine that any
6 rates that are to be implemented in the hearing are
7 just and reasonable whether it comes before them as a
8 Stipulation or as a fully litigated case.

9 And so I think the Committee and other
10 parties who enter into a settlement as part of the
11 overall consideration, one is that they have to be
12 able to provide sufficient evidence to the Commission
13 on the record that will allow the Commission to
14 perform its duty.

15 COMMISSIONER CAMPBELL: Dr. Brill is kind
16 of the Division policy witness. I mean, we
17 understand the law and we understand this change
18 actually happened recently. As far as when I say
19 "recently," since I've been involved in the utility
20 regulation. So the Legislature is telling us
21 stipulations and settlements are encouraged. At what
22 point do you litigate? At what point should you
23 litigate?

24 MR. BRILL: That's a difficult question
25 for me to answer. I am aware, having participated in
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1 all the settlement negotiations, that the Division
2 had no preference for a settlement and would have
3 been perfectly willing to litigate this if it was
4 appropriate.

5 COMMISSIONER CAMPBELL: So if you had not
6 gotten a result in the Settlement Agreement that you
7 felt was not in the public interest and did not fill
8 your statutory mandate to be a tough regulator on
9 this utility you would have litigated?

10 MR. BRILL: Yes. We had a range, a
11 Division range, other parties might have had other
12 ranges. Our range was 108 to 124. We felt the 115
13 was solidly in that range. Obviously, anything
14 towards either end of that range would have caused
15 some heartburn. Outside of that range would have
16 been unacceptable for us, we would have litigated.

17 COMMISSIONER CAMPBELL: All right. Let's
18 move to redirect for those attorneys that have
19 redirect for witnesses. Mr. Hunter, do you have any
20 in redirect?

21 MR. HUNTER: Just briefly.

22 ROBERT L. TAYLOR,
23 called as a witness, was examined and testified as
24 follows:

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1 REDIRECT EXAMINATION

2 BY MR. HUNTER:

3 Q. Mr. Taylor, there were a series of
4 questions regarding the Lakeside online date and its
5 relation to the Stipulation and what would happen if
6 it didn't come online.

7 If Lakeside didn't come online as
8 scheduled, would the Company have a responsibility to
9 provide replacement power?

10 A. Yeah. I mean, if the plant doesn't come
11 online the Company still has to meet the customers'
12 needs. So we would have to acquire that amount of
13 energy somewhere in the marketplace to replace what
14 that market generated.

15 Q. Was there some analysis done by the
16 Company as to the impact on the revenue requirement
17 portion of this case if the plant didn't come online
18 and you had to make other arrangements?

19 A. There was some. And I think there was not
20 a huge difference in the Total Revenue Column between
21 Lakeside getting online and relying on the market for
22 that power on a total requirement revenue basis.

23 Q. So if, indeed, the plant didn't come
24 online as scheduled from the Company's perspective,
25 the \$115 million would still be a just and reasonable
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1 amount?

2 A. Yes, I believe it would be. And one other
3 point on Lakeside. As people talk about the
4 criteria, again, there's no requirement in the
5 Stipulation that Lakeside be online for that.
6 There's also no provision that if Lakeside comes on
7 early that the second phase of the rate increase gets
8 implemented earlier. There's a fixed date and that's
9 what the Stipulation states.

10 Q. You were asked a question about what
11 reporting the Company currently does and what
12 additional reporting it has agreed to. Will you go
13 through that briefly?

14 A. Sure. The Company has for a number of
15 years provided semiannual reports to the Commission
16 and the regulatory community. In those reports we
17 show actual results for the time period and then we
18 go through a series of adjustments, type 1, type 2
19 and type 3 adjustments, which are normalization
20 adjustments which are just little things that don't
21 belong in the test period, which is temperature
22 normalization or accounting transactions that didn't
23 apply to the test period and so on, those get
24 removed. There's annualization adjustments, which is
25 a type 2 adjustment, which is things that are

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1 existing at the end of a test period and the sooner
2 they get existing through the whole time period. And
3 then there are pro forma adjustments that look
4 forward out about 12 months.

