

In the Matter Of:

In Re: RMP - Application for Approval of its Proposed Energy Cost Adjustment Me

HEARING PROCEEDINGS DOCKET NO. 09-035-15

January 17, 2017

Job Number: 348480A

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of)
Rocky Mountain Power for Approval of)
Its Proposed Energy Cost Adjustment)
Mechanism) Docket No. 09-035-15

HEARING PROCEEDINGS

TAKEN AT: Utah Public Service Commission
160 East 300 South, Fourth Floor
Salt Lake City, Utah
DATE: Tuesday, January 17, 2017
TIME: 9:00 a.m.
REPORTER: Mary R. Honigman, R.P.R.

LST Job #348480A

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1 PROCEEDINGS

2 COMMISSIONER LEVAR: Good morning.

3 We are here in Public Service Commission Docket

4 09-035-15 in the Matter of the Application of Rocky

5 Mountain Power for Approval of its Proposed Energy

6 Cost Adjustment Mechanism. Why don't we start with

7 appearances for the Utility.

8 MS. HOGLE: Good morning. Yvonne

9 Hogle on behalf of Rocky Mountain Power. With me

10 here today is Mr. Mike Wilding, who will be a

11 witness in the case. Thank you.

12 COMMISSIONER LEVAR: Thank you.

13 MS. SCHMID: Good morning. Patricia

14 Schmid with the Attorney General's Office for the

15 Division of Public Utilities. The Division's

16 witnesses today are Mr. Charles Peterson and

17 Mr. David Thomson.

18 MR. MOORE: Thank you. Robert Moore

19 with the Attorney General's office representing the

20 Office of Consumer Services. With me is Danny

21 Martinez, a utility analyst for the Office of

22 Consumer Services, and our consultant, Philip Hayet.

23 COMMISSIONER LEVAR: Thank you.

24 MR. DODGE: Good morning,

25 Mr. Chairman. Gary Dodge of Hatch, James and Dodge,

1 on behalf of UAE. UAE's witness is Kevin Higgins,
2 who will join us at some point today.

3 COMMISSIONER LEVAR: Okay. Thank
4 you.

5 MR. EVANS: I'm William Evans of
6 Parsons, Behle and Latimer, on behalf of the Utah
7 Industrial Energy Consumers. We, as you know, don't
8 have a witness this morning but have filed comments
9 in this docket.

10 COMMISSIONER LEVAR: Thank you. Any
11 other preliminary matters before we move forward
12 with the testimony? Okay. Let me just ask the
13 parties -- this docket started with a report from
14 the Division of Public Utilities, but I'll seek your
15 input on whether it makes sense to start with them
16 or to start with the Utility first based on the way
17 the issues are developed through the docket. Let me
18 go to Ms. Hogle first. Does it make sense to start
19 with you?

20 MS. HOGLE: That is how I have been
21 assuming the hearing would develop, but I have no
22 preference.

23 COMMISSIONER LEVAR: Okay. Any
24 thoughts otherwise? Ms. Schmid?

25 MS. SCHMID: Since people are

1 responding to the Division's report, it seems that
2 it would be prudent to have the Division go first.

3 COMMISSIONER LEVAR: Okay. You had
4 envisioned presenting your witness first; correct,
5 Ms. Hogle?

6 MS. HOGLE: Yes, correct.

7 COMMISSIONER LEVAR: Any other
8 parties have a position on the issue or any interest
9 in this issue?

10 MR. MOORE: The Office has no
11 position.

12 MR. DODGE: We'll leave it to you.

13 COMMISSIONER LEVAR: Okay. Well, let
14 me just look to my colleagues. We haven't discussed
15 this. This is kind of -- do you want to break for a
16 second?

17 COMMISSIONER CLARK: I'm not sure a
18 break is necessary. I'm going to leave it to you as
19 well. I don't have a preference, I really don't.

20 COMMISSIONER WHITE: If Ms. Hogle has
21 a preference and if the Division has a preference,
22 it seems like it makes sense to defer to the
23 Division.

24 COMMISSIONER LEVAR: This docket did
25 start with a report from the Division, so if their

1 desire is to present first, then that should be
2 accommodated.

3 MS. SCHMID: The Division would like
4 to call its first witness, Mr. Charles Peterson.

5 CHARLES PETERSON,
6 having been first duly sworn to tell the truth, was
7 examined and testified as follows:

8 EXAMINATION

9 BY MS. SCHMID:

10 **Q. Good morning. Please state your full**
11 **name, business address, by whom you are employed,**
12 **and title for the record.**

13 A. Charles E. Peterson of -- my office is in
14 the Heber Wells building on the fourth floor in Salt
15 Lake City, Utah. I'm a utility technical consultant
16 with the Division of Public Utilities.

17 **Q. In that capacity, did you participate in**
18 **this docket on behalf of the Division?**

19 A. Yes.

20 **Q. Were you involved in the preparation of**
21 **the DPU's evaluation report of Rocky Mountain**
22 **Power's EBA Pilot Program?**

23 A. Yes.

24 **Q. Were you -- did you prepare or cause to be**
25 **prepared your direct testimony, DPU No. 5.0 direct**

1 with accompanying exhibits, your DPU direct
 2 supplemental 5.0 direct supplemental, your rebuttal
 3 DPU No. 5.0R with an exhibit -- supplemental also
 4 had an exhibit -- and your surrebuttal DPU No.
 5 5.0SR?

6 A. Yes, I did.

7 Q. Do you have any changes or corrections to
 8 those?

9 A. Not beyond what's contained in the direct
 10 supplemental testimony you referred to.

11 Q. If I were to ask you the same questions
 12 today that were presented in your testimony, would
 13 the answers be the same?

14 A. Yes.

15 MS. SCHMID: With that, the Division
 16 would like to move the admission of the final -- the
 17 DPU's Evaluation Report and Mr. Peterson's
 18 testimony.

19 COMMISSIONER LEVAR: If any party
 20 objects to that motion, please indicate to me. And
 21 I'm not seeing any objections, so the motion is
 22 granted.

23 BY MS. SCHMID:

24 Q. Do you have a summary?

25 A. Yes, I do.

1 **Q. Please proceed.**

2 A. Good morning, Commissioners. The Division
3 appreciates the opportunity to evaluate PacifiCorp's
4 EBA pilot program.

5 The Division believes that its proposed
6 changes to the actual EBA program are relatively
7 minor. While not directly a change to the structure
8 of the EBA pilot program, in order to keep net power
9 cost baseline somewhat current -- what the Division
10 has referred to as the mismatch problem -- the
11 Division proposed that PacifiCorp should be required
12 to file in general rate cases periodically beginning
13 with the filing in 2017. The Division proposed that
14 the Company file general rate cases at least every
15 three years thereafter. PacifiCorp holds that this
16 is a major change to the program. I will discuss a
17 bit more of the mismatch problem in a moment.

18 I propose two other changes to the EBA:
19 The elimination of wheeling revenues from the EBA
20 and a change to the annual EBA audit schedule.
21 Simply put, wheeling revenues are not related to net
22 power costs paid by the Company's retail customers.
23 And the Division has always believed that they are
24 inappropriately included in the EBA. The arguments
25 in favor of keeping wheeling revenues in the EBA

1 largely revolve around the idea that ratepayers
2 today have been net beneficiaries, including revenue
3 increments in the EBA, and therefore they should be
4 retained.

5 The Division does not consider this to be
6 a compelling justification. This is an appropriate
7 time for the Commission to remove wheeling revenues
8 from the EBA. The Division proposes to change the
9 annual EBA audit schedule as follows: The Company
10 would file March 15 as it currently does. After a
11 review by the Division, interim EBA rates could go
12 into effect on May 1st that would amortize the EBA
13 balance over the next 12 months. The Division would
14 file its audit report on November 15, following
15 which the Commission would set a schedule for
16 intervenors to file testimony or comments, followed
17 by a hearing about February 1st. The Commission
18 could order a true-up of any interim rates beginning
19 March 1st, which, if the incremental changes were
20 small, could be amortized over a March or April or
21 roughly two-month period. Having interim rates
22 would help minimize carrying charges and serve to
23 allow the Company to recover its expenses or
24 ratepayers to receive any refunds more quickly.

25 I alluded in my direct testimony that

1 there may be legal issues with the imposition of
2 interim rates. The Division is not strongly wedded
3 to this idea, although there are policy and
4 practical benefits to interim rates. Absent the
5 imposition of interim rates, the Commission set EBA
6 rates to go into effect on March 1st of the year
7 following the Company's filing for then a 12-month
8 amortization.

9 In my direct testimony, the Division also
10 proposed to alter the EBA carrying charge. However,
11 the Company reminded the Division that it had
12 stipulated in the Deer Creek mine closure docket
13 that it would not seek a change in the EBA carrying
14 charge until the next general rate case. The
15 Division has withdrawn its request to change the
16 carrying charge in this docket.

17 A further comment on the mismatch issue.
18 Mr. Higgins, in testimony filed on behalf of UAE,
19 argues that the mismatch issue need not be decided,
20 in part because the function of the EBA is to simply
21 true-up net power costs that are already in rates to
22 the actual net power costs on a dollar per megawatt
23 basis -- dollar per megawatt hour basis. Therefore,
24 Mr. Higgins suggests that it doesn't really matter
25 what the baseline that power cost in rates be.

1 Mr. Higgins is correct that adjusting the baseline
2 from time to time doesn't matter a whole lot if
3 there are no sharing bands and there are no carrying
4 charge issues. Of course, there are no sharing
5 bands currently in the EBA, at least through 2019.
6 There continues to be carrying charges that are a
7 detriment to ratepayers that could sometimes reverse
8 and penalize the Company. The Division believes
9 that some resolution of the mismatch issue is better
10 done sooner rather than later. The Division also
11 believes that eventually this issue will need to be
12 addressed.

13 The Company proposes to add three items to
14 the EBA that are non-net power cost items by its own
15 admission. The Division opposes the inclusion of
16 any non-net power costs in the EBA. First, by
17 definition, the EBA is set up for the recovery of
18 net power costs as they are usually defined. And
19 second -- and perhaps most importantly -- expanding
20 the EBA in the manner the Company suggests sets a
21 bad precedent that will only encourage efforts to
22 further expand the EBA. The Company also seems to
23 ask the Commission to make the EBA program
24 permanent. The Division opposes any such suggestion
25 as premature and outside the scope of the present

1 process.

2 Finally, some intervenor comments uses
3 language in the Division's final EBA evaluation
4 report that discusses the limitations of the
5 Division's annual audit. They seem to hint that the
6 Company's net power costs are or may be inaccurate
7 or imprudent. I want to make a couple of
8 clarifications. The Division perceives its audit
9 limitations to mean that it cannot attest to the
10 audit results as being a statistically accurate
11 representation of the universe of net power costs,
12 but can only be applied to the results specifically
13 discussed in the Division's annual audit reports.
14 Therefore, the Division is not warranting that the
15 net power costs reported by the Company are
16 materially accurate in a formal audit sense.

17 However, this does not mean that the
18 Division has any evidence that the Company's
19 reported net power costs are materially inaccurate
20 or imprudent beyond those items specifically called
21 out in the Division's annual audit reports, nor does
22 the Division currently harbor a belief that the
23 Company's reported net power costs may be materially
24 inaccurate or imprudent.

25 This concludes my opening statement.

1 **Q. A clarifying question. Mr. Peterson, your**
2 **testimony talks about wheeling revenues and wheeling**
3 **expenses. Could you please explain what wheeling**
4 **revenues are and what wheeling expenses are?**

5 A. Well, briefly, wheeling expenses, the
6 Division believes, are properly included in the net
7 power costs because they are a cost incurred by the
8 Company to deliver power to its retail customers.
9 The wheeling revenues, however, relate to rents that
10 third parties pay on the Company's transmission
11 system and are not -- there is no cause and effect
12 relationship between wheeling revenues and wheeling
13 expenses or between wheeling revenues and net power
14 costs. Therefore, the Division thinks that and
15 believes that it's inappropriate to have wheeling
16 revenues in the EBA.

17 Now, since the Commission has previously
18 ordered wheeling revenues to be included in the EBA,
19 we have effectively an implicit tracking mechanism
20 for wheeling revenues. So if the parties wanted to
21 bring out wheeling revenues in a separate tracker,
22 the Division may support such a move. But we think
23 it's important to keep the EBA somewhat pure with
24 respect to the recovery of net power costs as we
25 traditionally define them.

1 MS. SCHMID: Thank you. Mr. Peterson
2 is now available for questions from the parties and
3 from the Commission.

4 COMMISSIONER LEVAR: Thank you. I'll
5 go to Mr. Moore next.

6 EXAMINATION

7 BY MR. MOORE:

8 Q. Hello, Mr. Peterson.

9 A. Good morning.

10 Q. You mentioned in your summary that you
11 have withdrawn your request for the Commission to
12 consider carrying charges in this docket?

13 A. Yes.

14 Q. Do you have a copy of your testimony?

15 A. Yes.

16 Q. On page 8 of your surrebuttal --

17 A. Page 8 of surrebuttal?

18 Q. Yes -- you state that your reason for
19 withdrawing the request for the Commission to
20 consider carrying charges is due to Mr. Wilding's
21 testimony regarding a stipulation entered in the
22 Deer Creek mine closure; is that correct?

23 A. Yes.

24 Q. Do you have Mr. Wilding's testimony
25 available to you?

1 A. I do not.

2 Q. Let me read you a provision where
3 Mr. Wilding, I'm sorry, testifies on page 7
4 regarding the stipulation. Mr. Wilding states that
5 the parties agree that the carrying costs related to
6 deferral should be 6 percent as set forth in the EBA
7 tariff for -- and I'm paraphrasing here -- deferrals
8 relating to the closure of the Deer Creek Mine.

9 COMMISSIONER LEVAR: Mr. Moore, I
10 don't think we're getting your voice on the
11 streaming.

12 MR. MOORE: Thank you, Commissioner.

13 BY MR. MOORE:

14 Q. Let me start again. The parties agree
15 that the carrying costs of EBA-related deferrals
16 should be 6 percent as set forth in the EBA tariff.
17 And then -- I'm paraphrasing here -- with the
18 exception of the carrying charges in the Deer Creek
19 Mine's closure. Again quoting, the testimony
20 concludes with this statement: "This condition
21 should exist until the effective date of the
22 Company's next general rate case." Does that seem
23 familiar to you?

24 A. Generally familiar. I did review the
25 stipulation as well as Mr. Wilding's testimony.

1 Q. Well, so your testimony is that this
2 stipulated language that provides the 6 percent
3 interest rate should exist until the effective date
4 of the next general rate case is somehow
5 inconsistent with Mr. Martinez's surrebuttal
6 testimony, which says, "The Office's carrying
7 charges recommendations, if accepted by the
8 Commission, would presumably be implemented in the
9 next general rate case."

10 A. Okay. I'm sorry. I didn't quite -- what
11 was the specific question you're asking?

12 Q. The specific question is, is the
13 stipulation inconsistent with the testimony of Mr.
14 Martinez from the Office, who has not withdrawn the
15 request for the Commission to consider this
16 document -- the carrying charges -- when he sums up
17 stating, "The Office's carrying charges
18 recommendation, if accepted by this Commission,
19 would presumably be implemented in the next general
20 rate case."

21 A. I think that would be consistent with the
22 stipulation. That's not the exact position the
23 Division has taken, but I don't see that
24 specifically as inconsistent. But that might be a
25 legal question to parse out.

1 Q. Turning to the question of wheeling
2 revenues, is it not true that your position opposing
3 the inclusion of wheeling revenues in the EBA is
4 based on what you describe as a philosophical view
5 that only net power costs should be included in the
6 EBA, and in your view, in a technical sense,
7 wheeling revenues are not precisely net power costs?

8 A. Well, that's essentially it. It's a
9 policy matter. We believe that the EBA should be as
10 pure as possible and letting outside items into the
11 EBA only sets up the situation that encourages more
12 items to be lumped into the EBA.

13 Q. Is it not true on page 10 of your direct
14 testimony and in your summary you state that as an
15 alternative to including wheeling revenues in the
16 EBA, a separate tracker could be set up for wheeling
17 revenues with some reservations to that proposition?

18 A. That is my testimony, yes.

19 Q. But the Division would likely support a
20 wheeling revenue tracker; isn't that true?

21 A. Depending on how it's structured, we might
22 support it, yes.

23 Q. Isn't it true that as a practical matter
24 rather than a philosophical matter, a separate
25 tracker for wheeling revenues would present the same

1 **benefits or detriments of including wheeling**
2 **revenues in the EBA, but the separate tracker would**
3 **be more complex and therefore more inefficient?**

4 A. I don't think it would be necessarily more
5 complex or inefficient since all the parties --
6 since the Company has to compile the data and all
7 the parties have to analyze it. In the current EBA
8 docket, there might be cause to have some additional
9 memoranda or testimony filed each year, but I don't
10 see that as a major issue. But in answer to the
11 main thrust of your question as I understood it, as
12 a practical matter, if you're looking at sheer
13 practicality and not policy or philosophy, having a
14 separate tracker would, in the end, have little
15 practical difference being in or out of the EBA. I
16 acknowledge that, but I think there's a significant
17 policy issue that needs to be addressed with that.

18 MR. MOORE: Thank you very much,
19 Mr. Peterson. I have no further questions.

20 COMMISSIONER LEVAR: Thank you, Mr.
21 Moore. Mr. Dodge?

22 EXAMINATION

23 BY MR. DODGE:

24 Q. Thank you, Mr. Chairman. Mr. Peterson,
25 the Division appears to believe that the EBA ought

1 to be strictly limited to net power costs. If one
2 were to step beyond net power costs, if the Division
3 identified an easy way to define what should and
4 should not be in the EBA -- in other words, if you
5 break that barrier that you're trying not to break
6 to go beyond net power costs, fuel costs, have you
7 identified any way to keep the EBA limited in any
8 way?

9 A. Well, one of the ways the Division
10 attempts to keep it limited is to detail
11 specification of net power costs accounting --
12 account numbers -- so that we know with some fair
13 degree of precision what is allowable in the EBA,
14 and then anything that's not in those accounting
15 numbers would not be included in the EBA. Even with
16 the detail we've had published in the tariff,
17 there's occasionally some items that under the
18 current system of accounts, non-net power costs can
19 slip in, but I think we're generally aware of those.
20 I don't know if that answers your question, but it
21 seems to be the main thrust as I understood it.

22 Q. Has the Division witnessed problems in the
23 past with utilities trying to expand the scope of an
24 energy balancing account?

25 MS. SCHMID: Objection. Beyond the

1 scope of Mr. Peterson's testimony.

2 MR. DODGE: I believe he actually did
3 testify to that he sees it being open to -- the
4 Division doesn't want it open to all kinds of
5 different costs. I'm saying have you seen a problem
6 with that in the past.

7 COMMISSIONER LEVAR: Let me clarify.
8 Is your question about other utilities in other
9 jurisdictions? Because I think that's the basis of
10 Ms. Schmid's objection.

11 MR. DODGE: I'm specifically talking
12 about in this state.

13 MS. SCHMID: Objection withdrawn.

14 COMMISSIONER LEVAR: Okay. Thank
15 you.

16 A. The obvious example is that Mr. Wilding
17 has specifically proposed to having three items that
18 he admits are not net power costs as we've
19 traditionally defined them, and he even suggests
20 that there may be at least one additional item that
21 in the future the Company may request inclusion in
22 the EBA.

23 BY MR. DODGE:

24 Q. So I guess my question is, is the Division
25 worried about a slippery slope here?

1 A. Yes.

2 Q. In response to Mr. Wilding's suggestion
3 about resetting base net power costs each year, Mr.
4 Peterson, you testified that the Division notes the
5 proposal may have a legal problem of being
6 tantamount to a single-item rate case. Does the
7 Division also recognize that there might be a legal
8 problem with the interim rates that the Division
9 suggests?

10 A. Yes. I mentioned that specifically in my
11 opening comments, but, you know, that's something
12 for you attorneys to argue about.

13 Q. With respect to the carrying charge,
14 Mr. Peterson, I just have a question about your view
15 of what a stipulation means vis-a-vis the
16 Commission.

17 A. Yes.

18 Q. You indicated that the carrying charge
19 stipulation, when you entered into that, you
20 contemplated a new rate case early in 2016; is that
21 right?

22 A. Yes. If you were to refer specifically to
23 my direct testimony in that docket, I specifically
24 mention the expectation of a January 2016 rate case
25 filing.

1 Q. In your view, if circumstances had changed
2 and the Commission were to find that that carrying
3 charge is no longer just and reasonable --

4 MS. SCHMID: Objection. Calls for
5 speculation.

6 MR. DODGE: I'm not asking a legal
7 question. I'm asking does the Division believe that
8 the Commission can't look at that -- shouldn't look
9 at that.

10 COMMISSIONER LEVAR: I'd like to get
11 clarification of the question again.

12 MR. DODGE: The question is if
13 circumstances have changed from those facts and
14 circumstances assumed when that stipulation was
15 entered into and as a result of that --

16 COMMISSIONER LEVAR: The Deer Creek
17 stipulation?

18 MR. DODGE: Yes. And I'll ask the
19 Division if the Division believes circumstances have
20 changed and the consequence of that interest rate is
21 no longer just and reasonable, do you believe the
22 Division has no ability to speak out and say it
23 ought to be changed?

24 COMMISSIONER LEVAR: Let me go to Ms.
25 Schmid to clarify your objection.

1 MS. SCHMID: To the extent that he
2 seems to be asking for a legal conclusion, I object.
3 To the extent that he is asking whether or not the
4 Division can speak to an issue, I do not object.

5 MR. DODGE: Then I'll say the latter.

6 MS. SCHMID: Could you please restate
7 the question?

8 BY MR. DODGE:

9 Q. Can the Division speak up if it believes
10 that the interest rate is no longer just and
11 reasonable, notwithstanding the stipulation, given a
12 change in the circumstances?

13 A. I think the Division could stand up and
14 speak out in spite of the stipulation. At this
15 point on this particular issue, the Division has
16 elected not to press the matter in this docket.

