BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter: the Application of PacifiCorp, by and through its Rocky Mountain Power Division, for Approval of a Solicitation Process for a Flexible Resource for the 2012-2017 Time Period, and for Approval of a Significant Energy Resource Decision	)	TRANSCRIPT OF PROCEEDINGS Docket No.: 07-035-94

May 1, 2008 * 10:31 a.m.

Location: Public Service Commission
160 East 300 South
Salt Lake City, Utah 84114

Before: Ted Boyer - Commission Chairman
Commissioner Richard M. Campbell
Commissioner Ron Allen

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Frank Mossburg (via telephone)
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P R O C E E D I N G S

CHAIRMAN BOYER: Welcome this morning.

This is the time and place duly noticed for the hearing on approval of the RFP, the Request For Proposal, in Docket Number 07-035-94, captioned in the Matter of the Application of PacifiCorp, by and through its Rocky Mountain Power Division, for Approval of a Solicitation Process for a Flexible Resource for the 2012-2017 Time Period, and for Approval of a Significant Energy Resource.

We have talked preliminarily off the record before convening this hearing and it is our intention to proceed in a panel format issue by issue. And we'll be working off of a summary of issues that has just been circulated, which lists 13 issues as open for further discussion. A number of other issues have been resolved and/or incorporated in the final draft RFP, which I believe is dated April 25, '08.

So let's take appearances first and then we'll begin. We'll start with Issue Number -- which is Division Issue Number 3, but Issue Number 1 on the summary, which are credit issues. And we'll let the Company go first. And then I think we'll begin -- I don't know how the best order would be. We could just go around the room or we could go the Division, the Committee and then the parties.

Anyone have a preference?

MR. GINSBERG: I think it's best to let the IEs go next.

CHAIRMAN BOYER: Well, I think we're going to let the IEs go last. They are our consultants and independent evaluators in this process. But we'll let you folks take the laboring or those who are charged statutorily with vetting these issues. And then we'll let the Independent Evaluators go last.

Okay. Well, let's begin by taking appearances. Let's start with Mr. Proctor and move around the room.

MR. PROCTOR: Thank you, Mr. Chairman.

Paul Proctor, Assistant Attorney General, representing Utah Committee of Consumer Services.

The Director of that committee, Michelle Beck, is with me.

MR. SELGRADE: Edward L. Selgrade, representing Merrimack Energy, the Independent Evaluator in this proceeding.

CHAIRMAN BOYER: Thank you, Mr. Selgrade.

MR. OLIVER: Wayne Oliver, with Merrimack

Energy, the Independent Evaluator.

MR. GINSBERG: Michael Ginsberg, appearing for the Division of Public Utilities.

Tom Brill is here with us.

MR. SOLANDER: Daniel Solander, on behalf of Rocky Mountain Power.

And I have with me Yvonne Hogle, not appearing at counsel table, but on behalf of Rocky Mountain Power.

CHAIRMAN BOYER: Very well.

MS. KUSTERS: Stacey Kusters, on behalf of the Company.

MR. PAPOUSEK: Chris Papousek, also on behalf of the Company.

CHAIRMAN BOYER: Would you mind spelling your last name.

MR. PAPOUSEK: Certainly. P-A-P-O-U-S-E-K.

CHAIRMAN BOYER: For the benefit also of our court reporter.

Mr. Larsen.

MR. LARSEN: Jeff Larsen, Rocky Mountain Power.

CHAIRMAN BOYER: Ms. Wright?

MS. WRIGHT: Yes. And I'm not sure of the correct proceedings here. I'm not a formal intervener. I have some comments, public comments, to submit. And -- mainly in support of Western Resource Advocates' comments with a little bit more information. So as I said, I'm not sure of the correct proceedings.

CHAIRMAN BOYER: It's sort of a case of first impression. You haven't intervened yet, but you did more in the nature of a public comment.

This is not a traditional evidentiary hearing of expert witnesses. We're talking about basically policy positions on how the RFP should look and so on and so forth.

Well, let's see how it goes. But I guess right now my current intention would be to let you speak at the time Mr. Michel speaks.

MS. WRIGHT: And I would add that unfortunately because I thought there would be a public witness, I have to leave at 11:30. So I do have written comments that I can leave.

But Steve Michel will represent our interests.

CHAIRMAN BOYER: That would be very helpful. Thank you, Ms. Wright.

Mr. Michel?

MR. MICHEL: Steven Michael, Western Resource Advocates.

MR. GASSAWAY: Adam Gassaway, Market Analyst at LS Power.

MR. EVANS: William Evans, counsel for LS Power System.

MR. DODGE: Gary Dodge, on behalf of UAE.

CHAIRMAN BOYER: Okay. Well, we do have a full house.

Welcome, everybody.

Let's proceed then with Issue Number 1.

I guess, preliminarily, the Commissioners have read all of the position statements that have been filed thus far. And of course, we've met with our staff and we've reviewed the matrix that has been prepared by the Division of Public Utilities.

So this is the parties' opportunity to persuade us why we should adopt your position on how this RFP should look.

MR. PROCTOR: Mr. Chairman, if I might?

CHAIRMAN BOYER: Yes. Mr. Proctor.

MR. PROCTOR: If I could address one of the issues that is noted having been resolved in connection with the matrix that you did review, and we discussed this in our meeting prior to this hearing, the Committee's position with respect to the benchmark versus self build option of course was clearly stated in our filing, most recent filing, with respect to the statutory interpretation of SB-26. It shows up on the matrix that CCS agrees the Company should submit a benchmark. We had asked that that actually state otherwise. But our position is clearly stated that the benchmark is the only way that the Company can participate as a bidder.

That is our position. The Company has agreed to -- and I don't mean to speak for them, but they have agreed that they will file this RFP with benchmarks which will fully comply with the statute and administrative rules. So it's not a question anymore of being versus a self build. This is a benchmark RFP.

We wanted to make that very clear because of the concern for this -- the legal nature, the statutory interpretation nature of this dispute.

Thank you.

CHAIRMAN BOYER: Thank you, Mr. Proctor. We understand that position.

And I should say about the matrix, we envisioned using the matrix as simply a way of identifying outstanding issues. The Division's characterization of the various parties' positions is not binding on us in any way. It's not evidence before us. We simply wanted to find out which issues have been resolved and which issues remained for discussion. And I think we have that list now.

With that clarification, Mr. Larsen, would you like to proceed on the issue we're calling "credit."

MR. LARSEN: Yes. Mr. Papousek will address the Company's position on that.

MR. PAPOUSEK: Good morning. I'm the Director of Credit and Risk Management for PacifiCorp. And have been dealing with the credit issues in most of the Company's RFPs.

And this one in particular we did respond to some of the clarifications and improvement requests that were submitted from the third parties. One example of that was the "How to use the credit matrix." We did take the IE's recommendation there and made those changes in the RFP.

We also added a way to determine credit security amounts for all three big categories.

The area that I think we're sort of at an impasse is with dealing with commitment letters. And as you know, commitment letters are required from bidders who are unable to provide an adequate level of credit worthiness and bring in a credit support provider who agrees to provide a commitment to provide credit scores to support the bidders bid. It was suggested that the credit support providers -- we allow them the right to review the final agreement and the terms of that agreement before they become bound by that commitment letter. The Company feels that that's too late in the process.

It's worth noting that we have moved credit to -- from the prequalification stage to further down in the process and we're requiring a commitment letter included in the RFP to be provided within 20 business days after the bidder has been notified that they made the final short list.

We think that's in the best interests of protecting the rate payers in this process.

The other issue with commitment letters is, again, the timing. There was a recommendation that we wait for that commitment letter to come 15 days after the selection of the winning bidder. Again, we find that to be too late. We would like to have it -- what we think is fair, is 20 business days after the bidder is selected for the final short list.

So those are the two areas of the commitment letters that we're -- that we are right now. That's our position on those.

We are going to provide and offer a credit workshop to address how to interpret the credit requirements in the RFP, how to understand the security and insurance schedules, and as well as talk about the commitment letters themselves.

And the other issue was more of the reasonableness of our credit security amounts. And we looked to the IE and I think they did provide a comment that the security amounts we're requiring are, according to industry standard, fair and reasonable.

Forms of security, we do have commercially reasonable forms of security that we're accepting, cash, letters of credit, guarantees. And we also have adjusted the security amounts by the rights and the size of the individual contracts. Implemented security stepping rights and a second lien. We're also factoring those in as well.

And finally, on the posting of security, there was an issue of using milestones to determine that posting schedule versus having a set schedule. The Company recommends having a set schedule. That way all the bidders know where they stand. And if we're trying to seek security after a milestone has been missed, we probably will be in a bad situation, trying to get security after something has already gone wrong.

So I believe those are the main issues and that's the Company's position on those issues.

CHAIRMAN BOYER: Okay. Very well. Thank you.

I've changed my mind and taking the prerogative of rearranging how we'll proceed from this point on.

Let's -- after the Company makes its presentation, we'll go to the Division, then the Committee, Western Resource Advocates and then LS Power.

Mr. Brill, you're up.

DR. BRILL: Thank you.

First, on the matter of credit, the Division will defer to the IE, but the Division would like to make a couple of comments.

The Division was concerned with the number of bidders in the RFP process last year and believes that some were driven away from the process because of credit and the credit restrictions. And we had provided the feedback to the Commission and to the Company that we thought the Company, in last year's RFP, was too inflexible on credit. Now we recognize that the Company has made -- loosened some of those restrictions, and we appreciate that. So we see progress there. But we've observed that the Company has not adopted all of the IEs recommendations on credit. And we do refer to the IE on the issue of credit.

Finally, the Division believes that credit is somewhat tight now and that any additional restrictions on credit will reduce the number of bidders. And that is a concern of the Division.

CHAIRMAN BOYER: Thank you, Mr. Bill.

Mr. Proctor, Ms. Beck.

MS. BECK: The Committee is not taking a position on credit, but we would like to urge the Commission to listen to the recommendations of the IE and market participants. We think they've provided probably the most useful input on this issue.

CHAIRMAN BOYER: Thank you, Ms. Beck.

Western Resource Advocates, Mr. Michel.

MR. MICHEL: Mr. Chairman, we haven't taken a position on this issue and don't.

CHAIRMAN BOYER: Ms. Wright, now based on your earlier statement, are there areas in which your position may be different than Western Resource Advocates'?

MS. WRIGHT: No. We're waiting for more information.

CHAIRMAN BOYER: Okay. Very well. Thanks.

Mr. Evans.

MR. EVANS: I'll let Mr. Gassaway address that.

MR. GASSAWAY: Thank you.

There are really -- there is two components that we find troubling with the credit requirements in the RFP. First is timing of the security and second is the sheer amount of security.

The current RFP requirements require that bidders post 10 percent of the total requirement on the effective date. And then from there, 10 percent must be posted every six months after that for the next 18 months. And then a hundred percent must be posted 24 months after the effective date. This potentially means that bidders would have to post maybe hundreds of millions of dollars prior to achieving financial closing. For -- for many bidders, this is troubling.

Our suggestion would be to adopt a milestone approach. This approach would require bidders to post security in the event that they miss a milestone. This would correlate better with the risk of not performing under what was promised because the risk of delays increases as the milestones are not reached in time.

LS Power also believes that the amount of credit is unreasonably high and will be a burden to bidders, which in turn will limit participation.

The credit requirements act to protect rate payers from things that the benchmark resources would not. This creates an unfair advantage for the benchmark resources.

We recognize that there is third party risk and that some amount of security is required. However, that security comes at a cost and there should be a trade off between cost and risk. LS Power believes that credit requirements that are three to five times smaller will be more appropriate where the Company also has a subordinate security interest. This would create a larger number of bids and help to level the playing field for bidders.

In fact, LS Power has entered into a number of PPAs with other utilities with similar credit requirements or less.

Thank you.

CHAIRMAN BOYER: Thank you.

Mr. Dodge.

MR. DODGE: UAE's position on this has been to support the IE and the market participants. Our concern, like the Division expressed and the Committee, I think, is that in the past we don't think there has been sufficient market participation. And the thing we keep hearing is the credit requirements are too onerous. As at rate payers, we want reasonable credit requirements. But if it predetermines the outcome, then we don't like that. Or if keeps some competitive bidders out of the process, we don't like it.

But we support the suggestions of both the IE and LS Power in trying to create more reasonable credit requirements.

CHAIRMAN BOYER: Thank you, Mr. Dodge.

Now let's hear from the Independent Evaluators.

Mr. Selgrade, were you going to address the credit issue.

MR. SELGRADE: I was going to in the limited respect we have languages differences. I hasten to point out that our differences in language reduced to two words in one sentence. And it's captured by the notion that we would like the credit providers before they are bound in the amounts of tens and sometimes hundreds of millions of dollars, to have a chance to look at the final terms and conditions. And we believe this is the reality that occurs out in the world and that there is an artificial acceleration of that review and a huge degree of uncertainty that's introduced in the minds of the credit providers if you have to commit to those sorts of numbers in advance of the time when you've seen the final deal.

Now the Company, I think, has argued that that's too late. If you have the final deal, you're really on the effective date signing the contract and that the rate payers aren't protected. But I point out that the rate payers don't even have a deal to lose until that point in time. Any time we've put the commitment earlier in time, and we're starting much, much earlier in this learning process of requiring the commitment earlier in the process, you lose people from the universe of potential guarantors. They have no idea what the deal is. They have no real mature feel for what they're exposing themselves too. So the whole learning curve has been moving it backwards and backwards and backwards until now it's 20 days after the short list has been created. And it's our position that that's still too late because there are -- there is a universe of potential guarantors that will not accept that because it still means that they are putting tens of millions of dollars at risk at a time when the deal is not final.

So the two words are simply saying that the undersigned guarantor has the right to find the final terms and conditions satisfactory, just like the Company and the bidder. And the one sentence that we wanted was addressing the case in the instance of a letter of credit issued by a bank, so that the bank could review the final letter of credit terms and the deal terms in the normal process in their monthly credit committee meeting. And we have found that in cases that we're aware of, with one exception that the Company has brought to our attention, that banks do insist upon having this review of the terms of the deal that they are issuing the letter of credit with respect to.

And the fact that there are outliers in this process and that you might find people outside of the larger universe of potential guarantors and credit score providers, doesn't take anything away from the point that you want that universe to be as big as possible to protect rate payers as much as possible by having a robust number of bidders who have access to credit markets.

CHAIRMAN BOYER: Thank you, Mr. Selgrade.

Now I was told yesterday you have a scheduling issue?

MR. SELGRADE: I -- I'm going back today, but I'm taking the red eye.

CHAIRMAN BOYER: Okay. Excellent.

And by the way, our intention is to proceed until about 12:30, take an hour and a half recess for lunch, come back and continue on until we finish, or five o'clock, whichever occurs sooner, later. And we're going to be out of here around five o'clock, if we could.

MR. SELGRADE: There were other credit issues that Mr. Oliver --

CHAIRMAN BOYER: Oh, Mr. Oliver, I'm sorry. I didn't mean to cut you off.

MR. OLIVER: No problem. Thank you very much.

Mr. Brill had mentioned about the

challenge these days in the competitive bidding processes with credit. And certainly, credit has been one of the most contentious issues in all of the competitive bidding processes that we've been involved in.

And from that perspective, let me talk a bit about the amount of credit that the Company is requesting, the timing for posting the credit and also the Company's willingness to offer a credit workshop to bidders to not only explain the process on how to establish the credit requirements, but, you know, we had also recommended that that workshop be used to solicit other comments from bidders that may want to raise other alternative ideas in terms of structuring credit.

