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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In The Matter of The Request )  
of Rocky Mountain Power for ) Docket No. 08-035-35  
Waiver of Solicitation Process )  
and for Approval of Significant )  
Energy Resource Decision. )

April 9, 2008 - 1:30 p.m.

Location: Heber Wells Building  
160 East 300 South  
Salt Lake City, Utah

Reporter: Lanette Shindurling, RPR, RMR, CRR  
Notary Public in and for the State of Utah

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

FOR THE DIVISION:

MICHAEL L. GINSBERG  
ATTORNEY GENERAL'S OFFICE  
160 East 300 South  
Salt Lake City, Utah 84114  
(801) 366-0353

FOR THE PETITIONER:

GREGORY B. MONSON  
STOEL RIVES, LLP  
201 South Main, Suite 1100  
Salt Lake City, Utah 84111  
(801) 328-3131

MARCH C. MOENCH  
General Counsel, Rocky Mountain Power

ALSO PRESENT:

Gary Dodge  
Michelle Beck  
Stefan Bird  
Jeff Larsen  
Artie Powell  
Wayne Oliver (by telephone)  
Jorol Walker (by telephone)

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

2 COMMISSIONER BOYER: Let's do go on the  
3 record, then. This is the time and place duly  
4 noticed for the Technical Conference in Docket No.  
5 08-035-35, captioned In The Matter of The Request of  
6 Rocky Mountain Power for Waiver of Solicitation  
7 Process and For Approval of Significant Energy  
8 Resource Decision.

9 And, Reporter, do you have a copy of the  
10 notice?

11 REPORTER: I do.

12 COMMISSIONER BOYER: Okay. I noticed in  
13 reading it today that there was a typo in it. In the  
14 first sentence it references that it's a scheduling  
15 order in the Technical Conference. So that's the way  
16 it was originally drafted, and then I had staff  
17 rewrite it and recaption it, and we caught them all  
18 except that one.

19 But this is a Technical Conference being  
20 held pursuant to Utah Code Annotated 54-17-501(4),  
21 which requires us to hold a Technical Conference in  
22 the event a waiver is requested.

23 We did extend it for one day so that we  
24 could have commissioners here. And the statute that  
25 describes what actually takes place is subsection 5,

26

1 and it says, "At the Technical Conference held under  
2 subsection (4), the affected electrical utility shall  
3 provide adequate support for its Verified Application  
4 and shall respond to questions of the Commission and  
5 independent evaluator, if one is participating, and  
6 any other interested person."

7 And then we're instructed to prepare and  
8 retain a transcript of the Technical Conference, and  
9 for that reason we have our good and able reporter  
10 here with us.

11 So before we begin, I think the way we'll  
12 proceed is let the Company go first inasmuch as the  
13 statute requires that you provide information to us,  
14 and then we'll go to questions after that. But  
15 before we do that, why don't we go around the table  
16 and introduce all of ourselves.

17 MR. DUVAL: Greg DuVal, PacifiCorp.

18 MR. DODGE: Gary Dodge for UAE.

19 MS. BECK: Michelle Beck, Committee of  
20 Consumer Services.

21 COMMISSIONER BOYER: Ted Boyer. I'm the  
22 Commissioner.

23 MR. MONSON: Greg Monson. I'm an attorney  
24 for Rocky Mountain Power.

25 MR. MOENCH: Mark Moench, General Counsel

26

1 for Rocky Mountain Power.

2 MR. BIRD: Stefan Bird over Commercial and  
3 Trading for PacifiCorp.

4 MR. LARSEN: Jeff Larsen, Regulation,  
5 Rocky Mountain Power.

6 MR. POWELL: Artie Powell with the  
7 Division.

8 MR. GINSBERG: Michael Ginsberg also with  
9 the Division.

10 (Phone rings.)

11 MR. OLIVER: Wayne Oliver here.

12 MS. WALKER: And Jorol Walker.

13 COMMISSIONER BOYER: Okay. Welcome. This  
14 is Commissioner Boyer. We were just going around the  
15 room introducing ourselves. We talked about you in  
16 your absence.

17 Part of the information presented will be  
18 public information and some of it will be  
19 confidential, and we'll have to discuss that when we  
20 get to that point. But those who have not signed the  
21 Protective Order will probably have to hang up. And  
22 that might be Western Resource Advocates, according  
23 to my most current information.

24 MS. WALKER: Yes, that's right.

25 COMMISSIONER BOYER: Okay. But if you  
26

1 don't mind holding on for just a moment, both of you,  
2 we'll continue introducing folks around the room.  
3 And also for your information, this is being recorded  
4 because the statute requires that we maintain --  
5 prepare and retain a transcript of this Technical  
6 Conference.

7 Okay. We have gone around to -- Artie,  
8 did you --

9 MR. POWELL: I did.

10 MR. TAYLOR: Dave Taylor, Rocky Mountain  
11 Power.

12 MR. POLLOCK: Bill Pollock, Division of  
13 Public Utilities.

14 MS. REVELT: Carol Revelt, Commission  
15 staff.

16 MS. WILSON: Becky Wilson, Commission  
17 staff.

18 MR. HARVEY: John Harvey, Commission  
19 staff.

20 MR. BOGAN: Dick Bogan, Commission staff.

21 COMMISSIONER CAMPBELL: Ric Campbell with  
22 the Commission.

23 MR. PETERSON: Charles Peterson, Division.

24 MS. SPRINGER: Shauna Benvegna-Springer  
25 with the Division.

26

1 MS. MURRAY: Cheryl Murray from the  
2 Consumer Services staff.

3 MR. PROCTOR: Paul Proctor, Attorney  
4 General for the Committee of Consumer Services.

5 MR. GROW: Thomas Grow with the Division.

6 MS. KUSTER: Stacey Kuster, PacifiCorp.

7 COMMISSIONER BOYER: Thank you. With  
8 that, then, as the statute requires -- did I read  
9 that into the record, the portion of the statute that  
10 governs what we're doing here? Well, based on that,  
11 we'll let the Company proceed.

12 Mr. Moench, I guess you're in charge here  
13 today.

14 MR. MOENCH: Sure. Thank you, Chairman  
15 Boyer.

16 On behalf of the Company, we appreciate  
17 everyone coming together and convening for this  
18 Technical Conference on relatively short notice as  
19 dictated by the statute. We initially wanted to  
20 discuss procedural matters relative to both the  
21 schedule for the waiver process, if that would be  
22 acceptable to the Commission, as well as  
23 consideration of a schedule for the approval process.  
24 And we felt like could be done in the public arena  
25 such that anybody that had not signed a protective  
26

1 order could still feel like they were participating  
2 in trying to set a schedule for this. And then we  
3 will prepare to move into the confidential section  
4 where only people that had executed the protective  
5 order or were otherwise governed by it would remain  
6 either on the phone or in the room.

7           And there we would then walk through some  
8 of the preliminary information that's required of us  
9 to prove up a case for a request for waiver of the  
10 solicitation, take questions in respect to those.  
11 And then I guess the next milestone was the comments  
12 that are due on April 23rd for this proceeding. And  
13 then beyond that would be hopefully established as a  
14 scheduling item that we could discuss up front here.

15           COMMISSIONER BOYER: So are you  
16 anticipating that we would schedule today, or we  
17 would talk generally about the parameters of the  
18 scheduling? I understand from having read the  
19 pleadings thus far that you want an answer from us  
20 prior to 180 days because of certain exigent  
21 circumstances and closing the transaction and so on  
22 which is conditioned upon the approval.

23           MR. MOENCH: Right.

24           COMMISSIONER BOYER: So we could probably  
25 go that far. I guess if we're going to schedule it

26



1 up, I wasn't prepared to schedule today, but if other  
2 parties are, we could certainly get Ms. Orchard to  
3 come in and help us with that portion.

4 MR. MOENCH: Well, because it was such a  
5 tight fuse, a tight time frame, and we know everybody  
6 has got a lot on their plate in this room relative to  
7 other dockets, we thought it might be helpful with  
8 everybody in the same place to take advantage of that  
9 and spend some time looking at the calendar and  
10 sketching out what might work out for parties.

11 We filed both the waiver of the  
12 solicitation and the approval request at the same  
13 time to trigger those dates, but we didn't want to  
14 compress the Commission too much and not have the  
15 advantage of a schedule here. And the other update  
16 to the -- excuse me?

17 MR. LARSEN: That was my phone. I'll turn  
18 my phone off.

19 MR. MOENCH: Strike that from the record.

20 One update that we will be filing a  
21 supplement to the feeding on relative to the approval  
22 process is the fact that Senate Bill 202 has  
23 shortened the time frame by which the Commission can  
24 consider an approval from 180 days down to 120 days;  
25 and that is something that, again, we wanted to work  
26

1 with the parties on and make a reasonable schedule.

2 The date that we have set forth in the  
3 confidential filing to close by is -- again, that's a  
4 confidential piece of information -- but needless to  
5 say, if we can close by that date, that is our  
6 objective. So that can give you a time frame beyond  
7 120 days, but --

8 MR. DODGE: Subject to that time frame.

9 MR. MOENCH: Okay. So September 14th is  
10 the date, then. And that is still a date that works  
11 for us; but of course, to the extent we have our  
12 approvals, within the 120 days would be -- you know,  
13 we're very content with that, obviously. But that's  
14 part of the reason we wanted to get a schedule out,  
15 to see if the parties are willing to do that.

16 COMMISSIONER BOYER: Are the parties  
17 willing to schedule this afternoon?

18 MR. DODGE: Given the short time frame, I  
19 think we would be wise to.

20 COMMISSIONER BOYER: I think that's what  
21 it's sounding like to me. For the record, we've just  
22 sent a colleague to get Ms. Orchard, who does our  
23 scheduling for us; and that's where you want to  
24 commence is with the scheduling on that this morning?

25 MR. MOENCH: Yes.

26

1 MS. WILSON: One comment, I thought I  
2 heard you say once that comments on the waiver were  
3 due two weeks from now. I thought the statute  
4 required one week. Am I off the mark here on that?

5 MR. MOENCH: I think you are. But I  
6 assumed that was the Commission exercising discretion  
7 to change that date, and they did so. We had  
8 proposed April 15th as the date for the comments  
9 consistent with the statute; but the Order says  
10 comments would be due on April 23rd, which gave  
11 parties an extra week or more. And so we were fine  
12 with that. And that's what the date is out there  
13 presently.

14 MR. POWELL: And those initial comments  
15 are just on the waiver?

16 MR. MOENCH: Yes, yes. Yup, yup. And  
17 then the Commission has a statutory time frame in  
18 which they issue an order after the comments are due.

19 COMMISSIONER BOYER: Which is seven days.

20 MR. MOENCH: Right. So by theory,  
21 April 30th or thereabouts.

22 COMMISSIONER BOYER: And that's seven  
23 calendar days and ten business days.

24 MR. MOENCH: Right. I guess that falls on  
25 a weekday, Wednesday, April 30th.

26

1                   So in theory we've got those dates set  
2 out. It would be just the approval process to kind  
3 of work through those dates.

4                   COMMISSIONER BOYER: We're going to have  
5 to accommodate requests and so on, responses to  
6 pleadings and testimony and so on.

7                   For the record, Ms. Julie Orchard has  
8 joined us. Rocky Mountain Power wishes to take the  
9 first part of this Technical Conference to schedule  
10 this docket, and the parties who are here have no  
11 objection to doing that. So we thought we would go  
12 ahead and do that first. And we'll turn the time  
13 over to you, then, Ms. Orchard, to work that out.  
14 Some of the dates are set by statute, but the other  
15 procedural dates in terms of filing testimony and  
16 Data Requests and so on or not.

17                   MS. ORCHARD: All right. So tell me what  
18 the end result is. Do we have a hearing that's set?  
19 Sorry; I wasn't in here at the beginning.