17 Q. With respect to the mismatch issue,
18 Mr. Peterson, you indicated that although you -- I
19 forget the word you used -- you understood
20 Mr. Higgins' points, the Division believes that the
21 mismatch issue should be addressed sooner rather
22 than later. You remember that?

23 A. Yes.

24 Q. You have testified, have you not, in your
25 testimony that prior to the expiration of the -- in

1 2019 -- of the sharing band elimination, there
2 should be another docket in which the decision
3 should be made about whether to extend the EBA and,
4 if so, under what terms?

5 A. Your question is has the Division
6 recommended another docket in perhaps a couple of
7 years that would deal with the EBA, the major
8 questions about the EBA?

9 Q. Yes.

10 A. Yes, we have recommended that.

11 Q. And wouldn't that be a good docket -- one
12 other predicate fact. You've also indicated you
13 agree with Mr. Higgins that, given the elimination
14 of the sharing band, whether or not we have an
15 annual reset or a rate case in the middle won't
16 change anything -- ultimately, what customers pay
17 other than maybe carrying charge implications?

18 A. Well, carrying charges is an implication
19 that continues to go forward, but Mr. Higgins is, or
20 you, are correct that the sharing band was the
21 larger issue relating to the reset of the baseline.

22 Q. So I guess my question is, wouldn't you
23 agree that a good time to address the issue of
24 whether, and if so, how to deal with a mismatch
25 issue would be in the context of that case in a

1 couple of years when we're also dealing with whether
2 to reinstitute a sharing band?

3 A. Well, that obviously would be an option.
4 The Division also considers the carrying charge
5 issue to be a sum in part, and so we brought it up
6 in this process.

7 MR. DODGE: Okay. Thank you. I have
8 no further questions.

9 COMMISSIONER LEVAR: Mr. Evans?

10 MR. EVANS: Thank you, Mr. Chairman.

11 BY MR. EVANS:

12 Q. Good morning, Mr. Peterson.

13 MS. HOGLE: Your Honor, I have an
14 objection. Per the Commission's order last week, I
15 believe, UIEC has been deemed to be a public
16 witness, and therefore the Company objects to its
17 participation in this evidentiary hearing. And in
18 addition, per rule 746110-K, I believe that UIEC is
19 well aware that the Commission generally prohibits
20 parties from making their case on cross-examination
21 given especially that UIEC did not present a
22 witness.

23 COMMISSIONER LEVAR: Thank you. Mr.
24 Evans, do you want to respond to the objection?

25 MR. EVANS: Yes, thank you. I think

1 my questions are going to go to Mr. Peterson's
2 comment on the stand today about the Division's
3 ability to conduct a prudence review. I believe
4 that he prefaced that with the statement that it was
5 directed toward comments that the UIEC had filed.
6 So we're not making our case on cross, but
7 Mr. Peterson has addressed assumptions underlying
8 the legal argument in the UIEC's comments. And I
9 believe that it's fair game for me to direct some
10 questions to him about his criticism of the
11 assumptions that I made or that UIEC made in their
12 comments.

13 So this isn't making our case on
14 cross, it is rehabilitating our case because he has
15 addressed it from the stand this morning.

16 MS. SCHMID: May the Division weigh
17 in as it's the Division's witness?

18 COMMISSIONER LEVAR: Yes.

19 MS. SCHMID: Ms. Hogle is quicker on
20 the trigger than I am, but thank you. The Division
21 also objects to UIEC trying to make its case through
22 cross-examination of Mr. Peterson, and furthermore
23 to the extent that he is pursuing assumptions
24 underlying his legal arguments to the extent that
25 that calls for a legal conclusion, I object.

1 COMMISSIONER LEVAR: I'd like to ask
2 Mr. Evans one clarifying question just to make sure
3 that I'm following you correctly. And I'm trying to
4 remember Mr. Peterson's responses to questions. I
5 remember him making the point that he didn't want to
6 make legal arguments in his testimony,
7 appropriately. Describe for me again your position
8 of what Mr. Peterson has testified to with respect
9 to the legal arguments that are contained in your
10 comments. And I apologize if I'm asking you to be
11 repetitive, but just so I completely understand.

12 MR. EVANS: In our comments, we
13 relied on certain statements in the Division's final
14 evaluation report in which the Division remarked
15 that it was -- it had reservations about its ability
16 to conduct an adequate prudence review of net power
17 costs. And part of our argument, legal argument,
18 was based on the uncertainty revolving around those
19 prudence reviews. Mr. Peterson, on the stand this
20 morning, said, "I'd like to" -- he wanted to
21 address those comments and clarify that about --
22 make clarifications about limitations of the
23 Division's ability to conduct a materially accurate
24 audit.

25 And so I want to follow up with that

1 and probe a little bit the extent to which the
2 Division is confident in the results of its prudence
3 review. And I think that's fair game. It is a
4 response to his response to my comments. If he had
5 said nothing about my comments, I would be able to
6 waive cross, but having attacked the basis for my
7 comments, I think I need to rehabilitate them. I
8 think I'm entitled to do that since he offered the
9 testimony from the stand.

10 MR. DODGE: Chairman, may I weigh in
11 briefly? I apologize for this. Other than -- I'm
12 very resistant -- I strongly resist any argument
13 that an intervenor in the docket who chooses not to
14 file testimony cannot show up and cross-exam
15 witnesses of parties trying to make affirmative
16 changes. That certainly has not been the practice
17 before this Commission. I've done it many times. I
18 agree that the rule says you can't make your case
19 through cross, so someone who shows up and tries to
20 make an affirmative case for some changes ought to
21 be restricted. But not just because they're a party
22 without testimony -- that shouldn't restrict their
23 ability to ask questions.

24 And primarily I submit that the
25 objections are premature because he hasn't asked a

1 question yet. If your Honor believes that a
2 question or if any parties believe that a question
3 is aimed at making an affirmative case as opposed to
4 probing the case of the parties before the
5 Commission proposing something, then I think that
6 the objection may be well-founded. But it's
7 certainly, you know, objectionable to me to think
8 that people of parties can't show up who have not
9 filed direct testimony and question those that are
10 proposing something before this Commission.

11 MS. SCHMID: That is not the
12 Division's position. The Division believes that
13 parties are entitled to show up and question, just
14 not to make their case.

15 COMMISSIONER LEVAR: Did you have a
16 question, Commissioner White?

17 COMMISSIONER WHITE: I just had a
18 clarifying question. Are the questions of the
19 issues you'd like to probe, were they the subject of
20 the prefiled direct testimony or something that
21 Mr. Peterson has brought up today in his summary?

22 MR. EVANS: They are the subject of
23 the Division's final evaluation report and subject
24 matter that he brought up this morning from the
25 stand.

1 COMMISSIONER LEVAR: Mr. Clark, did
2 you want to ask any questions of anybody?

3 COMMISSIONER CLARK: No, no
4 questions.

5 COMMISSIONER LEVAR: And, Mr. Moore,
6 did you have any position on this?

7 MR. MOORE: The Office has no
8 position other than to concur with Mr. Dodge that an
9 intervenor has the right to cross appropriately,
10 even though they don't submit a witness testimony.

11 COMMISSIONER LEVAR: Anything further
12 from anybody? Ms. Hogle, this is your objection so
13 I'll let you sum.

14 MS. HOGLE: Yes, your Honor. What
15 Mr. Dodge and Mr. Moore and, I believe, Mr. Evans,
16 are attempting to do would undermine the process and
17 has been undermining the process that is going on
18 today. I believe the Commission was clear in its
19 order last week about UIEC being a public witness.
20 I believe that UIEC is making a case or did, in
21 fact, make a case in its comments regarding the EBA.
22 It's not just defending its position or it's not
23 just wanting to clarify comments or testimony made
24 by Mr. Peterson this morning. UIEC laid out its
25 case very clearly in its comments, and the

1 Commission has already determined that those
2 comments are public. It follows then that it should
3 be treated just like a public witness would be
4 treated.

5 And this is even more important when
6 the attorney representing the UIEC has been
7 participating in this proceeding for a very long
8 time and knows the process very well, and in the
9 Company's case, is attempting to undermine it and
10 changing the rules as we speak. That is its attempt
11 and therefore the Commission -- excuse me, the
12 Company -- again moves for the Commission to strike
13 any of Mr. Evans' testimony that comes out as a
14 result of this and deems his questioning to be
15 inappropriate.

16 MR. EVANS: May I respond?

17 COMMISSIONER LEVAR: I mean, at some
18 point, we don't want to continue back and forth. I
19 think she has the right to sum her motion, but if
20 you want to comment a little bit further --

21 MR. EVANS: It isn't accurate to say
22 that we are in the same status of a public witness.
23 We are intervenors in this proceeding and, as
24 Ms. Hogle points out, have been for seven years.
25 The fact that we chose not to file testimony in this

1 phase of the docket shouldn't preclude us from
2 offering legal argument to the Commission. And when
3 the Division's witness addresses that argument from
4 the stand and challenges some of the assumptions
5 that are made in that argument that are based on the
6 Division's report, I think the cross is entirely
7 appropriate. I'm not trying to make my case. I'm
8 trying to rebut the Division's surrebuttal -- this
9 is surrebuttal of the Division's rebuttal of my
10 case. If they thought that this should be treated
11 like testimony, then they should not have addressed
12 it from the stand this morning.

13 COMMISSIONER LEVAR: Anything
14 further, Ms. Hogle?

15 MS. HOGLE: I believe that he just
16 made a statement. He testified and, therefore,
17 again, the fact that he is a well-known lawyer, has
18 been participating in this case for a long time
19 really underscores the importance of keeping the
20 process as has been and as has the Commission
21 historically respected it and followed. Thank you.

22 MS. SCHMID: And may I add one more
23 thing? Mr. Peterson's summary this morning
24 summarized his written testimony. UIEC and
25 others --

1 COMMISSIONER LEVAR: I'm not sure
2 your microphone is picking up.

3 MS. SCHMID: UIEC is not the only
4 party to question the audit, so I think that it is
5 unreasonable to characterize Mr. Peterson's comments
6 as just addressing UIEC's public witness comments.

7 COMMISSIONER LEVAR: Thank you.
8 Before I rule on this motion, I'm just going to turn
9 to my colleagues and see if a break is appropriate
10 or if any discussion among the three of us -- sorry
11 to put you on the spot.

12 COMMISSIONER CLARK: I'm fine with
13 you ruling on the motion, Chair LeVar, and I'll give
14 you my perspective if you'd like, but I think you
15 should allow the question Mr. Evans wants to ask.
16 Seems to me it's a reasonable follow-up to Mr.
17 Peterson's statements to us today or testimony to us
18 today. His summary, in other words.

19 COMMISSIONER WHITE: I guess my
20 concern is, I recognize that the Commission in the
21 past and historically has allowed intervening
22 parties who have not had a witness to participate,
23 but I guess my concern is, you know, again, we have
24 issued an order with respect to UIEC's comments.
25 And I guess my question is, if we open this up,

1 where does it end? In other words, if Mr. Peterson
2 introduces additional evidence beyond the scope --
3 he was intending to address the comments of UIEC's
4 -- does that then provide another right for
5 essentially in vivo or live round of additional
6 testimony on the part of other intervenors or
7 parties in this case? I guess that's my question is
8 where does this end.

9 COMMISSIONER LEVAR: So you're asking
10 Mr. Evans a question?

11 COMMISSIONER WHITE: I'm just
12 responding to your -- again, maybe this is more
13 appropriate to have a discussion offline, but I'm
14 thinking out loud about my concerns about where
15 we're heading with this. I guess I would -- again,
16 if it was very, very discreetly focused on that
17 specific issue of what he's introduced today rather
18 than going beyond that, that might be a
19 consideration to think about. But, you know, if
20 we're going to allow additional live cross -- I mean
21 additional testimony outside the scope of direct,
22 that's my question is where does that end. So with
23 that, I guess the question is do you want to take it
24 offline to think about this for a second or are you
25 ready to -- I'll defer to you ultimately.

1 COMMISSIONER LEVAR: I think the
2 right way -- I think I'm going to rule on this
3 motion. And as I look at the administrative ruling,
4 which in R746-111-10 says, "The Commission
5 discourages and may prohibit parties from making
6 their cases through cross-examination." And I think
7 the line that seems appropriate to me based on
8 Ms. Hogle's objection is probably one that's going
9 to have to be addressed on a question-by-question
10 basis. I agree that it's inappropriate for UIEC to
11 try to make its public comments into sworn testimony
12 in this hearing through questions, and that's the
13 line we have to be careful that we don't cross.

14 Where it's asking Mr. Peterson
15 questions about his testimony, to the specific
16 objection, I don't have the transcript in front of
17 me and I don't have a photographic memory to
18 remember exactly what Mr. Peterson has said this
19 morning with respect to his testimony, and I don't
20 even remember whether he specifically referred to
21 the legal arguments or whether he referred to
22 principles that are contained in the public comments
23 from UIEC. So it seems to me the appropriate way to
24 handle this matter is to allow questioning with that
25 line as the line we don't want to cross, and we may

1 have to deal with individual objections as that
2 questioning goes forward.

3 MR. EVANS: Thank you.

4 MS. SCHMID: To facilitate narrowing
5 the scope of Mr. Evans' questions and making sure
6 they are appropriate, the Division would request
7 that the court reporter read back the portion of Mr.
8 Peterson's summary this morning addressing the
9 audit.

10 COMMISSIONER LEVAR: What's the best
11 way for us to identify that portion of his
12 testimony? Should we take a brief recess and, Ms.
13 Schmid, maybe communicate with the court reporter on
14 that or any party that wants to do so? I think
15 that's probably an appropriate, helpful step at this
16 point. Would a five-minute break facilitate that?

17 MS. SCHMID: I believe it would.

18 COMMISSIONER LEVAR: Why don't we
19 come back at 9:50.

20 (A brief recess was taken.)

21 COMMISSIONER LEVAR: So then before
22 we go to Mr. Evans' first question, Ms. Schmid
23 wanted to make a clarification with respect to
24 Mr. Peterson's testimony this morning; is that
25 correct?

1 MS. SCHMID: Yes. What I'd like to
2 do is have the court reporter read her rough
3 transcription into the record to help us focus.

4 COMMISSIONER LEVAR: Okay. And
5 you've identified the portion?

6 MS. SCHMID: Yes. And Mr. Evans
7 participated in that, as did Ms. Hogle.

8 COMMISSIONER LEVAR: Okay. Thank
9 you.

10 (A portion of the transcript was read back.)

11 MR. EVANS: Mr. Chairman, I think
12 she's read the portion that entitles me to ask the
13 question, because his testimony, in the very first
14 part, says he's addressing intervenor comments. And
15 so I want to respond to his addressing those
16 comments. She can read the beginning of that
17 paragraph again to confirm that his comments were
18 directed to the UIEC comments, if you'd like.

19 COMMISSIONER LEVAR: I'm not sure she
20 should necessarily re-read it. Was there any more
21 you wanted read into the record, Ms. Schmid?

22 MS. SCHMID: Yes. I would like to
23 have his comments on the audit read into the record
24 in totality so we aren't just taking a single
25 sentence out of context.

1 (The paragraph was read back.)

2 MR. PETERSON: May I make a comment
3 on what she just read?

4 COMMISSIONER LEVAR: I'm not sure how
5 appropriate that is.

6 MR. EVANS: Thank you, Mr. Chairman.
7 Mr. Peterson, since we're opening this back up, I
8 think you can find opportunities to comment.
9 Really, what I'm searching for is clarification, and
10 the questions are probably a lot more innocuous than
11 the lead-up to allowing the question might suggest.
12 I wonder -- statistically, you say that the Division
13 cannot attest the results are statistically
14 accurate. Can you explain what that means?

15 MS. HOGLE: I'm sorry. I'm going to
16 renew my objection. I object because I did not hear
17 the UIEC being mentioned in any of the language that
18 was read back from the reporter, and so I don't
19 believe that Mr. Peterson was discussing the UIEC
20 comments at all.

21 MR. EVANS: Well, let's ask
22 Mr. Peterson.

23 COMMISSIONER LEVAR: Before we ask --
24 I think I'll rule on this objection. The basis on
25 which we're allowing Mr. Evans to ask questions is

1 not whether UIEC was referred to in Mr. Peterson's
2 statements. It's whether he's crossing the line
3 from asking clarifying questions of Mr. Peterson's
4 testimony versus trying to rehabilitate or trying
5 to -- rehabilitate is a strong word -- trying to
6 change his unsworn comments into testimony at the
7 hearing. That's the line I think we can't cross.
8 Although, having said that, I do recall the phrase
9 "intervenor comments," and I believe UIEC is the
10 only intervenor that's filed unsworn comments. But
11 with that, I think I'm going to allow the question
12 to be answered.

13 THE WITNESS: Okay. Would you repeat
14 the question, please?

15 BY MR. EVANS:

16 Q. The question is what does it mean to say
17 that the Division cannot attest that the results are
18 statistically accurate?

19 A. Well, my understanding of the audit
20 process -- when a CPA firm, for example, audits a
21 company and files an attestation of correctness to
22 financial statements, they have reviewed the
23 financial statements and audited them, which
24 involves making statistical samples of selected
25 items. They do not look at the whole universe of

1 accounts. And then based on their statistical
2 sampling, they attribute to the financial statements
3 as a whole the characteristic that they found in
4 their statistical sampling. And that allows them to
5 say that they believe that -- I think the language
6 now is something to the effect that it's free of all
7 material defect or inaccuracy. The Division does
8 not make such an attestation. Our sampling which we
9 do is limited in scope and does not allow us, we
10 believe, to attest in this outside auditor sense to
11 the correctness of the financial statements or, in
12 this case, the specific net power cost accounts.
13 And so we want to be clear that we're not doing that
14 sort of technical audit. Does that answer that
15 specific question?

16 Q. Yes. Thank you. And when you say that
17 the Division does not attest in the formal sense of
18 an audit to the accuracy of the net power cost data
19 submitted by the Company, is it the case that -- I
20 think you said but I'll ask you again -- that the
21 Division also cannot attest to the prudence of those
22 transactions?

23 MS. SCHMID: Objection. I don't recall
24 the word prudence.

25 MR. EVANS: Well, if you want to

1 spend the Commission's time going back and looking
2 at it, I can tell you that it's there. And this is
3 a question that I think is in line with what I have
4 been given latitude to do this morning. So,
5 Mr. Chairman, may I proceed?

6 COMMISSIONER LEVAR: I'm going to
7 allow that question to be answered.

8 A. The Division is also not attesting in this
9 audit sense to any prudence or imprudence of the
10 Company's financial statements or net power costs
11 taken as a whole.

12 BY MR. EVANS:

13 Q. Thank you. And would you look at the
14 final evaluation report on page 42, if you would,
15 please. I'm sorry, 43. If you look at the first
16 full paragraph on that page, beginning "The Division
17 is concerned," would you read that into the record,
18 please?

19 A. Okay. I must have a different pagination
20 that starts "The Division's concern."

21 Q. It's on page 43 in my copy.

22 A. And that's the start of the paragraph?

23 MS. SCHMID: I believe that I have a
24 copy.

25 THE WITNESS: I think I see it on

1 page 44 of my copy. Apparently, when it prints out,
2 it prints out different pages. Do you want me to
3 read that paragraph?

4 BY MR. EVANS:

5 Q. Yes, please.

6 A. "The Division is concerned that it may be
7 virtually impossible to meaningfully assess the
8 prudence of daily trading transactions because of a
9 lack of contemporaneous and verifiable source
10 documentation supporting and justifying the trades
11 made. In the first two EBA audits, the Division
12 identified several supporting documentation issues
13 related to front office transactions. If the
14 Division -- excuse me -- if the Company continues to
15 improve its written documentation as it has in fact
16 done since the start of the EBA, the Division will
17 be able to more adequately assess the prudence of
18 these transactions. But at this time, it cannot
19 state that improved documentation will alleviate its
20 prudence concerns stated above. Even with
21 supporting documentation, the Division's resource is
22 limited to reviewing small samples and relying on
23 the expertise of its consultant to make a prudence
24 determination. Expanding its scope of review in
25 this area would require additional resources not

1 presently available to the Division."

2 **Q. Thank you. Is that still the view of the**
3 **Division of Public Utilities?**

4 A. Yes, but if you'll note, it's limited
5 specifically to the daily trading transactions that
6 the Company does to meet its energy balancing needs,
7 primarily.

8 **Q. And how many of those daily transactions**
9 **are submitted to the Division for review?**

10 A. We typically review about 60.

11 **Q. How many are submitted for review? How**
12 **many daily transaction actions are there in an EBA**
13 **review?**

14 A. There's thousands, tens of thousands.

15 MS. SCHMID: Objection. It goes beyond
16 facts in evidence.

17 COMMISSIONER LEVAR: Mr. Evans, do you
18 want to respond to that objection?

19 MR. EVANS: Say what? I'm sorry. I
20 didn't hear it.

21 COMMISSIONER LEVAR: The objection
22 was -- will you restate your objection, Ms. Schmid?

23 MS. SCHMID: Mr. Evans is going
24 beyond facts already in evidence.

25 MR. EVANS: I'm probing the meaning

1 of "statistically significant." That's what this
2 discussion is about. Well, I'll move on. I'll move
3 on.

4 COMMISSIONER LEVAR: The question was
5 answered, and I think I'll let it stay there and
6 move on.

7 BY MR. EVANS:

8 Q. Would you turn over the page of the
9 Division's report, please? And maybe on your page
10 45 is a paragraph that begins, "While the Division
11 was generally supportive of the Company..." Do you
12 see that?

13 A. Yes.

14 Q. And halfway down that paragraph, I'll read
15 this line in if you don't mind. It says, "The
16 Division continues to have concerns about
17 determining transaction prudence." Have I read that
18 correctly?

19 A. Yes.

20 Q. Is that still true?

21 A. Yes. And I think it refers back to what
22 we've previously discussed.

23 Q. All right. I'm going to read the next
24 sentence. "The Division" --

25 MS. HOGLE: Excuse me. I have an

1 objection. I believe at this point Mr. Evans is
2 actually testifying, and there's no real question
3 there other than to confirm what's already in the
4 report. The report is already part of this
5 proceeding. I think Mr. Evans is going beyond the
6 scope of the line of questioning that your Honors
7 imposed based on my objection earlier this morning.