But in terms of the amount of credit that we're seeing in a number of our competitive bidding processes, we -- in our final -- in our report, we had attached a credit matrix that identified how other utilities throughout the country have addressed credit in their RFP processes. And in our view, the amount of credit the Company is requesting for the different -- the Company's matrix has established credit requirements based on the credit rating of the bidders. So bidders with less than an investment grade credit rating, would have to post higher levels of credit basically because they're at more risk if they default on their contract. So that's the concept.

My recollection was that that number is about -- for those types of bidders is about $139 a kilowatt, based on the amount of kilowatts the bidder is bidding. What we're seeing in the market -- that's for base load resources. What we're seeing in the market is something in the order of $100 to $200 per kilowatt. So our view is the Company's requirements were pretty much in the middle of that range, you know, and consistent with what others are asking for.

Based on our discussion this morning, what the Company is suggesting for intermediate and peaking units would be less, based on the capacity factors of those units. So I would assume that the -- that for intermediate resources, the credit requirements would be under $100 and for peaking resources they would be -- I don't know what the number would be, but they would be possibly under $100.

So from our perspective and what we've seen in the industry, that the level of credit seems reasonable to protect customers' interests in case of a default.

In terms of the schedule for posting, our view has been that the Company's schedule offers a lot of flexibility to bidders. And from that -- and -- that's based on the perspective that bidders really don't have to post 100 percent of their security requirements until basically they achieve the financing for their projects. So in our view, that would allow the bidders to pretty much lock in their financing with -- along with their credit requirements.

In many RFPs, or many contracts, the bidder has to post the full amount of security when it signs the contract.

So we thought that flexibility benefit -- flexibility provided benefit to the bidders.

Of course, on the other hand, it does expose the customers to some risk if the project defaults within that period before -- from the time they sign the contract to the time they achieve the financing. So there is some risk shifted onto the customers, but it does provide, as I mentioned, flexibility for the bidders.

And then as I -- a third point, as I

mentioned, is the Company has agreed to do the workshop for the bidders on credit. And we think that's a real -- real positive to at least identify to the bidders how the credit requirements were determined and answer questions from bidders and explain how the bidders really need to deal with their credit support providers to achieve -- to meet the credit requirements in the RFP.

Thank you.

CHAIRMAN BOYER: Thank you, Mr. Oliver.

Are there any final comments before we go to the Commission, see if the Commissioners have questions?

MR. EVANS: Maybe just one response.

CHAIRMAN BOYER: Mr. Evans, go ahead.

MR. EVANS: In our reply brief --

CHAIRMAN BOYER: Would you slide over to the mic or turn it on or speak louder.

MR. EVANS: How is that?

In our reply comments, we included a table where the security requirements were much less than the Independent Evaluator is recommending, between his recommendation of between 100 and 200 kilowatt, we have cited a lot of instances where the credit requirements were much less than that. And we'd ask the Commission to take note of that.

Also, it isn't exactly correct that the entire security is due at the time of financial closing. If that were the case, that would be one thing. But it's scheduled so that the entire amount is due after 24 months. It may be possible to achieve financial closing by that point, but the security requirement is not triggered upon financial closing, it's triggered by time. So we could still find ourselves in a situation of having to post the entire security amount before financial closing, which is a problem for us.

MR. PAPOUSEK: May I address that issue?

CHAIRMAN BOYER: Yes, please.

MR. PAPOUSEK: The posting schedule that we've been referring to is actually contained in our credit methodology. And the effective date plus 24 months is for a 2012 resource. For a 2013 resource, it's the effective date plus 36 months. For a 2014 resource, it's the effective date plus 48 months. And so on, until you get to the 2016 resource.

So we're really asking for -- if the resource is coming online in June of 2012, we're really looking for that security to be coming in in 2011 at the latest. And I think Wayne has pointed out that the industry usually asks for it all up front at the time of contract signing. So we're actually exposing ourselves for a period -- the Company's exposing itself for a period of time with this posting schedule.

CHAIRMAN BOYER: Thank you.

Anything further?

(No verbal response.)

CHAIRMAN BOYER: Commissioner Allen.

COMMISSIONER ALLEN: Thank you, Mr. Chairman.

I have one question for Mr. Gassaway and Dodge.

You proposed that bidders should be allowed to have their own credit alternatives. And I'm just curious if you've given thought how that could be kept objective? How it can consequently be managed? Is it going to be part of the credit workshop? And how are we going to determine or make certain that alternatives don't disadvantage other bidders?

MR. GASSAWAY: Right. You know, my initial thought was that if bidders were allowed to propose what credit requirements that they felt were acceptable and what they found acceptable in other

RFPs and in other agreements that they've signed, that the Commission and the IEs would be able to evaluate the cost of credit and the effect that it has on bidding. You know, given it a little more thought, it does make the analysis more difficult. And it -- it makes it more difficult to put bids on a level playing field. And you know, you have to consider the risk, the additional risk from different credit profiles.

And also -- I'm sorry. There was another --

COMMISSIONER ALLEN: That's helpful. That's fine.

Maybe Mr. Dodge has something to add to that.

Didn't you also propose alternatives?

MR. DODGE: We had agreed with LS Power. I think what Mr. Gassaway is saying is instead of that, he's now proposing a set amount that's lower.

Is that --

MR. GASSAWAY: Right. I think it's more effective that going into the situation, they're going to have -- probably the Company is going to have their stance and we're going to have our stance. And it may lead to nothing.

Maybe a more effective way would be to reduce the requirements now.

COMMISSIONER ALLEN: Thank you.

CHAIRMAN BOYER: Mr. Campbell.

COMMISSIONER CAMPBELL: Mr. Gassaway, I was a little confused with what you said at the end of your initial statement. I think it deals with the same issue.

You said LS Power has entered into agreements. And I wasn't clear if you meant to say entered into agreements with lower security requirements or --

MR. GASSAWAY: Right.

COMMISSIONER CAMPBELL: -- I wasn't clear exactly what your point was.

MR. GASSAWAY: Yes, sir. We've entered into a number of power purchase agreements that had had credit requirements two to three times lower than what PacifiCorp is proposing now.

COMMISSIONER CAMPBELL: So that statement dealt specifically with your three to five times approach?

MR. GASSAWAY: Yes.

CHAIRMAN BOYER: The only question I have is for Mr. Brill.

You referenced current -- current credit markets. Could you elaborate on that? Are you talking about rates or availability?

DR. BRILL: Availability mostly. And I believe in PacifiCorp's rate case, ROE testimony, they referred to tight credit markets as well.

CHAIRMAN BOYER: Okay. Thank you.

Mr. Selgrade.

MR. SELGRADE: Would we be permitted to get a fact on the record from LS with regard to those RFPs that have lower credit requirements? Are they all with municipal utilities?

MR. GASSAWAY: No. The power purchase agreements that we've entered into? No. They've been investor owned, co-ops, municipal, a whole broad range of different companies.

CHAIRMAN BOYER: There is a chart attached to the one of the pleadings LS Power has filed that lays those out and describes the type of purchaser and what the credit requirement was, as I understand it. That's the way I read it anyway.

MR. GASSAWAY: No. I think the chart that was referred to was the RFPs that the IE addressed.

CHAIRMAN BOYER: Oh, that's right.

MR. GASSAWAY: And we asked that the

Commission also consider the outcome of those RFPs. And that in almost every case, the utility either self builds or requires a resource.

CHAIRMAN BOYER: I stand corrected. Yes.

MR. OLIVER: Can I ask a question of LS Power as well?

CHAIRMAN BOYER: Certainly.

MR. OLIVER: My recollection was that the table that you had in the comments addressed the credit requirements from a number of other RFPs, particularly for wind resources and other assets. I believe there was only a few PPAs included in that list?

MR. GASSAWAY: Right. They were the RFPs that you identified in your comments.

MR. OLIVER: Right. I was wondering, is it possible to provide the credit requirements from the contracts that you've negotiated?

MR. GASSAWAY: I don't know that answer. I don't think they are public. I don't know.

MR. OLIVER: Is it possible to put a summary together without identifying who the counter party is?

MR. EVANS: We can try to do that. Let's check. And if it's possible, we'll be glad to submit something to the Commission and the parties on that.

CHAIRMAN BOYER: Thank you, Mr. Oliver.

All right. Let's move on then to the second issue on the summary, which is the Division's Issue Number 8, indexing.

Ms. Kusters.

MS. KUSTERS: Thank you.

So we discussed indexing a little bit earlier on in our meeting. We see that there is three issues with the indexing.

The first one being the flexibility for bidders to provide alternative indexes. And we believe that -- we believe that specific item has been resolved between the parties where we've addressed it in the redline of the RFP that to the extent that the index can be forecast, measurable and hedged, then, in fact, bidders can propose alternative indexes. So we think that aspect of it has been resolved.

The other two items that we believe still need to be addressed is, first, being the percent of the costs that can be indexed. And the third item, when will the bidder be required to fix the index.

So from the basis of the percent of the index, in the 2012 RFP, the Commission provided guidance to the Company that allowed bidders to index 40 percent of their costs and have 60 percent of it fixed. The Company's position was to have 100 percent of it fixed. Recognizing that the costs of steel and other aspects of construction have gone up considerably over the course of the last three years, we move towards having 40 percent of it being indexed and 60 percent of it being fixed. The Company would recommend that we stick to that same percentage, having the ability to have bidders as well as the benchmark provide 40 percent on an index basis and then 60 percent on a fixed basis. This will minimize the price shift to customers, but at the same time allow for bidders to have some flexibility with regards to providing a fixed cost.

With regards to the third item, the bidders, when will the requirement of fixing the index be imposed? And the Company's position is that we would stay consistent with what is -- with what is consistent with the 2012 RFP, where the Company would agree that it would be the time where bidders would execute the EPC contract, but no later than -- or receive financing, but no later than two years after the execution of the contract.

So I believe that the two items that are still before the Commission for resolution are the percent of the costs that should be indexed or allowed to be indexed and the -- and when that particular index would be required to be fixed.

CHAIRMAN BOYER: Thank you, Ms. Kusters.

Mr. Brill.

DR. BRILL: Thank you.

First, the Division does support the indexing suggestions that will be made by the IE. The Division has recognized the increased cost of steel and construction materials. And I believe in our March 21st comments to the Commission, we had proposed maybe allowing up to something like 60 percent be indexed as maybe a compromise.

But again, I say we -- the Division will support the IE's recommendations on indexing. And I believe that's up to 100 percent.

We see indexing as an attempt of increasing flexibility for the bidders. Proposing their own alternative indexes is a good thing. And again, increased bidder flexibility, the Division believes, will increase the number of bidders.

CHAIRMAN BOYER: Thank you, Mr. Brill.

Ms. Beck.

MS. BECK: We've not taken a position.

CHAIRMAN BOYER: Thank you.
Western Resource Advocates, Mr. Michel.
MR. MICHEL: Mr. Chairman, we did have an indexing issue and I'm not sure -- as I understand it, may have been moved into the comparability category. But it had to do with whether or not index bids should trigger some kind of penalty in the assessment because they are presenting more risk to the Company when they do index and the more that they index.
And I'm not sure if the Company was envisioning that we discuss that with the comparability issue or indexing?
MS. KUSTERS: We should discuss it with indexing.
MR. MICHEL: Okay. So that's our position.
CHAIRMAN BOYER: Thank you, Mr. Michel.
Mr. Dodge. Or no, I'm sorry. Mr. Gassaway.
MR. GASSAWAY: Thank you.
We believe that indexing from zero to 100 percent would be the most appropriate. This provides flexibility to bidders. And they should also be able to index to a number of indices.

However, the risk pertaining to those indices should also be considered in the analysis. That way bidders can optimize their bid so that the -- knowing that the risk is going to be considered, changes to those indices. And also so they can find a trade off between how much risk that they're willing to take and how much risk they're willing to pass on.

CHAIRMAN BOYER: Okay. Thank you.

Mr. Dodge.

MR. DODGE: Thank you. We support the IE's suggestion on this.

As well as LS Power's. Excuse me.

CHAIRMAN BOYER: Okay. Mr. Oliver.

MR. OLIVER: Yes. Thank you.

The indexing suggestion we had, we did include in a comparability discussion, but it really could stand alone as well.

And our proposal, basically, was to allow bidders to index between zero and 100 percent of their -- either the capital cost or their capacity price, however their bidding. That would include the Company and third party bidders. And address the risk issues. Because it's really a cost, risk and reliability I think is the way we look at comparability. And indexing as being part of that.

As we talked last time, certainly the more you -- indexing you allow, the greater the risk to the customers. I mean, there is a risk because more of the costs would be variable and those costs could go up or down. We don't know where they would go. But certainly the most recent trend is up.

And our concept basically was that if bidders had the flexibility to index zero to 100 percent, bidders would have the option to make a determination of what percentage, you know, they would deem appropriate. And the evaluation process would reward bidders that minimize the amount of their cost they would index. So the evaluation process would pick up the risk of the portion of the price that's indexed and reward bidders for those -- or those bidders that suggest that they would fix their price or limit the indexing, from a risk standpoint.

So from the percentage basis, that's -- that was our concept.

From the concept of when you lock in the index, we had suggested giving bidders flexibility from any time they signed -- or they submit their pricing to the time -- I believe we say even going into commercial operation. But again, the quicker they limit the indexing, the less risk they are providing for the customer. So therefore, the more value would be attributed to them in the evaluation process.

So from those two perspectives, we're looking at, you know, the minimum amount of indexing and the shortest period of time for indexing. Those conditions would be more valuable to the customers than they would to a -- than longer periods of indexing and greater percentages.

In the evaluation process, the risk analysis that the Company would do could -- you know, I thought it wasn't -- that that evaluation could pick up that -- you know, those impacts through the risk analysis that the Company does on fuel and power prices, CO2 costs and other factors that are considered as part of risk assessment.

CHAIRMAN BOYER: Thank you, Mr. Oliver.

Mr. Selgrade, did you have any comment on this?

MR. SELGRADE: I have nothing to add.

CHAIRMAN BOYER: Any final comments before we go to the Commission on this particular issue?

Ms. Kusters.

MS. KUSTERS: Wayne, maybe you can expand a little bit more with regards to the risk analysis picking up this particular assessment. I mean, recognizing that to minimize the index and to lock in the bids as soon as possible is in the best interests of customers, recognizing that we do provide a risk analysis, but how would you propose that the Company incorporate that particular risk whereby bidders have the opportunity all the way to commercial operation to hold open an index?

That's my first question, I guess, to Wayne.

And the second question would be, you know, we have a process where we come before the Commission for approval of a resource under SB-26, at which time we would execute the transaction to go forward. We would not know what we would be asking the Commission for approval from a capital standpoint in that they have no -- they wouldn't have the obligation to fix that particular index at that point in time. So we would be requesting from the Commission not a fixed amount, but potentially just a forecast amount of what we would be seeking recovery for going forward.

Those are sort of my question to Wayne and just one comment.

CHAIRMAN BOYER: Okay. Mr. Oliver.

MR. OLIVER: I think the -- in terms of the date which the index would be locked in, my suggestion would be that that's addressed as a non-factor. In that case, you know, you would award more points or provide a higher value to those bids that would limit indexing to a shorter period of time.

With regard to the price components, one of the things that we did agree to, I think, this morning was that the Company would allow the bidders to suggest alternative indexes. And those indices would be approved if the -- under a couple of conditions. One is that those indices could be forecast. For example, an inflation index or a Handy-Whitman, can impact Handy-Whitman if the Company had forecasts of Handy-Whitman, which is a construction index, or other indices. If those indices can be forecast, then that might be a condition with the Company. And through discussions with the IEs, would accept that index.

And the second issue is that index can be hedged so there is a way of, you know, managing the risk of that index.

I guess in our view, what we would suggest is that those indices could -- you could develop a high and low forecast of those indices and model those indices as you do high and low fuel price forecasts or CO2 forecasts, that type of thing.