20                   COMMISSIONER BOYER: We don't have it. I  
21 think we need to back into that, because we did have  
22 a deadline of September the 14th for the approval or  
23 disapproval to be issued.

24                   MR. MOOY: Sandy Mooy. I might need to  
25 make one caution. The notice that the Commission  
26

1 gave indicated that the scheduling for the approval  
2 of the acquisition would be subsequently noticed. So  
3 I think that if there's any scheduling that comes out  
4 today, it would probably have to be tentative and  
5 allow an opportunity for those who didn't come here  
6 today to object.

7 COMMISSIONER BOYER: People to respond,  
8 sure.

9 MR. MOENCH: That makes sense to me.

10 MR. MOOY: Just the notice.

11 COMMISSIONER BOYER: Actually, our notice  
12 was ambiguous because it was captioned Technical  
13 Conference, and most of the reference is to the  
14 Technical Conference, but in the first sentence there  
15 was a scheduling order or language indicating there  
16 might be scheduling as well. So it was a little  
17 ambiguous. But in any event --

18 MR. MOENCH: So maybe the place to start  
19 would be to get a hearing date.

20 COMMISSIONER BOYER: I think we'll do that  
21 and then back into the other dates.

22 MS. ORCHARD: I think that things like  
23 that have usually worked out well. So what are your  
24 thoughts related to that hearing date?

25 MR. DODGE: The 14th is actually a Sunday.

26

1 So if you wanted to schedule for that, you would need  
2 to have the order out by the 12th.

3 COMMISSIONER BOYER: We work most Sundays.

4 MR. DODGE: We'll give you from Friday to  
5 Sunday to write it.

6 MR. MOENCH: How much time after the  
7 hearing would the Commission want to write the Order?  
8 Three or four days?

9 COMMISSIONER BOYER: Staff, can you help?  
10 How much time after the hearing would you need to  
11 draft the order? Three or four months?

12 MS. ORCHARD: How about if we have three  
13 weeks to write the order. And then -- so then that  
14 would put us --

15 COMMISSIONER BOYER: That would be three  
16 weeks prior to September 12th.

17 MR. PROCTOR: There's always the  
18 possibility of appeal. So you have to add 30 days to  
19 that if they want to close it with certainty. And I  
20 can't imagine that an institution is going to finance  
21 that kind of a purchase unless it's a final order  
22 that's not appealable.

23 MR. MOENCH: That's a very good point,  
24 Paul. And we do have -- you know, if we got a denial  
25 we would have some real contingency issues to work  
26

1 through with the counterparty and advance notice of  
2 that. So for an appeal, if it was approved then an  
3 appeal from another party, maybe we ought to look at  
4 that. It still doesn't get you to 120 days.

5 COMMISSIONER BOYER: It's shorter than  
6 120 days?

7 MR. MOENCH: No. It would be more.

8 MR. MONSON: 120 days is July 30th. So  
9 you could probably do that, but --

10 MR. MOENCH: But if we had an order out  
11 by, say, you know, mid August or August 13th or so,  
12 to allow that 30-day period to run, that would be  
13 optimum.

14 MR. GINSBERG: Well, you would actually  
15 need more than 30 days. If someone asks for a  
16 rehearing, you know, you would have to --

17 MR. PROCTOR: That's a condition. And the  
18 other thing is, this is without asking you to  
19 disclose anything confidential, but if the order is  
20 conditional or is not pure rejection but requires you  
21 to do certain things, but what is your out time if  
22 you have one?

23 MR. MOENCH: It has to be an order  
24 acceptable to us. So, again, we would have to look  
25 at those conditions and find them acceptable or not,

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1 and then we would simply go forward. If they weren't  
2 acceptable we wouldn't close, and we would just lose  
3 the opportunity.

4 MS. KUSTER: So the week of July 20th.

5 MR. DODGE: Because you know by the  
6 30 days whether someone has asked for a rehearing,  
7 and if not, there is no appeal.

8 MR. GINSBERG: Right.

9 MS. KUSTER: You need a month plus three  
10 weeks.

11 MR. DODGE: So, yeah, as long as you do it  
12 that week, we're fine.

13 MS. ORCHARD: That goes through the 23rd.  
14 That whole week will not work out, so the week prior?

15 MS. KUSTER: The week after.

16 MR. PROCTOR: This is pretty important.

17 MR. MOENCH: The week prior is the week of  
18 the 14th of July?

19 MS. ORCHARD: Yeah. I think that the week  
20 prior works much better.

21 MR. GINSBERG: I think there's another --

22 MS. ORCHARD: We have some conflicts that  
23 are going on the third and fourth week of July.  
24 Mike?

25 MR. GINSBERG: There is another hearing  
26



1 scheduled with the ALJ. I think that's the week  
2 prior to that. And I will be the only attorney  
3 around at that time.

4 COMMISSIONER BOYER: In the entire world?

5 MR. GINSBERG: Well, the DPU world.

6 MS. ORCHARD: The hearing that I show for  
7 the ALJ is on the 10th and 11th --

8 MR. GINSBERG: Okay.

9 MS. ORCHARD: -- of July. But the week of  
10 the 14th appears to be a good week. So is this  
11 hearing going to be one day in length?

12 MR. MOENCH: We had assumed that it would  
13 be one day, but it depends on the parties.

14 MR. POWELL: Wayne, are you at the  
15 airport?

16 MR. OLIVER: Yes.

17 COMMISSIONER BOYER: Are you flying  
18 American?

19 MR. OLIVER: They're calling my flight.

20 MR. POWELL: You might just want to put  
21 your phone on mute, if you can. Thanks. Sorry.

22 COMMISSIONER BOYER: I think we should  
23 schedule one day with a backup day.

24 MS. ORCHARD: Okay. How about July 17th?  
25 That's a Thursday. That appears to be clear on the

26

1 Commission's schedule. And then --

2 MR. MOENCH: We can carry over to the 18th  
3 if we need to.

4 MS. ORCHARD: If necessary.

5 MR. MOENCH: That would be acceptable.

6 MS. ORCHARD: So would that work for the  
7 Committee, the 17th?

8 UNIDENTIFIED SPEAKER: Are you aware of  
9 anything else? That works for us.

10 MS. ORCHARD: How about if we have it  
11 start at 9:00 a.m. since we may be a little more  
12 pressed for time and we're not sure about the length.

13 MR. MOENCH: That would be fine.

14 MS. ORCHARD: So we'll begin at 9:00 a.m.

15 So now let's talk about rebuttal and  
16 surrebuttal and then direct. What are your thoughts  
17 related to that?

18 MR. MOENCH: And I guess it would be good  
19 to hear from the parties.

20 MR. DODGE: You're not planning on  
21 anything else, right? You're done with what you're  
22 filing other than rebuttal?

23 MR. MONSON: Yes. I think the rule  
24 contemplates comments and both testimony, but it  
25 could be testimony, I guess. I don't know.

26

1 MR. DODGE: Is that true of the rule?

2 MR. GINSBERG: I don't think it says  
3 anything about the approval.

4 MR. PROCTOR: Are the issues different on  
5 the approval than they are for the later hearing?

6 MR. MOENCH: Yes, I think so.

7 MR. PROCTOR: So you've got to file  
8 testimony on that, right? The waiver is here, but  
9 the approval process, doesn't that require a greater  
10 inquiry?

11 MR. MOENCH: It does, but it still refers  
12 to comments.

13 MR. DODGE: Wait. Does it say may but is  
14 not required to hold a hearing, you're just required  
15 to take comments? Is that what it was?

16 MS. ORCHARD: Yeah.

17 MR. POWELL: Then it would be a question,  
18 do you have any comments? Yes, here they are.

19 MR. MOENCH: It's 302, I think.

20 MS. ORCHARD: While they're looking that  
21 up, is a public witness day required in this case, or  
22 are we okay without?

23 MR. MOENCH: No. I don't -- there's not  
24 one called out.

25 MR. DODGE: It's not one required. And  
26

1 given that most of it is confidential, it probably  
2 wouldn't make a whole lot of sense. I don't think  
3 the public is going to comment on it if they don't  
4 know --

5 MR. PROCTOR: Absence of knowledge.

6 MR. DODGE: That's a good point.

7 MR. MOENCH: So that is 440.

8 MR. DODGE: In the rules?

9 MR. MONSON: Yes. It says -- it talks  
10 about discovery, and then it says --

11 MR. GINSBERG: The statute does require  
12 them to make findings, so it does strike me that  
13 testimony would probably --

14 MR. DODGE: A hearing probably makes  
15 sense.

16 MR. GINSBERG: Yeah.

17 MR. MOENCH: Yes. I think that's  
18 acceptable to us. We just wanted to alert people  
19 that that more streamlined process is available; but  
20 I think we ought to just set up dates for testimony  
21 as you suggest, Julie, and not necessarily go with  
22 comments unless the parties feel differently. Does  
23 that sound good to you?

24 MR. DODGE: I agree.

25 MS. ORCHARD: So, let's first determine  
26

1 when the direct will be due.

2 MR. DODGE: You've got to be done by July,  
3 right?

4 MR. GINSBERG: It's already been filed,  
5 their direct, hasn't it?

6 MR. DODGE: I assume what we're  
7 contemplating is a responsive direct, whatever you  
8 want to call that, and then rebuttal and maybe  
9 surrebuttal.

10 MS. ORCHARD: Okay. I think that sounds  
11 good.

12 MR. DODGE: You need surrebuttal too?

13 MS. ORCHARD: Yes, I think we need to.

14 MR. DODGE: May, June, July, so we've got  
15 three months.

16 MR. MONSON: How about something like June  
17 18th or something that week?

18 MS. ORCHARD: For the rebuttal?

19 MR. MONSON: For the intervenor and the  
20 public.

21 MS. ORCHARD: Okay.

22 MS. KUSTER: Is that enough time for three  
23 rounds?

24 MR. MOENCH: Well, then you would have the  
25 other one July 9th or something like that.

26

1 MR. DODGE: June 18?

2 MR. MONSON: I'm just throwing out some  
3 dates. But it seems like if you do that, and then  
4 you have about three weeks for rebuttal and  
5 surrebuttal, and we've got the hearing.

6 MS. ORCHARD: Now, we do have -- on that  
7 same date, on June 18th, we also have the Joint  
8 Position Matrix that's due on the Questar rate case.  
9 So are the Division or the Committee, either one,  
10 worried about that? Mike?

11 MR. MOOY: No. They would have answered  
12 already as the company -- the company is filing on  
13 that date so the commission would have it.

14 MS. ORCHARD: Okay. So that should be all  
15 right.

16 MR. MONSON: It could also be the 20th or  
17 the 19th. That's just Wednesday of that week.

18 MR. MOENCH: Well, I wouldn't squeeze it  
19 into that week. I mean, I think the 18th, if that  
20 works for them.

21 MR. DODGE: And you're saying the 9th for  
22 rebuttal?

23 MR. POWELL: What date did we say?

24 MR. GINSBERG: June 18th.

25 MS. ORCHARD: June 18th. That's a

26

1 Wednesday.

2 MR. POWELL: Oh, shoot. I'm looking at  
3 the wrong one.

4 MR. DODGE: That's redirect?

5 MS. ORCHARD: That would be the --

6 MR. DODGE: Direct testimony?

7 MS. ORCHARD: Yes.

8 MS. SPRINGER: So you're not contemplating  
9 a surrebuttal round?

10 MR. DODGE: That wouldn't give time for  
11 surrebuttal.

12 MR. MONSON: I was thinking July 9th.

13 MR. DODGE: For the rebuttal. If we want  
14 three rounds.

15 MS. ORCHARD: If we want three rounds,  
16 then it's probably --

17 MR. DODGE: Which requires the intervenors  
18 to respond.

19 MS. SPRINGER: I think we do want that. I  
20 would rather have less time for direct than --

21 MS. ORCHARD: How about June 13th for the  
22 intervenor direct? That would be Friday.

23 MR. GINSBERG: That's cutting it awful  
24 close to when the rate case will be going on.

25 MR. POWELL: The Division has problems  
26

1 with witnesses.