8 MS. SCHMID: The Division agrees and
9 believes that he has crossed that line.

10 MR. EVANS: If I may?

11 COMMISSIONER LEVAR: Yes, Mr. Evans.

12 MR. EVANS: Mr. Peterson's testimony
13 from the stand this morning threw some doubt on
14 whether the statements in the Division's report
15 still reflected the view of the Division. I think
16 as part of the scope of this cross I'm entitled to
17 ask if the Division still holds the views stated in
18 the report.

19 MS. HOGLE: May I respond to that?

20 COMMISSIONER LEVAR: Yes, Ms. Hogle.

21 MS. HOGLE: I believe that at this
22 point it appears to, at least myself, that, again,
23 Mr. Evans is going beyond the line of questioning
24 that was allowed this morning. And beyond that, he
25 is attempting to make his case, which has

1 specifically been prohibited and as he acknowledges
2 and as he acknowledged this morning, and therefore I
3 renew my objection.

4 MR. EVANS: If I may, I can wrap this
5 up in one final question if you'd like and we'll be
6 done with it.

7 COMMISSIONER LEVAR: I think the
8 questions I've heard so far have been related to the
9 Division's position in Mr. Peterson's testimony, and
10 I don't think we've yet gotten repetitive on those
11 questions, so I think I'm going to allow this to
12 continue a little further.

13 BY MR. EVANS:

14 Q. Thank you. On page 45 of your report,
15 Mr. Peterson, and on page 44 of mine, in the same
16 paragraph in the following sentence from the one
17 that I just quoted, it reads, "The Division has
18 relied on the 70/30 sharing split to give it some
19 confidence that the Company will generally act with
20 prudence because of the potential loss to the
21 Company outside of the threat of a formal prudence
22 disallowance by regulators. That Company incentive
23 is now gone." Is that still the view of the
24 Division of Public Utilities?

25 A. Yes.

1 MR. EVANS: Thank you. No more
2 questions.

3 COMMISSIONER LEVAR: Ms. Hogle, any
4 cross-examination for Mr. Peterson?

5 MS. HOGLE: None.

6 COMMISSIONER LEVAR: Ms. Schmid, any
7 redirect?

8 MS. SCHMID. None.

9 COMMISSIONER LEVAR: Mr. Clark, do
10 you have anything for Mr. Peterson?

11 COMMISSIONER CLARK: Couple of
12 questions, and, again, in the same general area that
13 we have been probing. I'm looking at the
14 conclusions and recommendations on page 49 of the
15 report, and what I'd like to understand is if the
16 request that the Commission consider employing
17 interim rates as a means to afford more time for
18 review to the Division, is that going to help the
19 Division to feel more confident in the results of
20 its review and to alleviate some of the reservations
21 that are expressed on page 49?

22 THE WITNESS: Well, the Division is
23 asking for an extension to alleviate some of the
24 pressures and increase the scope of our -- the
25 time-imposed pressures to do the audit and to allow

1 us to increase the scope of our audit. At this
2 time, I cannot say that the Division believes that
3 we will get to a point where we can make a formal
4 attestation of the material correctness of the net
5 power costs as a result of our audit. But in an
6 informal sense, it would increase our comfort level
7 with the audit generally -- and just say it would
8 increase our comfort level -- and it should increase
9 the comfort level of parties that are relying on the
10 Division's audit. But I can't say that we will
11 necessarily ever get to a point where we would make
12 a formal attestation of the Company's financial
13 statement, at least as related to net power costs.

14 But I think what I intended to convey
15 in my opening comments was that part of the reason
16 we're not making an attestation is that we're not
17 prepared to say that our sample is a statistically
18 accurate representation of the Company's financial
19 statements. And also, we do not want to convey the
20 impression that we necessarily believe that the
21 Company, at this point, has been doing anything --
22 has been making inaccurate or materially inaccurate
23 reports to the Division and the Commission. So we
24 have no evidence of any specific problems beyond
25 what we have brought out in our audit reports, and

1 we don't have reason to believe that there are
2 problems. But at this point, perhaps, and probably
3 going into the future indefinitely, we are not going
4 to be able to say yes, indeed, we have a
5 statistically valid audit that we can attest to the
6 material accuracy of their financial statements.
7 Maybe this is a fine technical distinction that I'm
8 trying to make, but that's what we're trying to say.

9 COMMISSIONER CLARK: I just wanted to
10 be sure that I could infer, at least from your
11 testimony -- and it's probably explicit here as
12 well -- that additional time would allow you to
13 check more items and feel greater confidence in your
14 work product, ultimately, at the conclusion of the
15 final review of a given period of net power costs.

16 THE WITNESS: Yes, that's a fair
17 statement.

18 COMMISSIONER CLARK: And you ask us
19 to consider implementing interim rates but recognize
20 that there may be legal issues associated with that,
21 and I'm loathe to ask you to offer a legal opinion
22 on that or to express the Division's view, but I'm
23 interested in whether or not the Division does have
24 a view. So I guess I turn to the Division's counsel
25 to inquire, is there any reason why or any legal

1 impediment in the Division's view for the Commission
2 to approve the recommendation that we employ interim
3 rates in this setting as we do in some other
4 balancing account related dockets?

5 MS. SCHMID: Earlier in this lengthy
6 process, the Commission did rule that interim rates
7 were not allowed under the statute. That said,
8 there are ways to implement interim rates, such as
9 seeking a change at the legislature of the statute
10 and perhaps other means. The Commission could also
11 change its order, but at this time I believe there
12 are impediments to having interim rates.

13 COMMISSIONER CLARK: Thank you. I
14 don't have further questions.

15 COMMISSIONER LEVAR: Commissioner
16 White?

17 COMMISSIONER WHITE: Sorry to beat a
18 dead horse on this audit issue. Question: Are you
19 aware of any other Commission proceedings in which
20 the Division participates where an audit is
21 performed as required to be upheld to the degree of,
22 you know, the licensure of a CPA's formal audit? I
23 mean, is that the standard or is that from the
24 Division's perspective in terms of auditing?

25 THE WITNESS: Personally, I'm not

1 aware of anything, as I sit here, that we are making
2 a specific attestation as to the correctness of
3 those things. I don't think we do that. So in that
4 regard, what I'm saying is similar to what I think
5 the other audit situations are that we're involved
6 with. The Division did not want -- given the fact
7 that we hired an outside consultant and we spent
8 several months working with the Company to
9 understand their EBA filing, I did not want any
10 parties to get the impression that we were able to
11 make such a formal attestation.

12 COMMISSIONER WHITE: Is it uncommon
13 or unusual in dockets or proceedings or audit
14 procedure where there's voluminous amounts of data,
15 I guess, to pull samples for auditing purposes or is
16 that unusual or is that a common practice?

17 THE WITNESS: That would be fairly
18 typical if you're doing any kind of auditing. I
19 mean there's -- you could audit the whole universe
20 of something of a particular item if it only had a
21 few items involved. But if you're looking at
22 thousands of different transactions, then it would
23 be common to do a sample and see if anything shows
24 up that causes concern.

25 COMMISSIONER WHITE: There's been

1 some discussion about, you know, essentially,
 2 bringing in or taking out typical or not typical --
 3 but historically since the EBA has been going on --
 4 components of what's considered NPC, net power
 5 costs. Assuming our innuendo that the current EBA
 6 continues in pilot format until the legislature and
 7 the reports are filed, et cetera, is there any
 8 concern on the Division's part of essentially
 9 altering the definition of net power cost during
 10 that evaluation period?

11 THE WITNESS: Yes. I think that the
 12 Division thinks that that would set a bad precedent
 13 that would ultimately come back and be used in any
 14 future hearings about the structure of the EBA. We
 15 would be concerned about making changes like that.

16 COMMISSIONER WHITE: The one final
 17 question is just to understand the suggestion of
 18 ordering a rate case yearly and then understanding
 19 that in context with the interim rate concept: Are
 20 those two concepts linked together or are those
 21 mutually exclusive?

22 THE WITNESS: Well, they're --

23 MS. SCHMID: Pardon me. Did you mean
 24 to say a rate case every three years?

25 COMMISSIONER WHITE: Yes, but

1 understanding is the first would be filed.

2 THE WITNESS: We asked that one be
3 filed this year and then at least every three years
4 after that. That was our recommendation suggestion.
5 I think they're mutually exclusive.

6 COMMISSIONER WHITE: That's all I
7 have, Chair.

8 COMMISSIONER LEVAR: One other
9 question with respect to your request for interim
10 rate authority. As I'm thinking about other cases
11 with other utilities where we grant interim rates,
12 there are some situations where the interim rates
13 have remained interim for fairly lengthy periods of
14 time, multiple years. Are you suggesting that if we
15 consider allowing interim rates that it would have
16 to be final one way or another before the next EBA
17 is filed next year, either by Division
18 recommendation or made final in the absence of one?

19 THE WITNESS: That was the intent of
20 our recommendation was to avoid pancaking to have --
21 I think the suggestion is that the Commission would
22 issue an order March 1st, and that would, absent any
23 additional true-ups, that could be done relatively
24 shortly over a month or two as a result of interim
25 rates. We would avoid pancaking cases; we would

1 make them within the year. We would make a given
2 EBA filing final and avoid the pancaking of cases
3 that seem to have in another utility.

4 COMMISSIONER LEVAR: Let me ask one
5 further clarification. You said it would be your
6 desire to avoid the pancaking. Do you believe
7 that's a necessity that interim rates have got to be
8 final before the next EBA filing?

9 A. No, I don't think they have to be. In the
10 absence of interim rates, the suggestion would be
11 that if the Commission were to accept the Division's
12 proposal of the process, the Commission would order
13 by March 1st of the following year the EBA -- let
14 the EBA amortization go into effect, whatever it is,
15 and then that would continue for the next 12 months.
16 So there would be the situation potentially like we
17 have now for a while that there would be overlapping
18 EBA dockets that were being amortized, but as far as
19 the process before the Commission is concerned,
20 we're hopeful that it would end before the next EBA
21 filing was made.

22 COMMISSIONER LEVAR: Thank you. I think
23 that's all for you, Mr. Peterson.

24 MS. HOGLE: Your Honor, excuse me.
25 I'm wondering if you can give me some leeway in

1 asking one or two questions regarding Mr. Peterson's
2 responses.

3 COMMISSIONER LEVAR: We typically
4 don't allow questions after the Commissioner
5 questions for redirect from those, but I think we'll
6 allow a little leeway today to do that.

7 EXAMINATION

8 BY MS. HOGLE:

9 Q. I appreciate that. Mr. Peterson, earlier
10 you were asked about limitations that the Division
11 has in auditing the Company's EBA net power costs.
12 Do you recall that?

13 A. I recall talking about that.

14 Q. Isn't it true that in prior DPU audit
15 reports the Division has stated that the audit
16 has -- the difficulty has not been as other parties,
17 for example, in this proceeding today have noted,
18 because the Division has been able to review
19 documentation testing and key controls that would
20 allow the error, for example, to be more noticeable.
21 Am I clear on that? Did you get me with that?

22 A. Let me repeat what I think you asked me,
23 if I may. You're asking me in prior audit reports,
24 the Division has reported that it has done a
25 sampling of transactions and also reviewed the

1 Company's various manuals as to how things are
2 supposed to be done and refute the general process.
3 I think that is all true.

4 Q. And so has this allowed the Division a
5 little bit more comfort in knowing that the sampling
6 of transactions that it has reviewed is a fair
7 representation of other transactions or other
8 support that the Division has not necessarily
9 reviewed, but based on these key control and
10 documentation processes, the Division has some
11 comfort that at least it would be able to know
12 whether there are errors?

13 A. I think that's generally correct.
14 Again -- and I guess this may be too fine of a point
15 that I was trying to make on it -- we have a certain
16 level of comfort or that we have achieved a certain
17 level of comfort over the several audit cycles that
18 we have been through as we've worked through various
19 difficulties with the Company. So I think my
20 opening statement intended to convey that there is
21 a level of comfort that the Division has with what
22 the Company is doing. And I do not want to convey
23 the impression that based upon our investigations we
24 have reason to believe that there is material
25 inaccuracy or imprudence with the Company's books

1 and records and the Company's behavior.

2 MS. HOGLE: Thank you.

3 COMMISSIONER LEVAR: Was that all,
4 Ms. Hogle?

5 MS. HOGLE: That's all. Thank you.

6 COMMISSIONER LEVAR: Commissioner
7 Clark or White, do you have anything further?

8 COMMISSIONER CLARK: I do, if I may.
9 I'm trying to understand this important testimony,
10 and I would put a question to you that I hope will
11 help us explore this a little bit better. I'd like
12 you to compare, if you can, the Division's level of
13 comfort with its most recent EBA report -- its most
14 recent review of an EBA filing by the Company and
15 compare that, if you can, to the Division's level of
16 comfort typically with the recommendations it would
17 make in response to a rate case filing. Is there a
18 material difference there, if you know? I know that
19 you've been involved in rate cases in the past.

20 THE WITNESS: Well, that's actually a
21 difficult question for me to answer. And maybe
22 others in the Division could answer it better.

23 COMMISSIONER CLARK: I'm not asking
24 you to manufacture an answer. Just if you know or
25 have an opinion.

1 THE WITNESS: I would say that on the
2 whole, as the situation has evolved to this point,
3 there's not a significant difference in comfort
4 level. That said, I think we pointed out in our
5 audit reports and in my testimony that there are
6 areas that the Company operates in that, frankly,
7 without basically looking over their shoulder 24/7,
8 we might not ever be able to attain a level of
9 complete comfort. But I am saying that we have no
10 evidence that there's material problems. And if we
11 went out and were able to have infinite time and
12 resources and investigated the whole universe, we'd
13 probably find additional problems, but we don't see
14 that right now as likely to result in anything big.

15 COMMISSIONER CLARK: And so if we
16 were to take, for example, from a rate case setting,
17 a projection of expense in an account that perhaps
18 relates to some type of labor maintenance of utility
19 facilities, is there a difference in reaching
20 conclusions about that kind of numerical
21 presentation by the Company versus EBA data?

22 THE WITNESS: Well, as I'm thinking
23 about it, there would probably be less review of the
24 minutia of the Company's filing in a rate case,
25 whereas in the EBA filing, we are attempting to look

1 at the minutia. So it would depend on whether the
2 analyst in a rate case focuses on a particular line
3 item, for example, in the Company's filing and wants
4 to dig deeply into it for some reason. And that
5 will vary from line item to line item. Some line
6 items will get relatively little review, and others
7 will be more intensely reviewed.

8 COMMISSIONER CLARK: Thank you. That
9 concludes my questions. Thank you. Chair Levar?

10 COMMISSIONER LEVAR: Thank you,
11 Mr. Peterson. And I think it's an appropriate time
12 for a short break before your next witness, Ms.
13 Schmid. So why don't we reconvene at 10:45.

14 (A brief recess was taken.)

15 COMMISSIONER LEVAR: We're back on
16 the record. Ms. Schmid?

17 MS. SCHMID: Yes. The Division would
18 like to call its next witness, Mr. David Thomson.

19 DAVID THOMSON,
20 having been first duly sworn to tell the truth, was
21 examined and testified as follows:

22 EXAMINATION

23 BY MS. SCHMID:

24 Q. Good morning.

25 A. Good morning.

1 **Q. Please state your full name, business**
2 **address, title and employer for the record.**

3 A. Okay. My name is David Thomson,
4 T-h-o-m-s-o-n, without a "P." I am a utility
5 technical consultant for the Division of Public
6 Utilities, and I have participated in the docket on
7 behalf of the Division. My business address is 160
8 East 300 South, Salt Lake City, Utah 84111.

9 **Q. Did you prepare and cause to be filed your**
10 **direct testimony, designated as DPU Exhibit No. 6.0**
11 **Direct with accompanying exhibits and your**
12 **surrebuttal testimony, designated as DPU Exhibit No.**
13 **6.0-SR?**

14 A. Yes.

15 **Q. Do you have any changes to that testimony?**

16 A. I do not.

17 **Q. If I were to ask you today the same**
18 **questions that are in that testimony, would your**
19 **answers today be the same as they are written?**

20 A. Yes.

21 **Q. With that, the Division would like to move**
22 **for the admission of Mr. Thomson's direct testimony**
23 **with exhibits and his surrebuttal testimony.**

24 COMMISSIONER LEVAR: If anyone objects to
25 that motion, please indicate to me. I'm not seeing

1 any, so the motion is granted.

2 BY MS. HOGLE:

3 Q. Do you have a summary?

4 A. I do.

5 Q. Please proceed.

6 A. Good morning, Commissioners. I am sure
7 that you have read my testimony applicable to this
8 docket, so I will be brief in my summary statement.
9 As explained in my direct testimony and surrebuttal
10 testimony, the Division believes that cost
11 adjustments from prior periods should not be allowed
12 in future deferral periods where the deferral amount
13 has, by Commission order, been closed for being
14 filed. If costs or benefits flow between years, the
15 yearly rate setting mechanism of the EBA is
16 violated. The deferral period, in essence, starts
17 at inception and never ends, resulting in
18 retroactive ratemaking. If the Company believes
19 that its prior period account adjustments qualify,
20 it has the option to file for a deferred accounting
21 order with the Commission to seek the recovery of
22 adjustment costs in future rates. The Division
23 recommends that retroactive ratemaking practice
24 should not be permitted in EBA filings.

25 Second, the Division is asking that the

1 Commission specifically clarify that the Company may
2 bear the risk of imprudent outages caused by its
3 agents and partners when facts warrant on a case by
4 case basis. The Company is best positioned to
5 ensure adequate and prudent performance by its
6 commercial agents and partners. The risk of those
7 business relationships is the Company's risk, not
8 rate payers' risk. And that concludes my summary.

9 MS. SCHMID: Mr. Thomson is now
10 available for questions from the parties and from
11 the Commission.

12 COMMISSIONER LEVAR: Thank you. I'll
13 go to Mr. Moore next.

14 MR. MOORE: We have no cross. Thank
15 you.

16 COMMISSIONER LEVAR: Mr. Dodge?

17 MR. DODGE: I have no questions.
18 Thank you.

19 COMMISSIONER LEVAR: Mr. Evans?

20 MR. EVANS: No questions. Thank you.

21 COMMISSIONER LEVAR: Ms. Hogle?

22 EXAMINATION

23 BY MS. HOGLE:

24 Q. I just have a few based on your summary.

25 Good morning, Mr. Thomson. I believe you testified

1 regarding what the Division or what you call out of
2 period adjustments. So I just want to explore that
3 a little bit. The Company's adjusted accounting
4 entries are made to costs for future rates; is that
5 right?

6 A. Yes.

7 Q. Okay. And so these adjusting accounting
8 entries are not being made to rates, correct? Based
9 on what you just said that they're being made to
10 cost, not to --

11 A. Well, the rates are based on the costs,
12 net power costs.

13 Q. But the rates are not the same as costs,
14 correct?

15 A. Well, net power cost uses a cost per
16 megawatt, so it uses the cost to figure out the cost
17 per megawatt, which is applied to actual megawatts
18 to come up with a historical net power cost.

19 Q. You would agree with me though that costs
20 are different from rates?

21 A. I can't agree with that. I must have
22 misunderstood the original question when I said yes.
23 Rates are based on costs.

24 Q. Okay. And do you agree with me that
25 retroactive ratemaking deals with changes to rates,

1 **not changes to costs?**

2 A. No.

3 **Q. You don't agree with me that retroactive**
4 **ratemaking means changing rates that have already**
5 **been set?**

6 A. I agreed that if you had just cost, it
7 will affect your rates.

8 **Q. Okay. So you do agree with me that**
9 **retroactive ratemaking deals with changing rates?**

10 MS. SCHMID: Objection. Asked and
11 answered.

12 COMMISSIONER LEVAR: I think we're
13 back to that point. I think I'll allow this answer.

14 A. If you adjust costs, it will affect your
15 rates.

16 BY MS. HOGLE:

17 **Q. Okay. So is that a "yes?" Retroactive**
18 **ratemaking means adjusting rates, means changing**
19 **rates?**

20 A. You're not allowed to do retroactive
21 ratemaking -- retroactive adjustments to ratemaking.

22 **Q. So I think we're back to the same**
23 **question. You agreed with me, I think, that rates**
24 **are different from costs.**

25 A. Costs are part of ratemaking.

1 Q. But they're different, correct?

2 A. No. The costs flow into and create rates
3 which the people pay for, and the rates that they
4 pay for are based upon the costs.

5 Q. Do you agree with me that for the EBA,
6 rates change annually?

7 A. They do, but they're not based upon
8 retroactive adjustments. They're based on 12 months
9 of actual costs for that period.

10 Q. Okay. And so the rates that were set in
11 last year's EBA, those -- if they're not adjusted,
12 the rates are not adjusted, that means that they're
13 final until new rates are put in place. Would you
14 agree with me?

15 A. That's correct.

16 Q. Okay. I want to take you to your
17 testimony regarding imprudent outages. Do you have
18 that in front of you?

19 A. My surrebuttal?

20 Q. Your direct testimony.

21 A. Okay. The one filed September 21st?

22 Q. Correct. And then you also reference as
23 an exhibit, I think, the Daymark report; is that
24 correct? Do you have that in front of you as well?

25 A. Yes.

1 Q. Okay. So I do want to ask you a general
2 question about outages. Is the recovery of costs
3 for a specific outage an issue in this case?

4 A. Pardon me?

5 Q. Is the recovery of costs for a specific
6 outage an issue in this case? Is the Company
7 seeking to recover any costs for an outage in this
8 case? The Company isn't, correct? The Company, in
9 this case, is not requesting recovery of any costs
10 for any outages, is it?

11 A. In this docket?

12 Q. In this docket. Correct.

13 A. Yes.

14 Q. You're agreeing with me?

15 A. Yes.

16 Q. Okay. So the Commission can't weigh in on
17 an issue if there's no specific outage that was
18 caused by a third-party operator, can it, in this
19 case?