MS. KUSTERS: Thank you.

CHAIRMAN BOYER: Thank you, Ms. Kusters.

MR. MICHEL: Could -- could I ask a question?

CHAIRMAN BOYER: Mr. Michel, please.

MR. MICHEL: Wayne, I understood what you said, that the timing of when the index would become fixed would be a non-price factor.

But why would you characterize them as a non-price factor rather than a price factor in the evaluation?

MR. OLIVER: Well, I think the issue there is that -- I would look at that as -- and that would be, I think, a challenge to the Company to do that evaluation just in the modeling process. It's really almost an option evaluation. And I don't know if the Company has the methodology established at this point to do that analysis.

So I think from that perspective, we thought it would be more appropriate to do it as a non-price factor.

MR. MICHEL: Okay.

CHAIRMAN BOYER: Very well. Commissioner Allen.

COMMISSIONER ALLEN: No questions.

CHAIRMAN BOYER: Ms. Kusters, did you have something else you wanted to add?

Looked like you were just on the edge of your seat.

MS. KUSTERS: No.

MR. SELGRADE: May I make a comment of a limited nature.

I try to keep up with the statute SB-26 and the rules and there was a suggestion in Stacey's comments that there would be something contrary to either the statute or the rules if you were asked to approve a capital cost upon the petition to approve the resource. That was a closed-end formula. It would be an index that would run until a future date, but then it would cut off at that future date and the formula could then be determined in the closed-end fashion. On the date that the request was made, the final number would not be known, but there would be a deterministic formula that would allow the number to be known within a finite period of time.

And I found nothing inconsistent with that notion and the rules that I've read.

Is there something that I'm missing?

MS. KUSTERS: It's not that it's inconsistent, it's just that we wouldn't know what we would be requesting from an approval standpoint, outside of the fact that it's 100 percent indexed to something that could go up 25 percent and the Commission would be approving something that is unknown. That's all.

CHAIRMAN BOYER: I think we understand that.

Commissioner Campbell.

COMMISSIONER CAMPBELL: In that context, Wayne, help me understand, how is a least cost determination made of something that's 100 percent indexed? Do you get to least cost because you choose a different index than the Company is using and that can get you -- that is, how is a least cost determination made in that environment?

MR. OLIVER: Well, I guess from a least cost perspective, the bidder -- whether the bidder has to -- is bidding a fixed price or index pricing, they are going to basically reflect -- you know, if it's a fixed price, they'll reflect the risk premium in their bid. Through indexing, that risk premium would be lower or, you know, reduced substantially because they -- you know, they can lock in their price -- their capital costs or their capacity price ideally to the EPC contract, the components of the EPC contract. So that those costs are matched. And the bidder, therefore, doesn't have that high of risk.

So from a least cost -- I think from a cost standpoint, indexing is -- you know, would lead to lower cost. I think from a risk standpoint, there is more -- you know, there would be potentially more risk because of the uncertainty with where that index is going.

But certainly, a fixed -- if I have to offer a fixed price, given today's market with the volatility and costs and components of the cost of building a power plant, I'm going to include a very high risk premium in my price.

COMMISSIONER CAMPBELL: I understand from a provider's perspective how they can bid in a lower cost with indexing. The question is from a customer's perspective, how does the customer get comfortable that they are getting the lowest cost when there is that index out there that can dramatically escalate the costs versus an alternative that's fixed permanently?

MR. OLIVER: And I agree. You know, I think I mentioned it is a riskier proposition, I think, for customers. There is a risk that cost could be higher because of the index. But I look at that as a risk -- part of the risk side of the equation, not the cost side. So the cost could, you know, at the end of day could be high because of the uncertainty in those indices. But I think that up front that the bidders would -- you know, wouldn't have to reflect those higher risk premium when they submit their proposals.

MR. SELGRADE: Could I make a comment about that?

I guess I, as an old physicist, look at this as something quite different than just a straight line metric, meaning like a ruler, where you put the lowest cost on one side and you build up, you know, scale by scale by scale to the highest cost. Because each cost, for example, the benchmark cost, is still just a guess. And around that number on the scale there is a shadow. And the shadow is a risk distribution of possible costs, because they could come in below and there is a risk that they could come in above. And when you have an index price, it might be somewhere else on that single line metric, but -- and it would have a different shadow around it, which is the possible distribution of variance in that cost.

So least cost is risk adjusted least cost. And you have to take the size of the shadow into account and how the shadows between different prices overlap when you try to make a comprehensive judgement whether you have risk adjusted least cost.

COMMISSIONER CAMPBELL: So it's the Company making the decision as far as where the shadows overlap. What's --

MR. SELGRADE: In the first -- I'm sorry.

COMMISSIONER CAMPBELL: -- best for rate payers; right? Doesn't that open up to a whole lot of debate down the road after a decision is made as to whether the overlapping shadow is correctly decided?

MR. SELGRADE: I read the statute as saying that's one of reasons why the IE is appointed, to go over the evaluations with the Company and to ask questions to try to determine whether the shadow around any one price is the right shadow, whether it's too narrow for the benchmark, whether it should be broader. And similarly with all the other prices as well.

So the Company gets the first shot at it. But there are review mechanisms built into the statute that provides rate payers an extra level of protection.

CHAIRMAN BOYER: Thank you.

Now, Ms. Write you said you had to leave at 11:30?

MS. WRIGHT: I just changed that.

CHAIRMAN BOYER: Would it be acceptable to you to simply submit your written summary of your comments? Or would you like to make a statement on the record?

MS. WRIGHT: No. I can submit my written statements.

CHAIRMAN BOYER: Then why don't we do it that way. Then you can leave at your leisure.

MS. WRIGHT: I'm interested in hearing the carbon discussions, though.

CHAIRMAN BOYER: Thank you.

MS. WRIGHT: Thank you.

CHAIRMAN BOYER: I'm just wondering, would it make sense to jump to the issue of comparability, which is sort of closely aligned to what we've been talking about, and then resume the list?

Let's do that then.

Mr. Larsen.

MR. LARSEN: Thank you, Mr. Chairman.

I guess in looking at the issue of comparability and also what the DPU had on their matrix, we would agree that the ultimate goal is really to require a least cost, risk adjusted or least risk resource for our customers. And that's the primary aim and goal out of all of this.

Having said that, we have the challenge of really two different business models, that of a cost-based regulated utility with its benchmarks and the enterprises that are market based. And trying to bring those together and level the playing field where we can ultimately achieve the goal of providing a resource for our customers. And I think in the IE's comments, they really identified the two ends of the spectrum, both with a cost-based resource and a benchmark or market-based bids and how you could possibly try to narrow the gap between those two. Each of them with advantages and disadvantages.

Clearly, Rocky Mountain Power is a cost-based utility. And by statute, we are -- we are required to provide service at cost with a -- an authorized rate of return set by this Commission. That's the basis under which we operate. We can't move to alternative rate making or incentive-based rate making based on that. So that limits us. And I think there has been various alternatives mentioned or proposed in terms of providing a non-regulated affiliate or other ways. We're precluded from those types of endeavors through commitments and through Commission orders on commitments we made as part of our transactions and so forth. So really, it comes down to how do you try to level the playing field between those two types of models?

And we believe that the RFP that we've put forward does address comparability. It provides a level playing field. While at the same time, properly addressing the risk that customers would potentially face under other alternatives. And really, you know, what we were just discussing on indexing, you know, how much risk do you really, at the end of day, want to expose customers to in achieving that balance? As we try to find enough measures that we balance the risk, level that playing field, whether as the Company has suggested, on the indexing, for example, moving to a 40 percent indexing, does that provide enough balance while still mitigating the risk that customers would be exposed to in terms of the open-end nature of the cost of the resource?

So in terms of the Company's position, we believe that the RFP that we've put forward does balance the playing field. It provides enough balance between the different models, that customers in the end will receive the ultimate benefits and a proper resource.

CHAIRMAN BOYER: Okay. Thank you, Mr. Larsen.

Anyone else speaking for the Company on the issue of comparability?

(No verbal response.)

CHAIRMAN BOYER: All right.

Mr. Brill.

DR. BRILL: Thank you.

On the issue of comparability, the Division will defer to and support the recommendations of the Independent Evaluator.

CHAIRMAN BOYER: Thank you, Mr. Bill.

Ms. Beck.

MS. BECK: Thank you.

The Committee agrees that there are comparability issues. That was part of the driver in our original comments on the benchmark. We felt like at least using benchmarks gave transparency to the process in the case that there are differences just by definition in the types of resources the Company would put forward as opposed to other types of bids.

So given that change has been made, we support the IE's recommendations in evaluating this RFP.

CHAIRMAN BOYER: Mr. Michel.

MR. MICHEL: Thank you, Mr. Chairman.

Other than the comments we made and the IE made in regard to some kind of risk penalty in the evaluation of how much a bidder indexes, we don't have anything to add to this particular topic.

CHAIRMAN BOYER: Thank you, Mr. Michel.

LS Power.

MR. GASSAWAY: Thank you.

As a potential bidder, this is an issue we are very troubled by. We think that the benchmark resources and third-party bids are not comparable under the current structure. The benchmark resources aren't binding, so they pass all the risk of price increases to rate payers. Whereas bidders have to fix their bids or at least a majority of their bid and index the remainder to an imperfect index. So this means that they must price this risk of changes into their bid price. Whereas the Company is free to bid aggressively, knowing that price increases can just simply be passed on.

We believe if bidding -- if the Company and third party -- third parties aren't going to be held to the same bidding standards, then the risk of changes should be fairly considered in the analysis. This way you can determine whether or not rate payers are getting the lowest cost, lowest risk resource.

Thank you.

CHAIRMAN BOYER: Thank you.

Mr. Dodge.

MR. DODGE: Thank you, Mr. Chairman.

This has been one of UAE's longstanding issues. We have expressed a preference for a way to come up with a way to quantify and add into the evaluation process the different risk characteristics of one -- of a bid versus a self build. And till this point, unfortunately, we're not smart enough and we haven't seen anyone come up with something that was -- that looked promising in that regard.

So we appreciate the IE's efforts to address this issue. He's kind of trying to address it a little from the other perspective, trying to make -- allow the bidders to do more of the same sort of thing, put some of the risk off onto the rate payers like the Company is able to. So we support those efforts.

If someone can come up with a better way to make them comparable, we'll support that, too.

In terms of what we're seeing, we think the IE's proposal makes the most sense.

Thank you.

CHAIRMAN BOYER: Thank you, Mr. Dodge.

Let's go to the Independent Evaluators, Mr. Oliver.

MR. OLIVER: Thank you.

Just to take a step back, in comments by a number of parties, the issue of comparability was a major issue. And I believe we were asked to address that issue by those parties in our comments on the RFP. We attempted to do that by basically looking at three different approaches. And let me just state up front that none of these approaches have been adopted or standard in the industry. You know, we're really cutting new ground here in a lot of ways. And I think Mr. Larsen, you know, mentioned that one of the approaches, the performance-based approach, the Company would have a number of problems with that.

If we adopted another approach, you know, other parties would have problems. There is no perfect solution to this problem.

What we -- what we've tried to do is we really focused I guess at the beginning on trying to look at three factors. One is cost, the other is risk and the third is reliability. Because I think the three models have -- have different -- affect each one differently. And again, I think the key issue -- just to step back. The key issue is really how do you put third-party bids and cost of service bids on more of an equal playing field so that bidders have, you know, have a feeling that if they compete aggressively, they have a chance of winning, that it's not an uphill battle, that the utility project has an advantage out of the box because their prices are not locked in?

And with that said also, I do want to mention that I think the Company made a number of strides in the last RFP, as we talked about the hearings in 2006. And they've made further strides in this RFP. And our suggestion is to take it a little bit further.

Our view is that under the extremes of performance-based mechanism and the cost-based mechanism, to implement one of those two mechanisms would require months of hearings and, you know, probably a separate docket to address that. We're really talking about, I think as Mr. Larsen mentioned, a performance-based type approach. And it's a totally different regulatory mechanism in my view. So we tried to address this issue by looking at the evaluation process. How can we revise the evaluation process to -- in this RFP, to address the comparability issue? And that's what I would like to talk about, is what are some of our suggestions and how they would fit into this whole process.

And maybe if I could just, you know, go down the list that I have here.

We've talked about indexing. And as I mentioned, I think indexing was part of our comparability suggestion, but it could stand alone as well. And if the Commission deems that -- the comparability suggestions are not valid at this point. But you know, it could stand alone as part of the pricing in any case.

Another component is that the pass through and change of law costs associated with environmental requirements. The RFP right now envisions that the Company would pass through those costs as part of the evaluation to avoid a situation where bidders come in and say, "We'll accept those costs," but then don't provide the security to ensure that if they default, that those costs are not being absorbed. So -- and the Company had a situation like that before.

And Mr. Dodge had suggested that possibly the bidder should be able to offer an alternative to allow -- to suggest that they would absorb some of those costs in exchange for reducing their price or changing their pricing in some way.

We think that that can be handled through alternative pricing mechanisms that the Company has allowed the bidders. Right now the Company allows the bidders, for a fixed fee, a base bid and two alternatives. Plus bidders have the option of, for $1,000 a piece, to bid three other alternatives. And we think those three -- those alternatives would allow a bidder that would want to make a proposal to absorb some of those costs, would allow them to do that through those alternative pricing mechanisms. And the Company has also allowed -- agreed to allow bidders to provide alternative indexing mechanisms through those alternative pricing provisions as well. Which we think is a real positive.

I think part of the comparability

suggestion here, too, that we support the Company's position with regard to impugn of debt. And the Company's proposal is to treat impugn of debt at the end of the process as opposed to at the beginning of the evaluation process as some utilities have done. Impugn of debt becomes a big issue when it's addressed up front in terms of providing a potential benefit to the Company's own resources at the expense of a third-party resource. And the Company's proposal to address it at the back end of the process and actually allow the Commission to request that the Company seeks an opinion from a rating agency is a real positive step.

And that was part of the last RFP as well.

The Company is requiring the bids and the benchmarks to provide the same price and non-price information, including in the four-in-one (ph) pricing sheets. Those four-in-one pricing sheets we found last time were very effective in structuring the bid prices and the bid operational characteristics that the bidders and the Company offered. So that all bids and Company resources could be put on a level playing field in that regard.

There is also a requirement in the statute and in the requirements of the IE -- the IE's tasks, that the IE would validate and audit the cost of the Company's benchmark resources. We did that along with the Argon IEs last time. And our focus was to really ensure that the Company is not low balling its price initially with the intent that they win the bid and then come in with a -- you know, sort of cost of service approach and basically say, "Oh, our prices are a lot higher now." So we looked at it from the perspective of, you know, were the cost components complete and were they consistent with other benchmarks we're seeing in the industry. And you know, our conclusion was last time that the Company's pricing was -- certainly didn't low ball the price. It was reasonable pricing. But we have that authority again in this case to review and audit the pricing. So again, I think that's a positive step.

We also evaluate the benchmark resources prior to the receipt of the other bids so that the bid prices are locked down before other bids come in. And again, that serves to put the projects on more of a level playing field.

I think another key aspect of the role of the IE that Mr. Selgrade had mentioned is that the IE can request the Company to undertake sensitivity analysis on the benchmark resources, if necessary, or on other costs. And one of our intents last time was if the benchmark resource was going to be a selected resource, we were going to ask the Company to do sensitivity analysis and break even analysis on the benchmark to determine at what point does the benchmark win or loose. If the benchmark is -- the cost of the benchmarking increases by five percent, is that the tipping point? So we have that ability to ask the Company to run that analysis. So I think that's a real positive to bring back to you to show under these conditions, this is where the economics would change for the different resources.