5 And so there's those three type of
6 adjustments that the Company provides with these
7 results of operations that are filed. That will
8 continue, just as it has in the past. What we've
9 agreed to do is, before the State of Utah results, do
10 a projection in addition to those that looks out two
11 years into the future beyond the historical test
12 period and will provide a look that's 12 months out
13 and a look that's 24 months out, that looks at not
14 only particular pro forma adjustments, but low
15 projections and things such as that and those
16 results. I think that's to have people continue
17 looking forward to say, "Do we think we're going to
18 continue to have a reasonable return?" "Do we think
19 the Company is projected to overearn," and those type
20 of things.

21 And then in addition to that we agreed to
22 provide with the semiannual reports an aggregate look
23 at the Rocky Mountain Power Company as well as just
24 the State of Utah.

25 Q. And Mr. Ball asked a series of questions

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1 about what has actually been done to provide notice
2 to the public of the Stipulation and the hearing this
3 morning. And it's already a matter of the
4 Commission's record, but the Stipulation was filed on
5 July 26th and August 1st notice of this hearing was
6 provided.

7 Do you know whether news stories were
8 actually also done regarding the details of the
9 Stipulation?

10 A. Yes. And as I indicated to Mr. Ball, that
11 the Company has provided press releases. This has
12 been covered I think rather widely in the press that
13 this Stipulation has been agreed to and what the
14 major terms of it are. So the Company has been made
15 -- or the population at large I think has been made
16 aware of the general terms of the Stipulation.

17 Q. And in addition to those, and in addition
18 to the fact that parties to this case represent every
19 customer class I can imagine, does the Company
20 actually have customer account managers who have also
21 gone out and talked to your customers about the
22 details of the Stipulation?

23 A. Well, sure. Because but for those larger
24 customers where we do -- have made issues, there's
25 been one on one conversations with those kinds of
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1 customers.

2 MR. HUNTER: Thank you. That's all I
3 have.

4 COMMISSIONER CAMPBELL: Any redirect, Mr.
5 Ginsberg?

6 THOMAS C. BRILL,
7 called as a witness, was examined and testified as
8 follows:

9 REDIRECT EXAMINATION

10 BY MR. GINSBERG:

11 Q. Just one question, and possibly Dr. Brill
12 can answer it. You went through some of the type of
13 reporting requirements that are included in the
14 Stipulation. There's also additional reporting that
15 the Company provides in just their normal course of
16 business, do they not, their monthly financial
17 statements?

18 A. Yes. There are monthly financial
19 statements.

20 Q. And those are reviewed by the Division as
21 they come in?

22 A. Yes, they are.

23 COMMISSIONER CAMPBELL: And what do they
24 show, is the Company overearning or underearning?

25 MR. PETERSON: Well, up here on the panel

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1 I guess I'm the one that's most familiar with them.
2 Their latest report to us indicates that they are
3 underearning with respect to the previous rate case.
4 They were earning, they reported --

5 COMMISSIONER CAMPBELL: Don't disclose any
6 confidential information from those numbers.

7 MR. PETERSON: I'm sorry. But they're
8 underearning versus their current allowed rate of
9 return. And they would be underearning under the new
10 10.25 as well.

11 COMMISSIONER CAMPBELL: Any redirect, Mr.
12 Proctor?

13 MR. PROCTOR: No. Thank you.

14 COMMISSIONER CAMPBELL: We are --

15 MR. BALL: Chairman, I would like to come
16 back on the answers that Mr. Taylor just gave, if I
17 may.

18 COMMISSIONER CAMPBELL: In response to
19 redirect?

20 MR. BALL: Yeah, briefly.

21 COMMISSIONER CAMPBELL: All right.

22 FURTHER CROSS-EXAMINATION

23 BY MR. BALL:

24 Q. In those press releases, newspaper
25 articles, the conversations with larger customers who

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1 have individual customer representatives from the
2 Company, Mr. Taylor, there wasn't any ability, was
3 there, to say anything about a public witness hearing
4 in connection with this hearing today?

5 A. I'm not aware of what the notice is for a
6 public notice statement.

7 Q. The details of the public witness hearing
8 were not, in fact, made known, were they? Nobody
9 knew what they were?

10 A. Again, I don't know what the notice has
11 been on that.

12 MR. BALL: Thank you.

13 COMMISSIONER CAMPBELL: All right.

14 MR. REEDER: If I may, I would like to
15 make a statement in closing argument.

16 Number one, calling the Commission's
17 attention, this is a black box study. The
18 adjustments that the Division proposed are not the
19 adjustments that we proposed. In fact, we opposed
20 some of those in the capital structure. That's the
21 reason it's a black box. We had other adjustments
22 that led to the conclusion that we've all reached
23 that the amount of \$115 million was a reasonable
24 amount.