20 MS. SCHMID: Objection. Calls for a
21 legal conclusion.

22 COMMISSIONER LEVAR: Ms. Hogle, do
23 you want to respond to the objection?

24 MS. HOGLE: I'm not sure that was a
25 legal question. It was simply a question of whether

1 the Commission can weigh in on an issue that is not
2 before it.

3 MS. SCHMID: That is a legal
4 question.

5 COMMISSIONER LEVAR: I think we have
6 his answer to the fact that the issue is not before
7 us in the docket, and so with Ms. Schmid's
8 objection, I think that's the appropriate conclusion
9 of his answer to that issue.

10 BY MS. HOGLE:

11 Q. Okay. And so the Division's
12 recommendation for the Commission to make a
13 statement about imprudent outages, do you agree that
14 that is something that the Division is testifying to
15 specifically in your testimony?

16 A. My position is stated in my testimony.

17 Q. Okay.

18 A. That we're looking for the Commission to
19 clarify something that has been contentious and
20 problematic in prior dockets.

21 Q. But that is not an issue in this case.
22 You have already agreed with me.

23 A. The issue is setting EBA policy after an
24 evaluation. That's what we're asking for.

25 Q. And so you're asking the Commission to

1 opine in this matter without any context or any
2 facts as to any specific outage, correct?

3 A. We're asking nothing specific. We're
4 asking in a general matter to have them clarify so
5 in the future this problem won't keep coming up.

6 Q. But right now it's not a problem, is it?

7 A. It is a problem. If you try and file an
8 EBA report, we have a disagreement on this subject.
9 And it will go forward with that disagreement, and
10 we're hoping the Commission will clarify that so in
11 the forward when there's outages caused by -- when
12 there's discussions whether an outage should be
13 allowed or not or talked about or ignored because it
14 was done by an agent or a principal, that that won't
15 come up anymore, that it can be discussed, not just
16 say, "Well, they're an agent so we can't talk about
17 that outage."

18 Q. Okay. So can you turn to the Daymark
19 report, please?

20 A. Pardon me?

21 Q. Can you please turn to the Daymark report
22 that you have, please? That very first page dated
23 September 21st. Can you read the last sentence on
24 that page, please?

25 A. Read where?

1 **Q. The last sentence on that first page of**
2 **that Daymark report.**

3 A. "It is self-evident that costs incurred as
4 a direct result of imprudent action are not
5 prudently incurred costs."

6 **Q. Do you agree with me that "self-evident"**
7 **means needing no further explanation or**
8 **demonstration?**

9 MS. SCHMID: Objection to the extent
10 it calls for a legal conclusion, but he can answer
11 as to common understanding.

12 COMMISSIONER LEVAR: Do you have any
13 response to the objection, Ms. Hogle?

14 MS. HOGLE: I'm just wondering if he
15 agrees with me that generally "self-evident" means
16 needing no further explanation.

17 COMMISSIONER LEVAR: I'll allow the
18 question to be answered under common understanding.
19 I'll allow you to answer the question based on your
20 understanding of the term.

21 A. If something is not prudent, then it's
22 imprudent. If it's imprudent, then it's not
23 prudent; that's self-evident.

24 BY MS. HOGLE:

25 **Q. And do you agree with me that generally**

1 **"self-evident" means needing no additional**
 2 **explanation?**

3 A. No. I think it's a case-by-case matter,
 4 which we took great pains to point out in our
 5 testimony -- a case-by-case matter after analysis
 6 that may be self-evident.

7 MS. HOGLE: Thank you. I have no
 8 further questions.

9 COMMISSIONER LEVAR: Thank you. Any
 10 redirect, Ms. Schmid?

11 MS. SCHMID: Just a little.

12 RE-DIRECT EXAMINATION

13 BY MS. SCHMID:

14 Q. Mr. Thomson, you were asked questions
 15 about this Pilot Program and outages. And is it
 16 true that you said the Division wants the Commission
 17 to make a statement that the Company can be
 18 responsible for outages on a case-by-case basis
 19 caused by its partners, agents, or contractors?

20 A. Yes.

21 Q. Is it your understanding that the purpose
 22 of this section of the EBA process is to evaluate
 23 and take comments on the Pilot Program so we know
 24 where we are?

25 A. Yes.

1 MS. SCHMID: Those are all my
2 questions. Thank you.

3 COMMISSIONER LEVAR: Thank you. Any
4 recross, Ms. Hogle? Commissioner White, any
5 questions for Mr. Thomson?

6 COMMISSIONER WHITE: If the
7 Commissioner were harking back to Ms. Schmid's
8 statement, if the Commissioner were to make such a
9 statement, does that change anything that the
10 Commission has a right to do currently under the
11 EBA? Is it just essentially put something, you
12 know, expressly in writing that the Commission
13 already has a right to do?

14 THE WITNESS: The Commission can do
15 whatever it wants, but what we're -- she kind of
16 summed up our position. I'm not sure if I
17 understand your question.

18 COMMISSIONER WHITE: That's okay. I
19 have no further questions. Thanks, Chair.

20 COMMISSIONER LEVAR: Commissioner
21 Clark, any questions?

22 COMMISSIONER CLARK: No questions.
23 Thank you.

24 COMMISSIONER LEVAR: Thank you. I
25 don't have anything further. Thank you,

1 Mr. Thomson. Ms. Schmid?

2 MS. SCHMID: Those are the Division's
3 two witnesses.

4 COMMISSIONER LEVAR: Thank you.
5 We'll go to Ms. Hogle now.

6 MS. HOGLE: Rocky Mountain Power
7 calls Mr. Mike Wilding.

8 MICHAEL G. WILDING,
9 having been first duly sworn to tell the truth, was
10 examined and testified as follows:

11 EXAMINATION

12 BY MS. HOGLE:

13 Q. Good morning, Mr. Wilding.

14 A. Good morning.

15 Q. Could you please state your name, address,
16 and position for the record?

17 A. Yes. My name is Michael G. Wilding. I am
18 the manager of net power costs of PacifiCorp, and my
19 address 825 Northeast Multnomah Street, Suite 600,
20 Portland, Oregon 97232.

21 Q. And in that capacity did you prepare or
22 cause to be prepared direct testimony and Exhibit A
23 and work papers filed on September 21st, 2016?

24 A. Yes.

25 Q. Rebuttal testimony filed November 16,

1 **2016?**

2 A. Yes.

3 **Q. And surrebuttal testimony and work papers**
4 **filed December 15 2016?**

5 A. Yes.

6 **Q. And do you have any changes to any of that**
7 **testimony?**

8 A. No.

9 **Q. So if I were to ask you the questions in**
10 **that testimony again here today, your answers would**
11 **be the same?**

12 A. Yes.

13 MS. HOGLE: I move for the admission
14 into evidence of Mr. Wilding's direct testimony and
15 Exhibit A, rebuttal testimony and surrebuttal
16 testimony and work papers.

17 COMMISSIONER LEVAR: Thank you. If
18 anyone objects to that option, please indicate to
19 me. And I'm not seeing any so the motion is
20 granted.

21 BY MS. HOGLE:

22 **Q. Thank you. Mr. Wilding, what issues were**
23 **addressed in the direct testimony in this case?**

24 A. So pursuant to the most recent scheduling
25 order, indirect testimony's parties proposed changes

1 that they would like to make to the current EBA.

2 **Q. And what issues will you be addressing**
3 **today?**

4 A. Because all of those issues are contested,
5 I will summarize the Company's position for each of
6 the eight issues.

7 First, the EBA is in the public interest
8 and does provide value to the Company's customers.
9 Second, the Company is proposing to include chemical
10 cost start-up fuel and production tax credits as
11 part of the EBA. Third, the mismatch issue can be
12 best resolved by annual updates to base net power
13 costs, or if that is determined to be not in the
14 public interest, then to leave the manner in which
15 base NPC is set unchanged. Fourth, the accounting
16 for actual net power costs in the EBA should remain
17 unchanged. Fifth, the carrying charge in the EBA
18 should not be changed until the next general rate
19 case. Sixth, the EBA procedural schedule could be
20 modified to allow the DPU more time to complete its
21 audit or its prudence review report, but the rounds
22 of testimony should not be changed. Seventh, a
23 statement regarding the outages and the prudence of
24 costs related to the outages is not needed this time
25 because it will not change anything. And then

1 lastly, eight, the Company's position is that
2 wheeling revenues should be included in the EBA.

3 **Q. Why does the Company believe that the EBA**
4 **is in the public interest, Mr. Wilding?**

5 A. So for the Company, the EBA is an integral
6 and necessary ratemaking mechanism because it allows
7 for the timely recovery of the costs that the
8 Company incurs to provide safe and reliable energy
9 to its customers. And the EBA ensures that
10 customers only pay the cost of the energy they
11 consume, no more and no less. And truing-up the
12 actual net power costs to the net power costs in
13 base rates each year keeps rates just and reasonable
14 and in the public interest. And as the net power
15 costs are a significant portion of the Company's
16 revenue requirement, one of benefits of the EBA in
17 allowing those costs -- the net power costs -- to be
18 trued-up is it mitigates the need for more frequent
19 rate cases. And, in fact, we haven't filed a rate
20 case in Utah since 2014.

21 The EBA also helps ensure that customers
22 are serviced by a financially healthy company, or a
23 financially healthy utility, and it's a balance
24 mechanism by which neither customers nor the Company
25 benefit at the expense of others. And the

1 Commission recently acknowledged that the EBA and
2 the Pilot Program would continue through 2019 in the
3 recently approved EBA tariff. And at this time, the
4 Company would respectfully request that the EBA be
5 made permanent and continue on after 2019.

6 **Q. Are there any modifications to the EBA**
7 **that the Company proposes to make at this time?**

8 A. Yes. So as I mentioned, the Company has
9 proposed to include chemical costs, start-up fuel,
10 and production tax credits in the EBA. And this is
11 because they have a similar profile to net power
12 costs. Chemicals are used in the pollution control
13 and are largely dependent upon our coal generation.
14 And start-up fuel is essential in our coal
15 generation process and is also subject to market
16 exposure, and therefore start-up fuel should be
17 treated just like the coal fuel expense, which is
18 part of net power costs.

19 And then finally, the amount of production
20 tax credits received is entirely dependent upon
21 renewable generation, which in turn is dependent on
22 the variable weather conditions.

23 **Q. At this time, would you like to discuss**
24 **the mismatch issue that was addressed by the**
25 **Division in its testimony earlier today?**

1 A. So the mismatch issue is the fact that the
2 time period of base net power cost is not always
3 aligned with the EBA deferral period or the period
4 of actual net power costs. And this is because the
5 test period from the general rate case in which base
6 net power costs are set, like I said, doesn't align
7 with actual net power costs or the EBA deferral
8 period. And sometimes, this can be one of the
9 underlying causes of the variances in the EBA.

10 **Q. And in your opinion, Mr. Wilding, what is**
11 **the best way to resolve the mismatch issue?**

12 A. So the Company would support the
13 unbundling of net power costs from general rates and
14 resetting base net power costs annually. And this
15 would ensure that the forecast of base net power
16 costs never grows still, and that the test period
17 will always line up with the deferral period. And
18 furthermore, it would give customers a more accurate
19 price point by which they could more wisely
20 determine their energy consumption. However, if the
21 Commission determines that annual updates are not in
22 the public interest, then the manner in which base
23 net power costs are set should remain unchanged.

24 **Q. And do you have an opinion regarding the**
25 **Division's proposal on how to resolve the mismatch**

1 **issue?**

2 A. Yes. So the Company opposes the
3 Division's proposal for a three-year rate case cycle
4 simply because it will not have the desired outcome
5 of mitigating the annual EBA adjustment. And though
6 the Company generally supports forecasting as a
7 rate-setting tool, the DPU's proposal goes beyond
8 that which is reasonable in the rate-making process.
9 And simply -- like I said -- simply matching the
10 period for base MPC and actual MPC will not mitigate
11 or guarantee smaller variances in the EBA because --
12 and this is because a forecast grows still not only
13 because the time period forecasted has passed, but
14 the inputs upon which that forecast is based change
15 over time. And so, for example, if the Company were
16 to forecast net power costs today for calendar year
17 2020, that forecast would grow, increasing still
18 leading up to 2020 because the things that that
19 forecast were based on -- such as market prices for
20 energy and natural gas load, weather conditions --
21 all those things would change and would not
22 guarantee a smaller variance in the EBA.

23 And just like all those things will change
24 in a forecast, those things are going to change when
25 comparing actual net power costs to base net power

1 costs, regardless of when the forecast is set. And
2 so whether it's an annual update or an update three
3 years in advance, those things are going to change
4 and there's always going to be an EBA variance. But
5 the further out the forecast is, the likelihood of
6 greater variances will occur.

7 And then my last point would be that using
8 a single point in time forecast to set rates three
9 years in advance increases the likelihood that rates
10 will not always be just and reasonable. So, for
11 example, if you set or you do a forecast of net
12 power costs for three years down the road, it could
13 show increasing net power costs and, consequently, a
14 rate increase would be scheduled for three years
15 down the road to capture that forecast. However,
16 because things change over time, when that period
17 actually arrives, net power costs could actually be
18 decreasing, and therefore your rates and your actual
19 costs would be deviating. Just increasing more
20 variances in the EBA would also result in unjust and
21 unreasonable rates.

22 **Q. Do any other parties in the case agree**
23 **with you regarding the Division's proposal on the**
24 **mismatch issue?**

25 **A. Yes. So UAE, they also oppose the**

1 three-year NPC forecast in the rate case cycle. The
2 OCS suggests that the DPU's proposal would be
3 equivalent to Questar's requirement to file a
4 general rate case every three years and its
5 infrastructure replacement tracker. However, my
6 understanding is that this condition exists as the
7 result of a settlement. And also, the
8 infrastructure replacement tracker really can't be
9 compared to the EBA, because one tracks capital
10 costs and infrastructure and the other tracks
11 variable fuel costs. So they're apples and oranges.

12 **Q. So, Mr. Wilding, we have just heard**
13 **testimony here today about base net power costs and**
14 **the fact that they haven't been set since 2014. I**
15 **believe that was the last general rate case. Given**
16 **that, why is there no need currently to reset base**
17 **net power costs?**

18 **A.** So there's not a current need to reset
19 base net power costs because the base net power cost
20 and actual net power cost right now are actually
21 fairly close. And the base net power cost from the
22 2014 general rate case was a settled amount; it was
23 based on our forecast, but it was a settlement. And
24 in the most recent EBA quarterly filing from the
25 third quarter, the net power cost variance before

1 adjustments for Deer Creek and everything -- so
2 simply net power costs -- was a \$1.7 million
3 giveback to customers, so we're fairly close.

4 **Q. Can you now talk about the Division's**
5 **proposal regarding the adjusting accounting entries**
6 **in the EBA?**

7 A. Yes. So as we heard, the Division
8 proposed to disallow adjusting accounting entries in
9 the EBA, and this is not just and reasonable and is
10 based on the opinion that these adjusting accounting
11 entries constitute retroactive ratemaking. However,
12 in my opinion, the Utah statute is fairly clear and
13 it explicitly states that the EBA does not
14 constitute impermissible retroactive ratemaking.
15 And then, additionally, the Company is not seeking
16 to unwind rates that have been previously set by the
17 Commission. However, we're rather trying to set a
18 new rate based on the current calendar year
19 accounting of net power costs. And the use of
20 adjusting accounting entries are just typical and
21 normal accounting.

22 The accounting records are kept in
23 accordance to generally accepted accounting
24 principles and are subject to an independent audit
25 each year. And in the Company's books and records,

1 each accounting entry has what's called an
2 accounting period and an operating period. And the
3 accounting period is just simply when the expense
4 was incurred. So in accordance with GAAP, the
5 Company would book that expense or that net power
6 cost item in the expense that it was incurred. And
7 then sometimes after the books have closed for that
8 accounting period, we may receive new information
9 for whatever reason, and, at that point, an adjusted
10 accounting entry is necessary. And so when that
11 happens, what we do is we book that adjustment in
12 the period in which it became known or the current
13 accounting period, and so it has a current
14 accounting period, but we would -- simply to create
15 an audit trail so that expense or that net power
16 cost item could be traced -- we would include an
17 operating period that would differ from the
18 accounting period.

19 **Q. So why should the accounting for actual**
20 **net power costs remain unchanged for purposes of the**
21 **EBA?**

22 **A.** So the EBA defines the deferral period as
23 the calendar year prior to the EBA filing date. And
24 the DPU points out that this is the calendar year
25 accounting period. And the net power costs

1 currently included in the EBA are the net power
2 costs booked during the calendar year accounting
3 period or during the deferral period. And in
4 contrast to the DPU statement, if the net power
5 costs reported in the EBA complies with GAAP
6 accounting, this will create a clean accounting in
7 the EBA of net power costs, and it will allow those
8 net power cost items to be reconciled and tied back
9 to the FERC 41, the annual results of the operation,
10 the annual 10-K. The DPU's proposal in contrast
11 would represent a deviation from GAAP accounting and
12 would make tying those back more difficult.

13 **Q. Mr. Wilding, do you have any examples or**
14 **any illustrations that would shed light on why the**
15 **Division's proposal to do away with adjusting**
16 **accounting is not in the public interest?**

17 A. Certainly. Thank you. I actually outline
18 multiple examples in my rebuttal testimony, but a
19 real simple example would be -- say the Company had
20 a net power cost item, and it rightfully accounted
21 for it when it was incurred in 2015. But then in
22 2016, for whatever reason, it was determined that
23 the Company was overcharged in 2015. However, those
24 overcharges flow through the EBA as a net power cost
25 item. Well, in 2016, what we would do now is we

1 would make an adjusted accounting entry, and we
2 would book the incremental change or the refund of
3 those overcharges, and it would have an accounting
4 period of 2016 when the adjustment became known,
5 but it would have an operating period of 2015 simply
6 to create an audit trail that it could be traced
7 back to the initial overcharges. And currently,
8 what the Company would do is that would be included
9 in the net power costs for 2016, and it would flow
10 through the EBA and be returned to customers. And,
11 in my opinion, that's just and reasonable for them
12 to receive that refund in this scenario because they
13 paid for the initial overages the year before.
14 However, the DPU proposal would be that the Company
15 would not include that item in its net power cost,
16 and therefore the customers would not receive the
17 benefit in this scenario.

18 **Q. Let's switch to carrying charge, the**
19 **carrying charge issue. Can you describe what**
20 **parties' positions are regarding the carrying charge**
21 **issue?**

22 **A.** Yes. So all parties have proposed
23 changing the carrying charge, and pursuant to a
24 settlement agreement that we've already talked
25 about, we believe the carrying charge should not be

1 changed until the next general rate case. And at
2 that time, the Company would support a carrying
3 charge that is consistent with our other mechanisms
4 or, namely, the average corporate bond rate of the
5 preceding year. The Company does not support a
6 short-term rate, simply because the recovery of the
7 EBA -- or the amortization of the EBA -- is not
8 short term. From the beginning of the deferral
9 period until the end of the rate effective period is
10 35 months, so just one month shy of three years, and
11 this is clearly not short term.

12 Additionally, the EBA is not materially
13 different from our other mechanisms that use the
14 average corporate bond rate, and therefore it
15 doesn't warrant a different rate.

16 **Q. Can you testify to the Commission's**
17 **position on the Division's proposed modifications to**
18 **the EBA procedural schedule?**

19 A. The Company's position?

20 **Q. The Company's position.**

21 A. The Company would support a change in the
22 EBA procedural schedule to allow the DPU more time
23 to complete its review or its audit if that schedule
24 included interim rates as outlined in testimony.
25 And, in fact, there are other mechanisms we have --

1 namely the RBA -- that does include interim rates.
2 However, if it's determined that interim rates are
3 not in the public interest, we would not support a
4 change in the procedural schedule.

5 **Q. Does the Company have a position on the**
6 **OCS's proposal to modify the EBA procedural**
7 **schedule?**

8 A. Yes. So the Company opposes eliminating
9 our ability to reply to the DPU audit report at the
10 same time as all other parties, and this is because
11 the Company bears the burden to show that our costs
12 are prudent. And, therefore, in my opinion, its
13 equitable and due process would dictate that the
14 Company be allowed to respond to the audit report at
15 the same time as all other parties. However, again,
16 if the Commission were to determine that all parties
17 should have equal rounds of testimony, then it's the
18 Company's position that all intervening parties
19 should have to file direct testimony at the same
20 time or at the time of the DPU audit report.

21 MR. MOORE: Excuse me. May I
22 interject here? When you said due process, were you
23 referring to a legal proposition or more of a common
24 term for a due process such as just general
25 fairness?

1 COMMISSIONER LEVAR: I think I'm
2 going to ask Mr. Moore if he's making an objection.
3 If it's a question, it should probably wait for
4 cross-examine, but if you're making an objection --

5 MR. MOORE: I will object that he
6 offered legal conclusion to the extent that he made
7 an opinion on the due process cause of constitution.

8 COMMISSIONER LEVAR: Ms. Hogle, do
9 you want to respond to the objection, and are you
10 willing to strike that portion?

11 MR. MOORE: I'm moving to strike that
12 portion. Thank you, Chairman.

13 BY MS. HOGLE:

14 **Q. Mr. Wilding, when you mentioned due**
15 **process, what did you mean?**

16 COMMISSIONER LEVAR: At this point, do you
17 have a response to the objection before we ask
18 further questions of the witness?

19 MS. HOGLE: Yes, I do. I believe
20 that Mr. Wilding was testifying to the fairness, not
21 necessarily the legal term "due process" but the
22 fairness, and therefore I think that his objection
23 is not warranted in this case.

24 COMMISSIONER LEVAR: And I'm going to
25 deny the objection. I think due process has a legal

1 meaning but also has a general common meaning, and I
2 agree that that's the meaning to which the witness
3 was referring, so, Ms. Hogle, continue.