As -- I think as sort of a creative solution here, one of the things we found in actually going through a risk profile of every aspect of project development from a third-party bid and a utility self build option, you know, from the perspective of project development, financing, construction, fuel supply, you know, if you go through it, you know, soup to nuts, from the beginning of the project development all the way through the operational phase of a project, what are the risk parameters that utilities and third-party projects face? And what we see as one of the big issues is security, that bidders have to post security. And there is a cost associated with posting that security. Whereas a utility doesn't have to post security.

As an example, if a project -- if a third-party project defaulted and the bidders didn't provide power -- the power under the contract, the utility would have to go out and replace that power. And it could be at a higher price. And the utility would draw on the security that the bidder posted to pay the replacement cost for that power. If the utility itself -- if the utilities project operated at less than expected, the utility would go out in the market, replace it with possibly higher cost power, but the customers would be subject to those costs with a possible prudence issue that the Commission would have to address.

But that's an area where we think there is a big distinction between costs associated to the Company and to the third-party bidder.

So our suggestion is to allow bidders to offer their pricing with or without security so we can get a perspective on what's -- what is exactly the cost of security, posting security.

And we're seeing in other RFPs for renewable resources where utilities are asking bidders to post -- to price with or without security.

So that's, I guess, one wrinkle that that's not currently in the RFP.

As we mentioned, we also think that the risk analysis should reflect some of the non-price factors as well, non-price risks for both project development feasibility risk and operating risk. If third-party projects -- you know, our concern is unreliability. And -- as one of the three factors. And one issue is that third-party projects, before they post security, could theoretically walk away from the deal. And their risk may be minimal at that point. But the customer then would absorb that risk if the utility has to go out and do another project or build its project. So we think that more work needs to be done on that side of the risk perspective, on the non-price side of it.

And we also want to encourage bidders to offer multiple pricing options. As I mentioned, they have those alternatives built into the RFP. And we hope that bidders take the opportunity to offer creative pricing or take advantage of those pricing options and propose different pricing structures that would allow the utility to evaluate those costs and risk trade offs.

So that's basically our proposal for comparability. It goes beyond, in some areas, what the Company is already doing. And I guess, from a summary perspective, it's really indexing and security, I think, that are the major changes from where the RFP currently stands.

CHAIRMAN BOYER: Thank you, Mr. Oliver.

Any final comments before we go to the Commissioners?

Mr. Larsen.

MR. LARSEN: Chairman Boyer, if I could just follow up on one comment made by LS Power.

They indicated that the Company may low ball its bid and in the future try to come back and get those costs passed on to customers. It's not quite as easy as that may sound. I think as everybody is aware, the Senate Bill process, Senate Bill 26, the Company would bring forward a resource option for preapproval by this Commission that would establish the level that is approved for going into rates. If the Company exceeds that level, either through unforeseen events, it would come back and ask for additional approval from the Commission whereby there is a review. It's not a unilateral pass through to customers where there is no review or challenge or prudency of those costs.

If the Company overruns its expenditures and doesn't come back for preapproval, then it is at risk for those costs to be challenged in a future rate making or rate setting process.

So there is oversight and review of those costs.

CHAIRMAN BOYER: Thank you, Mr. Larsen.

Commissioner Allen.

COMMISSIONER ALLEN: No. Nothing.

CHAIRMAN BOYER: Mr. Campbell.

COMMISSIONER CAMPBELL: I think I just -- I think I just have two questions. Or maybe one is just a comment and get your response to this, Mr. Oliver.

When I look at the comparability issues, sometimes it feels like we're trying to, you know, shove a round peg in a square hole and we forget that the issue is lowest cost to the rate payer, that our objective isn't necessarily to make everything exactly the same and comparable, but the end objective is the lowest cost to the rate payer. And I think the argument is if it's there, then we're going to get the lowest cost.

But I don't want to lose sight of that.

When we talk about comparability, our goal is to make everything the same.

Question for you, in the last round that you looked at, did you notice any bias or -- my understanding is that when we went through the modeling, that PPAs were being picked in various scenarios. And so, is there any bias in that model that you see as it goes through and picks between the various options?

I guess I'm looking for experience at the last round, rather than just the theoretical discussion that I've heard today. Is there anything from that round that troubles you, that makes you have such a strong opinion on this point?

MR. OLIVER: No. I mean, I think -- that's why I think a lot of the conditions that were in the last RFP and what the Company has added to this RFP is acceptable -- very acceptable to us.

We did hear from some bidders that on the indexing, I think, and from EPC contractors, that there were some concern about the limited indexing. And that the indices didn't necessarily match up with the cost increases that were being experienced. So I think that was one message from the market that we did receive.

I guess the other thing was that really didn't allow us to follow through on this whole process is that the Company pulled its benchmarks. So we really never had an opportunity to assess at the end of the day whether or not, you know, this process would all work.

But I do agree 100 percent with you that in some cases I think some of these alternative approaches are trying to make bidders or utilities bid to a performance-based contract or even make third-party bidders bid to a cost base arrangement is, my view, is putting a square peg into a round hole. And that's why our focus was to try to do a little more through the evaluation process, to put -- you know, to be able to assess the risks better. You know, using -- allowing more flexibility to assess risk and treat it that way as opposed to creating a separate model.

CHAIRMAN BOYER: I have one question for Mr. Oliver. And it's not exactly related to comparability.

But I'm just wondering, how robust is the independent power producer market at this time?

I mean, we're delighted that LS Power is here, but they are the only ones participating at this stage of the game. We've had some experience in earlier RFPs.

What's your understanding on that?

MR. OLIVER: Well, you know, truthfully, what I've been seeing in the market -- except for renewables, we're seeing -- you know, for renewables, we're seeing a lot of players, a lot of different types of bidders in the market. But for conventional resources, it's not as robust as it used to be. You know, there are a handful of bidders that, you know, compete in a number of RFP processes. But you know, it's actually been somewhat discouraging, as an Independent Evaluator, to see the number of bids that are being submitted. And it's also discouraging to see the number of third-party bidders that have opportunities like -- you know, like in this case, to comment on the RFP and don't take advantage of those comments. We're seeing that throughout the country in other RFPs that we're working on.

So we're not -- you know, we're not seeing a lot of third-party bidders competing. And you know, I -- some of the RFPs we have done have coal resources that were being bid. And I can certainly understand it there where, you know, you need to have, you know, experience in building coal projects.

And you may see a limited number of bidders there. But even with gas projects, we're not seeing a huge number of bidders.

CHAIRMAN BOYER: Thank you, Mr. Oliver.

Let's check with our reporter. How are you doing? Can you continue on until 12:30?

THE REPORTER: Sure.

CHAIRMAN BOYER: Very well.

Okay. Let's resume the schedule then and go to resource eligibility.

Oh. We could do that. Let's try to accommodate Ms. Wright, who has been kind enough to come here.

Would you like us to address the CO2 issue out of turn?

MS. WRIGHT: Well, thank you very much, Mr. Chairman.

I think that resource eligibility will get to some of our questions.

But I appreciate your offer.

CHAIRMAN BOYER: All right. Let's see how that -- let's see how we do then. Okay. Then we will go to resource eligibility at this point.

And we have a new speaker.

Would you identify yourself for the

record, please.

MR. DUVALL: Yes. My name is Greg Duvall, with PacifiCorp.

I think our -- the Company's proposal on resource eligibility is fairly straight forward. In the original RFP, we had not included coal as an eligible resource. There were many comments from the Utah parties saying that they wanted us to put coal in there. So we put coal in there, with a caveat that says, "Bids from new or existing coal resources will only be considered by the Company if such proposals are consistent with multi-state legal and regulatory requirements regarding new and existing coal resources."

So that's our proposal. And others, I guess, may have comments.

CHAIRMAN BOYER: I bet they will. Thanks, Mr. Duvall.

Mr. Brill.

DR. BRILL: Thank you.

The Division is concerned with multi-state requirements regarding coal resources. The Division maintains the current RFP language effectively excludes coal. We believe that a least cost, least risk resource can only be demonstrated by at least considering a full range of coal resources.

We understand that the Company has argued that gasified coal is still on the table, subject to those multi-state requirements.

And I think the Division would ask that the Commission resolve this issue.

CHAIRMAN BOYER: Thank you, Mr. Brill. We may have further questions on that comment.

Ms. Beck.

MS. BECK: The Committee did not take a position in our comments to date on this.

If I just may say, it's because we did not object to the proposal of the Company. We think that we're in a position right now where we -- we have a very serious need to get resources online. And we did not object to the assessment that certain types of resources might not be able to be online in a timely manner.

On the other hand, we also don't object to the related Issue Number 17, that will come up later, some other parties have put in a proposal that certain types of bids be allowed as long as they take on related risks.

So we didn't object to either side on that.

CHAIRMAN BOYER: Thank you, Ms. Beck.

Western Resource Advocates, Mr. Michel.

MR. MICHEL: Thank you, Mr. Chairman.

We are -- we're comfortable with where the Company has landed on this issue.

I guess what we'd point out, sort of consistent with what Ms. Beck said, except maybe a little bit broader, is that it's not -- the notion that everything should come into the bidding process and be evaluated, I think, is misplaced. I think there are a number of very high risk alternatives that are simply precluded from bidding because it's more trouble to evaluate them than to have them just excluded. And for example, intermittent resources. Those are not permitted to bid into this process. Why? Because there is a risk that an intermittent resource is not going to be available to serve customers. There are credit risks that preclude bidders from bidding. There are experience criteria that would also preclude bidders from bidding. For example, if they don't have the experience for a particular type of project.

You know, when you -- when you start looking at coal plants and what's going on with them today, the development risk is so great and the environmental risk is so great that I think there is a significant enough risk that those resources are not -- are simply not going to be available in a low enough risk profile to meet the needs of customers.

We think the smart thing to do is not have them in the bidding process in the first place. Because at the end of the day, you're still going to have to grapple with the issue for new coal anyway, can this project really get off the ground and get built? For existing coal, we don't have that risk, but we do have a lot of environmental risk. You also have a risk associated with the fact that, you know, they may not be eligible in other jurisdictions, and particularly with some of the generation performance standards we're seeing in other jurisdictions, it won't be saleable in other jurisdictions. Which, again, increases the risk to the point where we think it's not the kind of resource that should be -- we should be considering at this point. Or need to go through all those hoops and analysis to reach what seems, to us, to be an obvious conclusion, that these -- these resources just have too high a risk profile to be included in the bid process.

CHAIRMAN BOYER: Thank you, Mr. Michel.

LS Power.

MR. EVANS: We don't have a comment on this issue, Mr. Chairman.

CHAIRMAN BOYER: Thank you, Mr. Evans.

Mr. Dodge.

MR. DODGE: Thank you, Mr. Chairman.

UAE is troubled by -- quite troubled by a couple -- what appear to be realties within the resource procurement process of PacifiCorp. We don't disagree that they are realities, but we're troubled by them.

One is that the utility has made the decision, perhaps prudently, given its need to serve six states and its need to try and keep Commissions happy in other states, its made the decision to walk away from even proposing as a benchmark or even evaluating a coal resource. We don't believe that that -- that the interstate problem, even though real, is one that the rate payers should bear. We think that's one the utility should bear. And this Commission cannot know and will not know whether the ultimate outcome of this RFP is lowest cost, adjusted by risk, without -- when you exclude an entire category of resources, any category.

The second thing we're troubled by is the perpetual state we find ourselves in of RFPs that go out far enough to allow only coal -- or wind or gas or similar resources to bid in. As a practical matter, the RFPs do preclude construction of a new coal plant within the time frame proposed. Certainly they preclude consideration of a nuclear plant or any other kind of plant that might have a long lead time.

UAE has not taken a position on which resource is the best. But we think it's impossible to gauge what is the best without knowing what all the alternatives are. And so we're very, very troubled by those two facts that we've been complaining about now for about a decade without success, I'm afraid, in terms of convincing the Company to change its approach in a way that allows all potential resource options to be fairly and reasonably evaluated.

In this case, if they refuse to propose a coal benchmark, we're troubled by whether we ultimately think you can preapprove it as, in fact, consistent with the standards of Rule -- Senate Bill 26. We haven't reached a conclusion on that, but we're troubled by it.

But in our view, if they even exclude bids from existing coal plants or coal plants that may be within a time frame that they could be constructed in time, they certainly have precluded this Commission from making the decision contemplated by Rule 26. And our view would be you cannot, at the end, preapprove. Whether they've built it or not, you know, that may be a different issue. But we don't believe you can preapprove it if they exclude categories of resources that are critical for you to be able to make the lowest cost, risk adjusted decision.

Again, we don't discount the risk, but what they've essentially said is coal plants have a risk that is infinity. And so we can't analyze it. And yet they acknowledge that a gas plant has X percent of the same risk. And X percent of infinity, is infinity. And they can't adequately evaluate the risk of all the gas plants being added in the region and in the area, what that will do to gas prices. There are projections there that are equally dramatic with the CO_2 tax projection.

So if we allow the inability to adequately address risk to a certainty, if you will, to preclude resources, then we don't have any resources. And we might as well accept that if we, in fact, are going to be assessing in very difficult to assess risk factors, then all resources ought to be eligible to bid into the process and should be fairly evaluated.

And then ultimately, the Commission can make the decision what risk you think is appropriate for the rate payers to take up.

Thank you.

CHAIRMAN BOYER: Thank you, Mr. Dodge.

Mr. Oliver.

MR. OLIVER: Yes. Our position here basically was -- you know, our view was that coal shouldn't be excluded, you know, from a least risk perspective. Our view is that all resources should be allowed to compete and not have certain resources be eliminated up front.

CHAIRMAN BOYER: Any final remarks before we go to the Commissioners?

Ms. Wright has a comment.

MS. WRIGHT: And I'm not sure if this is the place for the comment or if this should be handled in the integrated resource planning process. There is significant risk associated with these plants. You may have -- today there was a teleconference at nine o'clock, that I couldn't be at, which a number of the banks, the three banks that recently announced that they are -- have certain provisions for financing. And one of those provisions was that rates could go high enough to pass on the carbon risk to the customer.

The other issue that I think hasn't been discussed in integrated resource plan is what do the customers want? We hear from the industrial customers. Some states have done deliberative polling where they have polled customers, educated them and then re-polled them so that they could understand the weighing of the cost and risk. I don't think we're asking the customers that.

There is also a moral issue associated with these plants. The customers were making decisions based just on dollars.

So I just would like to put those out. I'm not sure if this is the proceeding, but I hope that we can address those in the future.

Thank you.

CHAIRMAN BOYER: Thank you, Ms. Wright.

Mr. Brill, did you have a --

DR. BRILL: No.

CHAIRMAN BOYER: Looks like everybody is probably anxious for the hearing to be over not to speak.

Let's go to Commissioner Allen.

COMMISSIONER ALLEN: Thank you, Mr.

Chairman.

Mr. Michel, I realize that you've stated now you're in agreement with the Company's exclusion of coal. But I have a couple of quick questions of your prefile testimony to make sure I understand -- I'm clear with what you intended there.

One question is that you just talk about the carbon footprint as being a possible test. And you use the 1100 pounds of CO_2 per megawatt.

Will you just remind me where that comes from?

MR. MICHEL: I believe that's the generation performance standard that some of the states have adopted. It's roughly equivalent to combined cycle combustion turbine.

MR. DUVALL: It's both from Washington and California law.

COMMISSIONER ALLEN: Thanks. That's helpful.

And the other question I have, when you're talking about load curtailment, you mentioned "financial curtailment," that it's been disregarded. And where I come from, in the accounting world, when we talk about financial curtailment, we're talking about downsizing companies or restricting expenditures or removing capital plans.

What was your intent -- how do you see this as affecting the RFP?