2 MS. ORCHARD: So that's a little too  
3 tight? So which date would you suggest?

4 MR. POWELL: Well, I like the 18th.  
5 That's fine with me.

6 MS. SPRINGER: And you're willing to give  
7 up surrebuttal?

8 MR. GINSBERG: Can we do it live?

9 MR. POWELL: I mean, by the time you get  
10 to surrebuttal, the issues should be fairly narrow.  
11 I don't think we need that much time to do  
12 surrebuttal.

13 MS. SPRINGER: Well, I don't think we're  
14 allowing time.

15 COMMISSIONER BOYER: Well, maybe we'll  
16 need to do live --

17 MR. DODGE: Did you say the week of the  
18 13th was bad? If we had to do it on the 13th, that's  
19 bad?

20 MR. POWELL: Yes. Because all of that  
21 previous week and the first of the week is revenue  
22 requirement. And I've got witnesses that will be in  
23 that case that are working on this case too.

24 COMMISSIONER BOYER: How about doing live  
25 surrebuttal because of the time constraints if it's  
26



1 needed?

2 MR. POWELL: That's fine with me.

3 MS. ORCHARD: The 18th is also part of the  
4 Western Conference date as well. So hopefully that  
5 won't present a conflict for those of you that are  
6 preparing it.

7 Okay. So we'll go with the 18th for the  
8 intervenor direct. And then rebuttal, what date  
9 would work?

10 MR. MOENCH: July 9th, is that what we're  
11 suggesting as a start?

12 MR. GINSBERG: If you move that back a few  
13 days, you probably could do surrebuttal a week later.

14 MR. DODGE: You could file on the 4th of  
15 July.

16 MS. ORCHARD: Yeah, that is --

17 MR. GINSBERG: Or the 5th.

18 MR. MOENCH: The 4th is on a Friday, the  
19 9th is a Wednesday. So that's kind of tight.

20 COMMISSIONER BOYER: How about moving up  
21 the intervenor direct? June 18th is more than a  
22 month out.

23 MR. LARSEN: That's what Artie was saying,  
24 that's about the earliest he could do it.

25 MS. ORCHARD: We could do it Wednesday,

26

1 July 2nd, for the rebuttal.

2 MR. DODGE: Isn't that a hearing too?  
3 Questar rate case.

4 MR. POWELL: There's a hearing, but our  
5 staff is split. So I'm okay with that one.

6 MS. SPRINGER: Well, we're not writing  
7 rebuttal. We might have some, but it's --

8 MR. POWELL: We always have rebuttal.

9 MR. DODGE: It's a matter of policy,  
10 right?

11 MR. POWELL: Have to rebut.

12 MR. DODGE: When you're always right you  
13 have to rebut everybody.

14 MR. GINSBERG: I think the only real issue  
15 is whether you're willing to let the surrebuttal be  
16 live. If it's okay to do it live, then --

17 MS. ORCHARD: It appears that it is okay.

18 MR. GINSBERG: Okay.

19 MS. ORCHARD: So what date?

20 MR. MOENCH: So July 9th would work best  
21 for us on rebuttal.

22 MS. ORCHARD: Okay, July 9th.

23 MR. DODGE: What about a date of  
24 turnaround, the date of response time? How quickly  
25 can you guys respond?

26

1 MR. MOENCH: Jeff, what do you feel  
2 comfortable with? You're the one that has the team  
3 on that.

4 MR. LARSEN: Well, we can assign them out  
5 quick. I don't know how long for them to answer it.

6 MR. POWELL: Question. I know that Wayne  
7 is obviously on the phone and he's participating in  
8 the waiver, but has the Commission also engaged him  
9 to participate in the approval process too?

10 COMMISSIONER BOYER: Yes.

11 MR. POWELL: So I don't know if Wayne has  
12 any comments on the proposed dates.

13 COMMISSIONER BOYER: Wayne, did you hear  
14 that?

15 MR. OLIVER: On scheduling?

16 MR. MOENCH: Yeah. Are you okay on the  
17 schedule, Wayne?

18 MR. OLIVER: Yeah. And I'll just make it  
19 work. That won't be a problem.

20 MR. MOENCH: So typically on Data Request  
21 responses we have, what, 30 days?

22 MS. KUSTER: Yeah, something like that.

23 MR. MOENCH: No. 14, what is it?

24 MR. LARSEN: I'm thinking two weeks, ten  
25 business days.

26

1 COMMISSIONER BOYER: Are you talking --

2 MR. MOENCH: For turnaround for data  
3 responses by both parties.

4 MS. ORCHARD: Ten business days.

5 MR. DODGE: That may not work between the  
6 18th and the 9th. Oh, maybe it will. You will get  
7 one round in there, I guess.

8 MS. ORCHARD: It looks like it does work.

9 MR. MOENCH: So if we have testimony there  
10 or request 10 business days, 14. Jeff?

11 MR. DODGE: And can I ask for one  
12 clarification while we're thinking this through?

13 MS. ORCHARD: Sure.

14 MR. DODGE: Can we have the order say  
15 testimony or comments are due on that date? You can  
16 rely on comments for findings, but, I mean, for them,  
17 right now I'm the only one for UEA who has signed the  
18 protective order, and I'm trying to decide whether I  
19 need to find an expert. It may be simply that we  
20 want to file a position statement without expert  
21 testimony. So if we did that, would that be  
22 acceptable, is the question. Because we may want to  
23 file comments even if we don't file testimony.

24 MS. ORCHARD: It seems like that's fine,  
25 but I want Michelle and Paul to hear that.

26

1 MS. SPRINGER: Sorry. We had a  
2 conversation --

3 MR. DODGE: There's some chance we won't  
4 actually file testimony. I recognize there can't be  
5 findings on something that isn't testimony, but we  
6 may still want to put a position in on it, our view  
7 of it on the record. So I'm just asking comments --

8 MS. SPRINGER: I think that sounds  
9 reasonable.

10 MR. PROCTOR: As long as they're sworn and  
11 subject to cross if somebody wants to.

12 MR. DODGE: Well, again, they can't -- the  
13 Commission can take in hearsay and anything else  
14 unsworn; they just can't base findings on it.

15 MR. MOOY: That's only if it's to resolve  
16 a contested issue. So if you're not contesting  
17 issues and then there's something the company puts  
18 forward and no one addresses it, the Commission can  
19 make a finding on what the --

20 MR. DODGE: True, true. My point is, if  
21 we were going to contest it and say don't grant it,  
22 we would need testimony. Obviously, if we don't  
23 choose to take that position, or if we even want to  
24 say there might be some conditions you ought to  
25 consider, I'm hoping to do it without necessarily

26

1 having to bring an expert in.

2 MS. SPRINGER: If they haven't even  
3 considered it, they can't contest it.

4 MR. DODGE: The statute allows them to do  
5 it without anything.

6 MR. MONSON: Yeah, the statute and the  
7 rules just contemplate comments, actually.

8 Gary, I lost the point you're making.  
9 What's your point you're making?

10 MR. DODGE: Well, it is to authorize  
11 either testimony or comments by parties. Because if  
12 we choose not to file testimony where we put on an  
13 expert witness, we may still want to lay out our  
14 position for the Commission to consider it.

15 MS. SPRINGER: Can't you do that in the  
16 form of a policy witness?

17 MR. DODGE: Then I would have to  
18 cross-examine them.

19 MS. SPRINGER: So you're not helping your  
20 cause.

21 MR. DODGE: I only go under oath if Greg  
22 does too, and I get to ask him questions, or Mark.

23 MR. POWELL: And it's my hypothetical.

24 MS. ORCHARD: What was your point?

25 MR. PROCTOR: I don't want to get in a  
26

1       dispute, because as you all know, I don't like  
2       disputes. I don't think that that statute said  
3       comments waived at all, the Administrative Procedures  
4       Act or the Supreme Court's direction, that this  
5       commission has to have evidence, and that means  
6       something --

7                 MR. DODGE: I'm not contesting it.

8                 MR. PROCTOR: -- to make findings. So I  
9       think they still have the same standards for their  
10      ultimate order, Greg. That's my opinion. So I think  
11      we have to be careful with the extent to which they  
12      rely upon unsworn comments to make particular  
13      findings or, for example, to condition it on certain  
14      events or certain obligations or duties.

15                MR. DODGE: I don't disagree with you.

16                COMMISSIONER BOYER: We'll deal with that  
17      one when it arises.

18                MR. DODGE: I don't think they can base a  
19      finding on a position statement.

20                MR. MOENCH: I mean, Paul makes a good  
21      point. We are going forward with the hearing process  
22      where we are going to put testimony on; but I guess  
23      it's a comfort level for the Commission, if they felt  
24      like comments would serve a purpose as well as file  
25      testimony, we're open to it.

26

1                   COMMISSIONER BOYER: We have a quorum of  
2 two here. As far as I'm concerned, we welcome  
3 comments as well, and we'll give them appropriate  
4 weight and consideration when and if they come in.

5                   MR. MOENCH: Okay. That's good.

6                   MR. DODGE: Thank you. That's all I'm  
7 asking.

8                   MR. MOENCH: Back on the discovery.

9                   MR. LARSEN: On discovery?

10                  MS. ORCHARD: Yes.

11                  MR. LARSEN: So I guess we proposed doing  
12 10 business days, or 14 calendar days until  
13 June 18th, and then June 18th and after, we would  
14 shorten that to seven business days?

15                  MR. MOENCH: And ten calendar?

16                  MS. ORCHARD: Okay.

17                  MS. MURRAY: No, that won't work.

18                  MR. PROCTOR: Five business.

19                  MR. LARSEN: Five business days?

20                  MR. MOENCH: After June 18th?

21                  MR. DODGE: This is discovery of you, so  
22 make sure you're comfortable with it.

23                  MS. MURRAY: But when they file rebuttal  
24 testimony, then you want discovery on that.

25                  MS. SPRINGER: Do discovery in between  
26



1 rebuttal and the hearing, or else you've effectively  
2 closed out any meaningful surrebuttal.

3 MR. DODGE: Right. So maybe five business  
4 days?

5 MS. MURRAY: That gets you a response the  
6 day before the hearing, or, if you count the 9th, two  
7 days.

8 MR. LARSEN: So after June 18th goes to  
9 five business days?

10 MS. ORCHARD: Yes. That will be great.  
11 Any other issues we need to discuss related to the  
12 schedule?

13 MR. POWELL: You know, what would be  
14 helpful on discovery is if from here on out any  
15 filings contained the backup worksheets with all  
16 formulas intact, and then we don't have to ask.

17 COMMISSIONER BOYER: So they're complete.

18 MR. POWELL: Yeah. Then wait for ten days  
19 to get the papers that we need.

20 MR. DODGE: Given that this is a  
21 compressed kind of time frame procedure, it probably  
22 ought to be part of a regular standard and scheduling  
23 order.

24 MR. MOENCH: Greg, does that work for you?  
25 You guys crunch the models and --

26

1 MR. DUVAL: As far as I can tell, yeah.

2 MR. MONSON: Did the stuff we sent you not  
3 have the formulas in it?

4 MR. POWELL: I don't know about the  
5 spreadsheets.

6 MR. MONSON: Yeah, I thought we had sent  
7 those. We sent the work papers the next day after  
8 the testimony was filed.

9 MR. MOENCH: Is that okay with you, Jeff?

10 MR. LARSEN: Yes.

11 MR. MOENCH: I haven't tried to go into  
12 them and check.

13 MS. ORCHARD: So, Greg, would you be  
14 willing to send me a draft scheduling order?

15 MR. MONSON: Yes.

16 MR. MOENCH: And then we'll circulate that  
17 around to the parties before we send it over.

18 MS. ORCHARD: That will be great, and then  
19 we'll try to get it out quickly. Thank you.

20 MR. MOENCH: Excellent.

21 COMMISSIONER BOYER: Thank you for coming  
22 in. So that resolves the scheduling issues.

23 MR. MOENCH: That does.

24 And, Mr. Chairman, we propose at this  
25 point to go into a confidential session, and only  
26

1 parties that have signed and executed a protective  
2 order in this case would be allowed to stay. And  
3 then we'll proceed on that basis.