4 MS. HOGLE: Thank you. I'm not sure
5 that Mr. Wilding was finished with that part of his
6 testimony. Are we --

7 COMMISSIONER LEVAR: If it would help
8 to restate the question and start over with the last
9 question --

10 BY MS. HOGLE:

11 Q. Okay. So I believe that we left off on
12 the reasoning or the reasons why the Commission or
13 why the Company opposes the OCS's recommendation as
14 far as the changes to the procedural schedule. We
15 finished that one; is that correct, Mr. Wilding?

16 A. I believe so, but I can restate it.

17 Q. No, that's fine. Does the Company have a
18 position regarding the Division's proposal regarding
19 imprudent outages?

20 A. Yes. A clarifying statement from the
21 Commission regarding outages is unnecessary at this
22 time because it will not change anything. The
23 Company agrees and the statute is very clear that we
24 cannot recover imprudent costs. And each outage is
25 unique, and therefore it has to be reviewed on a

1 case-by-case basis. Therefore, a statement is not
2 going to -- a statement at this time from the
3 Commission is not going to change the fact that each
4 outage has to be reviewed on a case-by-case-basis
5 and that there will be back and forth between
6 parties on the prudence of the outage.

7 And, furthermore, the Company has never
8 argued that we cannot be held responsible simply
9 because a third party was involved. However, we
10 have argued that the decision to hire a third
11 party -- the selection process, the contract itself,
12 and the management of that contract -- were all
13 prudent decisions, and therefore the outage should
14 not be deemed imprudent. And the standard for
15 determining prudence is super clear in that a
16 reasonable utility -- knowing what a utility should
17 have known -- would have incurred that cost. And,
18 like I said, because an outage is unique, regardless
19 of whether or not a third party is involved, it has
20 to be reviewed on a case-by-case basis. And for
21 that reason, the Company does not believe a
22 statement from the Commission is necessary at this
23 time.

24 **Q. Finally, what is the Company's position**
25 **regarding wheeling revenues in the EBA and including**

1 **them in the EBA?**

2 A. So in regard to willing revenues, it's the
3 Company's preference that they stay in the EBA
4 simply for administrative convenience. We already
5 have a deferral mechanism in place for the EBA and
6 they should just stay there.

7 **Q. Mr. Wilding, does that conclude your**
8 **testimony?**

9 A. Yes. Thank you for your time.

10 MS. HOGLE: Mr. Wilding is available
11 for cross-examination or questions from the
12 Commission. Thank you.

13 COMMISSIONER LEVAR: Thank you. Ms.
14 Schmid?

15 EXAMINATION

16 BY MS. SCHMID:

17 **Q. Thank you. Good morning, Mr. Wilding.**
18 **Would the Division's proposal regarding the mismatch**
19 **issue prevent the Company from reporting expenses,**
20 **costs, and the like in its books according to GAAP?**

21 A. No, but I don't think there's a connection
22 between the mismatch issue and the adjusted
23 accounting.

24 **Q. Does the Company only keep one set of**
25 **books, or are there books for tax purposes, books**

1 **for regulatory accounting, and books for GAAP**
2 **accounting, for example?**

3 A. So the Company has -- I guess you would
4 say the Company has one set of books, and then
5 adjustments are made for different reporting
6 purposes. And the outcome is, yes, a different set
7 of reporting.

8 Q. Let's go to adding things into the EBA.
9 So you propose that chemicals, start-up fuel costs,
10 and production tax credits be included in the EBA;
11 is that correct?

12 A. Yes.

13 Q. Is it correct that you characterize these
14 costs as volatile and that they vary with generation
15 and weather?

16 A. Yes. They do vary with generation and
17 weather.

18 Q. Are there other items that you would
19 characterize as volatile and that vary with
20 generation and weather?

21 A. At this time, no. That's why we limited
22 the scope of what we would want to include in the
23 EBA to items that have a similar profile to net
24 power costs.

25 Q. So is it your testimony that the Company

1 would not seek to expand the scope of the EBA to
2 include other things that are volatile and that vary
3 with generation and weather?

4 A. It would be my testimony that at this time
5 we do not have plans to seek to the EBA, but I would
6 not put a definitive stamp on that, that that will
7 never change.

8 Q. So it's possible that the EBA scope could
9 be expanded?

10 A. Yes, with Commission approval. But, like
11 I said, at this time, we have no plans as a company
12 to ask for inclusion of additional costs besides
13 what's already been asked for.

14 Q. Turning now to outages caused by
15 contractors and agents, do you recall Mr. Thomson's
16 statement that the Commission should clarify that
17 ratepayers may pay -- should not pay for outage
18 costs where imprudence is due to the actions of the
19 Company's agents or contractors?

20 A. I do recall that statement, yes.

21 Q. And is it true that you said such a
22 statement is not necessary?

23 A. Yes.

24 Q. So do you agree that the Commission may
25 order the Company to pay for costs related to

1 **imprudent actions caused by the Company's agents or**
 2 **contractors?**

3 MS. HOGLE: Objection. I believe
 4 that Mr. Wilding does not have sufficient facts or
 5 context by which he can answer that question.

6 COMMISSIONER LEVAR: Do you want do
 7 respond to the objection, Ms. Schmid?

8 BY MS. SCHMID:

9 **Q. Let's see if I can rephrase. Is it your**
 10 **understanding that the Commission may allow or**
 11 **disallow recovery of certain costs?**

12 A. Yes. The Commission would determine the
 13 question of prudence on any issue brought before it.

14 **Q. So given -- let's do a hypothetical.**
 15 **Given that an outage was caused by the Company's**
 16 **agents or contractors, is it possible that -- using**
 17 **this hypothetical -- the Commission could order that**
 18 **the Company not recover costs associated with those**
 19 **outages?**

20 A. As I stated, each outage is unique, so I
 21 would not want to opine on a hypothetical outage
 22 without the details necessary to make a prudence
 23 call. And each outage is unique, which is why it
 24 has to be reviewed on a case-by-case basis.

25 **Q. Are you then saying that just because an**

1 **outage was caused by a Company's contractor or agent**
2 **that the Company should not be responsible?**

3 MS. HOGLE: Objection. I believe
4 he's already stated that he cannot answer a
5 hypothetical question without any more context or
6 facts.

7 COMMISSIONER LEVAR: Ms. Schmid, do
8 you want to respond to the objection?

9 MS. SCHMID: Let me rephrase, because
10 I could make a hypothetical and I could give you
11 lots and lots of facts, but that would take a lot of
12 time. So let's see if I can just rephrase, so just
13 give me just a moment, please.

14 BY MS. SCHMID:

15 Q. **Does the Company hire contractors?**

16 A. Yes.

17 Q. **And there is -- and so there would be a**
18 **contract between the Company and the contractor; is**
19 **that correct?**

20 A. Yes.

21 Q. **Does the Commission determine who the**
22 **Company hires?**

23 A. No. However, all contracts would be --
24 any contract the Company would enter into could be
25 subject to review at any time.

1 Q. So it is the Company's determination of
2 who to hire and under what conditions; is that
3 correct?

4 A. Yes.

5 Q. You talked about the benefits of the EBA,
6 and you said that one benefit of the EBA is that it
7 helps mitigate the need for more frequent general
8 rate cases. Did I paraphrase that correctly?

9 A. Yes.

10 Q. Could there be a time when more frequent
11 general rate cases could benefit ratepayers?

12 MS. HOGLE: Objection. I'm sorry.
13 I'm not sure what the relevance is of the question
14 with respect to the initial point that Ms. Schmid
15 was trying to make.

16 COMMISSIONER LEVAR: Ms. Schmid, do
17 you want to respond to the objection?

18 MS. SCHMID: Yes. I'm exploring
19 whether or not his statement that an EBA is helpful
20 because it helps prevent more frequent general rate
21 cases is true.

22 COMMISSIONER LEVAR: I'm going to
23 allow that question to be answered.

24 BY MS. SCHMID:

25 Q. Would a general rate case benefit

1 **ratepayers if the ROE set in that rate case was,**
2 **say, 9.5 instead of 9.8?**

3 A. You know, there again, outside my realm of
4 expertise. I'm not involved in setting the ROE in a
5 general rate case. However, I would say that a
6 financially healthy utility is beneficial to
7 customers in that we are able to provide safe and
8 reliable energy to customers. And then I guess I
9 would further that, that public interest and just
10 and reasonable is not synonymous with lower rates.

11 **Q. Is it true, though, that if the Company is**
12 **over earning, it is the Company's shareholders that**
13 **benefit, not the ratepayers?**

14 MS. HOGLE: Objection. I'm not sure
15 that is within the scope of Mr. Wilding's testimony.

16 MS. SCHMID: He did talk about
17 benefits of not having general rate cases, so I
18 believe that it should be included.

19 COMMISSIONER LEVAR: I do agree that
20 it's within the scope of speaking of benefits of not
21 having a general rate case. I'll allow this
22 question.

23 THE WITNESS: Sorry. Can you repeat
24 the question?

25 BY MS. SCHMID:

1 Q. If the Company is over earning, do the
2 benefits flow to the Company's stockholders rather
3 than the ratepayers? Financial benefits.

4 A. So I guess hypothetically if a utility was
5 over earning, shareholders would benefit.

6 MS. SCHMID: Thank you. Those are
7 all my questions.

8 COMMISSIONER LEVAR: Thank you.
9 Mr. Moore.

10 EXAMINATION

11 BY MR. MOORE:

12 Q. Hello, Mr. Wilding. Can I direct you to
13 page 7 of your rebuttal testimony?

14 A. Okay.

15 Q. Did you mean to imply on page 7 of your
16 rebuttal testimony that a settlement with the Office
17 entered into in Docket 14-035-147, the Deer Creek
18 docket, precludes the Office from arguing that in
19 this present docket, the Commission should --
20 Commission should consider -- let me start over.
21 I'm sorry. I know I confused you. Did you mean to
22 imply that on page 7 of your rebuttal testimony that
23 the settlement the Office entered into in Docket
24 14-035-147 precludes the Office from arguing in this
25 docket that the Commission should consider the

1 carrying charge despite the fact the Office argues
2 any changes should be implemented in the next
3 general rate case?

4 A. No. And, in fact, I think I stated that
5 the Company would support a change at the time of
6 the next general rate case to the rate consistent
7 with our other mechanisms, which is the average
8 corporate bond rate of the preceding year.

9 Q. May I direct you to page 8 of your
10 rebuttal testimony, specifically, lines 163, 164,
11 165. Didn't you state in your rebuttal testimony
12 that the Company must wait 23 months to recover any
13 paid deferral?

14 A. I'm sorry. My line numbering is a little
15 different, but yes, I did say that.

16 Q. Did you state in your direct testimony
17 today that the Company must wait 35 months?

18 A. Yes. And so the difference in the end
19 would be 35 months -- would be from the beginning of
20 the deferral period to the end of the rate-effective
21 period, and the 23 months would be from the end of
22 the deferral period to the end of the rate-effective
23 period. And so the deferral period is 12 months,
24 one year, and so that's the difference between the
25 35 and 23.

1 Q. Thank you for clarifying that. You
2 testified that the Commission should reject the
3 Office's suggestion to use a short-term interest
4 rate in the carrying charge because of, say, 35
5 months doesn't qualify as a short-term interest
6 rate.

7 A. Yes, correct.

8 Q. Isn't it true that as a matter of simple
9 mathematics, a 12-month period is closer to the
10 30-month period than a period of 10 or 20 years,
11 which would be associated with the long-term bonds?

12 A. Yes.

13 Q. It's also true, isn't it, that in your
14 written testimony, you did not disagree with
15 Mr. Martinez's factual assertion that the AAA and
16 BBB corporate bond rates, the 90-day non-fiscal
17 commercial paper rates, and the 1-year treasury bond
18 rates are below -- and, in some cases, significantly
19 below -- the 6 percent carrying charge; isn't that
20 correct?

21 A. I'm sorry. Will you restate that?

22 Q. Just as a matter of fact, you have not
23 taken the position that the testimony offered by
24 Mr. Martinez concerning the AAA and BBB corporate
25 bond rates, the 90-day non-fiscal commercial paper

1 rates, and the 1-year treasury bond rates are
2 below -- and, in some cases, significantly below --
3 the 6 percent carrying charge?

4 A. That's correct. In fact, the position we
5 have taken is that the carrying charge in the EBA
6 effective with the next general case should be
7 consistent with the other mechanisms the Company
8 has.

9 Q. And what position is that as opposed to
10 the 6 percent carrying charge?

11 A. So the Company's position is that the EBA
12 carrying charge should remain at 6 percent until the
13 next general rate case, which is pursuant with the
14 Deer Creek settlement. And then at that time, the
15 carrying charge should be changed to the average
16 corporate bond rate of the preceding year, which is
17 consistent with all of the other mechanisms and was
18 recently set within the last year.

19 Q. What was it set during the last -- I'm
20 sorry. I understand you. I misstated the question.
21 Let me ask you a hypothetical question then. If the
22 carrying charge charged by an EBA deferral is higher
23 than the short-term interest rates, isn't it true
24 that under that situation, the Company enjoys a
25 de facto loan of a favorable interest rate at the

1 **expense of the EBA deferral account and therefore at**
2 **the expense of the ratepayer?**

3 MS. HOGLE: Objection.
4 Argumentative.

5 MR. MOORE: He's on cross.

6 COMMISSIONER LEVAR: Ms. Hogle, do
7 you want to respond?

8 MS. HOGLE: I'm not sure what the
9 term "favorable" is or "at the expense of the
10 ratepayer." It's taken out of context. Favorable,
11 that could be a number of things. So that is why I
12 believe it's argumentative.

13 COMMISSIONER LEVAR: Anything further
14 from you, Mr. Moore?

15 MR. MOORE: It was a hypothetical
16 question. By favorable I meant higher.

17 COMMISSIONER LEVAR: I think the
18 question is leading, but that's appropriate for
19 cross-examination, so I think I'll allow that
20 question to be answered.

21 THE WITNESS: I'm sorry. Can you
22 repeat it?

23 BY MR. MOORE:

24 **Q. Yes. Isn't it true in a hypothetical**
25 **situation that if a carrying charge was based on**

1 long-term interest rates, the Company would actually
2 receive the benefit of a higher rate than short-term
3 rates at the expense of the EBA deferral account and
4 at the expense of the ratepayers?

5 A. Not necessarily, because the EBA variances
6 can go both ways. It can be a giveback to customers
7 as well as a recovery from customers. And then,
8 also, the Commission has determined that -- the
9 Commission ultimately determines what the prudent
10 carrying charge is, and, so in that fact, or given
11 that, I would say because the Commission has
12 determined that the carrying charge is prudent that
13 that's what it is.

14 Q. But the Commission hasn't determined that
15 at this point in this docket, have they?

16 A. Earlier in this docket when they approved
17 the EBA, they approved a 6 percent carrying charge.

18 Q. But you agree that the Commission could
19 consider changing the carrying charge at the end of
20 the next general rate case?

21 A. Yes.

22 Q. And isn't it true that from its inception
23 to the date, the Company has generally almost always
24 benefited from the payback of the EBA? That,
25 meaning that the true-up allowed the Company to

1 **recover more funds in addition to this high carrying**
 2 **charge.**

3 MS. HOGLE: Objection. I'm not sure
 4 that this witness should be speaking to whether the
 5 Company has benefited or not. He doesn't see the
 6 books on what the amounts of those rates would be in
 7 addition to what the Commission allows for recovery.
 8 He doesn't see those amounts, so he really has no
 9 context in which to respond to that question.

10 COMMISSIONER LEVAR: Thank you.
 11 Mr. Moore, do you want to respond to that question?

12 MR. MOORE: Yes. He testified at
 13 length about the carrying charge, of the 6 percent
 14 carrying charge. If he's not qualified to answer my
 15 question, he's not qualified to offer this
 16 testimony. So I would ask the Commission to either
 17 direct the witness to testify or strike his
 18 testimony.

19 COMMISSIONER LEVAR: I'm going to
 20 rule that the question is within the scope of his
 21 testimony and so allow the witness to answer within
 22 the scope of his knowledge.

23 A. So in answer to your question, yes, the
 24 EBA has resulted in the recovery of net power costs
 25 from customers.

1 BY MR. MOORE:

2 Q. At a 6 percent interest rate?

3 A. Yes.

4 Q. I'd like to turn really quickly to the
5 imprudence issue and ask just one question. I don't
6 want to retrack your testimony with the Division,
7 but, to clarify for me, you reject the contention
8 that under no circumstances the Company should be
9 held liable for prudent outages caused by third
10 party contractors when the Company, as a result of
11 its own actions in negotiating the contract with a
12 third party, has no contractual ability to seek
13 recourse from the third party?

14 A. I didn't quite capture your question and
15 mostly because I couldn't hear a lot of it.

16 COMMISSIONER LEVAR: Ms. Hogle, were
17 you -- I don't know if you were making an objection.
18 I'm not sure if I caught what the question was from
19 that, too, so I don't know if a rephrase is more
20 appropriate than going through an objection at this
21 point.

22 BY MR. MOORE:

23 Q. Your testimony generally has been that
24 imprudence decisions should be made on a
25 case-by-case basis?

1 A. Correct.

2 Q. So therefore, you reject any contention,
3 hypothetically, that under no circumstances should a
4 company be held liable for prudent outages caused by
5 third party contracting partners when the company,
6 as a result of its own acts in negotiating the
7 contracts with the third party, has no contractual
8 ability to seek recourse from that third party?

9 A. I guess what I would say is our position
10 is that outages have to be reviewed on a
11 case-by-case basis; that they're unique. Whether or
12 not a third party is involved, then the Company's
13 actions have to be reviewed on a case-by-case basis
14 to determine prudence.

15 Q. So you don't reject the notion that in a
16 certain circumstance, a company should not be held
17 liable for the imprudent acts of a third party
18 despite the fact the company has chosen to negotiate
19 the contract in such a manner that the company does
20 not have the ability to seek recourse from the third
21 party?

22 MS. HOGLE: Objection. Asked and
23 answered.

24 COMMISSIONER LEVAR: Do you want to
25 respond to the objection?

1 MR. MOORE: Mr. Wilding has
2 repeatedly stated that the prudence determination
3 has to be made on a case-by-case basis. My question
4 just seeks to illustrate the fact that that
5 question, that that position, excludes the
6 possibility of the Company making the argument in
7 every case that they are not liable for the manner
8 in which they contracted with the third party.

9 COMMISSIONER LEVAR: And I understand
10 the point you're making, and I am going to rule the
11 question has been asked and answered.

12 BY MR. MOORE:

13 Q. Could you turn to page 6 of your rebuttal
14 testimony?

15 A. Okay.

16 Q. Is it true that your testimony is that the
17 Company should have additional rounds of testimony
18 beyond the rounds of testimony granted to the other
19 parties because the Company bears the burden of
20 demonstrating the cost -- that a cost is prudent?

21 A. Yes. It is our position and the Company's
22 position that the rounds of testimony should not
23 change and remain as they are currently set in the
24 EBA procedure.

25 Q. Is it not true that in many proceedings in

1 front of this Commission -- outside of the EBA
2 setting -- the Company has the burden of proof when
3 additional rounds of testimony are not offered?

4 A. I cannot answer that. My limitation to
5 hearings and proceedings outside of an EBA docket in
6 Utah are very limited.

7 MR. MOORE: That's all I have. Thank
8 you.

9 COMMISSIONER LEVAR: Mr. Dodge?

10 MR. DODGE: Thank you, Mr. Chairman.

11 EXAMINATION

12 BY MR. DODGE:

13 Q. Good morning, Mr. Wilding.

14 A. Good morning.

15 Q. You testified that in your view, a benefit
16 of the EBA is reducing the amount of general rate
17 cases. I assume that's based on the burden to all
18 parties of a general rate case?

19 A. Yes.

20 Q. You acknowledge that there will be a
21 burden if the proposal to do annual net power cost
22 updates each year is instituted, that that will also
23 create a burden?

24 A. Yes.

25 Q. Do you agree that, effectively, the

1 Legislature's action in the STEP legislation
2 effectively extended the pilot period through 2019?

3 A. Yes.

4 Q. If so, then, isn't your proposal that the
5 Commission determine now that the EBA should be made
6 permanent premature if the pilot is not over?

7 A. I think that could be one position, and I
8 think the Company would support not making that
9 change until the end of the pilot program.

10 Q. From a nonlegal perspective, Mr. Wilding,
11 is it your view that so long as a cost item is run
12 through the Energy Balancing Account, it is not
13 retroactive ratemaking because the statute says that
14 an energy balancing account is not retroactive
15 ratemaking?

16 A. From a nonlegal opinion, yes, my opinion
17 is that the EBA does not constitute retroactive
18 ratemaking.

19 Q. So, for example, if a party were to
20 propose today that the EBA include an adjustment for
21 bonus tax depreciation that's not captured in
22 current rates and propose that go to the EBA, would
23 it be your nonlegal view that wouldn't be
24 retroactive going back to 2014 and forward?

25 A. So I don't like your hypothetical

1 situation. However, I guess I would say our
2 position would be that bonus depreciation is not a
3 net power cost item.

4 **Q. And neither is chemicals, right?**

5 A. That's true, but as a profile similar to
6 net power costs.

7 **Q. But with my hypothetical, if one were to**
8 **successfully argue before this Commission that**
9 **something like bonus tax depreciation, the impacts**
10 **of that, should be reflected through the EBA, your**
11 **nonlegal position would be that isn't retroactive**
12 **because the EBA is declared by statute not to be**
13 **retroactive?**

14 MS. HOGLE: Objection. Asked and
15 answered.

16 MR. DODGE: I think he fought my
17 hypothetical. Now I'm asking him to not fight the
18 hypothetical and answer the question.

19 COMMISSIONER LEVAR: If you would
20 just clarify what your answer was to the question,
21 Mr. Wilding.

22 A. So yes, the Company's position is that the
23 EBA does not constitute retroactive ratemaking and
24 that the bonus tax depreciation is not a net power
25 cost item.

1 BY MR. DODGE:

2 Q. But if the Commission were to rule that
3 that will go through the EBA, your nonlegal
4 position -- I recognize you don't make the legal
5 arguments for the Company -- but your nonlegal
6 position would be that retroactive ratemaking
7 wouldn't be a problem in bringing back bonus
8 depreciation impacts from 2014 on?