MR. MICHEL: I think -- if I recall our comments correctly, we had asked for more explanation as to why financial curtailment could not be something that could be bid in. And frankly, it was because I did not understand the issue enough to really appreciate why a financial curtailment resource or a resource that could be financially curtailed would not be valuable to the Company. And frankly, we haven't followed up on that issue. And I'm not sure where it stands right now.

COMMISSIONER ALLEN: Okay. Thank you.

COMMISSIONER CAMPBELL: I've got nothing.

CHAIRMAN BOYER: I guess just one follow-up question.

On the timing issue that Mr. Dodge raised, I mean, we've been hearing -- I've been on the Commission now four-plus years and we've been hearing that the resource procurement has been sort of -- I guess, we can say driven by unanticipated demand growth.

What point do we catch up with that and issue RFPs that are out long enough? I mean, even this one is four years out to eight years out.

When do we get a little longer lead time so that we could contemplate other kinds of resources? Is that a valid question? Comment?

Mr. Duvall.

MR. DUVALL: It is a valid question and comment. And I don't -- I don't particularly have an answer for it. I mean, at this point we've gone out with RFPs that go out to 2016. And I think to capture the things that Mr. Dodge brought up, like a nuclear plant, you'd have to go out through -- well, a long ways. So I don't think that we're contemplating that at the moment.

CHAIRMAN BOYER: Ms. Beck.

MS. BECK: If I may respond to that as well. And I appreciate the opportunity because it allows me to agree with something that Mr. Dodge said. And we share that concern about the timing. So our comments were really limited to the scope of this RFP. And I feel like in the IRP process is where we've been raising this.

I think that you see a lot of uncertainty in the industry right now. But you do see other jurisdictions looking at RFPs that are much farther out. And if we're only ever looking four to eight years out, the practical matter is that the types of resources are very much restricted. So I think the question that you're asking is an appropriate question. I wish I had a better answer. But I think one of the answers is to continue to strive for a more robust planning process.

CHAIRMAN BOYER: Thank you, Ms. Beck.

Okay. Let's move onto -- we still have another 20, 25 minutes before we're going to recess for lunch.

The next issue listed on the summary is called "proposal option," which was the Division's -- DPU's Issue Number 11.

Mr. Larsen -- or Ms. Kusters. Okay.

MS. KUSTERS: The Company currently allows bidders to offer a base load bid and two alternatives for -- and those alternatives would be options for $1,000 per option. There has been some request that the Company allow for more proposals to be under that same bid so that the bidder would provide one bid as a base bid for the $10,000, but then have -- instead of having just the $1,000 per option under that same base bid, that they would be able to provide multiple options under one base bid. And from the Company's standpoint, we would like bidders to propose as many options as possible. However, at the same time, we're sensitive to the fact that each time we receive proposals, it takes a considerable amount of time to go through and do all of the analysis. So although we want multiple options, at the same time we don't want a full laundry list of options if it only costs bidders a $1,000 to propose.

So I think what the Company provided, we worked with the Independent Evaluator in order to assess what would be reasonable for providing proposals and came up with a base bid, as well as two separate options under that same base bid, as opposed to requiring bidders to provide $10,000 for each bid itself.

So the Company believes that this is a reasonable approach that will provide bidders with an opportunity to provide a base bid, as well as to provide two options under that base bid at a reasonable cost to bidders, without encouraging -- you know, sort of bidders providing us laundry lists of options that not necessarily tie back to the base bid.

CHAIRMAN BOYER: Thank you, Ms. Kusters.

Mr. Brill.

DR. BRILL: Thank you.

The Division agrees with and supports the Company's proposal options. We find it reasonable. And we like the base bid -- after the experience of the previous RFP last year, we do applaud the base bid with two options.

CHAIRMAN BOYER: Thank you, Mr. Brill.

Ms. Beck.

MS. BECK: We have no comment on this issue.

CHAIRMAN BOYER: Mr. Michel.

MR. MICHEL: We don't have a comment on this issue.

CHAIRMAN BOYER: Very well.

LS Power.

MR. GASSAWAY: Our view is that the three additional options, on top of the base bid, plus options is too limiting. We've heard from a number of parties saying they want to see the creativity of bidders. And we feel that we can't offer the creativity, being that we don't know how the Company will respond to that creativity, under the number of options that we have. So we feel that more options would allow bidders to explore creative ideas.

And also, given the -- you know, the RFP is for five years, if you had a resource that could be online for the first year, but also for all the other years, you don't know when it may be optimal. And let's say you have different index options, you quickly exceed the number of bids that's allowed or options that's allowed.

CHAIRMAN BOYER: Okay. Thank you.

Mr. Dodge.

MR. DODGE: We understand the trade off between the creativity on the one hand and the burden of analysis on the other. We are on the side of creativity because we think bidders should, in fact, be encouraged to be creative in their options. And as just mentioned, if they start being creative with indexing and security options and in different years when they could be up and going, you run into that limit very, very quickly.

We think that should be expanded by -- I don't know what the right number is. I guess I would ask whether LS Power has a particular suggestion. But we think it ought to be expanded so the encouragement of creativity is real and not limited by other parts of the RFP.

CHAIRMAN BOYER: Okay. Thank you, Mr. Dodge.

Mr. Oliver.

MR. OLIVER: Yes. Our original position was that we basically agree with the Company's proposal, which was the base bid and two alternatives, plus the ability for bidders to ask for three other alternatives at $1,000 a piece. So six alternatives. But certainly, as the IE, you know, if the agreement or the parties are interested in additional -- limited number of additional alternatives, I wouldn't object to that at all. I think -- you know, I'm on the side of creative bids as well. And if companies like LS Power are interested in offering more proposals or more creative pricing options, I think that would be a valid idea.

CHAIRMAN BOYER: Thank you, Mr. Oliver.

Any further comment before we go to the Commissioners?

MS. KUSTERS: Just one comment. And that is just to remind everyone that we do take the bid fee that bidders provide to help offset the cost of the Independent Evaluators. And that way, it helps minimize the overall cost to customers.

That's just one point.

The other is there was a couple of suggestions with regards to the options. One being that the options be allowed to include index options, which the Company has agreed to. The other, which has been commented on, is to allow for bidders to provide security options as a bid. And the Company does not agree that that should be an option that bidders should be allowed to provide.

So I just wanted to make sure that those two items were on the record.

CHAIRMAN BOYER: Thank you, Ms. Kusters.

Commissioner Allen.

COMMISSIONER ALLEN: Mr. Oliver, when you mentioned that you want to encourage more bidders, I'm just wondering, is there anybody out there that's doing something we haven't considered here that's working, that's getting really creative and just hasn't come to our attention?

MR. OLIVER: Another utility?

COMMISSIONER ALLEN: Yes.

MR. OLIVER: I mean, actually, I think most of the creativity we're seeing, at least lately, has been pretty much in the renewable side, where some utilities are asking bidders to bid prices with and without security, that type of thing, and asking for more flexible pricing.

But you know, in my view, originally -- my original position was I thought, you know, the Company asking bidders to offer really six -- there is really six different options was a reasonable approach. And actually, it's more than what most companies ask for.

COMMISSIONER ALLEN: Thank you.

COMMISSIONER CAMPBELL: Along these lines, let me ask you, are there utilities that do not require bid fees? How big a barrier is that; do you believe, to companies bidding in?

MR. OLIVER: I don't think it's a -- I don't think the level we're talking about is a huge barrier. My experience has been most companies do require some bid fee. Even renewable -- for renewable RFPs, there is a bid fee generally involved. And I think for the amount of megawatts that we're talking about here, the bid fees the Company is asking for I don't think are unreasonable at all.

COMMISSIONER CAMPBELL: So let me understand, your proposal is that $10,000 bid fee, with five $1,000 alternatives?

MR. OLIVER: Well, it's actually -- what the Company is offering is a $10,000 bid fee, and for that 10,000 bid fee, you submit a base bid and two alternatives. Then you have the option of also submitting three additional at $1,000 a piece.

COMMISSIONER CAMPBELL: So $13,000.

MR. OLIVER: Now if the bidder proposes a different type of technology or another project at a different site, then they have to submit a $10,000 bid fee over again. And they have those same alternatives. But it's only triggered if it's a different site or a different technology. Because then you have to go through -- the issue is then you have to go through all the non-price evaluation again and that type of thing. Whereas, same site, same project, it's a modeling -- becomes more of a modeling exercise to do the price evaluation.

CHAIRMAN BOYER: I guess I'll ask the question of LS Power that Mr. Dodge wanted to ask.

What number of options would you think reasonable? Or should it be a floating number?

MR. GASSAWAY: Well, for the scope of this RFP, we feel something like maybe ten additional options, rather than three, would be more appropriate.

CHAIRMAN BOYER: Ten in addition to the base, plus two?

MR. GASSAWAY: Right. Plus ten for $1,000 each.

CHAIRMAN BOYER: Let me ask this question of no one in particular.

What would the effect be of having a sliding scale on the fee for the additional options? Like after three, it goes up. After six, it goes up. After ten, it goes up?

Would that chill unnecessarily and defeat the purpose or would that help to offset the additional costs to the Company and other parties in evaluating these multiple options?

And I guess I'm looking at Mr. Oliver after all.

MR. OLIVER: And I think that's reasonable. And I think even LS Power mentioned that's something they would consider. Even a higher bid fee after a certain number.

Let me mention one thing, what we've seen in other RFPs, and actually the previous RFP, you know, these options were out there before and most bidders really didn't take advantage of multiple pricing options.

But with that said, I mean, I wouldn't have a problem with a sliding scale. I think, you know, like you said, it might discourage bidders, I don't know if it would or not. Because I'm not sure bidders are looking at that level anyway.

CHAIRMAN BOYER: Mr. Brill.

DR. BRILL: I do have a comment here.

Several on the panel referred to a balance between creativity and burden. And I would like to come down on the side of burden for the Company. After the experience of the RFP last year, we saw a lot of incomplete bids, a lot of repeated requests by the Company for clarification of bids. And I hope that by limiting the number of, let's say, to what the current Company proposal is, those are high quality bids that are complete.

And that led to a real delay in the RFP last year.

CHAIRMAN BOYER: Okay. Thank you, Mr. Brill.

We have a few minutes before we break for lunch. Can -- is price evaluation one that we can get reasonably started with?

MS. KUSTERS: It's quick.

CHAIRMAN BOYER: It's quick? Let's go then with the Company.

Ms. Kusters.

MS. KUSTERS: So on price evaluation, the

Company does not disagree with what the IE has commented on. Currently, in the initial short list, there is a range for the price component of the evaluation. In the initial short list, we have price and non-price factors. The price factor is 70 percent of the weighting. And in that 70 percent, to the degree that you are 60 percent of the price curve, you receive the full 70 points, 70 percent. To the degree that you're over 140 percent, you receive zero.

And so what we've experienced is that when we had a less broad of a range in our prior RFP, most of the bids exceeded the 120 percent, which then would result in having zero percent from the pricing standpoint.

So we agree with the IE that essentially from that standpoint we want to make sure there is some level of percentage that is applied on a pricing perspective for each of the given proposals. However, what we would like to keep in the RFP is some range in order to explain to the bidders how the Company will be evaluating the pricing component of the initial short list. And not having anything in the RFP, in our minds, would lead to a less transparent process.

So from the Company's standpoint, we've approached it in a matter where we've increased the range of which the evaluation would be done on to include 60 percent to 140 percent, recognizing that we've also added in the redlined RFP a statement that to the degree that it exceeds 120 percent, that it would be done on a percentage basis. So that's our approach as far as how we've addressed it. Recognizing that to the extent that bidders do provide proposals, where in the initial short list their pricing exceeds the 140 percent of the forward price curve, we don't want that to result in just zero percent, where it turns out that the entire initial short list is using the non-price factor, as far as how they are ranking the individual proposals.

CHAIRMAN BOYER: Mr. Brill.

DR. BRILL: On the issue of price evaluation, the Division will defer to and support the recommendations of the Independent Evaluator.

CHAIRMAN BOYER: Thank you, Mr. Brill.

Ms. Beck.

MS. BECK: We have no comment on this issue.

CHAIRMAN BOYER: Mr. Michel.

MR. MICHEL: Mr. Chairman, we had raised

an issue that has been characterized in the -- in this Number 22, environmental, that relates to this. Simply has to do with the -- how much of the weighting should be in price factors versus non-price factors. We felt the environmental component should be bumped up. But we can talk about that later. But felt like the 70 percent was too high a proportion to have price factors.

So if you would like, I can talk about it now. But if we're trying to get to lunch, we can leave that for Item 22, which is where we put it on the matrix.

CHAIRMAN BOYER: Yeah. I think it falls more naturally there, Mr. Michel.

LS Power. Is it -- would you spell your name for me.

MR. GASSAWAY: Gassaway, G-A-S-S-A-W-A-Y.

CHAIRMAN BOYER: Thank you very much, Mr. Gassaway.

MR. GASSAWAY: My only comment probably stems from my lack of clarity on the process. But from the diagram in the RFP, it appears as though the benchmark resource skips the initial short list process and goes straight to the final process, or final short list. And we would just ask that the benchmark resources have to go through the same process.

CHAIRMAN BOYER: Thank you, Mr. Gassaway.

Mr. Dodge.

MR. DODGE: UAE also defers to the IE on this issue.

CHAIRMAN BOYER: Okay. Mr. Oliver, you're up.

MR. OLIVER: Yes. We discussed this -- talked about some of the concerns we've had. But the issue is that the band width that the Company has set, we have been involved in other RFPs where the utility tries to pre-specify the price range. And in some cases, what did happen is that the -- the short list was driven by non-price.

So our suggestion was that if bids come in, that -- it ended up basically at the high end of the price range or at some point on the price range where price -- the 70 percent allocated to price is really not being met or is not close to being met, that the Company should have the option to re-establish those ranges to refine the short list. And you know, rescore the bids. Because otherwise -- one thing you don't want to have happen, you don't want to have a situation where the utility is saying, "70 percent of the points or 70 percent of the weight should be on price, 30 percent on non-price," and then have it flip-flop because you misspecified your price ranges.

And again, in this market, where prices are escalating, you know, and you have a forward curve that may have been generated before the bids came in and it maybe old by the time the bids arrive or the bids are evaluated, you have -- you know, that risk is real.

So our suggestion was, let the utility revise the price range after the bids are -- after you have a chance to review the bids.

I also had a couple of other price issues, if I could raise those at this point?

CHAIRMAN BOYER: Certainly.

MR. OLIVER: One is, in the RFP, the -- PacifiCorp basically mentions that on the risk side, that the metric they're going to use is tail risk. And in the previous RFP, the evaluation metric was risk adjusted PVRR.

I wasn't sure if that tail risk was just left in there from before or if it had been revised -- if it's going to be revised or not?

And we also had some suggested refinements to the Step 2 and Step 3 evaluation for the risk analysis. One thing we found difficult was being able to look at the results of the portfolio evaluation and -- you know, this, I guess, gets back to the least cost portfolios. It's difficult to look at the results of the portfolios and say -- and rank the portfolios, for example. And I think the Company's analysis does a great job of identifying which resources are robust in the different portfolios. And which ones, you know, would perform well in one portfolio versus another.

But in terms of comparing the economics of the different portfolios, it's very difficult to do that now because each portfolio has a different size, you know, different megawatt size and that type of thing. So it's -- it's like an apples and oranges comparison.

And we had some suggestions that -- to work with the Company, I guess, when we get into the -- when we meet with the Company on the modeling aspects of the process, to see if there is a way of designing a mechanism that would allow those portfolios to be put on more of an equal footing. For example, if there is a 2,000-megawatt portfolio, that's a portfolio that's a highest volume portfolio in terms of megawatts, then maybe look at portfolios that only have 1,600 megawatts should be brought up to the 2,000 megawatt limit. And the Company would buy and sell power to ensure that it's an apples and apples comparison. Everything is being done on the basis of 2,000 megawatts.