4 COMMISSIONER BOYER: Okay. We could ask  
5 Western Resource Advocates to swear that they're  
6 hanging up and then hang up, or we could cancel these  
7 calls and then have Mr. Oliver call back in. Any  
8 preference there? Is she still there? Is Western  
9 Resource Advocates still on the line?

10 MS. WALKER: Yes, I'm on the line. I can  
11 swear to hang up.

12 COMMISSIONER BOYER: We would love to have  
13 you, but inasmuch as you haven't signed, we'll hear  
14 from you later, I guess.

15 MS. WALKER: Yeah. We're planning on  
16 petitioning to intervene.

17 MR. MOENCH: And also -- this is Mark  
18 Moench. I left a message with Steve Michael about  
19 the need to sign the protective order if you desired.  
20 I haven't heard back from Steve, so --

21 MS. WALKER: Right. I think the plan is  
22 that we will. Obviously, we have to look at it,  
23 but --

24 MR. MOENCH: Sure.

25 MS. WALKER: -- it seems appropriate, so I  
26

1 think that will be forthcoming as well.

2 COMMISSIONER BOYER: Thanks for joining  
3 us.

4 MS. WALKER: I'm going. Bye.

5 COMMISSIONER BOYER: Okay, Mr. Moench.

6 MR. MOENCH: Okay. Mr. Chairman, thank  
7 you.

8 What we had decided to do for today was to  
9 focus the group on the waiver of the solicitation  
10 process as distinguished from the approval process in  
11 order to benefit or get the maximum benefit for us to  
12 enable the parties to ask further follow-up Data  
13 Requests or questions of us before they have to file  
14 their comments on the waiver on the 23rd.

15 The other aspect, and just to give you an  
16 example of the difference, our view is that waiver of  
17 the solicitation focuses on how this resource ties in  
18 with the existing IRP and/or the RFPs we have out  
19 there. In other words, what's the reason to ask for  
20 a waiver here of being in an existing RFP or starting  
21 a new one? And to that extent, logically there flows  
22 certain questions and information about the economics  
23 of this plan relative to the purchase price and how  
24 it fits in our portfolio from an economic standpoint.  
25 We think that's all valuable for that waiver process.

26

1                   The approval process, on the other hand,  
2                   is a much more in-depth look at kicking the tires on  
3                   the plant, so to speak: Do you have all of your  
4                   environmental permits? What's the operating history  
5                   of the plant? A lot of those details would be very  
6                   pertinent to that.

7                   We are prepared to provide all that  
8                   information as part of the inquiry into the approval  
9                   process. We just have cautioned people we've talked  
10                  to before this meeting that questions directed to  
11                  that we will start working on and we'll produce the  
12                  information; but for purposes of the comments on the  
13                  23rd, we would just like to direct people away from  
14                  that information so we don't get bogged down in it,  
15                  number one.

16                  Number two, we also have a slight concern  
17                  that should be resolved within 24 hours. We are  
18                  still waiting to execute the Purchase and Sale  
19                  Agreement with the seller, and Stefan will give you a  
20                  current update on that.

21                  One of the concerns we have is, the  
22                  confidentiality provisions in the PSA which provide  
23                  for a more expansive regulatory disclosure also kick  
24                  in when they execute that. So that's part of the  
25                  reason why we couldn't even provide you today with  
26

1 all the information in the data room that we will  
2 provide you immediately when that PSA is signed.

3 So just a procedural point there. Having  
4 said that, though, we are prepared to address, as  
5 I've outlined these issues in the waiver of  
6 solicitation request standard. And to that end I  
7 would offer Stefan Bird first to kind of give you an  
8 overview of where we are on the PSA, where we -- you  
9 know, just some background on how this opportunity  
10 came about and how it ties into the RFP.

11 And to that end, Stacey, who is very  
12 familiar with our existing RFPs, can chime in as  
13 appropriate to provide information there. And then  
14 Greg, of course, provided testimony and information  
15 relative to some of the modeling he's done relative  
16 to the plant.

17 But if -- and then we're open to  
18 questions. And I guess I would just ask anybody in  
19 terms of any of the lawyers if they have any other  
20 questions relative to proceeding on that basis and if  
21 they agree or disagree with that characterization of  
22 the differences in the two tracks.

23 Does that make sense to you?

24 COMMISSIONER BOYER: Do you want to add  
25 questions or comments on what Mr. Moench has said?

26

1 MR. DODGE: No. I think he's right.

2 MR. POWELL: I had some similar thoughts.  
3 I would like some time at one point to I think direct  
4 some questions to I think additional information that  
5 we need just on the waiver and to put together the  
6 comments we're going to have.

7 COMMISSIONER BOYER: Well, let's let the  
8 Company go forward, then, with those three or two  
9 witnesses.

10 MR. PROCTOR: And if the Company was  
11 asking me as the Committee's attorney to state  
12 whether I agree or disagree with Mr. Moench, not to  
13 answer that question, my silence shouldn't be taken  
14 either way at all.

15 COMMISSIONER BOYER: But you're not  
16 suggesting we do something different?

17 MR. PROCTOR: The Company should do what  
18 they feel is appropriate in this Technical  
19 Conference.

20 COMMISSIONER BOYER: Very well. We will  
21 let them do that.

22 MR. MOENCH: Let me also offer at this  
23 point answers to what I would characterize was an  
24 informal Data Request from Chuck Peterson that we  
25 received Monday. And we have put this on yellow

26

1 paper, and it's offered again as a document under the  
2 protective order. And so I would just suggest we  
3 pass that around.

4 COMMISSIONER BOYER: I'll remind everyone  
5 that it is a protected document.

6 MR. MOENCH: Okay. With that, I'll turn  
7 the time over to Stefan to give us some of the  
8 background.

9 MR. BIRD: Sure. Thank you, Mark.

10 Well, it's a great opportunity and we're  
11 thrilled to be close to signing this. I do  
12 anticipate there's a pretty good chance of maybe  
13 signing that tonight yet. We have lawyers basically  
14 working on the final details, clean-up items. The  
15 owner of the project that we're negotiating with  
16 extends from a U.S. entity on over to Brussels and on  
17 into Paris, and so we're dealing with time zone  
18 issues and multiple parties to review things here at  
19 the final stage, just going through that final  
20 process.

21 MR. MOENCH: And just let me interrupt.  
22 Go ahead and disclose the name of seller, as we're  
23 totally in a protective order environment.

24 MR. BIRD: Sure. The ultimate parent of  
25 the entity we're acquiring the project from is Suez  
26



1 USA, and that's an entity that's in the middle of a  
2 merger process with Gazpar France in Paris. They  
3 expect to close that in June if that goes forward.

4 But we've been negotiating with their Suez  
5 Energy North America Division, which is a holding  
6 company for all of their United States assets and  
7 other North American assets where they have largely  
8 assets in the Northeast U.S. and Texas, primarily in  
9 markets where there's more deregulation and so they  
10 can participate in the full extent of value chain as  
11 a non-utility competitor. So they buy gas, trade  
12 gas, trade electricity, own power generation,  
13 independent power generation, and also operate on the  
14 retail side in the markets where they can do that.

15 Here in the Pacific Northwest they do not  
16 purchase, participate in all aspects of that value  
17 chain, and so that's one of the key reasons why this  
18 is not a strategic asset for them and why we've been  
19 able to come to an agreement.

20 We initially sought them out as we have  
21 talked with various parties in our region as in  
22 parallel with our RFP processes. Oftentimes people  
23 don't always necessarily respond to those, and we  
24 seek continuously opportunistic opportunities, which  
25 this is one of those. And we've been in discussions,

26

1 as we noticed, with them since late 2006. We signed  
2 a confidentiality agreement, they provided some  
3 additional information for which we could value the  
4 project, and we've been in discussions with them I'd  
5 say largely in just very preliminary terms.

6 In 2007 we were unable to come to an  
7 agreement on price through that period. Through that  
8 same period we issued our RFP to the market, the RFP  
9 2012, and got responses in the summer; and we've been  
10 evaluating those, as you know, and we now have a  
11 final short list, which I think everyone here is  
12 familiar with where we stand there.

13 And there's really one bidder that is  
14 remaining that is now working with two separate EPC  
15 counterparties to provide bids, which have provided  
16 indicative bids, but they're in the process now of  
17 building up firm pricing between now and June or  
18 July. And in parallel we're negotiating contract  
19 terms such that if we're successful we would be  
20 bringing to you a potential deal out of the RFP this  
21 summer.

22 But given the indicative pricing that  
23 we've received, we, of course, out of the bids last  
24 year and then coming into the first part of this  
25 year, the timing was fortuitous because we knew what  
26

1 our alternative was, and that alternative in the RFP  
2 2012 is not quite double the cost of this facility.

3 So for Currant Creek or Lakeside type  
4 facility, which is effectively what this is, less  
5 duct firing, which this facility does not have,  
6 you've got state-of-the-art equipment -- GE 7FA, low  
7 NOX burners, FCRs, you know, pretty standard 2 by 1  
8 combined cycle, 590-watt facility, which should  
9 average in conditions as to what it kicks out. When  
10 they originally built it, it tested out at just under  
11 520 megawatts. And so when you read the permits and  
12 public documents about the facility, you'll commonly  
13 see it referred to as a 520-megawatt facility.

14 And in our testimony we put everything  
15 apples to apples and referred to it at average  
16 ambient conditions, which I think is 51 degrees  
17 Fahrenheit, and it's running at 500 megawatts, which  
18 is what it's doing pretty much today. That's about  
19 the temperature we'll see at this time of year.

20 But the pricing, you know, was negotiated  
21 over a long period of time, but it really came to a  
22 head in January. At the end of last year they went  
23 through a reorganization within their North American  
24 group, and so I started interacting at the first of  
25 the year with a new senior executive who took over  
26

1 those reins, and he was contacted by two other  
2 parties and represented that, again, they hadn't been  
3 soliciting interests, these were unsolicited  
4 proposals that they were receiving from other  
5 parties.

6           You know, we had been talking to them for  
7 quite a while. They recognized that we were unique  
8 as a strong regional player with a strong balance  
9 sheet, the ability to close with our reputation and  
10 balance sheet to make that happen, and the  
11 recognition that as a utility with our transmission  
12 network and resource needs we would arguably get more  
13 value out of it than could certain other parties as a  
14 merchant player.

15           They indicated two other parties were  
16 being asked to provide bids in early February and  
17 they asked us to do the same, and so we submitted an  
18 indicative nonbinding offer. In early February that  
19 was accepted. We negotiated a Memorandum of  
20 Understanding which was executed at the end of  
21 February, and that keyed us into an exclusivity  
22 period which we're still in to negotiate a definitive  
23 Purchase and Sale Agreement. And we've been  
24 negotiating that through the month of March.

25           While in parallel, we were also doing due  
26

1 diligence. They opened up a data room which they did  
2 not have built because they were not, again, pursuing  
3 a sale of the project until we ultimately were able  
4 to reach terms. And so it took them a couple of  
5 weeks to build that data room, and as that progressed  
6 we negotiated the terms of the Purchase and Sale  
7 Agreement.

8           The one we filed is pretty effectively  
9 what we still have, and just modifying those final  
10 terms as we speak. And all the disclosure schedules  
11 are complete; all the contract terms are complete.  
12 It's really down to just some final minor items that  
13 need to be cleaned up.

14           MR. MOENCH: Let me interrupt you right  
15 there. You made reference to the offer that was made  
16 in February, and we have a copy of that for everyone  
17 to look at as well.