9 A. So my nonlegal opinion would be for the
10 Commission to decide that because the statute
11 regarding the EBA does identify net power cost
12 items -- does identify specific net power cost
13 items. And so I guess my nonlegal opinion would be
14 that that's something the Commission would have to
15 determine.

16 Q. Help me understand. Are you saying in
17 your view the statute only addresses net power cost
18 items in the EBA? That that's all that's allowed,
19 again, in your nonlegal view?

20 A. I mean, again, I'm not an attorney. I
21 believe the Commission has latitude to make the
22 decisions that it deems prudent in accordance with
23 the statute. I think the statute identifies what
24 net power costs are and then also states that the
25 EBA is not retroactive ratemaking.

1 Q. I'm trying to understand the basis for
2 some of your arguments in response to Mr. Thomson,
3 Mr. Wilding, and Mr. Thomson made two affirmative
4 proposals for changes to the EBA as a matter of
5 policy. The first one was that prior period
6 adjustments not be allowed. On that one, as I
7 understand it, you responded on the merits and argue
8 and disagree with them and then urge the Commission
9 to allow prior period adjustments to be made, and
10 yet -- even though in this case no one is proposing
11 a prior period adjustment, right?

12 A. That is true. And I would just -- I
13 wouldn't call it a prior period adjustment. I'd
14 rather call it an adjusted accounting entry, an
15 accounting entry that's made in the normal course of
16 business to adjust something that's already been
17 booked.

18 Q. Using your characterization -- I didn't
19 mean to mischaracterize your testimony. On that
20 issue, there's nothing in this case where someone is
21 proposing either to allow or disallow a specific
22 adjustment of that nature, is there?

23 A. That's correct. It is all principled.

24 Q. And yet, you responded saying the
25 Commission should rule that those kind of

1 **adjustments are allowed, right?**

2 A. I responded saying that the accounting for
3 actual net power costs as reported in the EBA are
4 the actual net power costs as booked in the deferral
5 period and therefore should be allowed in the EBA.

6 Q. Right. My point is a different one; it's
7 a procedural one. You're not arguing that the
8 Commission shouldn't rule on that issue because
9 there's nothing in this docket where someone is
10 making a specific prior adjustment or an adjustment
11 of the nature you described in this case. That
12 hasn't been your testimony, right?

13 A. That's correct.

14 Q. And yet, you did say that on the other
15 issue, which is the contractor issue, you're saying
16 because it's an item that requires the specifics of
17 the circumstance, the Commission shouldn't even rule
18 on it now. Don't you see those two positions as
19 inconsistent?

20 A. No. Because, one, using adjusting
21 accounting entries is just typical, standard
22 accounting according to GAAP accounting principles.
23 And so at that point, every single entry in our
24 actual net power cost could still be reviewed
25 individually on a case-by-case basis for prudence.

1 Regardless of whether it was an adjusting accounting
2 entry or just a regular accounting entry, it could
3 still be reviewed for prudence. However, with the
4 outages, I'm saying they should be reviewed on a
5 case-by-case basis, and it's not as clean as an
6 accounting method the way net power costs are
7 booked.

8 Q. These adjustments that you may propose
9 from a prior period should be reviewed on its own
10 merits under the specific circumstances, correct?

11 A. Yes, correct. As with all net power
12 costs.

13 Q. Right. And so my point is if the
14 Commission on this docket can appropriately rule on
15 that accounting adjustment, can it not also rule as
16 a policy matter from your perspective -- I'm not
17 talking legally -- on whether or not contractor
18 imprudence falls on ratepayers versus -- or can fall
19 on the utility versus the ratepayers?

20 MS. HOGLE: Objection. Asked and
21 answered.

22 MR. DODGE: No, I don't believe he
23 has answered this question.

24 COMMISSIONER LEVAR: I'm going to
25 deny the objection.

1 A. So definitely the Commission can rule.
2 And my position would be more along the lines that
3 it's not necessary because it's not going to change
4 anything. Even if the Commission rules that an
5 outage can be deemed as imprudent when a third party
6 is involved, there will still be discussion about
7 the prudence regarding the Company's actions, and it
8 will still need -- as the DPU and the Office have
9 both confirmed, there still needs to be a
10 case-by-case analysis of that issue, and therefore
11 it's not going to change anything. And that would
12 be my position is that it's not going to do away
13 with the need for a case-by-case analysis or a
14 case-by-case review, and therefore it's not really
15 necessary.

16 BY MR. DODGE:

17 **Q. So it won't change the fact that they**
18 **still need to do a case-by-case analysis of whether**
19 **the actions leading to the outage were imprudent?**

20 A. That's correct.

21 **Q. There is, though, is there not, a specific**
22 **policy issue that you're disputing with the Division**
23 **that the Commission could resolve here? Do you not**
24 **agree with that?**

25 A. I would maybe need you to clarify a little

1 bit.

2 Q. Then I will. If I understood your prior
3 testimony -- and tell me if I'm wrong, and I'm
4 summarizing, not trying to change it --

5 A. I understand.

6 Q. -- it was that you believe that the
7 prudence issue relative to the Company in hiring a
8 contactor is whether it was prudent under the
9 circumstances when they hired the contractor -- to
10 hire that particular contractor -- and enter into
11 the contract that was entered into, not the issue of
12 whether the contractor was imprudent in the way it
13 handled its obligations, which may have lead to the
14 outage?

15 A. Yes. So the Company's position is that we
16 should be held responsible for the standards of
17 prudence as outlined in the Utah statute, which is,
18 by my understanding, that prudence is determined
19 based on the actions of the utility given what the
20 utility should have known if it would have been
21 reasonable that the utility incur that expense.

22 Q. So what I'm trying to flesh out is, is
23 there not, therefore -- do you not understand the
24 Division to be taking a position that using that
25 same standard, the prudence of the contractor the

1 Company hires falls to the Company and not to its
2 ratepayers, and therefore, regardless of whether
3 it's prudent to enter into the contract at the time,
4 if the contractor was imprudent in carrying out its
5 activities, that falls to the Company and not to
6 the ratepayer. Isn't that their position?

7 A. Yes. I would agree with you, and I would
8 say the Company's position is that prudence is not
9 perfection, and therefore, the Company's management
10 of that contract and that relationship and the
11 Company's actions should be what determines prudence
12 as according to the statute.

13 Q. See, right now, I'm not trying to argue
14 with you over that because I didn't file testimony
15 on that point. I'm not trying to argue with you
16 over how -- what is and isn't prudent. But I'm
17 trying to point out, isn't there a policy issue
18 before the Commission that they can properly resolve
19 in this one whether the Company's view of looking
20 only at the prudence of entering into the contract
21 under the circumstances at that time is relevant or
22 the Division's view that the contractor's actions in
23 undertaking its activities, its obligations under
24 the contract, if they're imprudent, that falls back
25 to the Company.

1 MS. HOGLE: Objection. Asked and
2 answered.

3 COMMISSIONER LEVAR: Do you want to
4 respond to the objection, Mr. Dodge?

5 MR. DODGE: If you've answered it,
6 please tell me what the answer was; I didn't hear
7 it.

8 MS. HOGLE: Before he answers, I'd
9 like to renew my objection. I think he's attempted
10 to respond several times.

11 MR. DODGE: He's responded -- if I
12 may, Mr. Chairman -- but I'm trying to get him to
13 acknowledge whether -- agree with me or not that
14 there's a policy issue before the Commission that
15 doesn't require a look into the specific
16 circumstances of each imprudent or allegedly
17 imprudent act. It's whether we can even look to the
18 allegedly imprudent acts of a contractor is the
19 point I believe the Division was trying to make.
20 And I'm saying does he not agree that's a policy
21 issue before this Commission that it could resolve.

22 COMMISSIONER LEVAR: And I do
23 understand the point, but I'm going to affirm the
24 objection that he's answered, to the extent of his
25 knowledge and opinion that specific question.

1 BY MR. DODGE:

2 Q. Okay. And to make sure there's no
3 confusion on this, is it the Company's view that the
4 Commission in this docket can and should rule on
5 what the carrying charge should be effective at the
6 next general rate case?

7 A. The Company's position is that the
8 carrying charge should remain at 6 percent. And
9 whether the Commission should rule on what the
10 change would be at the next general rate case, I
11 would leave that to the Commission to decide whether
12 they should rule or not. But the Company's position
13 is that we would support a carrying charge effective
14 with the next general rate case consistent with our
15 other mechanisms. But I would leave that to the
16 Commission whether or not they should rule or will
17 rule.

18 Q. Mr. Wilding, in your surrebuttal testimony
19 on page 11, I'll read this -- you don't necessarily
20 have to go there, but it's starting on line 202 --
21 you wrote, "Annual NPC updates can reduce the
22 inevitable deviations, but parties should work
23 together to come up with a procedural schedule that
24 limits the amount of rate changes for customers and
25 allows more time for the DPU's audit of the EBA."

1 I'd just like to ask in what context you're
2 suggesting that working together should occur to
3 come up with a better procedural schedule?

4 A. In the context that annual updates of base
5 net power costs are implemented.

6 Q. You understand today that by Commission
7 order, there's a very specific schedule. Are you
8 suggesting the Commission not rule on whether that
9 should be changed here and defer that to a
10 collaborative effort by the customers and the
11 Company and the regulators or what? I just want to
12 understand what you were suggesting.

13 A. So only if annual updates are -- only if
14 annual updates are implemented in the EBA would
15 there need to be some collaborative effort to come
16 up with a schedule.

17 MR. DODGE: I had misunderstood that.
18 Thank you. I have no further questions.

19 COMMISSIONER LEVAR: Thank you. Mr.
20 Evans?

21 MR. EVANS: I think I'll pass on this
22 witness. Thank you.

23 COMMISSIONER LEVAR: Any redirect,
24 Ms. Hogle? Or if you have lengthy redirect, should
25 we save it for after lunch or would you rather go

1 ahead now?

2 MS. HOGLE: We can break for lunch.

3 COMMISSIONER LEVAR: Why don't we
4 break until 1:10. Thank you.

5 (A recess was taken.)

6 COMMISSIONER LEVAR: Mr. Wilding,
7 you're still under oath, and we'll go to Ms. Hogle
8 for any redirect.

9 REDIRECT EXAMINATION

10 BY MS. HOGLE:

11 Q. I just have a few questions. Thank you.
12 Mr. Wilding, do you recall Ms. Schmid asking you
13 about over earning?

14 A. Yes.

15 Q. Isn't it true that the financial impact of
16 both over and under earning rests with stakeholders,
17 not customers?

18 A. Yes.

19 Q. And you were also asked about the number
20 of books the Company keeps as it related to line of
21 questioning related to adjusting accounting entries.
22 Do you recall that?

23 A. Yes.

24 Q. To your knowledge, have any parties in any
25 of the other Company's service territory, both east

1 and west, made similar recommendations regarding
2 doing away with adjusting accounting entries?

3 A. No.

4 Q. And so the Company is allowed and does
5 make adjusting accounting entries in accordance with
6 GAAP and in the ordinary course of business in all
7 of its jurisdictions, correct?

8 A. Yes.

9 Q. And, finally, Mr. Wilding, can you clarify
10 what Rocky Mountain Power's position is on carrying
11 charges?

12 A. Yes. Our position is that the carrying
13 charge should remain in place at 6 percent as
14 approved by the Commission previously and in
15 accordance with the Deer Creek settlement docket
16 until the next general rate case. And if the
17 Commission wishes to decide or to order a change
18 effective with the next general rate case, the
19 carrying charge rate should be consistent with our
20 other mechanisms, namely, the average corporate bond
21 rate of the preceding year.

22 MS. HOGLE: I have no other redirect
23 questions for the witness.

24 MS. SCHMID: Mr. Chairman, from
25 Counsel's questions, it appears to me that she might

1 have misunderstood our position. May I ask a couple
2 of clarifying questions?

3 COMMISSIONER LEVAR: I was going to
4 allow everyone a chance for recross if they wanted
5 to.

6 EXAMINATION

7 BY MS. SCHMID:

8 Q. So did you understand that I was not
9 suggesting that you forego making GAAP accounting
10 adjustments to your non-regulatory books?

11 A. Yes.

12 MS. SCHMID: That's my question.

13 COMMISSIONER LEVAR: Mr. Moore, any
14 recross?

15 MR. MOORE: No recross. Thank you.

16 COMMISSIONER LEVAR: Thank you.

17 Mr. Dodge?

18 MR. DODGE: No questions.

19 COMMISSIONER LEVAR: Mr. Evans, you
20 didn't have any cross. Thank you, Mr. Wilding. I'm
21 sorry, wait. Commissioner Clark, any questions for
22 you?

23 COMMISSIONER CLARK: No questions.

24 COMMISSIONER LEVAR: Commissioner
25 White?

1 COMMISSIONER WHITE. Just a couple of
2 questions. The first one is out of curiosity.

3 EXAMINATION

4 BY COMMISSIONER WHITE:

5 Q. Are you aware of last year's average
6 corporate bond rate?

7 A. Currently, I couldn't tell you off the top
8 of my head.

9 Q. The second question -- I hate to go back
10 there, but I'm admittedly a bit confused in terms
11 of, I guess, the Company's perspective in terms of
12 this whole outage prudence review. I think I
13 heard -- I know there was some back and forth --
14 and, I guess, disabuse me if I was incorrect on the
15 Company's position, but is it the Company's position
16 that once the contract is, you know, signed,
17 whatever, that at that point -- and there's some
18 evaluation of that but beyond that -- that's kind of
19 the end of prudence review beyond that point?

20 A. No. I would say our position is that each
21 outage is unique and has to be reviewed on a
22 case-by-case. But the standard of prudence is based
23 upon what the Company should have known and if they
24 would have reasonably incurred those costs knowing
25 what a utility would have known. And so regardless

1 of whether the third party is involved in an outage
2 or what caused the outage, whether it was -- what
3 part in the process caused the outage, it still has
4 to be reviewed on a case-by-case basis. And that's
5 not going to change even with a statement from the
6 Commission in my opinion.

7 Q. So after a contract is signed, even if
8 there's something beyond that where it's the fault
9 or the alleged fault of a third party, the
10 Commission would still have discretion of whether to
11 make a determination of whether that was, I guess,
12 ultimately the Company's administration of the
13 contract was prudent?

14 A. Yes, I believe so. Yes.

15 Q. Okay. I frankly am still not sure why
16 that's different, you know, than what's currently
17 the practice. I mean, help me understand that.
18 What is the Division trying to address here?

19 A. I guess I would agree with you, and that's
20 why I think nothing will change. And so my thought
21 is -- I mean, I don't know. I don't want to speak
22 for the Commission or, excuse me, the Division and
23 what they're trying to get. But it's my opinion
24 that nothing would change the Commission's statement
25 on the outages of prudence or prudence of outages.

1 COMMISSIONER WHITE: Okay. That's all I
2 have, Chair.

3 COMMISSIONER LEVAR: I don't have anything
4 else. Thank you, Mr. Wilding. Ms. Hogle, anything
5 else from you?

6 MS. HOGLE: No further questions.
7 The Company rests.

8 COMMISSIONER LEVAR: Thank you.
9 Mr. Moore?

10 MR. MOORE: The Office would like to
11 call Danny Martinez.

12 DANNY A.C. MARTINEZ,
13 having been first duly sworn to tell the truth, was
14 examined and testified as follows:

15 EXAMINATION

16 BY MR. MOORE:

17 Q. Could you please state your name, address,
18 and occupation for the record?

19 A. Yes. My name is Danny A.C. Martinez. I
20 am a utility analyst for the Office of Consumer
21 Services. My business address 160 East 300 South,
22 Salt Lake City, 84111.

23 Q. Did you prepare direct testimony on
24 September 21st, rebuttal testimony on November 16th,
25 and surrebuttal on December 15th in 2016 for this

1 **docket?**

2 A. Yes.

3 **Q. Do you have any changes to be made to that**
4 **testimony?**

5 A. No.

6 **Q. If I ask you the same questions, would**
7 **your answers be the same?**

8 A. Yes.

9 MR. MOORE: Your Honor, at this
10 point, I move for admission of his testimony.

11 COMMISSIONER LEVAR: If any party
12 objects, please indicate. I'm not seeing any. The
13 motion is granted.

14 BY MR. MOORE:

15 **Q. Have you prepared a summary of your**
16 **testimony?**

17 A. I have.

18 **Q. Would you like to give it?**

19 A. Yes. Good afternoon, everyone. I filed
20 direct, rebuttal and surrebuttal testimony in this
21 EBA evaluation docket addressing many of the
22 Office's concerns and positions about the EBA.
23 Mr. Phil Hayet will also be presenting some of the
24 Office's issues. I addressed the following: The
25 EBA carrying charge modification of the filing

1 schedule; an additional EBA evaluation; the nature
2 of the EBA; the test period mismatch issue; and
3 removing wheeling revenues from the EBA deferral
4 calculation.

5 Regarding the EBA carrying charge, I cited
6 docket 15-035-69 as the basis for addressing the
7 issue in this current docket. The Commission
8 stated, "With respect to the EBA, we conclude
9 PacifiCorp's argument that the EBA carrying charge
10 interest rate should not be changed during the pilot
11 period and should be evaluated during the EBA
12 evaluation in 2016 is reasonable." This docket has
13 been established as a venue in which parties may
14 propose changes to the EBA carrying charge. While
15 6 percent was considered to be reasonable as the
16 carrying charge cost rate at the inception of the
17 EBA, interest rates have dropped since the carrying
18 charge rate was set and should be adjusted to
19 reflect current financial conditions.

20 In my direct testimony, I recommended that
21 the Commission should adopt a short-term bond rate
22 as the basis for establishing a new EBA carrying
23 charge. Since the EBA deferral period is defined as
24 the calendar year prior to the EBA filing date,
25 short-term rates would be applicable to the EBA's

1 deferral period and an appropriate carrying charge.
2 Using long-term financing for short-term expenses
3 creates unnecessary additional finance costs. As
4 such, the Office recommends the EBA carrying charge
5 should be set at the 12-month LIBOR interest rate in
6 effect at the end of the EBA deferral period. The
7 interest rate information is updated with a month
8 lag, providing sufficient time for the Company to
9 include in its March EBA filing. This data is also
10 readily available. The Office's carrying charge
11 recommendation, if accepted by the Commission, would
12 be presumably implemented in the next general rate
13 case, thus complying with the agreement signed in
14 Docket 14-035-147 or as discussed in the Deer Creek
15 stipulation.

16 My testimony also made a recommendation to
17 change the current EBA filing schedule. The current
18 filing schedule creates confusion on when issues are
19 presented and appropriately rebutted. The Office
20 recommends that since the Company has filed direct
21 testimony accompanying its application, the direct
22 testimony round should be for all parties other than
23 the Company. Then the Company would file its
24 response testimony to the Division's audit report
25 and all other direct testimony during the rebuttal

1 phase as other parties. This filing schedule
2 modification would allow parties to have equal
3 opportunity to file testimony and respond to
4 testimony in EBA proceedings.

5 My testimony discussed the need for
6 further EBA evaluation resulting from the passage of
7 Senate Bill 115 in the 2016 legislative session.
8 SB 115 requires the Commission to report on the EBA
9 to the Public Utilities and Technology Interim
10 Committee before December 1st in 2017 and 2018. In
11 Docket 16-035-T05, the Commission further stated
12 that SB 115 requires continued review of the EBA
13 through 2019. The Office recommends that the
14 Commission develop and articulate a process through
15 which stakeholders can provide comments that the
16 Commission can consider in developing its reports to
17 the Legislature.

18 My testimony opposes making the EBA
19 permanent at this time. The EBA evaluation period
20 was to end at the end of 2016, but the Commission
21 ruled that it was effectively extended by the
22 passage of SB 115. Without a thorough study of the
23 changes caused by SB 115, the public interest would
24 not be served by making the EBA permanent at this
25 time. The Office asserts that the Commission should

1 wait to make any orders addressing the permanency of
2 EBA until after the reports to the Legislature
3 required by SB 115 are complete.

4 My testimony addressed how the test period
5 mismatch issue is a natural consequence of the
6 current design of the EBA. After reviewing the
7 alternatives for addressing the test period mismatch
8 issue, the Office supports the Division's proposal
9 of requiring the Company to file a general rate case
10 every three years with an updated NPC forecast.
11 However, if the Commission approves the Company's
12 proposal, the Office recommends that the Commission
13 include a requirement the Company file a general
14 rate case at a minimum of every three years starting
15 July 2017.

16 Lastly, my testimony opposed the
17 Division's recommendation to remove wheeling
18 revenues from the EBA deferral. The Division
19 offered no evidence other than a philosophical
20 rationale for removing wheeling revenues.

21 I testified there were two reasons for not
22 removing wheeling revenues. First, removing
23 wheeling revenues would represent an inconsistent
24 treatment in ratemaking principles. The Commission
25 recognized the importance of including wheeling

1 revenues in maintaining consistent treatment of
2 related rate elements in the EBA deferral
3 calculation when it stated the following earlier in
4 this proceeding in its order dated March 2, 2011:
5 "We find it appropriate to include wholesale
6 wheeling revenues, FERC account 456.1, in the
7 balancing account calculation. Though not modeled
8 through GRID, wheeling revenues have always formed
9 an offset to wheeling expenses in general rates. To
10 set power-related rates without recognition of this
11 offsetting revenue would violate the matching
12 principle."

13 Second, with the removal of the 70/30
14 sharing band, having wheeling revenues as an offset
15 to wheeling costs is the only benefit the EBA
16 currently provides ratepayers. Including wheeling
17 revenues in the EBA deferral calculation has
18 decreased EBA deferrals to customers on average by
19 5.56 percent. Thus, the Division's proposal to
20 remove wheeling revenues from the EBA is essentially
21 a proposal to remove the only element of the EBA
22 that benefits ratepayers.

23 The Office's position since the inception
24 of the EBA has been that wheeling revenues should be
25 included in the EBA deferral calculation.