So we have some ideas around that and we'd like to, you know - I can't lay it all out today, but it's probably something we would need to sit down with the Company and the Division and work through.

CHAIRMAN BOYER: Thank you, Mr. Oliver.

Ms. Kusters on the tail risk.

Mr. Duvall.

MR. DUVALL: The evaluation that we anticipate in this RFP is -- it was anticipated that it would be the same as we did in the last RFP. So if you're reading a difference into that, then that's not what was intended.

MR. OLIVER: No. Just -- the wording says, "tail risk."

MR. DUVALL: Yeah.

MR. OLIVER: In the RFP itself. Maybe I can find that page.

MR. DUVALL: Well, there was --

MS. KUSTERS: We'll correct it, if that's the case.

MR. OLIVER: It's actually on page 56.

If that's one of the factors, that's fine. But -- it would be evaluated. But just want to be clear that what's said in there is how you're going to do your evaluation.

MS. KUSTERS: Not a problem.

MR. OLIVER: That's an easy one.

CHAIRMAN BOYER: Okay. Thank you.

Any last comments before we go to the Commissioners?

(No verbal response.)

CHAIRMAN BOYER: Commissioner Allen.

COMMISSIONER ALLEN: No questions.

CHAIRMAN BOYER: Commissioner Campbell.

COMMISSIONER CAMPBELL: Mr. Oliver, would you comment on LS Power's point about the benchmark jumping to the final process. Should the benchmark have their percentage against the forward price curve evaluated just like everyone else?

MR. OLIVER: That's a good question. I've seen it done both ways in other RFPs. In some cases, the utilities will -- you know, to avoid having a -- you know, non-price is generally subjective. So in some cases, the utilities' bids generally might score better on non-price. Utility has a site and that type of thing. So avoid having the non-price push the utility project ahead of others, they would -- you know, assuming the utility benchmark would be -- would pass through the short lift, would be on the short list automatically and would have to compete at that level. And others -- you know, when they actually submit self builds, they actually go through that process of competing at every stage of the process.

So I don't know which way -- I can't -- I'm not sure which way would be the best option here in terms of ensuring that the Company's bids are fairly vetted. But I would have no problem having the Company's bids compete -- or at least go through that first -- first stage modeling process. You know, in Step 1.

MS. KUSTERS: And just to add to his comments, the Company is proposing to evaluate the benchmarks on both price and non-price the same way we would evaluate the proposals that come from third parties. However, we will pass through the benchmark to the final short list as an alternative. But you will see the evaluation being complete for the benchmarks in the initial proposals.

MR. OLIVER: Last time what happened -- I mean, all bids made it to the short list last time.

CHAIRMAN BOYER: I just have a couple of questions on the portfolio comparability issue.

Do the models -- does the modeling select the portfolios or does the Company -- I'm not suggesting any impropriety there, but is there not room for mischief in the selection of portfolios?

MR. OLIVER: The initial portfolios or the --

CHAIRMAN BOYER: Yes.

MR. OLIVER: Well, the model selects the bids that rank best in the majority of the portfolios.

I think Greg can probably answer that better than I.

MR. DUVALL: Yeah. It's the models that select it. And we work with the IEs and the Division on how those models are set up and what the inputs are and that sort of stuff. So they are very transport as to how the models are run. And the results do come out of those models.

CHAIRMAN BOYER: Thank you.

If there is nothing further, then we'll be in recess until two o'clock p.m.

Thank you very much.

(Lunch recess taken at 12:31 to 2:03 p.m.)

CHAIRMAN BOYER: Back on the record.

And I think we've arrived at the moment we've all been waiting for. We're now going to talk about the risk of CO2 costs.

And Mr. Duvall, are you going to lead off on that topic?

MR. DUVALL: I am. This is Greg Duvall, again, from the Company.

And there is probably -- I guess there is two issues here on the CO2 risk, for the treatment of CO2.

And one is that, you know, how are we going to model the CO2? And our plan is to do it the same way we did it in the prior RFP, where we looked at a high -- low, medium and high scenarios of CO2 costs in our analytic framework.

And I think the other issue was the -- allowing bidders to propose creative means to include -- securitize the CO2 risks in any coal bids. And that was in Step 4. There is some language in the RFP on that on page 58.

That's all I had.

CHAIRMAN BOYER: Nothing further?

MR. DUVALL: Nothing further.

CHAIRMAN BOYER: Very well.

Mr. Brill.

DR. BRILL: Thank you.

Of course the Division has looked at Issue Number 17 to be closely related to Issue Number 10, which is resource eligibility. And we've often thought, as we discussed under resource eligibility, that coal should be allowed to compete and -- and so on. We've often had internal discussions within the Division and basically they conclude that if bidders are willing to take on the risk of CO2, then let them bid whatever they want.

The Division does support the IE's suggestion following the UAE's proposals to do something like this, to let the bidders take on the risk of CO2 on their own.

That's all.

CHAIRMAN BOYER: Thank you, Mr. Brill.

Ms. Beck, any position on this?

MS. BECK: Just what we said earlier, we don't object to that proposal that's on the table.

CHAIRMAN BOYER: Very well. Thank you.

Mr. Michel.

MR. MICHEL: Yes, Mr. Chairman.

There is a presumption here that bidders are able to take on CO2 risk. And there are a couple of things that may weigh against that.

One is just the bidder's ability to absorb that risk, which, you know, presumably could be dealt with through credit requirements and things like that.

But more importantly, I think it -- it also assumes that we have a clear understanding of how CO2 reduction legislation or regulation is going to -- what it's going to look like in the future. I -- you know, there are -- there are a variety of scenarios out there. I think everyone is focused on cap-and-trade, with allowances for generators. There are a number of different proposals circulating. And -- and what may seem like the most reasonable and the most likely today, may, in fact, may not be the way it comes out.

Just as an example, you know, one -- one -- one scenario is that the obligation is on utilities to reduce their CO2 footprint without regard to where those particular carbon dioxide emissions are coming from. And if PacifiCorp is told, "Okay. You guys need to reduce your -- your CO2 footprint ten percent from your base line," whatever that is, how is that risk going to be born by a bidder that may be a gas plant? I mean, what share of that CO2 mitigation is then assigned to them.

I mean, there -- there are some complications here that -- that -- that I think we need to be aware of. It may not just be as simple as saying, "The bidder takes the CO2 risk." Because until we know how that risk is going to materialize, I'm not sure we can -- you know, we can protect ourselves contractually enough to make sure that that truly is the case.

So that's just something to consider that seems to me to weigh against, you know, allowing the bidders to take on CO2 risk before we know what that risk looks like and where it's going to fall.

CHAIRMAN BOYER: Thank you, Mr. Michel.

Mr. Evans.

MR. EVANS: LS Power doesn't have a position on this issue, Mr. Chairman.

CHAIRMAN BOYER: Thank you, Mr. Evans.

Mr. Dodge, we started on the issue we're calling "risk of CO2 costs."

MR. DODGE: Thank you.

And first I apologize for being a few

minutes late.

UAE's position is that we support the IE's suggestion that we consider allowing alternative bids that would flesh out the ability and value, if you will, of a company assuming some part of the CO_2 risk. We -- we don't think that it ought to be assumed under all circumstances that rate payers have to take. If others put a different value on it and are able to securitize it, the bidder should be permitted to take that risk.

CHAIRMAN BOYER: Thank you, Mr. Dodge.

We'll turn to our Independent Evaluators.

Mr. Oliver.

MR. OLIVER: Yeah. Our approach here basically was in responding to Mr. Dodge's comments in his -- in his original filing, was that we thought that there were opportunities for bidders to -- to basically price or propose a price, that they wanted to take that risk. And price their -- price -- submit their proposal with or without, if they wanted to. The alternatives of the Company allows -- we felt, provide the opportunity for bidders to do that.

So that was our suggestion, just to provide a way of having the bidders that wanted to absorb that risk, price it into their proposals.

CHAIRMAN BOYER: Thank you, Mr. Oliver.
Any last comments before we go to the Commissioners on this issue?
(No verbal response.)
CHAIRMAN BOYER: Commissioner Allen.
COMMISSIONER ALLEN: Thanks.
I'll ask a question of our IE that's probably along the lines of what we've been asking already today, and that is, do you see anyone out there taking on these risks, any bidders around the country, anyone willing to actually do this?
MR. OLIVER: I think it's typical of most of the RFPs that we've been involved in that the utility will basically say, "We're going to treat these costs as a pass through for evaluation purposes." I -- I think there was one bidder in -- in one of PacifiCorp's RFPs that indicated they wanted -- they were willing to take that risk. But I haven't seen it -- I haven't seen it in other cases.
COMMISSIONER ALLEN: So relatively speaking, this is a fairly new idea then?
MR. OLIVER: Right. It really -- I think it's a flexibility issue. It gives the bidder the option if -- if they think that somehow they can manage that risk better than the utility can, then

they may want to take on that risk. And we'll just say let them price their proposal with that risk included if they wanted to.

COMMISSIONER ALLEN: Thank you.

MR. CAMPBELL: I don't have anything.

CHAIRMAN BOYER: Mr. Oliver, do you have any response to Mr. Michel's comment there on not being able to quantify what the risk is? And then how does one share risks or allocate risks, for example, a gas plant, for some future carbon regulatory regime? Or need we be concerned about that?

MR. OLIVER: I haven't -- I haven't really given that much thought. So I don't -- offhand, I'm not sure I can really answer it at this point. But it's certainly an issue.

I know the Company's analysis does -- the risk analysis does take into account the -- you know, four different CO2 cost cases, which gives a pretty good variation on that risk.

CHAIRMAN BOYER: Thank you.

Anybody else wish to speak to that issue?

MR. DODGE: Mr. Chairman?

CHAIRMAN BOYER: Mr. Dodge.

MR. DODGE: I would briefly respond.

Risk, by definition, is the unknown. And risk of pricing changes in that for gas or for fuel, all kinds of risks are allocated by contract between the contracting parties. The only question is, how big is the risk and can you provide proper security against it? But again, the rate payer takes that risk under the normal approach hundred percent presumably.

If someone is willing to price into their proposal a willingness to take that risk up to a certain level or whatever, how are we worse off even if they later default than if we just take it up front? In other words, it's something where the analysis would be like any other risk. It's who is willing to pay the most for it? And given all of that, is it more reasonable to accept that risk or to shun the -- shun the part of it off to somebody else?

CHAIRMAN BOYER: And assuming there is added security or collateralization for that risk that's being considered.

MR. DODGE: Right.

MS. KUSTERS: And the one thing that I'll add to your comment is that if there is a bidder that is willing to provide or cover that particular risk prior to legislation going into place, you're going to be paying for something up front potentially for several years before legislation comes into play that defines that risk. So if a bidder says, "I'm willing to take or absorb $8 a ton today for the next 30 years," and legislation comes in at $4, then they factor it in potentially $8 or vice versa.

So I think the one thing that we need to be cognizant of is that prior to any legislation coming into play, it's a little different than gas risk, where today we know that the volatility of gas can go up or down. But there is a gas forward price curve. With CO2, it's more unknown in that it may come into play in 2012, it may come into play in 2015. When legislation comes into play is going to determine when you're going to have to start paying or passing through that cost. To the extent that a bidder takes on that risk, they'll want you to pay as of the date that they become commercially operable. And so you may end up paying something that, you know, may materialize or may not materialize.

So I just want to make that distinction.

CHAIRMAN BOYER: Thank you, Ms. Kusters.

We're having telecommunications issues here.

MR. MICHEL: Mr. Chairman, are we on the

record?

CHAIRMAN BOYER: Go ahead.

MR. MICHEL: In response to Mr. Dodge, the point I was making was that we may not know how much of that risk should be assigned to this producer because the regulation of carbon in the future may not accommodate that type of -- that type of division of responsibility, regulations on the utility. And it's an overall type of regulations saying the utility should already do to a certain amount. Then you run into the problem, well, out of our responsibility, how much of that is this gas plant responsible for?

And you know -- and that's just one example. I think, you know, it is difficult to anticipate what the regulation may look like and how it may -- how it may -- how it may evolve in a way that PacifiCorp can cover themselves in all instances that this -- that this bidder is going to be responsible for a certain portion of carbon risk. Maybe it can. But -- but it seems like it could -- could be a difficult drafting issue to try and capture all those possible scenarios.

CHAIRMAN BOYER: Thank you, Mr. Michel.

And I guess the record should reflect that someone has joined us or some individuals have joined us by telephone.

And I apologize for not recognizing you earlier, if you were on earlier in the day.

Is there someone on the phone listening in?

MS. LYNCH: It's Mary Lynch, with Constellation, that's on the phone.

CHAIRMAN BOYER: Okay, Mary. Welcome.

Were you on this morning?

MS. LYNCH: Yes.

CHAIRMAN BOYER: Well, I apologize for not having acknowledged you and let you introduce yourself.

And you are with the Oregon --

MS. LYNCH: I'm with Constellation.

CHAIRMAN BOYER: Okay. I beg your pardon.

MS. LYNCH: Thank you.

CHAIRMAN BOYER: You're welcome.

MS. LYNCH: Thank you.

CHAIRMAN BOYER: We are continuing down the list of issues and we've just been discussing the risk of CO_2 costs. And we're going to move to the economic evaluation models next.

Do you have any comments you would like to make on any of the topics we've discussed heretofore?

MS. LYNCH: No. Thank you.

CHAIRMAN BOYER: Thank you, then.

Please shout or something or wave your hand if you wish to participate.

Thank you, Mary.

MS. LYNCH: Thank you.

MR. LARSEN: Mr. Chairman, if I could just follow up with a comment that -- on Mr. Dodge.

When you say that customers will be no worse off if someone defaults on the CO2 risk, but wouldn't it be the case if someone bid in a co-resource and they're willing to take on all of that risk and then later default, that would all come to the rate payer? But you may have selected a resource that had less CO2 risk to begin with. So I'm not sure that you can say that rate payers are no worse off if it drives the resource decision.

MR. DODGE: What I'm saying is that if you have security for the level of risk. I suspect if a company today said, "I'll take a hundred percent of the risk," there is probably not an LC that could be issued that anyone would issue to securitize that risk because it's too unknown. I agree with that.

My point was more, if we believe -- if we factor into this analysis an $8 per ton, and Stacey's point, what if it's 4 or what if it's 12, who is going to take the risk of the over or under? If some bidder values that delta greater than we do, or in other words, gives less risk to it than we do in the analysis, why should they not be permitted to take that to a specified level, an identifiable risk dollar wise, to securitize? Then I say, if beyond that we still have to take the risk, if the CO2 it is worse than what they have contracted to take, we take that in any event. In other words, we haven't been paid for that part of the risk. The part of the risk they're taking that we'll pay them for, we expect security for.

MS. KUSTERS: And just how we've addressed that is we have the bids go through to the final short list and then bidders have the opportunity in Step 4 to provide us with those creative solutions with regards to CO2 as a means of if they can or are willing to take on that CO2 risk and provide security, then we will accept those proposals and evaluate them accordingly.

So that's like on page 58.

CHAIRMAN BOYER: Thank you. I think we understand that issue now.

Let's move on to economic evaluation of models.

Who will be speaking?

MR. DUVALL: That's me one more time.

CHAIRMAN BOYER: Okay. Mr. Duvall.

MR. DUVALL: Since my group runs all the models.

In the -- the -- what we've proposed with this RFP is basically -- it's almost identical or it is identical to what methodology we had in our prior RFP. I would note, looking at some of the other positions, there is -- the UAE has indicated that the IE must be given full access to models. And we have no problem with that. And I heard the IE say earlier today that we will be getting together with the IE and the Division to kind of work through the analytic framework, make sure that if there is anything we can enhance, that that analysis would -- we will do that.