18           COMMISSIONER BOYER: Thank you.

19           MR. MONSON: I already have a copy.

20           MR. MOENCH: Do people want it?

21           MR. DODGE: Sure.

22           MR. BIRD: And in terms of kind of wise or  
23 compelling, I think the testimony provides a couple  
24 of simple references. I think the key one is  
25 comparing it to the competitive solicitation that we

26

1 just went through with the 2012 RFP. And the results  
2 of that I think provide the best indication of what  
3 the market is willing to offer today for a resource  
4 that would be online in 2012.

5           You know, we're also pursuing another  
6 solicitation in light of the results of that RFP  
7 which don't satisfy all of our resource requirements.  
8 You know, even if we're successful in moving forward  
9 with the final bidder in the RFP 2012, that's a  
10 593-megawatt average ambient output project with duct  
11 firing and power augmentation. And so that's still  
12 far short of the 1700 we were seeking. It's short of  
13 the requirements in the 2007 IRP. And most people  
14 are familiar with the dramatic load growth we  
15 continue to see in Wyoming and Utah, and we're  
16 anxious to satisfy that requirement.

17           So even with the going forward, say, of  
18 this acquisition and even the project that we're  
19 currently pursuing, we still believe we have needs  
20 and we have the new all source RFP for the 2012 to  
21 2016 period where we're seeking up to 2000 megawatts  
22 of peakers, combined cycle, various types of  
23 resources to meet our longer term needs. But  
24 certainly with the addition of this resource, the  
25 potential addition of the remaining bidder in the

26

1 2012 RFP, that will go a long way to meeting our  
2 needs.

3           But the costs of this project in reference  
4 to the 2012 RFP obviously are very compelling. Greg  
5 DuVal's testimony demonstrates the delta between  
6 effectively building another project in 2012 at the  
7 price that this market is currently willing to  
8 provide. We showed a range given that there's still  
9 a clear bit of uncertainty where that price may  
10 ultimately come out, given that a lot of the prices  
11 allows it to potentially flow. They're still working  
12 up firm pricing. Over the next few months the market  
13 will continue to be very volatile for metals, for  
14 EPC, construction costs.

15           And then ultimately we'll still need to  
16 negotiate all the terms and protect the schedule and  
17 ensure that it's there on June 2012, which the  
18 acquisition of this resource obviously mitigates all  
19 of that risk. I don't have construction risk, I  
20 don't have schedule risk, I don't have permitting  
21 risk, I don't have regulatory approval risk.

22           This is a known project that's been  
23 through its teething period. It came online in  
24 October of 2003, and it's been -- as normally  
25 projects come up, there's a few things that you need  
26

1 to tweak to get it fully up to snuff, and they've  
2 effectively done those things. There's likely a few  
3 additional things we may do to it to make it better  
4 fit the market for how we would use it as opposed to  
5 how a merchant would use the project. But by and  
6 large it's a very clean, excellent condition asset  
7 with about 20,000 hours on each of the turbines. You  
8 know, it's been running for five years, and so it's  
9 effectively a new project with a lot of life on it.

10 So that's my, I guess, quick overview for  
11 everyone.

12 MR. MOENCH: Let me just ask you, Stefan,  
13 and we're open to other questions, but I want to just  
14 lead him through some ideas here. The other question  
15 I think would be fair to ask is, given the desire to  
16 close on September 14th, if you could just restate  
17 our philosophy as a company relative to closing deals  
18 and how quickly we do those typically, but why we  
19 also then allowed additional time here with the  
20 seller or bought into a time frame for this  
21 exclusivity that cost us some money.

22 MR. BIRD: Sure.

23 MR. MOENCH: That would be helpful, I  
24 think, to the parties to understand why we're asking  
25 for waiver of the solicitation but we have time to

26



1 get approval.

2 MR. BIRD: Okay. When we negotiated, I  
3 think there are various things that set us apart and  
4 why we were selected as opposed to the other parties.  
5 Of course, we're not privy to -- you know, they do  
6 not disclose the bids in any detail; but they did  
7 comment that one of attractive things about the other  
8 two parties versus us was they saw more regulatory  
9 approval risk and delay in going with us versus what  
10 they had with the other parties. But on the other  
11 hand, we were able to acquire all of it, commit to  
12 utilize it in a fashion that the other bids might not  
13 fully satisfy.

14 So we were able to move forward, but it  
15 was very important to them that we negotiated a  
16 period of time that would limit how long, basically,  
17 their option remains open. They were very cognizant.  
18 The market for building new power projects seems  
19 to -- has have been dramatic. It's been escalating  
20 very rapidly over the last two years, and they looked  
21 forward and said, gosh, if we leave this option open  
22 for an extended period of time, we may be foregoing a  
23 fair bit of value that someone else may be willing to  
24 offer. And they were unwilling to leave that option  
25 open for an unlimited period of time.

26

1                   And so we negotiated terms which largely  
2                   were predicated on our belief of how long it would  
3                   take to get all of our regulatory approvals. Utah,  
4                   being on the outside of that and our federal  
5                   approvals being probably just inside that time frame,  
6                   which put us into that September 14th target, that  
7                   both parties said, we think that's achievable; that's  
8                   what we'll focus on making happen.

9                   That's how I -- and then --

10                   MR. MOENCH: And then I guess the third  
11                   question would be -- yes.

12                   MR. BIRD: You asked, why is it important  
13                   otherwise that we close. And there is that risk  
14                   still in any acquisition process. Until you're  
15                   signed and closed, there's a risk that things can go  
16                   wrong. And in this interim period, the shorter that  
17                   we can make that period, the better.

18                   You know, we have a history of -- at the  
19                   holding company level I was responsible for our  
20                   acquisition development area before coming here, and,  
21                   you know, we built a good reputation on being able to  
22                   close rapidly, anywhere from two months to four  
23                   months on multi billion dollar transactions with  
24                   federal, state, a billion transactional requirements.

25                   MR. MOENCH: You're forgetting Northern  
26

1 Natural Gas. Didn't we do that on a weekend?

2 MR. BIRD: Yeah. Well, that was -- yeah.

3 MR. MOENCH: That was like an all time  
4 record.

5 MR. BIRD: Yes. So I think for the  
6 regulatory pulls we've been successful in moving  
7 through. And it would be important to me to be as  
8 responsive as possible. I think it's a very  
9 straightforward asset, a very straightforward  
10 analysis on why this makes sense. But we certainly  
11 would appreciate your attention to that. It's a  
12 great deal for our customers that will go towards  
13 reducing the power costs. That's our fundamental  
14 goal. It improves our liability and really allows us  
15 to optimize in a way that takes advantage of the  
16 assets in this company.

17 MR. MOENCH: Let me ask you another  
18 question that goes to the waiver again. Why wouldn't  
19 this have fit into our existing RFP or the 2008 All  
20 Source RFP? And by the existing I'm referring to the  
21 2012.

22 MR. BIRD: Right. I think a number of  
23 issues come up there. We issued it in April, and at  
24 that time we were no where near reaching agreement  
25 and they weren't actively seeking to sell the

26

1 project. They certainly could have participated in  
2 the RFP but did not choose to, and it wasn't until  
3 the earlier part of this year where we got traction.

4 From a fairness standpoint, I think it  
5 would be challenging to introduce the bidder well  
6 after we had already qualified there and had gone  
7 through a very rigorous process of getting qualified,  
8 trying to meet credit requirements and meeting the  
9 schedule deadlines that we built into the RFP. I  
10 think RFPs are very effective and having competition  
11 is great, but it's not the answer for everything.

12 And I think this is a great example of why  
13 having that waiver capability is extremely important.  
14 And if there's ever a poster child for why that makes  
15 sense, this is it. And this is a great opportunity  
16 that I think we would be hard pressed to say would  
17 occur or could be possible inside an RFP  
18 solicitation.

19 With a 10- to 15-month time frame, plus  
20 another 120 or 180 days on the back of it for  
21 approval, you know, in an opportunity where we get  
22 traction on, you know, an exclusive negotiation, that  
23 just doesn't gel with the context of submitting  
24 something in and kind of hoping that that wins at the  
25 end of the day.

26

1                   You know, this is an entity that has a  
2                   very large, tens of billions of assets around the  
3                   world. This is a relatively small asset in the  
4                   scheme of things. It's not something where they want  
5                   to hassle with the effort. It's important for them  
6                   that we've got a clean, straightforward transaction  
7                   and get it done. And we've been able to reach those  
8                   terms and now have a mutual agreement that's a good  
9                   win for both sides, and we're anxious to get this one  
10                  done.

11                  But with the time frame fundamentally in  
12                  an RFP process, that is their primary prohibition for  
13                  this type of opportunity. Certainly this opportunity  
14                  would not be acceptable to those counterparts.

15                  MR. MOENCH: So with that, I would open  
16                  him up for any questions.

17                  MR. PROCTOR: Well, if you haven't  
18                  already, will you provide us with a copy of the  
19                  tolling agreement under which you will bind the power  
20                  now?

21                  MR. BIRD: Sure.

22                  MR. PROCTOR: When could we expect that?  
23                  Soon?

24                  MR. BIRD: I'll defer to the procedural  
25                  people. I mean, it's no problem providing that.

26

1 MR. MOENCH: What's the question?

2 MR. BIRD: He would like a copy of the  
3 tolling agreement.

4 MR. MOENCH: No problem.

5 MR. PROCTOR: One more follow-up question.  
6 Are you utilizing the power you buy from them for  
7 PacifiCorp customers now, or are you reselling it?

8 MR. BIRD: We don't color code megawatts,  
9 so --

10 MR. PROCTOR: Just within your system and  
11 your operation of the system.

12 MS. WILSON: Can you just summarize, when  
13 did you start?

14 MR. BIRD: March 1, 2008. So that was  
15 negotiated in that same couple of weeks there in  
16 February. We negotiated the tolling agreement at the  
17 same time we negotiated the Memorandum of  
18 Understanding to acquire the facility.

19 MR. PROCTOR: Was the tolling agreement  
20 just a bridge, then, to --

21 MR. BIRD: Essentially. You know, I think  
22 it was another attractive aspect of the deal for  
23 them. It allowed them, in all effectiveness, to exit  
24 the market at that point in time by tolling it and  
25 having it -- you could call that a bridge to when we

26

1 would close and purchase the facility.

2 MR. PROCTOR: What's the term of that  
3 contract?

4 MR. BIRD: The term of the contract is --  
5 it's November unless we close sooner, right?

6 MS. KUSTER: It's displacing market  
7 purchases. I mean, it's just optimizing off the  
8 system.

9 MR. PROCTOR: But the tolling agreement  
10 goes away in the event you don't close this.

11 MS. KUSTER: Absolutely. Absolutely.

12 MR. BIRD: Yes. We priced it flat to our  
13 alternative of buying power from the market. So it's  
14 not a win or a loss from that standpoint.

15 MR. PROCTOR: That helps a lot. But if we  
16 could see the agreement, that would help a lot.

17 MR. MOENCH: Mike, just let me ask him one  
18 question. On the exclusivity, just address that. I  
19 just don't want to forget it, but Mike, what's your  
20 question?

21 MR. GINSBERG: Can you go through what  
22 other regulatory approvals you have to go through?

23 MR. MOENCH: I can address that. We have  
24 a waiver of solicitation we filed in Oregon, Mike,  
25 that is similar to the instruction we have here on  
26

1 the waiver. The difference in Oregon is they do not  
2 have an approval requirement. But if they grant the  
3 waiver up there, we are then just at risk in the next  
4 rate case, and we're prepared to close just on that  
5 alone.

6 We also have a FERC 203 application, Mike,  
7 that we need approval on. That's probably the only  
8 other big element we've got out there. And we're  
9 confident that is going to be resolved. And it's  
10 unfortunate the IE is not available. He had a  
11 question -- and Tom, is he going to join us?