1 Mr. Wilding's and Mr. Peterson's suggestion for
2 creating another tracker to track wheeling revenues
3 and other variable costs merely adds an additional
4 net power cost recovery mechanism that is redundant
5 and unnecessary. The Office recommends to the
6 Commission that wheeling revenues should remain in
7 the EBA deferral calculation and not segregated into
8 a separate tracker. And that concludes my summary.

9 MR. MOORE: Mr. Martinez is available
10 for cross-examination.

11 COMMISSIONER LEVAR: Thank you.
12 Ms. Schmid?

13 EXAMINATION

14 BY MS. SCHMID:

15 Q. Good afternoon. Were you present in the
16 hearing room when Mr. Peterson testified this
17 morning?

18 A. Yes.

19 Q. Notwithstanding -- did you hear
20 Mr. Peterson say that there was not a cause and
21 effect relationship between wheeling revenues and
22 wheeling expenses?

23 A. I did.

24 Q. Notwithstanding that statement, you still
25 want wheeling revenues in the EBA?

1 A. Yes.

2 MS. SCHMID: Thank you. That's all
3 my questions.

4 COMMISSIONER LEVAR: Thank you.
5 Mr. Dodge?

6 MR. DODGE: I have no questions.

7 COMMISSIONER LEVAR: Mr. Evans?

8 MR. EVANS: No questions.

9 COMMISSIONER LEVAR: Ms. Hogle?

10 MS. HOGLE: I have no questions.

11 COMMISSIONER LEVAR: No questions.

12 Okay. Any redirect, Mr. Moore?

13 MR. MOORE: No. Thank you.

14 COMMISSIONER LEVAR: Mr. Clark?

15 COMMISSIONER CLARK: No questions.

16 COMMISSIONER LEVAR: Mr. White?

17 COMMISSIONER WHITE: No questions.

18 Thanks.

19 COMMISSIONER LEVAR: I don't have any
20 questions. Thank you, Mr. Martinez. Mr. Moore?

21 MR. MOORE: Mr. Moore calls Philip
22 Hayet to the stand, please.

23 PHILIP HAYET,
24 having been first duly sworn to tell the truth, was
25 examined and testified as follows:

1 EXAMINATION

2 BY MR. MOORE:

3 Q. Could you please state your name, address,
4 and who you are testifying for, for the record,
5 please.

6 A. Yes. My name is Philip Hayet. I'm
7 testifying on behalf of the Office of Consumer
8 Services, and my address is 570 Colonial Park Drive,
9 Roswell, Georgia 30075.

10 Q. And, in this docket, have you prepared a
11 direct testimony filed September 22, 2016, rebuttal
12 testimony filed November 16, 2016, and surrebuttal
13 testimony December 15, 2016?

14 A. Yes.

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

17 A. I do not.

18 Q. If I asked you the same questions today,
19 would your answers be the same?

20 A. They would.

21 MR. MOORE: At this point, the Office
22 would move for admission of his written testimony.

23 COMMISSIONER LEVAR: Thank you. If
24 anyone objects to that motion, please indicate to
25 me. I'm not seeing any, so that motion is granted.

1 BY MR. MOORE:

2 Q. Have you prepared a summary of your
3 testimony?

4 A. Yes, I have.

5 Q. Would you please provide it?

6 A. Yes. Thank you. Good afternoon,
7 Commissioners. I appreciate the opportunity to
8 provide this testimony to support the Office's
9 position in this docket. In addition to Office
10 witness Dan Martinez, I filed direct, rebuttal and
11 surrebuttal testimony addressing some of the
12 Office's concerns regarding evaluation of the EBA.

13 The issues that I addressed included a
14 change to the EBA carrying charge rate, the
15 inclusion of interim rates of part of the Division's
16 proposal to extend the procedural schedule, the
17 appropriateness of including out-of-period
18 adjustments, consideration of imprudent third party
19 outages, and the Company's proposal to include
20 additional costs in the EBA.

21 In the interest of time, I will just
22 highlight some of these issues. Regarding the
23 carrying charge issue, my direct testimony supports
24 the Office's position that in the current interest
25 rate environment, the use of a 6 percent carrying

1 charge rate for the EBA deferral balance is
2 overstated, especially considering the underlying
3 assets that make up the deferral balance. The
4 Office recommends that the carrying charge rate
5 should be changed to be based on a short-term debt
6 rate. The period over which the deferral balance is
7 paid off is generally just one year, and the risk of
8 cost recovery is low, which makes the use of
9 short-term debt rate reasonable.

10 In my testimony, I also provided a survey
11 of carrying charge rates used in similar proceedings
12 by utilities in eight other states, including other
13 states in which PacifiCorp operates. Based on this
14 survey, it's evident that the carrying charge rate
15 in those states is significantly lower than what is
16 used here. And in five of the eight states, the
17 rates used are consistent with short-term debt
18 rates. The Office recommends that the EBA carrying
19 charge rate should be set at the 12-month LIBOR
20 interest rate, as Mr. Martinez stated, in effect, at
21 the end of the EBA deferral period. And this change
22 should be implemented beginning with the next
23 general rate case.

24 Regarding the Division's request to extend
25 the procedural schedule by four months, the Office

1 believes this extension would be reasonable.
2 However, the office does not support the Division's
3 associated recommendation to implement interim rates
4 just because a procedural schedule will be extended
5 by four months. This would just be a short
6 extension period, and carrying charges would either
7 be paid to or by the Company on the outstanding
8 deferral balance, so there would be no need to also
9 implement a provision for including interim rates.

10 Furthermore, the Commission has made it
11 clear during these proceedings that it is opposed to
12 including interim rates in the EBA process. The
13 Office supports the Division's request for an
14 extension in the EBA evaluation schedule, but
15 opposes adding in a provision to include interim
16 rates.

17 Regarding the appropriateness of including
18 out-of-period judgments in the EBA, the Office
19 agrees with the Division that the Company should not
20 be permitted to include in current EBA deferral
21 periods adjustments to costs that were previously
22 included in prior periods. I believe this is
23 consistent with the Commission's objectives for the
24 EBA as is stated in a prior EBA order that it was
25 implementing a process requiring one annual rate

1 change following the completion of the Division's
2 audit without interim rates. The Commission
3 explained its preference for only allowing one
4 annual rate change because it wanted to avoid
5 litigation of these same issue occurring on multiple
6 occasions. This could conceivably happen if
7 out-of-period adjustments were permitted from a
8 prior EBA period. The Commission found that this
9 would be inefficient and unjustified, and the Office
10 believes that out of period adjustments should not
11 be permitted.

12 Lastly, in my rebuttal testimony I
13 supported the Division's recommendation that the
14 Commission should clarify to the Company that
15 whether a forced outage is caused by the action of
16 the Company and its employees or by the actions of
17 the third party acting on behalf of the Company, the
18 Company is ultimately responsible for the prudence
19 of these actions. In the past, the Company has
20 argued that it should not be held liable for the
21 actions of a third party that may have caused an
22 imprudent forced outage. I disagree and believe
23 that the Commission should make clear that the
24 Company could be held liable for the imprudent
25 actions of third parties operating on its behalf.

1 PacifiCorp has an obligation to provide reliable
2 power at the lowest reasonable cost and as compared
3 to the ratepayer, the Company is the only party in a
4 position that could possibly ensure that its third
5 party contractors do not cause outages that
6 otherwise could have and should have been avoided.
7 PacifiCorp must be responsible for the actions of
8 its own employees and the actions of the third party
9 contractors that it hires. However, in fairness to
10 the Company, I recommend that in articulating such a
11 policy, the Commission should also state that it
12 will continue its practice of evaluating each outage
13 based on the facts and circumstances associated with
14 each outage, including outages caused by third
15 parties. And this concludes my summary.

16 MR. MOORE: Mr. Hayet is available
17 for cross.

18 COMMISSIONER LEVAR: Ms. Schmid, any
19 cross?

20 BY MS. SCHMID:

21 Q. Yes. Just a bit. Mr. Hayet, were you in
22 the hearing room when PacifiCorp Rocky Mountain
23 Power witness Mr. Wilding and I discussed adding
24 additional items to the EBA, such as fuel start-up
25 costs?

1 A. Yes.

2 Q. Have you seen utilities attempt to put
3 non-net power cost items into energy balancing
4 accounts?

5 A. I have seen other utilities include fuel
6 costs, including start-up costs if that's your
7 question.

8 Q. Yes. Are you concerned that there might
9 be other things this company or other companies
10 might seek to get in the EBA?

11 A. I definitely am, and I think I made that
12 clear through my testimony that that is, as I have
13 heard today, a little bit of a slippery slope. And
14 so I prefaced in my testimony that we do not wish to
15 open up for having the Company -- by allowing this
16 opening up the opportunity for the Company to
17 continue to add in additional, additional,
18 additional items. We consider that when making this
19 position.

20 MS. SCHMID: Thank you. Those are
21 all my questions.

22 COMMISSIONER LEVAR: Thank you.
23 Mr. Dodge?

24 EXAMINATION

25 BY MR. DODGE:

1 Q. Thank you, Mr. Chairman. Good afternoon,
2 Mr. Hayet. Just briefly, on the same subject, you
3 touched on looking back to the Commission's order to
4 see what its objective was in not allowing interim
5 rates before. So you looked for the Commission --
6 what made it say we're not going to use them before.
7 Did you do the same thing, look back at why the
8 Commission concluded an EBA was in the public
9 interest in the first place or what the reason was
10 why an EBA might be appropriate in deciding what
11 items should or shouldn't be included in the EBA?

12 A. I looked back over the proceedings that
13 I've been a part of but not necessarily looking back
14 further in all cases. So I'm not sure exactly what
15 you're suggesting.

16 Q. Well, I guess I'm trying to find the test,
17 that slippery slope we've been talking about. Where
18 do you put the brakes on? How does one put the
19 brakes on without reference back either to the
20 enabling statute that talks about net power costs or
21 the Commission's objective in adopting the EBA and
22 saying it was in the public interest to deal with
23 the health of the -- the financial health of the
24 utility? Are those not good benchmarks for what not
25 ought to be included in the EBA?

1 A. I would say it is, yes. So I would agree
2 that that might be a good thing to consider prior
3 orders of the Commission. But in my case, it has
4 been my experience in other jurisdictions that
5 utilities have attempted to load in all kinds of
6 costs into the fuel proceeding or net power costs
7 type of proceeding. So my concern in establishing
8 this position was whether or not the Company is
9 attempting to do just that, load in costs that
10 certainly aren't related to power costs, and I came
11 to the conclusion that fuel costs are fuel costs,
12 and those are related to the generation. Without
13 starting up a unit, it's impossible to generate a
14 megawatt hour, and therefore I consider that to be a
15 power cost.

16 **Q. You wouldn't say the same for chemical or**
17 **PTC, right? The exact same justifications you just**
18 **gave. They're not power costs, are they?**

19 A. Well, with chemical costs, my
20 justification is that those are used, they are
21 considered in other jurisdictions as being part of
22 net power costs, they are part of the generation.
23 Without being able to add chemical treatment, you
24 cannot generate a megawatt hour of power from units.

25 **Q. Isn't it true that virtually every expense**

1 of the utility is needed to generate power from the
2 units?

3 A. To a certain extent, I would agree that
4 you could attempt to stretch the argument and say
5 that, yes. I think you have to be careful in
6 allowing -- I think that gets back to the point that
7 you would have to be very careful in allowing things
8 that, you know, stretch it that far. I'm not seeing
9 that with these items, but I get the points. We
10 want to be very careful about allowing additional
11 items into the EBA.

12 MR. DODGE: No further questions.

13 COMMISSIONER LEVAR: Thank you. Mr.
14 Evans?

15 MR. EVANS: No questions here. Thank
16 you.

17 COMMISSIONER LEVAR: Ms. Hogle?

18 EXAMINATION

19 BY MS. HOGLE:

20 Q. Maybe just one. Hello, Mr. Hayet. You
21 mentioned in your summary that in the past, the
22 Company has argued that it shouldn't be held
23 responsible for outages that are caused by third
24 party contractors. Was that related to a specific
25 outage; do you recall?

1 A. What I can say is I know that it might be
2 helpful if I quoted from my testimony on that
3 question, because I have worked on the cases as
4 Daymark has been a part of the cases and they noted
5 on behalf of the Division their position about how
6 the Company has responded. And I've also observed
7 how the Company has responded in cases where the
8 claim of imprudent outages that have been caused by
9 either the third party contractors or by the third
10 party operators.

11 **Q. But that was with respect to a specific**
12 **outage in that case, correct? Is that true or not?**

13 A. Those were in response, yes, to specific
14 outages, but they were the same responses -- very
15 typical response -- being that -- basically what I
16 quoted, typically, as Daymark knows, the Company
17 would argue that it is unreasonable to penalize
18 PacifiCorp for a third party's performance when
19 PacifiCorp has no contractual ability to seek
20 recourse from that third party. I'm quoting the
21 Daymark report that was attached to Mr. Thomson's
22 testimony, and that's in my rebuttal testimony,
23 November 16 rebuttal testimony. So it's a typical
24 situation that if it's a third party outage, the
25 Company would respond in a way that says, basically,

1 listen, we have no recourse, therefore, it's a third
2 party. And as we've also heard today, basically,
3 because it's a third party and the Company was
4 prudent in its hiring practice of that third party,
5 that should be sufficient. And all we're saying is
6 no, the Company needs to still take ownership
7 responsibility, that if there's an imprudent outage
8 caused by the third party, then the Company could
9 still be liable under that situation.

10 **Q. And that could be determined at the time**
11 **of the specific outage that is being reviewed in a**
12 **specific case; is that correct?**

13 A. Well, I don't see that it has to. I think
14 it could be made clear, it could be articulated so
15 that the Company clearly understands that the events
16 at the time will be reviewed -- the specific events
17 will be reviewed -- but it could be articulated that
18 there should be no distinction between the Company
19 and its employees causing an outage and that of a
20 third party causing an outage. That is, that the
21 Company could still be responsible for any imprudent
22 acts under either of those. That could be
23 articulated today and that's what the ask is here.

24 **Q. And so you think that the articulation of**
25 **that here today and making that blanket statement**

1 like that couldn't be taken out of context by
2 parties if the Commission were to make that
3 finding -- that blanket statement -- in a proceeding
4 such as this where there is no specific outage at
5 issue or in question?

6 A. I don't, and the reason why I don't think
7 it would be -- what would help for it not to be
8 taken out of context is the fact that I'm also
9 stating that I think as part of that articulation,
10 the Commission should say that it's going to do just
11 like what it does today. It should evaluate on the
12 facts and circumstances of each particular
13 situation, but, again, that there's no distinction.
14 That's all I'm asking for the Commission to
15 articulate, that there will be no distinction
16 between an outage caused by its own employees versus
17 an outage caused by the employees of an agent acting
18 on behalf of the Company. The Company should still
19 have that responsibility.

20 Q. Do you disagree that parties will have an
21 opportunity to make that argument in a specific
22 case?

23 MR. MOORE: Objection. Asked and
24 answered.

25 COMMISSIONER LEVAR: Do you want to

1 respond to the objection?

2 MS. HOGLE: No. I think it's a fair
3 question given his recommendation.

4 COMMISSIONER LEVAR: I'm going to
5 deny the objection and allow the question to be
6 answered.

7 THE WITNESS: Could you repeat the
8 question, please?

9 BY MS. HOGLE:

10 Q. Do you disagree that any party will have
11 that opportunity to make that argument in that
12 specific case where all of the facts will be in
13 evidence, both legal and factual issues?

14 A. I did not disagree. What I just simply
15 think is that the Company -- it should be
16 articulated, particularly for the Company's benefit,
17 that the Company is clear on that the Commission
18 believes that there should be no distinction between
19 an outage as caused by its employees versus an
20 outage caused by its agents. That's all I'm
21 suggesting. That clarification should be made for
22 the Company's behalf.

23 Q. Will that change -- will a Commission
24 finding change anything going forward in terms of
25 parties' opportunity to make those arguments later?

1 A. It will change the Company's arguments in
2 the future, because the Company will not go to that
3 argument.

4 **Q. The arguments that have been made by the**
5 **Company that you just mentioned, those were made**
6 **specific to specific outages, correct?**

7 A. It was made to an outage, and it was
8 simply stated the Company should not have
9 responsibility because it's a third party.

10 **Q. You agree, though, that there was more to**
11 **that than what you just mentioned; there were a lot**
12 **of argument made in addition to that?**

13 A. Yes.

14 MS. HOGLE: Okay. Thank you. No
15 further questions. Thank you.

16 COMMISSIONER LEVAR: Thank you. Any
17 redirect, Mr. Moore?

18 MR. MOORE: No. Thank you.

19 COMMISSIONER LEVAR: Thank you.
20 Commissioner White, do you have any questions?

21 COMMISSIONER WHITE: Just a couple.

22 EXAMINATION

23 BY COMMISSIONER WHITE:

24 **Q. Is it your understanding that contracts**
25 **with third parties are different for each contract?**

1 In other words, they contain different terms and
2 conditions?

3 A. Yes.

4 Q. And is it your understanding that, for
5 example, depending on who bears which risk, based
6 upon the terms and conditions of the contract, that
7 the costs may shift based upon that risk adjustment?

8 A. That could be true that the cost
9 responsibility could shift, but it's the Company who
10 has the responsibility for ensuring that the
11 customers are protected. And so, you know, if the
12 contract shifts the risk to the vendor, to the
13 contractor, then the Company has the obligation to
14 go after it, but the customer still has to be
15 protected. If the obligation is on the Company and
16 the ratepayers are harmed by the outage, then the
17 Company, again, under that situation, has to ensure
18 that the ratepayer is protected. So in either
19 situation, it always does come down to the Company
20 having the responsibility.

21 Q. So based upon that answer, it sounds like,
22 getting back to this concept, that prudence
23 determination would be reviewed on a case-by-case
24 basis based upon the context of not only the actions
25 of the Company and the contractor, but the context

1 of the contractual terms and conditions?

2 A. One simple distinction I'm making, which
3 is that the Company can't say, "Because it was a
4 third party, it wasn't us." There are situations
5 where there's a third party operating a generating
6 unit who is clearly at fault in this particular
7 situation. And the Company would say, well, look,
8 you know they're following the proper practices, but
9 we're not the operator. And because we're not the
10 operator, we shouldn't be held responsible for what
11 the practice of that other company is doing. And
12 that should not be the case. The Company has to
13 understand that it is responsible whether it's the
14 operator or if it is in an agreement that somebody
15 else would be the operator. It has to have a role
16 and make sure that it's following proper utility
17 best practices in operating that plant.

18 COMMISSIONER WHITE: That's all the
19 questions I have, Chair.

20 COMMISSIONER LEVAR: Commissioner
21 Clark?

22 EXAMINATION

23 BY COMMISSIONER CLARK:

24 Q. So I'm following up with the line of
25 questioning. So one fact that the Commission might

1 examine, or one set of facts, that it might examine
2 in the context that you were addressing with
3 Commissioner White is what appropriate utility
4 practice would be or is in relation to supervising
5 the work of a third party contractor; is that
6 correct?

7 A. Yes.

8 Q. And regarding providing contractually for
9 recourse or not, there could be at least a cost
10 associated with what recourse and how much recourse
11 is available to the Company. Is that correct as
12 well?

13 A. There could be, yes.

14 Q. So, again, those would be part of the
15 factual determinations in a prudence inquiry that
16 the Commission would make?

17 A. Yes, yes.

18 COMMISSIONER CLARK: Thank you. That
19 concludes my questions.

20 EXAMINATION

21 BY COMMISSIONER LEVAR:

22 Q. Thank you. I'd like to ask a question
23 based on an assumption, and I'll recognize that this
24 assumption is still a disputed issue in this case.
25 But assume that the EBA Pilot Program is extended to

1 2019 and that in 2019 this Commission and the
2 Legislature have to do an evaluation of the success
3 of the EBA program. To what extent would making a
4 change now to either the carrying charge or in the
5 inclusion of chemical startup and correction tax
6 credit costs, any of those things complicate an
7 impartial analysis three years from now of the
8 success of the EBA Pilot Program?

9 A. So if you were to wait for the next rate
10 case, and let's say it was held in 2017 at some
11 point, and there was a determination at that point
12 to lower the carrying charge rate -- so then going
13 forward after that point, the Company would be
14 charging customers based on perhaps a lower -- as
15 being requested by parties in this case. And what I
16 think you're saying is do you believe that -- you're
17 asking me if I believe that could affect your
18 evaluation of the EBA, the 2019 time point, and
19 whether or not that it should go forward after that
20 and whether it should be made permanent, for
21 example.

22 Q. Not just the carrying charge but also for
23 the chemical startup and correction tax costs, too.

24 A. Just taking the carrying charge as an
25 example just to begin with, I don't know -- I

1 understand what you're saying, is that a fact that
2 can influence whether or not you would want to make
3 it permanent. And I don't think it probably really
4 would factor in too much. I think that you could
5 definitely make a consideration of lowering the
6 interest rate, and I really don't see that that --
7 you're going to evaluate on the basis of whether or
8 not you think that it's been in the public interest,
9 whether or not ratepayers have been fairly charged,
10 whether or not the Company has fairly recovered its
11 costs, whether or not this is a process that meets
12 your objectives, whether or not the rate is set at a
13 2 percent rate or 6 percent rate for part of the
14 period of time. I don't see that as having a
15 dramatic effect on that. But I think you have a
16 valid point. If you wanted to make the decision in
17 2019 at a point where you're making it permanent, I
18 could see the argument for doing that.

19 **Q. Okay. Thank you. But is any of that any**
20 **different with respect to the chemical costs,**
21 **start-up costs?**

22 **A.** That may have a little bit more of an
23 influence because, again, it's the whole notion of
24 loading in costs into the EBA. And to that I may
25 answer that a little bit differently, because I

1 think there is some dissention over whether or not
 2 additional costs should be loaded into the EBA. And
 3 in that case, the Company does have another way to
 4 recover its costs and that is through, you know, the
 5 base rates, you know. So if it's not moved into the
 6 EBA, it still has a way to recover, which is through
 7 base rates. So I think you may -- I can see the
 8 argument that that could have a bigger impact on a
 9 decision you might make as to whether or not to
 10 continue the EBA.