The LS Power comment that the risk of a benchmark price increase and under performance should be included. We have not done that and I don't think it's appropriate without including the risk of a benchmark -- I mean a benchmark price decrease. It is -- you know, given the fact that the bid comes in or the benchmark comes in before the bids, the IE has the right to audit that benchmark as to its reasonableness. The Commission should be fairly comfortable that that benchmark -- the risks of either exceeding the costs or going below -- coming in below the costs, it should be symmetric. As well as the performance of the asset, whether it under performs or over performs. Hopefully that is what the IE is able to, you know, make sure that the benchmark is in the position where it will be balanced of -- of having the risks above and below what that benchmark level is.

And on the -- I'm not sure -- I note the CCS comment to take appropriate actions to ensure that the outcome is a defensible outcome. I don't really understand what that means. And I would like to ask the Committee to explain that a little better.

And that's all I have.

CHAIRMAN BOYER: Okay. Thank you, Mr. Duvall.

I think we'll let the Committee answer that when their turn comes up.

And we'll go to Mr. Brill.

DR. BRILL: Thank you. The Division has no comment on this issue.

CHAIRMAN BOYER: Thank you.

Ms. Beck.

MS. BECK: Our issue is really quite simple.

I think that this -- the sentence that came onto the matrix may not have been the best to reflect the position that we spent quite a bit of time talking about in both sets of comments related to this.

The Company has said they are using the same models that they have used in the IRP and the RFP. These are the same models that have an abundance of acknowledged flaws raised both by parties commenting on them, as well as in Commission order. So I acknowledge that the models are used somewhat differently in evaluating an RFP than an IRP, but it remains true that we have flawed models. And it cannot be discounted that over here in the IRP process, we're working on these issues and we all have -- have comments and concerns and questions. And -- and there is even a proposal on the table for improving those models. We still have the same flawed models used for evaluation.

And in my way of thinking, this ties back to one of Mr. Dodge's earlier comments, and that is relating to preapproval. I think the standard for preapproval is -- is reasonably high. And we're looking at trying to have a process that yields a least cost resource for consumers. Of course, adjusted for risk. And if the evaluation is done with models that are acknowledged to be flawed, I -- I do not understand how the Commission could ever make a determination that that standard had been met.

I'd also like to comment to one of the IE's earlier comments. I think there is a lot of overlap that I hadn't anticipated between Item Number 14, on price evaluation, and the model evaluation here. I think it's an absolutely unacceptable process to think that these evaluation concerns should be decided off line between the Company, the Independent Evaluator and the Division. I think that is -- is impugning to the IE and the Division, the Commission's authority.

And I'm not going to wonder further into legal territory without having my lawyer jump in, but from a substantive perspective, I think that tries to -- to -- to make a greater break between this RFP and the IRP process than exists. There are a lot of very interested stakeholders in how planning is done, how modeling is looked at. In fact, I don't think there is anyone here in the room today who -- who hasn't commented on that.

And so I think either addressing the issues of evaluation and modeling must be done in some sort of a Commission-overseen process or it can be done otherwise with the well-acknowledged risk that preapproval is -- is -- is seriously in question.

That's our issue.

CHAIRMAN BOYER: Okay. Thank you.

So play through here out of turn.

Was the intention that the discussions on the modeling be restricted just to the Division?

MS. KUSTERS: No.

MR. DUVALL: I don't think so. The Committee is certainly welcome to join in on those discussions.

CHAIRMAN BOYER: Would that satisfy your concern, Ms. Beck? Or would you want it in a more formal kind of setting?

MS. BECK: It only partially satisfies. Of course I want to be at the table. But I think that if I'm trying to consider the interests of small rate payers, it seems to me that it's -- it would only be fair to allow all interested parties to at least participate.

CHAIRMAN BOYER: Ms. Kusters.

MS. KUSTERS: I think one of the things we have to recognize, just stepping back here, is that, you know, we'll proceed with completing both the initial and the final short list, upon which we'll look at what the end result is. We'll then have to come in, through SB-26, for approval of that resource. Upon which all of the information will be reviewed by the parties as part of the process. So you will also have an opportunity to determine whether or not that resource does or doesn't meet the preapproval requirements before the Commission will issue an order on that.

So I mean, we welcome the Committee to participate as part of our -- as part of the modeling exercises with regards to the process. But recognize that all of this information is very confidential as we move through the process. And any information that gets out to the bidders at any given point in time prior to the Company making a decision on what resource we're going to go forward with is very confidential. And could impact customers in the long run if that information were to leak out to other bidders.

So we need to have some level of

confidentiality as we move through the process. But by no means are we attempting to exclude the Committee.

MS. BECK: Could we respond?

CHAIRMAN BOYER: Yes. Ms. Beck.

MS. BECK: We're not asking that confidential information be released. We're asking that the underlying assumptions and modeling methodology be discussed by other parties.

And I think had we a successful IRP process at this last round, if there were, for example, an acknowledged IRP, then I think the model -- modeling effort that led to that would also be used here and could be relied upon from a regulatory perspective. But we don't have that. So we do not have a set of modeling assumptions that can be relied upon.

And so I'm not saying that every modeling output needs to be released to everyone, you know, really jeopardizing confidential information. But I'm saying that resolving the underlying issues either needs to be done in a way that stakeholders have an opportunity to participate or resolved by Commission order or I think that, you know, just return to the preapproval risk that I think underlies it all.

CHAIRMAN BOYER: Thank you, Ms. Beck. I think we understand the parties' positions.

Mr. Michel.

MR. MICHEL: Thanks, Mr. Chairman.

We didn't have any issues, but sort of listening to the discussion right now, maybe I think we tend to agree with Ms. Beck, that as I understand it, the Division is -- is -- does advocate before the Commission. And it seems like if the Division is going to participate in this, then other stakeholders should be able to participate as well.

So I think we support CCS, in that if we're going to start heading down that road of allowing participants to participate in the modeling exercise, then stakeholders, under appropriate confidentiality restrictions, should be able to weigh in.

CHAIRMAN BOYER: Thank you, Mr. Michel.

Mr. Evans.

MR. EVANS: Thank you, Mr. Chairman.

We do have a comment listed here. But I think the concern of LS Power that's described in this column has been addressed under price evaluation and in part under our indexing discussion this morning. And also in part in our discussion of comparability.

So in terms of the economic modeling and methodologies, I don't think we have any additional comment to make.

Thank you.

CHAIRMAN BOYER: Thank you, Mr. Evans.

Mr. Dodge.

MR. DODGE: Thank you, Mr. Chairman.

The only comment we made, and maybe we're helping where no help is wanted here. But I was somewhat disturbed to read in the IE's report that in the last round they weren't given access to the models. They felt they were able to verify the results.

But in my view, the rules very clearly requires such access. If they don't want it, I guess I can't make them take it. But it's important to me to know that the IE is actually manipulating testing sensitivities, et cetera, in the modeling.

So unless I misunderstood their report, but that's the nature of my comment.

MR. OLIVER: I can clarify.

CHAIRMAN BOYER: Thank you, Mr. Dodge.

Turns out it's your turn now anyway, Mr.

Oliver.

MR. OLIVER: Thank you very much, Mr. Chairman.

Actually I have two things I want to add.

Our originally position was we didn't have any issues, but I probably should clarify a few things.

I guess first of all, when I say "access to the models," we -- we didn't run the Company's models per se. We, you know, worked with the Company and understanding all the inputs that we used and we also created test bids that we used to test out the models to ensure that the results were consistent and that type of thing. And the issue is that that data is coming from a lot of different sources within the Company. And for the IEs to be able to, you know, independently run the models, our view was that it's -- it's probably a task that would delay the process substantially because it would be a very, very difficult process.

What the Company did do is the Company set up a separate page on their website, a separate section on their website, where all of the outputs of all of the model runs were provided in a secure spot. And the IEs had access to those runs. So we were able to review every -- every analysis that the Company did.

And also in regards to Stage 2 and Stage 3 evaluation, we did receive all of the outputs.

So we didn't independently run the models, but we did have access to all the output and we had access to the Company's analysts to talk through the results at any time.

So I -- that's -- I think, to clarify, I mean, that's the role we feel comfortable with. And in most of the RFPs we do work on, it's usually the Company's analysts that run the Company's models and then the IEs will review the outputs and question the Company on the bases of the outputs. In some cases, we've asked the Company's to run separate reports to ensure the outputs are consistent.

The second thing, I guess, with regard to the comments by the Committee, one of the things I -- you know, we raised the issues about the Step 2 and Step 3 models in the previous discussion, I guess, about the price evaluation section. Based on our review coming out here and before we came out here about the Commission's decision on the IRP, and I think some of the comments that were made by the Committee, you know, almost jogged in our mind that, yeah, there is some issues and we saw those when we reviewed the results as well. And we thought we had some ideas about ways to get the output that -- you know, the output in a format that would be -- would allow us to, you know, to see which portfolios are the best portfolios. But I don't know that right now to say I have a solution, an absolute solution. I think that's going to take some time to sit down with the Company and see if this analysis can be done, given their current modeling capabilities.

So that was the basis of my statement that, you know, we would work off line with the Company and the Division to try to resolve that issue, to see if that can be done and what's the best way of doing it. But I didn't mean to limit any other participants from being involved in that. It was just an idea of trying to move the process forward and seeing if some of our ideas might work in terms of getting outputs that everybody feels comfortable with.

CHAIRMAN BOYER: Okay. Thank you, Mr. Oliver.

Any final remarks on this issue before we go to the Commissioners?

(No verbal response.)

CHAIRMAN BOYER: Commissioner Allen.
COMMISSIONER ALLEN: No questions.
MR. CAMPBELL: None.
CHAIRMAN BOYER: Okay. That makes three of us. No questions on that issue.
Now the next one on the list is other specific comments on the RFP. I'm wondering if we ought to pass that one by -- that seems like kind of a catch all -- and move onto environmental and then come back to that?
Although I'm certainly open to other suggestions.
MS. KUSTERS: I guess, Wayne, just to clarify, since this is a point that you brought up, are you envisioning talking about more items than the two that you highlighted with regards to your comments?
MR. OLIVER: On pricing or --
MS. KUSTERS: No. On the other specific comments. I'm just wondering, is it a catch all or are there two items that have to deal with that?
MR. OLIVER: No. I think those are the only two.
MS. KUSTERS: Yeah. There is two items.
CHAIRMAN BOYER: Let's proceed then with

those two comments. Thank you for that clarification.

And since these are yours, Mr. Oliver.

MR. OLIVER: Well, actually, one of these, the first one, we weren't sure if this needed to be taken off line?

CHAIRMAN BOYER: I guess we can't help you because we don't know what they are.

MR. GINSBERG: I don't think he meant "off line." I think he's meaning confidential.

CHAIRMAN BOYER: Confidential. Oh, I'm sorry.

MR. OLIVER: Yes.

MS. KUSTERS: How about I just frame up the two issues?

CHAIRMAN BOYER: Why don't you do that, if you can do that in a confidential manner.

MS. KUSTERS: Yes.

The two items that the IE had brought up was whether or not the Company was going to be providing any information with regards to the 2012 RFP to the bidders. And the Company's position on that is we've addressed in this RFP, the 2008, that to the degree the Company moves forward on the 2012 resource acquisition or on any other procurement that we're doing outside an RFP process, that those two aspects would be considered when, in fact, we're looking at procuring any additional megawatts in this particular RFP.

So we're currently seeking up to 2,000 megawatts. To the degree that we would end up moving forward into the 2012 with some -- a resource or other resources, that those would be considered when, in fact, we have the bidders provide the proposals in this particular RFP.

And that's written currently in the RFP, that those adjustments would be made accordingly.

The second issue that the IE brought up was with regards to the Company's reservation of rights that are on page 33 of the RFP. And there are several of which the Company has had in other RFPs as well where the Company reserves the right to exclude certain proposals to the degree that certain proposals don't meet certain qualifications in the reservation of rights. And this is our business practice with regards to not just this RFP, but previous RFPs that we've issued. And to date, we haven't heard from any bidders or from any independent evaluators that these particular reservation of rights are at all questionable.

And I guess the IE wanted to make sure that the Commission -- Commissioners reviewed those reservation of rights.

So those are the two items that I think are outstanding.

MR. OLIVER: Well, I think it might go a little bit beyond that, particularly the first item. One of the issues that I was concerned about are the site access. That's why -- that's why I was concerned about confidentiality in terms of --

MS. KUSTERS: I mean, I think to the degree that the Company moves forward with a resource, then that information, upon, you know, when, in fact, the Company has that resource and has contracted with a certain party, then that information will be available. But to the extent that it's not completed, then we're not going to be releasing any information on it.

MR. OLIVER: And I guess the issue would be if a bidder is proposing to bid on that site.

MS. KUSTERS: Then to the degree something else occurs, we would inform the process.

That was a roundabout non-confidential.

CHAIRMAN BOYER: I can see that.

MR. OLIVER: And I guess my other question with the reservation of rights issue, the point I guess we wanted to raise there is just that the Company's ability to, you know, reject the bids and terminate the RFP, is that something -- a right that the -- I know it's been in previous RFPs, but we just weren't sure if that's -- what the role of the Commission would be in terms of if that's the Company's right or would the Commission have authority over that RFP, or have authority over the Company's decision to terminate the RFP?

CHAIRMAN BOYER: Well, we have an opinion on that, but I guess we'd like to hear what the Company thinks about that.

MS. KUSTERS: I guess that's me.

From the Company's standpoint, to the degree that we see that the -- there is no bids that come through this process, and it's not in the best interests of the customers, we believe that the Company has the right to cancel the RFP process and seek potentially other mechanisms of procuring resources. But at the same time, the Company has to do it in a prudent manner and it has the obligation to ensure that the Commission is apprised of any decisions that the Company is making. But in the end, it is the Company's decision as to how they go about procuring resources, recognizing that we have to bring it before the Commission.

CHAIRMAN BOYER: Okay. I think that accurately states the Company's position on that, Mr. Oliver.

Does anyone else wish to comment on either of these two topics, to the extent you know enough to comment?

Mr. Evans.

MR. EVANS: I would just -- I'm sure it's not lost on the Commission, but I'll just point out that the way we got in trouble on the last RFP when the Company moved to amend, was that the right to terminate existed under the contract. And so the parties to the proceeding were essentially kind of held hostage to the Company's ability to terminate in either agreeing to their motion to amend or allowing the termination.

So it's problematic. And I don't know what to do about it. As Ms. Kusters said, "It's the Company's resource." But we found ourselves in a sticky situation in the last RFP because of that termination clause.

CHAIRMAN BOYER: Thank you.

I don't know that we can pursue this any further, so let's move on to the next issue. One probably near and dear to Mr. Michel's heart. This is the environmental issue.

And who will be speaking for the Company?

Ms. Kusters again.

MS. KUSTERS: Just to frame the issue up, the Company currently has, in the initial short list, two components. The first being the 70 percent for price and second being the non-price factors, which is 30 percent. The non-price factor for environmental is 10 percent.

Our understanding is that WRA is proposing that the non-price factor be increased to 25 percent because environmental factors are increasing. Currently, the non-price scoring is the 30 percent and the split is that there is another 20 percent that addresses development feasibility risk as well as site control and permitting.

And the Company's position is that we believe that all three of these elements should comprise the non-price calculation and not be so heavily weighted on just environmental factors. So there is 30 percent of which each of those elements are 10 percent of the 30.

CHAIRMAN BOYER: Thank you, Ms. Kusters.

Now I've been calling you "Mr. Brill," but I should be addressing you as Dr. Brill. I apologize for that.

DR. BRILL: Thank you.

The Division does not oppose the current scoring or weighting on environmental assessments. But it does look forward more to hearing more from Mr. Michel on his concerns.