12 TOM: No. He's officially dropped off.  
13 He had to catch a plane.

14 MR. MOENCH: Well, maybe somebody could  
15 follow up with him. But he had a question about  
16 whether we meet -- if FERC has jurisdiction over this  
17 because it was a transaction with an affiliate. We  
18 didn't know where that question came from. The only  
19 thing I was wondering is if he assumed that  
20 MidAmerican owned Northwest Pipeline which supplies  
21 the gas to the plant, and he thought that was an  
22 affiliate transaction that triggered for jurisdiction  
23 over FERC. Of course, Northwest is not owned by  
24 MidAmerican, so it's not an affiliate. But the  
25 trigger for FERC jurisdiction is on a different

26



1 basis. But we don't anticipate issues with the FERC  
2 close.

3 MR. POWELL: Can we also get a copy of the  
4 Memorandum of Understanding?

5 MR. MOENCH: The MOU?

6 MR. GINSBERG: Yes.

7 MR. MOENCH: Yes. And then why don't you  
8 address the exclusivity payment, how that works.

9 MR. BIRD: Yeah. And this goes back to  
10 that discussion about effectively holding this option  
11 open. You know, we negotiated a specific payment of  
12 \$8.7 million, which is payable five business days  
13 after we sign the Purchase and Sale Agreement. And  
14 that gives us the exclusive right to the project, you  
15 know, during the period negotiated in the Purchase  
16 and Sale Agreement.

17 COMMISSIONER BOYER: And that's credited  
18 against the purchase price?

19 MR. BIRD: As part of the purchase price,  
20 correct. So we pay \$8.7 million in those first five  
21 days; we pay \$296,200,000 at closing. And also  
22 there's an adjustment for the contractual service  
23 agreement with General Electric, a long-term  
24 agreement, where we negotiated a true-up payment of  
25 \$4.65 million. And all of that totals up to I think

26

1       \$310 million if you include that true-up for the  
2       contractual service agreement.

3               MR. MOENCH:  If we don't close, do we then  
4       still pay the \$8.7 million?

5               MR. BIRD:  The 8.7 only comes back if they  
6       breach their covenants during the interim period.  
7       Otherwise that's a nonrefundable \$8.7 million  
8       payment.

9               MR. DODGE:  And you completed due  
10       diligence?  I mean, there's no due diligence out on  
11       your part?

12              MR. BIRD:  That's correct.

13              MR. MOENCH:  Correct.  And again, the data  
14       that was provided to us in the data room we will  
15       provide to you as part of that approval thing once we  
16       close the PSA.

17              MR. BIRD:  I think there was just about a  
18       thousand, just under a thousand documents posted.

19              MR. MOENCH:  That includes all the  
20       environmental permits, all the citing permits, the  
21       construction agreements, all the history of the  
22       plant, all the detail.

23              COMMISSIONER BOYER:  I think Mr. Harvey  
24       had a question.

25              MR. HARVEY:  I briefly was looking through  
26

1 this, and it said there were no current long-term  
2 contracts. What's the true-up payment for?

3 MR. BIRD: No long-term commodity  
4 contracts I think was the question, if I remember  
5 right. So there's no gas or electric long-term  
6 contracts other than the one they have with us, which  
7 is the tolling agreement where we get the electric  
8 output prior to closing, and they provide the gas.  
9 And other than that, there isn't anything that we're  
10 requiring in terms of gas or electric commodity  
11 contracts.

12 The General Electric contractual service  
13 agreement is one of those long-term service  
14 agreements to maintain the turbines. So that's, I  
15 think, the lesser of 25 years or 96,000 hours, and  
16 there are 20,000 hours five years into it. So  
17 there's a lot of life left on that contract. You  
18 know, I think it's a 90 some million contract over  
19 the course of that period of time.

20 COMMISSIONER BOYER: Any other questions  
21 for Mr. Bird?

22 MR. LARSEN: Just a point on the  
23 exclusivity payment. When the MSA gets closed, we  
24 will make a --

25 MR. MOENCH: You mean the PSA?

26

1           MR. LARSEN: -- or the PSA. We'll make a  
2 motion within this docket to treat that \$8.7 million  
3 expense payment for that right as a regulatory asset  
4 during the pendency of this. If the deal closes,  
5 then that goes in as an offset against the overall  
6 price of the facilities. If not, it would become an  
7 expense to the company. So we're asking for  
8 treatment of that as a regulatory asset for the  
9 opportunity to pursue this deal. So you'll see that  
10 motion come through.

11           COMMISSIONER BOYER: Other questions?

12           MR. PETERSON: Just as a clarification,  
13 maybe you explained this earlier, but currently the  
14 plan is just selling into the spot market?

15           MR. BIRD: Correct.

16           MR. PETERSON: Prior to the tolling  
17 agreement with PacifiCorp?

18           MR. BIRD: Yes. Prior to us owning it,  
19 they had various agreements. They operated solely as  
20 a merchant player.

21           MR. PETERSON: With no long-term contracts  
22 or intermediate term contracts or anything?

23           MR. BIRD: Not that I'm aware of.

24           MS. KUSTER: No.

25           MR. BIRD: In the prior five years, I  
26

1 don't recall if they had within that period some  
2 shorter term agreements.

3 MS. KUSTER: There's nothing that goes  
4 beyond.

5 MR. BIRD: But nothing that went beyond  
6 March 1.

7 MR. PETERSON: And none of these prior  
8 contracts are with PacifiCorp; is that correct?

9 MS. KUSTER: That's correct.

10 COMMISSIONER BOYER: Your next speaker,  
11 Mr. Moench?

12 MR. POWELL: I have a question.

13 COMMISSIONER BOYER: Or two.

14 MR. POWELL: Mr. Bird, in your testimony  
15 you've indicated that Suez had informed the company  
16 that two other parties were interested and that's  
17 what kind of initiated this final.

18 MR. BIRD: Uh-huh (affirmative).

19 MR. POWELL: Is there anything in writing  
20 that we could see?

21 MR. BIRD: No.

22 MR. POWELL: It was just a phone call?

23 MR. BIRD: Yes.

24 MR. POWELL: You described it as a 7FA  
25 dry. Does that just mean it's an air cooled?

26

1                   MR. BIRD: The Dry Low NOX is I think the  
2 description of the burners, but it is air cooled,  
3 actually, and not water cooled.

4                   MR. POWELL: Okay. And what is an inlet  
5 fogger?

6                   MR. BIRD: It's a device used during  
7 higher ambient temperatures to get more output out of  
8 the turbines.

9                   MR. POWELL: So it's not the same thing as  
10 duct firing?

11                   MR. BIRD: No. You have chillers, evap  
12 coolers, you know, foggers. Those are different  
13 types of technology to essentially cool the -- get  
14 more density.

15                   MR. POWELL: Okay. But it is to enhance  
16 the output?

17                   MR. BIRD: Yes, correct.

18                   MR. POWELL: Okay. And does the company  
19 have a contract with BPA right now to wheel the  
20 electricity?

21                   MR. BIRD: We transferred -- yeah, we have  
22 a -- yeah. I'll answer two questions, I guess. At  
23 the closing with the Purchase and Sale Agreement we  
24 will acquire the existing of 600-megawatt BPA  
25 point-to-point firm transmission contract that LLC

26

1 owns. And I think as Greg's testimony discusses, you  
2 know, our intent is to continue to utilize that  
3 contract and otherwise, you know, not continue our  
4 638-megawatt BPA firm point-to-point contract that we  
5 currently own independent of that project.

6 MR. POWELL: And that runs over the life  
7 of the plant?

8 MR. BIRD: Yeah. What's the term?

9 MS. KUSTER: It's a 20-year set term. And  
10 it's a pre-FERC OASIS. So it has a term -- you have  
11 the rollover rights, but it's a fixed 20 years.

12 MR. DODGE: Okay. With 15 remaining?

13 MS. KUSTER: With 15 remaining.

14 MR. POWELL: Okay.

15 MS. KUSTER: But then it would go into  
16 the --

17 MR. DODGE: Rollover.

18 MS. KUSTER: -- rollover rights, and then  
19 it would go on OASIS, and then we would have the  
20 right. So it's just a different contract structure  
21 than what currently they have in place.

22 MR. POWELL: And then there's two reports  
23 that you referenced from -- one is The Brattle Group  
24 and the S&P group. Can we get copies of those?

25 MR. BIRD: Yes.

26

1 MR. MOENCH: Sure.

2 COMMISSIONER BOYER: Purchase price, debt  
3 and equity?

4 MR. BIRD: No debt.

5 MR. MOENCH: So the total price is 305?

6 MR. BIRD: Well, it's, again, the 8.7 plus  
7 the 296.9 -- 296.--

8 MS. KUSTER: Three.

9 MR. BIRD: Point 3. Well, we have the  
10 spare transformer, so that adds 600 thousand. So  
11 296.9, plus the 8.7, plus the 4.65. And then at  
12 closing there will be one last true-up on working  
13 capital. We have a target working capital of zero,  
14 and that can go either direction depending on where  
15 working capital is at closing. And that will be the  
16 final purchase price for Section 2 point whatever it  
17 is.

18 COMMISSIONER BOYER: Any other questions  
19 of Mr. Bird?

20 MR. POWELL: I did have. I just wrote it  
21 down under my notes for Mr. Bird, but it may be a  
22 question that Greg wants to address.

23 The benefit that you outline in your  
24 testimony, Greg, depends strongly on the PATH C  
25 upgrade; is that correct?

26



1                   MR. DUVAL: Well, the PATH C upgrade is  
2 included in the analysis.

3                   MR. POWELL: So did you do any scenarios  
4 where you -- either the PATH C upgrade does not  
5 happen or is significantly delayed?

6                   MR. DUVAL: No, I did not.

7                   MR. GINSBERG: I had one question.

8                   COMMISSIONER BOYER. Okay.

9                   MR. GINSBERG: You indicated that you're  
10 going to be making a request for a deferred  
11 accounting order. How does that fit in with the  
12 approval of the waiver or the approval of the  
13 purchase itself? Is it tied directly to the waiver  
14 request, or independent of that?

15                   MR. MOENCH: It's really tied to the  
16 approval request.

17                   MR. LARSEN: Yeah, it's not tied to the  
18 waiver, it would be tied to the overall approval.  
19 And if it's approved, that 8.7 becomes part of the  
20 asset cost. If not, then that would be an expense  
21 that we've incurred.

22                   MR. DODGE: Because it's not really tied  
23 to the approval; you're asking for a deferred  
24 accounting treatment of it one way or the other,  
25 right?

26

1                   MR. LARSEN: Well, if the plant is  
2 approved, it becomes part of the plant output cost in  
3 101. Otherwise it becomes --

4                   MR. DODGE: Otherwise it's just a motion  
5 within the docket, it's not really tied to either?

6                   MR. MOENCH: Affected by the outcome.

7                   MR. POWELL: Sorry.

8                   COMMISSIONER BOYER: That's okay.

9 Dr. Powell.

10                   MR. POWELL: I did remember one other  
11 question. Going back to the idea of whether or not  
12 this fits into the RFP, I think it was in your  
13 testimony you mentioned that the company was aware of  
14 this asset as far back as '06?

15                   MR. BIRD: Yes.

16                   MR. POWELL: So I'm not sure -- it's not  
17 clear to me why they didn't just bid in as an asset  
18 sale.

19                   MR. MOENCH: Stefan kind of walked  
20 through that, but he can do that again.

21                   MR. BIRD: I mean, I think there's a lot  
22 of projects we're aware of that exist in the west  
23 that are merchant projects that we've talked to. I  
24 don't think any of one of them bid into the RFP as  
25 perhaps a sale or any other type of proposal. But in

26

1 this case, again, at that time, in April 5th I think  
2 when we issued the RFP, we were not even close to any  
3 kind of mutual agreement or interest on price. So  
4 they could have bid into the RFP, but they didn't.