25 Number two, I would suggest the public
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1 interest is a question of whether or not the expenses
2 are prudently incurred, whether the assets are used
3 and useful, and whether the return of and return on
4 capital is within comparable ranges.

5 I think that you know that we all believe
6 that it is not determined by a public opinion poll.
7 The question is approval, used and useful and
8 comparable. And I think we can all agree that this
9 is the case, the test has been met, and urge you to
10 approve the Stipulation.

11 COMMISSIONER CAMPBELL: Any other parties
12 who haven't had any witnesses at this hearing, do you
13 have anything else to add?

14 MR. DODGE: I would just join Mr. Reeder's
15 statement that while we understand the Division and
16 to a certain extent the Committee have explained how
17 they reached the numbers, we have chosen not to do
18 that, but our silence should not be taken as
19 agreement with these specific adjustments or
20 approaches of the other parties. Indeed, we very
21 strongly stood on a different texture and probably
22 will into the future. So we reached the number being
23 fresh even with a different test year. So I think
24 it's important for the Commission to keep that in
25 mind.

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1 COMMISSIONER CAMPBELL: All right. We
2 will take the matter under advisement and wait to see
3 if Mr. Ball desires, once he's had a chance to review
4 the prefiled testimony of Dr. Brill and Mr. Peterson,
5 if he has further questions for them.

6 MR. BALL: Mr. Chairman, thank you.

7 On a procedural matter, I know from my
8 arrival here this morning that the Commission has
9 posted notices outside of a public witness hearing, I
10 believe from 11:30 to 12:30 today and no one has
11 shown up. I would like to suggest to the Commission
12 that that should not be taken as any evidence that
13 the public at large is not interested in these
14 proceedings or this proposed settlement.

15 Looking at the Commission's website on
16 Thursday of last week, the 24th of August, and I have
17 the dated printout of the Commission's website, on
18 that particular occasion, whilst it said that the
19 hearing, the hearing that we've just participated in
20 would take place from 9:30 a.m. to 5:00 p.m. today,
21 and it did mention the fact of a public witness day,
22 no time was given on the Commission's website. This
23 is now on the calendar on the Commission's website
24 for that public witness hearing today or any other
25 day.

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1 Looking yesterday evening at the docket
2 index for this particular docket, the last item on
3 the Commission's website was the Stipulation
4 testimony of Dr. Brill received by the Commission and
5 presumably posted on Friday, August the 17th, or
6 Thursday, August the 17th.

7 Now, the only thing that I'm aware of
8 that's been filed since is some procedural stuff to
9 do with Schedule 6, I think it is, that was filed
10 only on Friday. And so I don't know that I would
11 have expected to see that listed on the docket index
12 last night. But there's nothing on there at all to
13 suggest or to make accessible to the public any
14 scheduling order by the Commission scheduling a
15 public witness hearing. And of course the earlier
16 scheduling notices in this case for this particular
17 hearing on the Stipulation, including the erratum
18 notice on I think the 14th of August, said nothing
19 whatsoever about a public witness hearing.

20 And so not only has the public not been
21 given any widely publicized information that they
22 have an opportunity to be heard on this 10 plus
23 percent rate increase stipulation by the Commission,
24 but they haven't been given, even those who know how
25 to get into the Commission's website would have come
26

1 up empty had they been looking, you know, as recently
2 as yesterday for any information about a public
3 witness hearing.

4 And so I would move that this Commission
5 in fact schedule an appropriately widely publicized,
6 and do as previous Commissions have done, direct the
7 utility to undertake the task of advertising in the
8 media a public witness hearing on this rate increase
9 stipulation.

10 COMMISSIONER CAMPBELL: All right. We'll
11 adjourn.

12 (The taking of the deposition was
13 concluded at 12:14 p.m.)

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C E R T I F I C A T E

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STATE OF UTAH)

: ss.

COUNTY OF SALT LAKE)

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

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

That pages 1 through 124, contain a full, true and correct transcription of my stenotype notes so taken.

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

WITNESS MY HAND and official seal at Salt Lake City, Utah, this 19th day of September, 2006.

LANETTE SHINDURLING, RPR, CRR
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