CHAIRMAN BOYER: Thank you, Dr. Brill.

Ms. Beck.

MS. BECK: No comment.

CHAIRMAN BOYER: No comment there.

Okay. Mr. Michel, the floor is yours.

MR. MICHEL: Thank you, Mr. Chairman.

We were not suggesting that the environmental factors be given 25 percent and the other non-price factors be given only five percent. We were suggesting that a portion, a large portion, of moving the environmental factors up to 25 percent come from the pricing -- the 70 percent pricing evaluation.

I think -- as I understand it, there is no real -- there is no real magic where these numbers came from. Either the 70, 30 or the 10 percent assigned to environmental factors. And I think what we're saying is that we think the Company should be recognizing that right now environmental factors are among the most dominant utilities are facing and the most difficult. You know, environment liability can dwarf some of the other costs that utilities may incur in providing resource to their customers. I mean, you've got the obvious CO2 risk, which is very great. You've also got other emissions -- emissions responsibilities and potential exposure. You've got ozone. You've got hazardous -- you've got -- I'm sorry, you've got ozone regulations, you've got regional haze regulations. I mean, all of these things have been in the public domain and are probably going to continue. And if anything, get more -- get more stringent. We also have issues associated with hazardous waste, with decommissioning plants and so on. I mean, we all know the litany of environmental issues that are out there.

And what I'm -- all I'm saying is that I think assigning them 10 percent to the weighting in this process is really under valuing them. I think we really need to recognize that they are much more prominent than they have been in the past and provide a lot more exposure than they have in the past.

And that's why we're recommending that the environmental portion of the evaluation be bumped up to 25 percent.

CHAIRMAN BOYER: Thank you, Mr. Michel.

Mr. Evans.

MR. EVANS: We have no comment on this issue.

Thank you.

CHAIRMAN BOYER: Mr. Dodge.

MR. DODGE: Thank you, Mr. Chairman.

The environmental issues are probably the weightiest aspect of this entire RFP. And to the extent they impact cost, they are having a major impact. And most of the risks and costs that Mr. Michel is talking about, therefore, are already captured in the costing aspect. The 10 percent that the RFP proposes to -- the 10 points or 10 percent that the RFP proposes to give to this category includes the quality of the environmental compliance plan and environmental impacts. These are non-price impacts or -- and the like.

I don't believe that this Commission's primary job is to weigh them. I'm not dismissing or even disagreeing with the environmental impact arguments Mr. Michel and his clients would make. But those are weightier policy decisions that will be made in Washington and up on the Hill. And do, therefore, impact the costs. And will, therefore, go into the evaluation. But to further weight these non-price factors would give under weight, we think, to the primary factor, which is cost.

And we believe that's the appropriate goal for this Commission, is to find the lowest cost resources, adjusted for risk.

Thank you.

CHAIRMAN BOYER: Thank you, Mr. Dodge.

Coming now to the Independent Evaluators.

MR. OLIVER: We really didn't have a position on this issue.

CHAIRMAN BOYER: Okay. Any final comments on this before we go to the Commissioners?

Dr. Brill.

DR. BRILL: Thank you.

We do very much appreciate the concern over environmental assessment or environmental risk. And one thing that I failed to mention previously, I think it was under Issue 10, resource eligibility, Mr. Michel brought it up, we very much appreciate climate risk and development risk and your comments in that area. Given all of that, the Division struggles with how to quantify that risk. And -- but

I did just want to get that on the record, that we appreciate the environmental risk and are concerned with it.

MR. LARSEN: Mr. Chairman?

CHAIRMAN BOYER: Thank you.

Mr. Larsen.

MR. LARSEN: Just a point of clarification, Mr. Michel.

So you're suggesting a 55/45 split between price/non-price, instead of 70/30? If you're moving the 15 percent in the environmental --

MR. MICHEL: I think what we suggested was that 10 percent of that 15 percent come from the price portion. So it would be 60/40. And the other five percent come from the other non-price factors.

May I respond just briefly, Mr. Chairman?

CHAIRMAN BOYER: Surely. This would be the time.

MR. MICHEL: Yeah. The only issue -- the only thing I would like to respond to Mr. -- I don't think -- well, maybe Mr. Dodge was misunderstanding what I was saying. I'm not saying that this Commission start regulating the environment.

I think what I'm suggesting is that the Commission examine environmental exposure and -- and

-- and risk in these projects more heavily. I mean, you know, just to take an example of a coal plant. You've got potential emissions liability. You've got ozone. You've got -- you've got regional haze issues. You've got, you know, depending on the -- you know, you've got decommissioning costs. There are a lot of potential exposures there. And I -- we've seen utilities in other states really get nailed pretty badly for environmental -- for -- for environmental violations and remediations that -- that really did significantly add to the cost of those resources well after the time that they were procured.

So that's what I'm suggesting, is that you look at these resources and see how much exposure there is out there. And how many environmental regulations are they subject to and what kind of compliance issues do they have. And those be given a good deal more weight because there is so much potential exposure out there.

I'm not suggesting that the Commission decide independently that, well, we think we need to beat the ozone criteria or the emissions criteria and do better than that. I'm suggesting that you just look at the exposure that these -- that these types of plants can provide and weight that accordingly. Because they are becoming such a dominant feature of the resources we're seeing -- or some of the resources.

CHAIRMAN BOYER: Okay. Thank you, Mr. Michel.

Commissioner Allen.

COMMISSIONER ALLEN: Nothing.

CHAIRMAN BOYER: I have a question for Mr. Dodge.

Is it -- is it your position, Mr. Dodge, that -- well, let me say that environmental risks sort of spill over into some of the other risk factors, I guess, as well. I mean, in terms of -- I mean, we have costs, environmental costs if the carbon tax were imposed, cap-and-trading regime were imposed. But also, those kinds of risks affect availability of financing and cost of financing.

And is it your position that those kinds of costs are picked up in the pricing weighting?

MR. DODGE: To the extent there are specific costs imposed, yes.

To the extent they are risks, they would not be.

But the question here is on the weighting

-- excuse me, determining the final short list, if you will, which resource is going to be chosen. And my point is simply, I don't disagree that there is a risk that Mr. Michel is talking about is real and that you should disregard them. I'm saying they shouldn't be given points, additional points, in the stacking, if you will.

What ought to come before the Commission are the lowest cost resources. And then I think your job, along with the Company and the IE and others, to evaluate all those risks and decide which, in your view, is the most beneficial resource option for the customers.

And in that context, I fully expect Mr. Michel to be here arguing the environmental risks are so great you shouldn't approve this resource.

And I think you ought to consider that. I just don't think it ought to go into a formal weighting process.

CHAIRMAN BOYER: Okay. Thank you.

The -- I confess that I don't know what the last two issues on the list mean. But the next one in sequence is "IE focus." And I guess -- does that imply there is some dispute about what the Independent Evaluators focus is or should be? Or something else?

MS. KUSTERS: Maybe the Committee can tee these up because they had comments on that.

CHAIRMAN BOYER: Okay. Thanks a lot. Let's do that.

Ms. Beck.

MS. BECK: Okay. I'll take the first and I think Mr. Proctor will take the other.

On the focus, a concern that the Committee had -- has, in fact, already been very eloquently captured by a comment by Commissioner Campbell. It was precisely what you spoke about earlier, in that we want to keep the focus of the overall process on an end result of providing reasonably least cost electricity to retail consumers. And we were concerned in reading the IE's comments that it was -- it was too completely focused on just an unbiased and fair process with an absolute reliance that fair process, in and of itself, leads to that end result. And its that focus on the end result we want to keep in mind for everyone. And that's part of the reason why we had our earlier concerns about benchmarks and part of the reason why we have our concerns about evaluation.

And we thought it might be helpful for the

Commission to emphasize that desired end result. And it's just that simple.

CHAIRMAN BOYER: Okay. Thank you.

Commissioner Campbell has a question to ask.

MR. CAMPBELL: Well, the question is, would there be any change to the RFP as a result of your comment?

MS. BECK: I don't think to the -- to the RFP? I think potentially to the evaluation. And that's -- that's I think where we'd like to see that emphasis, is that -- that we're not convinced that just watching for a lack of bias or a fair process so that everyone can participate in and of itself leads to that. We think had the -- had the issue of benchmarks been decided differently, we would have more to say on this point.

CHAIRMAN BOYER: Well, how about Ms. Beck's question there on the focus of the IE?

I know Mr. Dodge was very involved in the -- at least the discussion of SB-26 before it was passed, as were many of us. And my impression was that the focus of the IE's work was to make sure that the process was fair, that the playing field was level. I thought that was the motivating factor behind that.

Should the focus be on anything else?

Anybody wish to enlighten me on that?

Mr. Dodge.

MR. DODGE: I'll be happy to respond. But I certainly agree with Ms. Beck's statement of the overall goal. And I hope and believe it's captured in the intent -- that intent is captured in the bill and the regulations.

Maybe the one comment I'd make, though, that I don't know if she disagrees with this or not, but I believe the underlying premise was that essential to delivering that goal is a -- is an open RFP process that's fair, well scored, well evaluated, et cetera. So that at the end of the day, the Commission really knows what the options are and can choose the one that meets that criteria.

And I, therefore -- I think the IE's role in making sure the machine works right to ultimately get to the result is critical. And I don't know if there is -- if we're disagreeing on that or not. But in other words, I think the IE needs to focus on the procedure as well as the goal because I think the procedure is necessary to the goal.

CHAIRMAN BOYER: Okay. Thank you.

Anyone else wish to talk about that subject?

MS. BECK: Well, if I could just respond briefly.

We're not disagreeing. I think the procedure is a critical part of it. And like I said, I think a lot of this does actually tie back to benchmarks. I think you do need to see what's out there in the market place. You need to have all the appropriate focus that we've seen from that unit ensuring a fair process.

But I think you also need appropriate signals from the planning side of the Company in terms of what would best meet needs. And that was where some of our concerns lay before that we had somewhat resolved by returning to benchmarks.

CHAIRMAN BOYER: Okay. Thank you.

Well, I think we understand that we need to keep our eye on the ball and not distracted by the trees as we look at this particular forest.

So thank you for bringing that point up.

And the last issue, then, is the Independent Evaluator's report.

Was that a Committee issue as well? And Mr. Proctor, were you going to --

MR. PROCTOR: That was. Let me just preface an explanation of our concerns by stating that probably neither of the last two issues require a change to the RFP. The -- what we would ask, however, in connection with both, and particularly with the reporting, it does address the well-oiled workings of the machine, as Gary -- or Mr. Dodge, pardon me, had described it. And I think some of the things that -- and our concerns also stem from the original application for the RFP and for statements that have been made here today.

There is an awful lot of off line communication taking place. In one case, I believe in the last RFP, the 2012, the off line character resulted in a two, two and a half month delay before regulatory authorities received information that there had been a material flaw identified in the RFP. And that it led to, ultimately, the event that Mr. Evans described, an attempt to or a request to amend and change the benchmarks after bids had already been submitted. And the resulting confusion totally unnecessary, in our judgement.

The other thing that we're concerned about and that led to this, was in the original application, the Company had requested to work with the IE developing the proposal. And then limit the issues that would be presented before this Commission so that it could be an expedited result. And that was never my understanding of what Senate Bill 26 was. Senate Bill 26 truly was a substitute for the lengthy, detailed, precise process that would have resulted if Senate Bill 26 wasn't passed and after the Company had already expended many millions of dollars in constructing a plant, taking the risk that this Commission would say, "No. You don't need it," or "You didn't do it correctly."

All that says that there needs to be transparency in the process. And since the IE performs such an important and central role to this Commission's careful consideration of this energy resource acquisition, before it's actually constructed, it's not something you can look at and touch and feel and inspect. The IE's work has to be available to the Commission and to the parties who have a statutory responsibility to review the Company's application and the IE's job, or the performance.

On page 4, of January 22nd, 2008 response, we raised the issue of making available through the Commission's website the IE's work product so that the materially important information that he develops or he receives is going to be made available, with the appropriate Commission rules, grounded in the Government Records Management Act, to protect the confidentiality of the process that Ms. Kusters' addressed. The State, of course, and governmental agencies have an additional responsibility born out of statute to protect confidentiality. The Commission does. So what we are asking for was that information be available if, it is not confidential, so we know what is happening in that process. And if it is confidential, we at least know it exists. As opposed to having to find out that there was a confidential document produced by reviewing in detail records from the State of Oregon, only to find that, in fact, that confidential document existed somewhere within the State of Utah's records process. You can protect the records that need to be protected. But the parties involved need to know it exists so that they can, in fact, make the request.

We pointed out in our March 2008 comments, on page 6, why that's necessary. And -- and truly in the case, for example, of a benchmark process, because of the possibility for a bias in favor of that self build, the information exchanged, the information that's available to the regulators who are responsible to make certain for the fairness of the process, and even to bidders so that they have confidence in the fairness of the process, requires that information be available. If it's confidential, at least they know what has been filed and they can request it if, in fact, it's appropriate.

And I think that Mr. Evans' client exists in a very different circumstance than my client, the Committee of Consumer Services. He's a competitor. We're a regulator. And so under the circumstances, that's why, on page 3, of our comments that we filed most recently, last month, we've actually described a potential rule or guidance -- I would suggest it be an order -- so that this Commission, in this particular RFP, direct the IE and the Division, since apparently this Commission has asked the Division to oversee the IE on your behalf, so that there is a means by which the Commission receives the records, the Company has access to what's going on, the regulators do. If it's confidential, we can prove to your satisfaction that we're entitled to view the record. That's all we ask, is a transparent process.

And that's why we have said what we have and that's why we have detailed a proposed order that you could enter in connection with this RFP.

Thank you very much.

CHAIRMAN BOYER: Thank you, Mr. Proctor.

Does anyone wish to respond to either what Ms. Beck or Mr. Proctor has said?

I know the -- Mr. Oliver does.

MR. OLIVER: I don't have any comments on this issue.

CHAIRMAN BOYER: Okay.

MR. MICHEL: Mr. Chairman, we support what the Committee has said.

CHAIRMAN BOYER: Thank you, Mr. Michel.

Okay. We've worked our way through the list of issues.

Are there any other issues that have occurred to the parties during the course of this discussion today?

(No verbal response.)

CHAIRMAN BOYER: If not, we'll take this matter under advisement.

Oh --

UNIDENTIFIED FEMALE: Bidder qualifications?

CHAIRMAN BOYER: Bidder qualifications? Didn't make the final list.

MR. MICHEL: Mr. Chairman, we resolved that with the Company.

CHAIRMAN BOYER: Bidder qualifications apparently have been resolved off line to everyone's satisfaction.

UNIDENTIFIED FEMALE: The Commission -- the items -- the corrections for the --

CHAIRMAN BOYER: Yes. Our staff did find what they think are typographical or reference kinds of errors in the RFP when referring to a particular chart or something and it may be incorrect.

Would anyone have an objection if we circulated that among all parties, the list of typographical corrections that we think should be made to the RFP? Is that an appropriate way to do this?

I mean, we could include it in our order, even though they haven't been discussed here. But I think if we did that informally. I think it's simply inadvertence and drafting kinds of confusions.

Okay. With that then, we will take this under advisement. And that will terminate this hearing.

Thank you all for being here, particularly those of you who traveled long distance.

Thank you.

(Hearing concluded at 3:05 p.m.)

REPORTER'S HEARING CERTIFICATE

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

I, Kelly Fine-Jensen, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That said proceeding was taken down by me in stenotype on May 1, 2008, at the place therein named, and was thereafter transcribed, and that a true and correct transcription of said testimony is set forth in the preceding pages;

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

WITNESS MY HAND AND OFFICIAL SEAL this 9th day of May, 2008.

____

Kelly Fine-Jensen, RPR
Notary Public