5 MR. POWELL: Well, what does it mean,  
6 then, when you say you were aware of this asset back  
7 in '06?

8 MR. BIRD: We signed a confidentiality  
9 agreement in order to get information about it so we  
10 could do a better valuation of the asset. But, yeah,  
11 I wouldn't put a lot of meaning on it personally.  
12 I'm aware of, you know, thousands of megawatts across  
13 the western interconnect that I know about.

14 MR. POWELL: Could we get a copy of that?

15 MR. BIRD: You know, look to the WKC  
16 website.

17 MR. POWELL: I mean, if you signed a  
18 Confidentiality Agreement --

19 MR. MOENCH: Oh, yeah, no problem. We'll  
20 give you the confidentiality agreement on that.  
21 That's not a concern. And it sounded to me, Artie,  
22 like Suez did not want to participate in the RFP. I  
23 mean, they just said, "We're not interested."

24 MR. PROCTOR: Stefan, when you said you  
25 were aware of the asset, were they selling or willing

26

1 to sell, or had they said at that time in 2006 that  
2 we're interested in finding a buyer?

3 MR. BIRD: No.

4 MR. PROCTOR: Can you tell me exactly  
5 where this is located?

6 MR. BIRD: Sure. It's almost midway  
7 between Seattle and Portland right off the I-5 in a  
8 town called Chehalis.

9 MR. PROCTOR: Is this the one in  
10 Centralia, or --

11 MR. BIRD: It's south of Centralia  
12 probably ten miles or so.

13 MS. KUSTER: They have some peakers there,  
14 but this is just gas.

15 MR. PROCTOR: The peaker is up next to the  
16 freeway?

17 MS. KUSTER: Yes. That might be what  
18 you're thinking of, the peakers on Centralia. This  
19 is different.

20 MR. LARSEN: Just a point of  
21 clarification. Externally we're now calling this  
22 Project Blue rather than referring to it as Chehalis  
23 plant. Because Chehalis, Washington would give way  
24 to where the plant is at. So if you hear "Project  
25 Blue," that's our code word for it so we don't

26

1 disclose it.

2 MR. DODGE: So the rumor is going to get  
3 out that Warren Buffet is going to buy IBM, huh?

4 COMMISSIONER BOYER: Or BYU.

5 Let's see if our court reporter needs a  
6 break.

7 THE REPORTER: I'm okay.

8 COMMISSIONER BOYER: Will you give me a  
9 signal if you need a break?

10 THE REPORTER: I will.

11 MR. GINSBERG: Does a confidentiality  
12 requirement exist all the way through after the  
13 Purchase and Sale Agreement is signed, or does it  
14 change in any way after that?

15 MR. MOENCH: It does, but I'll give you a  
16 little heads up. We had wanted to keep this  
17 confidential until we close on September 14th because  
18 of our concern that Suez could walk, I mean, if they  
19 got another higher bid and they are interested in  
20 litigation with us just because they want more money.  
21 I mean, we'll go after them aggressively, but we're  
22 concerned about that. So we've asked them for that.

23 And we just heard in the last 24 hours  
24 that they want to issue a press release, and we're  
25 trying to curb that down and keep it tighter. But

26

1 it's possible that if they go out with something --  
2 and part of their concern is their SEC disclosures.  
3 For us, we were comfortable with the idea that we  
4 don't have our regulatory approval yet, so it's not a  
5 material event yet. But for them, for whatever  
6 reason, they're pushing the other way.

7           So it is possible that they could go  
8 public at some point, at which point we're open. But  
9 we'll let you know where we battle and come out on  
10 that on the press release, but that's just an FYI.  
11 If they don't, our intent is to keep it confidential  
12 until the close of the deal in September, or we don't  
13 get approval and we don't close, then it's no longer  
14 confidential.

15           MR. BIRD: And the confidentiality terms  
16 do continue beyond closing. I haven't focused on  
17 that one recently, but I think we could provide you  
18 those. It's inside the Purchase and Sale Agreement,  
19 so you'll see that. What you have in fact now is  
20 pretty much it. I don't think it's been modified.

21           MS. KUSTER: For regulatory, we can  
22 disclose things on a regulatory basis, but otherwise  
23 its --

24           MR. MOENCH: There is an issue that Suez  
25 has under the MOU confidentiality, the original.

26

1 They are concerned that we don't have the full right  
2 to disclose everything to the regulator that's in the  
3 data room, but that is very clear in the PSA. Once  
4 they execute that, then it's an open door. So we've  
5 been a little judicious about what we provide you,  
6 kind of pushing the envelope with them for the  
7 benefit of the regulators even though they haven't  
8 executed a PSA. But we are very close.

9 MR. LARSEN: And we have liquidated  
10 damages, so if they walked we could get liquidated  
11 damages. So really the question is, could they  
12 attract a suitor that would give them a price over  
13 and above the liquidated damages that would make it  
14 valuable for them to terminate with us. So we want  
15 to --

16 UNIDENTIFIED SPEAKER: Do you have a rough  
17 idea what you would put those at?

18 MR. MOENCH: It's called out -- a \$50  
19 million cap is in the agreement for liquidated  
20 damages.

21 MR. LARSEN: That's legal fees.

22 MR. MOENCH: That's only another \$500,000.  
23 But, yeah, Jeff's point is if somebody comes in for  
24 \$100 million above what we paid, the market  
25 conditions change dramatically in the next six months

26

1 or something to the point of trying to get this  
2 closed early, we don't want to have to pay for that  
3 situation.

4 COMMISSIONER BOYER: Are we going to have  
5 someone else speak?

6 MR. MOENCH: Greg is able to give us a  
7 little summary of the modeling he's done, and I think  
8 it would be helpful to hear from him on that. And  
9 then that would conclude our presentation and no  
10 further questions for Greg.

11 MR. BIRD: Before we get Greg up, I just  
12 wanted to make one clarification. Someone asked  
13 about long-term contracts. There is one other  
14 long-term contract on Gas Transport. There's a  
15 commodity contract with --

16 MR. MOENCH: With Northwest Pipeline.

17 MR. BIRD: -- that was prepared on the fly  
18 from SUMAS, which is right on the Canadian border  
19 down to the plant, and then a lateral, about three  
20 and a half miles over to the facility. That's a  
21 25-year agreement with essentially 20 years left on  
22 it.

23 MR. LARSEN: And we would assume that.

24 MR. BIRD: Yeah, we would assume that, you  
25 know, for the full capability of the plant.

26



1                   COMMISSIONER BOYER:   Okay, Greg.

2                   MR. DUVAL:   Okay.  Well, I have the other  
3 piece of testimony in this proceeding.  And what I  
4 present is a fairly I think straightforward analysis  
5 of the valuation of this plant.  The -- it's based on  
6 basically the comparison of a portfolio that includes  
7 the Chehalis plant as compared to the business plan  
8 portfolio that was shared with you all on  
9 February 29th in the IRP meeting and basically is  
10 going to be the basis of our IRP updates.

11                   In that business plan IRP update there  
12 were two combined cycle turbine plants in 2012 on the  
13 east side of the system.  What we did through this  
14 study was we took our system optimizer model, which  
15 used to be the capacity expansion model, and we put  
16 Chehalis in in 2008, we ran the model to see how the  
17 portfolio would re-optimize, and what it did was, it  
18 moved front office transactions around in the early  
19 years, especially, and then it displaced one of the  
20 two gas plants in 2012.  That is part of that  
21 particular view that's shown in some of my work  
22 papers.

23                   UNIDENTIFIED SPEAKER:  Is it the plant  
24 that was displaced on the east side plant?

25                   MR. DUVAL:   Yes, it was.  And part of what  
26

1 makes that possible is the PATH C upgrades which  
2 allowed an addition of I think it was 780 megawatts  
3 of additional transfer capability out of the Bridger  
4 system into the east so we can add a generation unit  
5 on the west.

6           So we took that new portfolio and we ran  
7 it through our planning and risk model. We didn't  
8 use the stochastics, we used the deterministic view.  
9 So it was much like a grid study, a production cost  
10 study, but we did it for the 20-year time frame that  
11 the IRP is set up for.

12           My exhibit that accompanies my testimony  
13 summarizes the benefits of that. On the variable  
14 cost side there is about \$52 million worth of  
15 benefits. That was inclusive of a \$25 million  
16 increase in costs associated with the wheeling  
17 contracts that we talked about, then we got some  
18 additional wheeling, and then we were -- in the  
19 beginning, and then were able to get rid of some of  
20 our existing wheeling in 2012.

21           And on the exhibit it shows the \$52  
22 million in benefit under variable cost, plus another  
23 \$90 million benefit in terms of capital cost. And  
24 that was under the assumption that that displaced  
25 combined cycle in 2012 was at \$1,000 a kilowatt.

26

1 That's the one that shows up at \$142 million in  
2 present value benefits. If we assume the capital  
3 costs of that 2012 displaced combined cycle with  
4 \$1,150 a kilowatt, then the total benefits, the same  
5 variable for the \$52 million, but the capital costs,  
6 fixed cost benefits increased to \$145 million for a  
7 total of \$197 million.

8           So that's -- it's basically as simple as  
9 that in terms of the testimony. I've provided with  
10 the work papers, we have a document that's the key  
11 assumptions. It goes through and lays out a lot of  
12 the different assumptions that we used. These were  
13 based on the best information we have on the plant.  
14 And then the work papers behind that layout, being  
15 the Parr studies, and the CEM or the system optimizer  
16 portfolio.

17           So that concludes my remarks.

18           COMMISSIONER BOYER: Any questions of  
19 Mr. DuVal?

20           MR. DODGE: I have just one.

21           COMMISSIONER BOYER: Go ahead.

22           MR. PETERSON: Looking at your exhibit  
23 that you were just referring to, now, we were a  
24 little bit confused that in making an evaluation of  
25 this comparison between the capital costs of the  
26

1 prospective plants in 2012 and these variable costs,  
2 you only included variable costs in evaluating the  
3 plant under discussion here. Wouldn't there be  
4 depreciation and interest, in other words, fixed  
5 costs associated with acquiring this plant? And why  
6 weren't they included in this analysis?

7 MR. DUVAL: Yeah, I saw your question, and  
8 then as I looked at this table I realized that it was  
9 a little confusing because it talks about the  
10 variable costs and the capital costs. But the  
11 capital cost numbers are net of the increase in the  
12 new capital costs, less the avoidance of the other  
13 capital costs. So that's a net benefit of changing  
14 out by adding Centralia in 2008 and getting rid of  
15 the other combined cycle in 2012.

16 MR. DODGE: We're calling it Blue.

17 MR. DUVAL: Blue, Project Blue. Just so I  
18 didn't say miles.

19 MR. DODGE: Confusing it with Centralia.

20 MR. DUVAL: So that net benefit is  
21 anything over 90 million.

22 MR. PETERSON: And that's in your work  
23 papers?

24 MR. DUVAL: Yeah.

25 MR. PETERSON: I briefly looked through  
26

1       them, but I didn't make the connection.

2                   MR. DUVAL:   Right.  As you work through  
3       the work papers, you can see how that worked where  
4       the capital costs from the -- it's a line called Real  
5       Levelized Fixed Costs that shows up.  And that is  
6       the -- it shows in the early years that there's an  
7       increase, and in the later years beginning in 2012  
8       there's a decrease.  So there's increased capital in  
9       the first few years, and then the net difference  
10      because we have a depreciated plant that started at a  
11      low price is in the study, but we're now removing a  
12      brand new plant from 2012.

13                  MR. PETERSON:  Now that I know the  
14      connection, I did look enough at your spreadsheet  
15      exhibits.  Going forward, you're increasing the  
16      capital costs by 1.9 percent.  Why were you  
17      increasing them as opposed to keeping them flat?