11 COMMISSIONER LEVAR: Thank you. That's
 12 all I have. Mr. Moore, anything else from you?

13 MR. MOORE: No, sir. We have no more
 14 witnesses.

15 COMMISSIONER LEVAR: Thank you.
 16 Mr. Dodge?

17 MR. DODGE: Thank you, Mr. Chairman. UAE
 18 calls Kevin Higgins.

19 KEVIN HIGGINS,
 20 having been first duly sworn to tell the truth, was
 21 examined and testified as follows:

22 EXAMINATION

23 BY MR. DODGE:

24 Q. Mr. Higgins, will you please state for the
 25 record who you are and on whose behalf you're

1 **testifying.**

2 A. My name is Kevin Higgins. I'm here on
3 behalf of Utah Association of Energy Users.

4 Q. Mr. Higgins, did you cause to be prepared
5 and filed under your name rebuttal testimony that's
6 been marked UAE Exhibit 1R.0 and surrebuttal
7 testimony that's been marked UAE Exhibit 1SR.0?

8 A. Yes, I did.

9 Q. And do those prefiled testimony documents
10 reflect your testimony here today?

11 A. Yes.

12 MR. DODGE: Thank you. Mr. Chairman
13 I'd move the admission of both documents.

14 COMMISSIONER LEVAR: If anyone
15 objects to that motion, please indicate to me. I'm
16 not seeing any so the motion is granted.

17 BY MR. DODGE:

18 Q. Thank you. Mr. Higgins, would you provide
19 a summary of your rebuttal and surrebuttal
20 testimony?

21 A. Yes. Thank you. Good afternoon. As
22 Mr. Dodge indicated, my testimony was limited to
23 rebuttal and surrebuttal, so my summary will address
24 my responses to arguments or points that were made
25 by other parties to the case.

1 (1) I fully agree with the Division's
2 conclusion that the sharing mechanism in the EBA
3 provided a meaningful incentive for the Company to
4 manage its net power costs. The 70/30 sharing
5 mechanism originally adopted by the Commission as
6 part of the EBA pilot struck a reasonable balance
7 between customers and shareholders with respect to
8 the sharing of risks associated with deviations in
9 actual net power costs relative to what is
10 established in rates. If any extension of the EBA
11 is permitted beyond December 31, 2019, I recommend
12 that the 70/30 sharing mechanism be reinstated.

13 (2) I disagree with the Division's
14 recommendation that wheeling revenues should be
15 eliminated from the EBA. While wheeling revenues
16 are not formally a component of net power costs,
17 wheeling expenses are. Including wheeling revenues
18 in the EBA provides appropriate symmetry with the
19 treatment of wheeling expenses. And this is
20 consistent with the Commission's prior finding on
21 this issue when the EBA was adopted.

22 (3) The Commission should reject the
23 additional items that the Company proposes to add to
24 the EBA. Utility ratemaking is not an exercise in
25 expense reimbursement. The EBA was adopted to

1 address the perceived problem that material changes
2 in net power costs could affect the financial health
3 of the Company in between rate cases if changes in
4 costs were to go unrecovered. Expansion of a list
5 of EBA-eligible items is not necessary to meet this
6 objective.

7 (4) I disagree with Mr. Wilding's
8 assertion that the EBA should be made permanent.
9 Rather, I agree with the conclusion in the
10 Division's report that as the pilot program nears
11 its end in 2019, a full evidentiary docket should be
12 established to consider changes to or elimination of
13 the EBA. Further, I would strongly recommend
14 against making the EBA permanent without a robust
15 sharing mechanism.

16 (5) I agree with Mr. Hayet that the
17 Commission should refrain from adopting interim
18 rates as a routine step in the EBA process.

19 (6) And point number 6 is addressed to
20 the so-called mismatch issue. In my opinion, the
21 mismatch issue is not a genuine problem, but a
22 natural consequence of adopting an adjusted
23 mechanism in the first place. As I explain in my
24 testimony, it does not require any change in
25 practice. Therefore, I recommend that the

1 Commission reject both Mr. Peterson's rebuttal
2 proposal to require the Company to include a 3-year
3 net power cost forecast in every general rate case
4 filing, as well as Mr. Wilding's rebuttal proposal
5 to reset net power costs annually for ratemaking
6 purposes. Each of these intended solutions is more
7 troublesome and troubling than the alleged
8 imperfection they are trying to remedy.

9 The adoption of the EBA turned on the
10 question of whether such a mechanism was needed to
11 ensure the financial health of the utility and
12 produce fair rates for customers. Neither the
13 Division or the Company has demonstrated nor even
14 attempted to demonstrate that the very substantial
15 and burdensome changes each is proposing are
16 necessary to protect the financial health of the
17 Company. Indeed, they could not make such a
18 demonstration.

19 Yet, on the other hand, the other key
20 factor considered by the Commission in adopting the
21 EBA, namely, fair rates to customers, would be
22 undermined by adoption of either the Division's or
23 the Company's proposal. Customer interests are not
24 served by requiring base net power costs to be set
25 using a three-year forecast as proposed by the

1 Division, nor would customer interests be served by
2 resetting base net power costs every year as
3 proposed by the Company in an annual single-issue
4 rate case. Under the Company's proposal, parties in
5 the Commission would be forced to contend with an
6 annual prospective reset and an annual retroactive
7 true-up to the EBA increasing the complexity of what
8 is already a very complicated and time-consuming
9 review process.

10 With respect to each of these proposals,
11 the Commission should step back and ask what problem
12 is being solved by this additional administrative
13 burden. The answer is that there isn't a problem
14 needing resolution in the first place.

15 And, finally, I recommend that the
16 Commission reject Mr. Peterson's associated proposal
17 to require the Company to file a general rate case
18 at least every three years, which I interpret as
19 being a corollary to his proposal to address the
20 so-called mismatch issue. That concludes my
21 summary.

22 MR. DODGE: Thank you. Mr. Higgins is
23 available for cross.

24 COMMISSIONER LEVAR: I'll go to Mr. Evans
25 first. Do you have any cross?

1 MR. EVANS: Not at this time, but if
2 I may reserve until I see the kind of questions that
3 others are asking, I would appreciate a comeback on
4 recross.

5 COMMISSIONER LEVAR: Mr. Moore?

6 MR. MOORE: No questions.

7 COMMISSIONER LEVAR: Ms. Schmid?

8 MS. SCHMID: A few.

9 EXAMINATION

10 BY MS. SCHMID:

11 Q. Is it true that there currently is a
12 carrying charge applied to the balances in the
13 Company's EBA account?

14 A. Yes.

15 Q. Is it true that that carrying charge is
16 currently 6 percent?

17 A. Yes.

18 Q. Do you understand that that 6 percent rate
19 is an above-market rate, i.e., higher than the
20 short-term borrowing rate of PacifiCorp?

21 A. That is my understanding, yes.

22 Q. Since we have established that the EBA
23 carrying charge of 6 percent is an above-market
24 rate, is this a bonus benefit to whomever is
25 receiving the carrying charge?

1 A. I believe the carrying charge at 6 percent
2 represents a premium to whomever is receiving it.

3 **Q. If the EBA balance were to be reduced or**
4 **amortized monthly, wouldn't the amount of the**
5 **carrying charge being accumulated similarly decline?**

6 A. Could you please restate your question?
7 I'm not sure I'm following it. I'm not sure of the
8 foundation of what you're asking me.

9 **Q. Assume that we are amortizing the EBA**
10 **balance on a monthly basis.**

11 A. Okay.

12 **Q. Would that -- wouldn't the carrying charge**
13 **similarly decline?**

14 A. Well, my understanding is that the EBA is
15 built on a monthly basis and tracked in that
16 fashion. And so it is the case that to the extent
17 that the EBA balance is amortized monthly, that
18 reduces the total cost of the carrying charge.

19 **Q. So then it's also the case that the amount**
20 **of the EBA carrying charges would be much less if**
21 **the EBA -- hold on just a moment. If the EBA**
22 **balance is amortized to zero starting shortly after**
23 **the calendar year establishing the balance, won't**
24 **the accumulated amount of carrying charges be much**
25 **less than if the EBA balance were allowed to remain**

1 unamortized for an additional year and then
2 amortized?

3 A. I agree that if a balance is moved to
4 zero, sooner rather than later, that that reduces
5 the carrying costs on that. Of course, if one is --
6 whenever one is reducing a balance and amortizing
7 it, it has consequences for what rates must be paid
8 in order to achieve that within a period of time.
9 But I don't disagree with the basic math of what
10 you're asking me.

11 MS. SCHMID: Thank you. Those are
12 all my questions.

13 COMMISSIONER LEVAR: Thank you,
14 Ms. Schmid. Ms. Hogle, any cross?

15 MS. HOGLE: I have no questions.

16 COMMISSIONER LEVAR: Mr. Dodge, any
17 redirect?

18 MR. DODGE: No. Thank you.

19 COMMISSIONER LEVAR: Commissioner
20 Clark?

21 COMMISSIONER CLARK: No questions.

22 COMMISSIONER LEVAR: Commissioner
23 White?

24 COMMISSIONER WHITE: No questions.

25 Thank you.

1 COMMISSIONER LEVAR: I don't have
2 anything further. Thank you, Mr. Higgins.

3 MR. DODGE: UAE has nothing further.

4 COMMISSIONER LEVAR: I think that's
5 the conclusion of testimony. Are there any other
6 matters we need to consider before we adjourn prior
7 to the public witness hearing?

8 MR. EVANS: Mr. Chairman, if I might?

9 COMMISSIONER LEVAR: Yes, Mr. Evans.

10 MR. EVANS: Because I don't have a
11 witness, I haven't had a chance to offer UIEC
12 comments into evidence, but I would request that
13 they be accepted into the record and that the
14 Commission treat them as it has stated in its order
15 on the motion to strike as unsworn statements. And
16 I would also point out that much of the material in
17 the UIEC comments is offered as legal argument and
18 that it's not subject to a credibility assessment,
19 and so the Commission should be able to give them
20 due consideration as legal argument to the extent
21 they are that. But I would offer those and also the
22 responsive brief to Rocky Mountain Power's motion to
23 strike.

24 COMMISSIONER LEVAR: The comments
25 have already -- your request with respect to the

1 comments has been dealt with in the written order we
2 issued. I'm not sure that we've done the same --
3 are you making the same request with your response
4 to Rocky Mountain Power's motion to strike?

5 MR. EVANS: I am. I'm making the
6 same request with all those pleadings because they
7 were a continuation of the legal argument offered in
8 the comments.

9 COMMISSIONER LEVAR: To treat them as
10 unsworn public comments?

11 MR. EVANS: To treat them as legal
12 argument that they are. Those are purely legal
13 arguments. We're not arguing about the substance of
14 the comments in the pleadings related to the motion
15 to strike. All we're discussing is legal issues in
16 those documents, I believe.

17 COMMISSIONER LEVAR: Okay. Well, let
18 me go to other parties to discuss that request. I
19 want to make sure I've got the request right. We've
20 already entered your comments as unsworn public
21 comments. I recognize they contain some legal
22 issues.

23 MR. EVANS: I think the rest of it is
24 part of the record because it was a motion filed
25 with the Commission so I'm not very worried about

1 that. But just if you would confirm if anyone has
2 an objection to those being part of the record, they
3 should speak up.

4 COMMISSIONER LEVAR: Okay. We've had
5 a motion to strike one of those that we've dealt
6 with, so I'm just trying to ascertain do we have a
7 pending motion from you or am I asking whether
8 there's motions from any other parties. I'm just
9 not quite sure procedurally -- and I apologize if
10 I'm just not following you very well.

11 MR. EVANS: I think the motion to
12 strike, then, takes care of admission of the
13 comments into the record. There is also legal
14 argument contained in the motion to strike both from
15 the Company and the Division's argumentative support
16 and the UIEC's response, and I just want to confirm
17 those are part of the record and we can rely on the
18 Commission as having admitted those into the record,
19 correct?

20 COMMISSIONER LEVAR: Well, let me go
21 to other parties on that assertion. They have not
22 been entered into evidence. Whether they're entered
23 in the record, I mean, they're posted on the
24 website, they're in the docket, but they're not
25 evidence in the proceeding and --

1 MR. EVANS: As legal argument they're
2 not meant to be evidence, but they are meant to be
3 part of the record because they may be the basis for
4 legal argument that was before the Commission.
5 Should we want to request reconsideration or appeal,
6 those arguments need to be in the record, and so I'm
7 verifying that they are.

8 COMMISSIONER LEVAR: Okay. So I
9 guess I'll treat that as a motion. It's an unusual
10 motion, I think, at least one I haven't had the
11 opportunity to get my head around. But let me go to
12 parties now. I'll start with Ms. Hogle. Any
13 comment on what's been presented to us?

14 MR. EVANS: Yes. So my response to
15 that is that the legal argument is also considered
16 public comment, and I believe that this was
17 acknowledged by UIEC itself either in -- probably in
18 their response to the Company's motion to strike.
19 And I believe it was a quote -- I don't have those
20 in front of me -- but it was a quote by the
21 Commission or -- UIEC justified its ability to
22 present legal argument consistent with a Commission
23 decision putting those in the context of public
24 comment. And so I would -- I will go back and
25 review those carefully, but I would suggest that to

1 the extent that the response to the Company's motion
2 to strike has any legal argument, that it should
3 also fall into the category of public comment
4 consistent with what I believe the Commission has
5 held in prior cases where this has become an issue
6 or has been an issue.

7 MR. EVANS: May I respond?

8 COMMISSIONER LEVAR: I'd like to see
9 where the other parties might be, if there's any
10 position on the issue. I'll come back to you to
11 wrap up. Ms. Schmid, do you have any position on
12 this?

13 MS. SCHMID: I do. This is a very unusual
14 situation. Legal argument is something that the
15 Commission has not, in the past, just adopted on a
16 motion. It has been put forth to the Commission in
17 the form of a brief, a response brief and things
18 like that. So to the extent that UIEC is urging
19 that the legal argument as a whole just be accepted
20 by the Commission, the Division objects. The
21 Division also believes that the legal -- that UIEC's
22 response must be taken as a whole, and you can't
23 necessarily parse out what is legal and what is
24 public comment. It was all generated by the
25 objection to UIEC not filing testimony but instead

1 filing comments. So based on that, the Division
2 believes that if the Commission is inclined to take
3 the legal arguments set forth by UIEC under
4 consideration, the Division respectfully requests a
5 chance to file a proper response brief, and would
6 also move that the other parties, should they like,
7 have that opportunity.

8 COMMISSIONER LEVAR: Thank you.

9 Mr. Moore, do you have a position on this?

10 MR. MOORE: Unfortunately, I don't know if
11 I understand it properly. My understanding is that
12 public comments can include legal arguments, and I
13 don't see any reason why the Commission should issue
14 an order segregating these comments from other
15 public comments. But I have not thought this
16 through, and we don't have a strong position.

17 COMMISSIONER LEVAR: Okay. Thank
18 you. Mr. Dodge?

19 MR. DODGE: I hesitate to --

20 COMMISSIONER LEVAR: Well, you don't
21 have to.

22 MR. DODGE: I guess I view it this
23 way. If tomorrow Professor Cassell, at 5:00,
24 Professor Cassell came down and sat on that stand,
25 gave unsworn comments that in his view a legal

1 underpinning necessary for this Commission's
2 decision to find the EBA just and reasonable has
3 been eliminated, and therefore as a matter of law
4 you shouldn't continue it, you must stop it, you
5 wouldn't be able to accept that as sworn testimony;
6 you couldn't make a finding based on it. But if he
7 persuaded you on the argument, then you have little
8 choice to follow that admonition. And I believe
9 that's what UIEC is saying. If Ms. Schmid or anyone
10 else wants to respond, I guess, theoretically they
11 could have, but they could also respond with public
12 comments this afternoon or a briefing if you wanted
13 to. But I think that's what has been put before
14 you. It's not a matter of testimony; it's a matter
15 of a view of what the legal underpinnings of your
16 rulings were and what's happened to them. So I
17 don't think you have to rule on it, but I think the
18 issue is there that you at least need to decide
19 whether you're going to consider.

20 COMMISSIONER LEVAR: Let me ask --
21 before I go to Mr. Evans to sum up his request --
22 Commissioner Clark or Commissioner White, do you
23 want to ask any questions or wait until he concludes
24 to decide if you have any questions?

25 COMMISSIONER CLARK. Just to clarify,

1 Mr. Evans, are you asking us to treat what I'll call
2 the first section of your initial comments -- I
3 think it was Section 1. Section 2, actually.
4 Section 1 was the introduction. Are you asking us
5 to treat that as a brief, basically? Is that what
6 you're --

7 MR. EVANS: I think basically that
8 might be correct. Public comments and -- let me
9 back up and address -- well, if Professor Cassell
10 were sitting here, he would not be an intervenor.
11 He wouldn't have standing to raise a legal issue
12 before the Commission. We're intervenors, and so
13 it's not exactly the same. And even though the
14 Commission may discount our commentary or proposals
15 for amending the EBA going forward as having been
16 submitted as unsworn comments, when we submit legal
17 argument, the credibility is not subject to the
18 credibility of any witness or whether they're sworn
19 or not. But as Mr. Dodge says, by the strength of
20 the legal argument itself, the purpose of the UIEC
21 comments was to bring these legal issues before the
22 Commission and make them part of the record so that
23 if this all falls apart and goes awry at the end of
24 the day, we cannot say that the issue wasn't raised
25 and wasn't before the Commission. Our concern,

1 frankly, is we don't want to be foreclosed on
2 reconsideration or appeal because a legal issue
3 wasn't raised before the Commission. Hence, we have
4 raised them in our comments and asked the Commission
5 to consider them.

6 There have been other legal issues
7 raised here today apart from those raised in the
8 comments. For example, does the Commission have
9 authority to issue interim rates? That issue along
10 with any others, including what we have already
11 raised, the UEIC would be happy to brief and maybe
12 the Commission wants to ask for legal briefing,
13 which I think would be appropriate to give all
14 parties a chance to weigh in. But I don't want to
15 be caught up at the end of the Commission's order in
16 a position where Rocky Mountain Power is alleging
17 you didn't raise the legal issue below. So I want
18 those legal arguments to be made part of the record.

19 COMMISSIONER CLARK: One reaction
20 that I have to that is that the procedural schedule
21 doesn't call for briefing in this matter, and so how
22 would we -- if a party unilaterally decides to file
23 a brief with us, what stature does that have before
24 us without any provision in the schedule for any
25 party to do that?

1 MR. EVANS: It is purely advisory at
2 this point. If and when this goes to a decision, I
3 would agree that the legal issue must be raised
4 again on reconsideration. It should be considered
5 an advisory at this point.

6 COMMISSIONER CLARK: Thank you. That
7 concludes my questions. Thank you, Mr. Evans.

8 COMMISSIONER LEVAR: Mr. White, did
9 you have any questions?

10 COMMISSIONER WHITE: It almost sounds
11 like a proffer, I guess. You're just trying to get
12 something on the record, not necessarily as a -- let
13 me ask you this. If today at 5:30 p.m., a member of
14 the public comes and gets on the stand and begins to
15 read an article they have carefully drafted, should
16 we let that stand and do we need to allow the
17 Company or parties a chance to respond to those
18 arguments? I'm kind of piggybacking on what
19 Commissioner Clark said about -- typically, in a
20 procedural schedule, there's time for motions,
21 briefings, et cetera, and this is unique in the
22 sense that I understand that there's been a motion
23 to strike filed that I'm just trying to look at the
24 fairness of it, I guess.

25 MR. EVANS: If a public witness were

1 to appear and offer legal opinion on the
2 Commission's authority, I think it would be
3 considered advisory. And would it be on the record?
4 Do you put public comment on the record? The
5 difference is at the end of the proceeding, they
6 wouldn't have the standing to appeal or request
7 consideration that we would. So because there was a
8 motion to strike filed and because I'm unclear about
9 the status of the motion to strike pleadings
10 themselves as being part of the record, I raise the
11 issue and ask for the Commission to consider it all
12 as being part of the record and, at this point, the
13 legal argument is advisory.

14 COMMISSIONER WHITE: I have nothing
15 further.

16 COMMISSIONER LEVAR: Did you want to
17 sum up your motion, or did you do so in response to
18 those questions, Mr. Evans?

19 MR. EVANS: I think I have said what
20 I needed to say here today apart from what is in the
21 written documents.

22 COMMISSIONER LEVAR: I think it would
23 be appropriate to take a short recess right now. I
24 don't know how long. We might not need more than
25 five minutes, but why didn't we say 2:30.

1 COMMISSIONER CLARK: That's fine,
2 Chair LeVar. I was just wondering if we might
3 address this when we come back at 5:00, but I guess
4 that imposes --

5 COMMISSIONER LEVAR: I think that
6 would be a larger imposition on some. We will
7 recess until approximately 2:30.

8 (A brief recess was taken.)

9 COMMISSIONER LEVAR: We have reviewed
10 our January 12 order on PacifiCorp's motion to
11 strike. We decline to opine on that order or to
12 interpret its implications with respect to appellate
13 rights, and we let that order stand as written
14 without further comment. And so now I'll go back to
15 my other questions. Are there any other matters to
16 take up before we adjourn before the public witness
17 hearing later today? I'm not seeing any.

18 MR. DODGE: Just a request to be
19 excused from the 5:00 p.m. public witness hearing.

20 COMMISSIONER LEVAR: I'm not aware of
21 any rule that requires parties' attendance at public
22 witness hearings. Maybe there is one that I'm not
23 aware of, but we won't be surprised if you're not
24 here. Anything else? We're adjourned until 5:00.

25 (The proceedings concluded at 2:50 p.m.)

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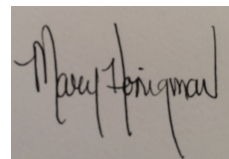
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I have subscribed my name on this 25th day of
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Mary R. Honigman
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