18                  MR. DUVAL:   These are based on the real  
19      levelized charges.  That's the way we do the  
20      comparisons in the IRP modeling.  It's using real  
21      levelized charges so that we basically take care of  
22      the end effects.  It's an economic comparison.

23                  MS. KUSTER:  You know this.

24                  MR. POWELL:  It's to take inflation out --

25                  MS. KUSTER:  Back in, yeah.

26

1                   Mr. POWELL:  -- and put inflation back  
2     in --

3                   MR. DODGE:  And get megawatts.

4                   MS. KUSTER:  Yeah.

5                   MR. POWELL:  What's a pound of sugar  
6     worth?

7                   MR. PETERSON:  Well, I guess I'm thinking  
8     of it in terms of accounting, because --

9                   UNIDENTIFIED SPEAKER:  Well, that's your  
10    problem.

11                  MR. PETERSON:  Well, except the problem  
12    is, that's what goes into rate cases.  You're going  
13    to have a fixed charge in an accounting sense, but I  
14    guess what you're saying is that in an economic sense  
15    in the future you're going to have to replace this  
16    plant at some time 30 years down the road, and so  
17    you're inflation adjusting it in a sense to take into  
18    account the future plant that you'll have to buy in  
19    2040 or something?  Is that roughly the correct  
20    analysis?

21                  MR. DUVAL:  Yes.

22                  MR. PETERSON:  Okay, thank you.

23                  COMMISSIONER BOYER:  Mr. Dodge, you had  
24    some question?

25                  MR. DODGE:  Yeah.  In terms of comparing  
26

1 it, say, to the 2012 RFP for delivery into the east  
2 side, a resource like this would have to provide  
3 transmission. Or maybe another way to say it is  
4 there's an opportunity cost to using the capacity  
5 upgrade for Jim Bridger power as opposed to -- in  
6 order to accommodate this west side resource. Is  
7 that all factored into your 104/90 million analysis;  
8 when you run the optimizer it assumes PATH C with and  
9 without this plant and using it for whatever is  
10 economical? Does that make sense?

11 MR. DUVAL: Yeah. And I think the PATH C  
12 with or without this plant would be available for  
13 network service. So I don't think there's an  
14 incremental cost. And I think on the flip side is  
15 that with the Chehalis plant we had included all the  
16 incremental costs, the \$25 million of incremental  
17 wheeling, and the fixed transport costs and all those  
18 different pieces, which are kind of local baggage to  
19 that plant, and compared it to a generic east side  
20 plant that all it has is the interconnection to the  
21 system. It doesn't have any additional costs that  
22 might be associated with that plant that are a  
23 specific deal.

24 MR. DODGE: I think I understood that.  
25 Thank you.

26

1                   COMMISSIONER BOYER: Does anyone else have  
2 questions for Mr. DuVal? Commissioner Campbell, do  
3 you have any?

4                   COMMISSIONER CAMPBELL: No.

5                   MR. LARSEN: Just to be clear: on your  
6 analysis, then, you ran -- put the plant in, you ran  
7 it and re-optimized it and compared it to what you  
8 had already done, the February stuff you gave us.  
9 Are there any other changes that you made to the  
10 model when you were there, or was it just the  
11 addition of the plant?

12                  MR. DUVAL: It was just the addition of  
13 the plant, and the result was the change in front  
14 office transactions along with the deferral of the  
15 2012 plant.

16                  COMMISSIONER BOYER: Is there anything  
17 further we need to discuss?

18                  MR. DODGE: How long did it defer the 2012  
19 plant?

20                  MR. DUVAL: Forever.

21                  MR. DODGE: It replaced it?

22                  MR. DUVAL: Yeah, it replaced it.

23                  MS. WILSON: I can't remember, but I  
24 thought there was a west side CCC 2 that was called  
25 for in one of the IRPs. Is that correct, and would  
26



1 this affect that at all? Do you recall that, like  
2 2011 or something?

3 MR. DUVAL: Oh, yeah. The 2007 IRP had a  
4 west side combined cycle in 2011, and the 2004 IRP  
5 had a west side combined cycle in 2012. But we're  
6 comparing it against our most recent plan, which is  
7 the one that we presented on February 29th.

8 MR. LARSEN: And that one doesn't have  
9 one?

10 MR. DUVAL: And it does not have a west  
11 side plant.

12 MR. BIRD: But would it be fair to say,  
13 Greg, I mean, we were pretty indifferent to where  
14 that plant would go.

15 MR. DUVAL: Right.

16 MR. BIRD: And just plopped it in the  
17 east. But it could have just as well been cited in  
18 the west; it wouldn't have changed the results.

19 MR. DUVAL: Right. And I think if we were  
20 to have forced a plant in the west in that plan, it  
21 wouldn't have changed the present value revenue  
22 requirement by much.

23 MR. LARSEN: And that was because PATH C  
24 makes it so easy to move?

25 MR. DUVAL: Right.

26

1 MR. POWELL: That's what was nice.

2 MR. DUVAL: Yeah.

3 MR. POWELL: The update included PATH C,  
4 right?

5 MR. DUVAL: Correct.

6 MS. WILSON: And the difference between  
7 the 2007 IRP and the plan, the business plan, would  
8 have also had the PATH C from 300 up to --

9 MR. DUVAL: Exactly. Exactly.

10 MS. WILSON: Okay. Thanks.

11 MR. PETERSON: I'm sorry. I have another  
12 follow-up.

13 COMMISSIONER BOYER: Question,  
14 Mr. Peterson?

15 MR. PETERSON: Another follow-up. When  
16 you issued the business plan at the end of February,  
17 is it fair to say that, as I understand it, you were  
18 well into the negotiations with this current Plant  
19 Blue? Is that --

20 MR. DUVAL: Yeah. We shared the business  
21 plan on February 29th that had been approved by our  
22 board of directors on December 9th of last year.

23 MR. PETERSON: So it was really before the  
24 heavy negotiations?

25 MR. DUVAL: Right.

26

1                   MR. PETERSON: So the current business  
2 plan that's going to represent the 2007 IRP update,  
3 you're not just simply substituting a known potential  
4 purchase for that west side plant that you had  
5 originally proposed in earlier IRPs?

6                   MR. DUVAL: No.

7                   MR. PETERSON: Thank you, Mr. Chairman.

8                   COMMISSIONER BOYER: You're welcome.

9                   Well, thanks to everyone for coming on  
10 such short notice.

11                   Mr. Powell, do you have another question?

12                   MR. POWELL: Yeah, I have a couple.

13                   COMMISSIONER BOYER: Each question  
14 provokes another question.

15                   MR. POWELL: Yes. Well, you mentioned  
16 that you did deterministic runs. Why didn't you do  
17 any stochastic runs on the 29th?

18                   THE WITNESS: Well, I think the stochastic  
19 runs are useful in a planning environment because  
20 they have -- and I think we've been told that by our  
21 stakeholders, that they like to see all the  
22 variability. But I think in terms of direct  
23 resource, you know, acquisition sorts of calculations  
24 or analysis, that it's always been on some kind of  
25 deterministic basis.

26

1                   MR. POWELL: And PATH C is scheduled to be  
2 completed in '10, 2010?

3                   MR. DUVAL: Yeah, June of 2010.

4                   MR. POWELL: I'm tempted to ask for a run  
5 either without PATH C or with a significant delay and  
6 see what happens.

7                   Cheryl, you're shaking your head. What  
8 would be a significant delay? Three years?

9                   MS. MURRAY: Or two.

10                  MR. POWELL: Two or three years?

11                  MR. DUVAL: A two-year delay would not  
12 make any difference.

13                  MS. KUSTER: Because it would still be  
14 2012.

15                  MR. POWELL: What about if we just had a  
16 run without it, no PATH C upgrade? I don't know if  
17 it's going to be useful or --

18                  MR. DODGE: Either in the before or after  
19 run, right? We would have to take it both places.

20                  MR. POWELL: The way I read the testimony,  
21 the analytics are strongly dependent on PATH C being  
22 there, the upgrade. And so I think we would be  
23 interested in seeing what would happen if PATH C  
24 didn't materialize in the upgrade. Is that possible?

25                  MS. KUSTER: If I say no --

26

1                   MR. DUVAL: I think what we would have to  
2 do, and I think Gary just said this, we would have to  
3 change the base to not have PATH C as well. And if  
4 we change the base to not have PATH C, you're  
5 probably not going to see two combined cycles --  
6 you'll probably see a combined cycle in the west to  
7 start with. And then when you go through and say  
8 what happens, you'll probably be replacing the  
9 combined cycle in the west. It's a bit of work to do  
10 this, but if that's want us to do, we will do it.

11                   MS. SPRINGER: It's a bit of a reward to  
12 get preapproval.

13                   MR. MOENCH: We're just talking about the  
14 waiver right now. We've got plenty of time to do it  
15 for the approval, but we are kind of pressed for  
16 making it meaningful by your comments on the 23rd.

17                   MR. POWELL: Yeah, maybe I don't need it  
18 by the 23rd, but I do want it for the approval.

19                   MR. MOENCH: That's what I was going  
20 suggest, if we could defer that, that would help us  
21 all out on our schedules.

22                   MR. POWELL: And the other information  
23 that I was going to ask is, can we get a comparison,  
24 or is part of the due diligence the maintenance  
25 history on the plant?

26

1 MR. MOENCH: Sure.

2 MR. POWELL: Can we get a comparison  
3 between that and Currant Creek, and maybe we can get  
4 a projection of what the maintenance schedule is for  
5 the first five years?

6 MR. MOENCH: Sure, we can put together  
7 something together like that.

8 MS. KUSTER: But not for the waiver,  
9 right?

10 MR. POWELL: Right, not for the waiver.

11 MR. PROCTOR: Do you know if this plant  
12 was affected by the December flood from that area?

13 MR. MOENCH: Do we know if it was? Stacy,  
14 did you hear anything on that?

15 MS. KUSTER: No.

16 MR. BIRD: We asked that question of all  
17 the plant management staff there. We put in Data  
18 Requests, and nothing.

19 MR. PROCTOR: Were they all standing in  
20 front of a water line on the south?

21 UNIDENTIFIED SPEAKER: There are waders in  
22 the closets.

23 MR. MOENCH: New paint job on the inside  
24 of the plant.

25 MR. BIRD: It's diked and there's a ditch

26

1 that goes around the facility to make sure it's well  
2 protected. There certainly weren't any visible  
3 signs, and we had a pretty extensive site visit,  
4 Phase 1 environmental assessments and all the usual  
5 due diligence.

6 UNIDENTIFIED SPEAKER: How far is it from  
7 the intersection?

8 MR. BIRD: A mile tops.

9 MS. KUSTER: You can see it if you look  
10 closely from the road.

11 COMMISSIONER BOYER: So always build on  
12 the high ground.

13 MR. KUSTER: Yeah.

14 COMMISSIONER BOYER: Last call for  
15 questions.

16 MR. MOENCH: I would just ask that we all  
17 kind of keep in mind Project Blue. Notwithstanding  
18 Greg's own admission here, we're really interested in  
19 keeping this very confidential.

20 COMMISSIONER BOYER: I caution the parties  
21 who have signed the agreement --

22 MR. MOENCH: And Data Requests that you  
23 might send out, just use that name.

24 COMMISSIONER BOYER: That's good advice.

25 Well, we'll be hearing or seeing you real

26

1       soon. Thank you for coming on such short notice, and  
2       we'll adjourn.

3                       (The hearing was closed at 3:22 p.m.)

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REPORTER'S CERTIFICATE

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

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

That the foregoing proceedings were taken down by Lanette Shindurling in stenotype on April 9, 2008, at the place herein named, and was thereafter transcribed by me and that a true and correct transcription of said proceedings, to the best of my ability, is set forth in the preceding pages.

WITNESS MY HAND AND OFFICIAL SEAL this 4th day of December, 2008.

Vicky McDaniel, CSR, RMR  
Notary Public  
Residing in Salt Lake County