

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of: The Rocky) Docket No:
Mountain Power Application for) 10-035-89
Alternative Cost Recovery for)
Major Plant Additions - Populus)
to Ben Lomond Transmission Line)
and Dunlap I Wind Project)

TRANSCRIPT OF HEARING PROCEEDINGS

TAKEN AT: Public Service Commission
160 East 300 South
Salt Lake City, Utah

DATE: September 28, 2010

TIME: 3:02 p.m.

REPORTED BY: Kelly L. Wilburn, CSR, RPR

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Ric Campbell
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1 SEPTEMBER 28, 2010

3:02 P.M.

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

3 CHAIRMAN BOYER: We might as well just go on
4 the record because basically we're hearing legal
5 arguments this morning. Afternoon it is now.

6 This is in Docket No. 10-035-89. And it's
7 the time duly noticed for the hearing of arguments on
8 UIEC's Motion to Defer Recovery of the Major Plant
9 Addition Costs.

10 And inasmuch as it's legal we won't have any
11 sworn witnesses or anything like that. So we hear
12 from the Company first and those supporting the
13 Company's motion, which I guess would be the Division
14 at least in part.

15 And then we'll hear from those who oppose the
16 motion. And then we'll give the -- those moving
17 parties the last bite at the apple at the end. And
18 then we'll see where we go from there. So let's,
19 let's take appearances. Let's begin with Mr. Hickey.

20 MR. HICKEY: Chairman Boyer, members of the
21 Commission, nice to see all of you again and your
22 staff, as well as the parties. Paul Hickey, of Hickey
23 & Evans, representing the Company. And with me at
24 counsel table is Dave Taylor, the State director of
25 regulatory affairs.

1 CHAIRMAN BOYER: Thank you. Welcome back,
2 Mr. Hickey.

3 Ms. Schmid?

4 MS. SCHMID: Patricia E. Schmid, with the
5 Attorney General's Office, representing the Division
6 of Public Utilities.

7 CHAIRMAN BOYER: And I'm told you had an
8 incident with your steed the other day. Are you okay?

9 MS. SCHMID: Yes. And the steed is fine as
10 well.

11 CHAIRMAN BOYER: Okay. Well, you first and
12 then the steed is my priority.

13 MS. SCHMID: All my friends did not ask the
14 questions in that order.

15 CHAIRMAN BOYER: Mr. Proctor?

16 MR. PROCTOR: Paul Proctor on behalf of the
17 Utah Office of Consumer Services.

18 CHAIRMAN BOYER: Thank you.

19 And Mr. Dodge?

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

21 CHAIRMAN BOYER: And Mr. Reeder?

22 MR. REEDER: Mr. Chairman and Commissioners,
23 I am Robert Reeder with Parsons, Behle & Latimer.
24 With me is Vicki Baldwin, sitting in the front row, to
25 make sure that I don't screw things up. We appear for

1 UIEC.

2 And oh, by the way, we happen to be the
3 moving party.

4 CHAIRMAN BOYER: You are the moving party. I
5 was a little confused. I've been on vacation. I
6 wasn't thrown from my horse, but I was thrown from my
7 wakeboard several times down at Lake Powell.

8 Right, okay. Let's correct the record to
9 reflect that UIEC is the moving party here. And
10 apparently the Division will support, at least in
11 part, that motion. And the other -- the Company and
12 the Office will be opposing.

13 I think I've got that right. But if not,
14 you'll straighten me out as we proceed. So with that,
15 Mr. Reeder?

16 MR. REEDER: Thank you. We filed two briefs
17 in this case. The two briefs were our motion and the
18 attendant pieces to that motion, and then our response
19 brief. We trust you've had the opportunity to read
20 them.

21 And we suspect that you've probably got some
22 questions associated with some of the things that
23 we've said with respect to them, and so I'm prepared
24 to answer your questions whenever you're ready to ask
25 them.

1 But if you'd like, I can start with a brief
2 summary of where we are. Kind of set a context for
3 the questions. And maybe answer some of your
4 questions in the summary.

5 CHAIRMAN BOYER: Well, let's do that. But
6 let me assure you that you're right on both counts.
7 We have a few questions, and we have read all of the
8 briefs.

9 MR. REEDER: The summary begins with the
10 basic proposition that in Utah we have a judicial
11 document called the Bar Against the Single-Item Rate
12 Case. Justice Maughan announced that bar in a wage
13 case several years ago.

14 There were a couple of exceptions to that
15 policy. And the reason for that policy, by the way,
16 is to make sure that rates are just and reasonable.
17 To make sure that you have before you all of the
18 information necessary for you to determine that all of
19 the costs and benefits are correctly aligned so that
20 the end price reflects the best price.

21 Two exceptions are Justice Maughan's theory
22 that there could be an abbreviated case. An
23 abbreviated case, if you had some comfort that all of
24 the pluses and minuses were relatively constant and
25 there was an extraordinary cost, you could do that.

1 In that case, as you may recall, he said the
2 mere passage of time, six months, was enough that you
3 couldn't have that comfort.

4 The second exception is the major plant
5 addition statute that the legislature enacted a couple
6 of years ago. And that statute's a fairly narrow
7 statute. It gives to you the authority, under a
8 limited set of circumstances, to allow rates to be
9 changed.

10 Provided the Utility comes to you and shows
11 you all of the costs and benefits, you can work with
12 the statute. And provided the Utility brings to you
13 the appropriate billing determinants with respect to
14 determination.

15 There -- that's the architecture of the
16 statute that we're dealing with. The architecture of
17 that statute then gives you fairly limited kinds of
18 discretion because it is an exception to the judicial
19 bar.

20 And I think the words of the Supreme Court in
21 the Logan City case we're probably all familiar with
22 by now said in the absence of a clear grant of
23 discretion, none is inferred. In fact, there's a
24 presumption against discretion where none is granted.

25 So we look at the statute to see what kind of

1 discretion there is inside of the statute. Taking
2 that architecture in the statute and applying it to
3 the facts in this case, there are two tranches in this
4 case for relief requested.

5 The first tranche is major plant one, tranche
6 one I think it is, Ben Lomond to Terminal. Part of
7 Gateway and some associated investments. And tranche
8 two, that is Populus to Ben Lomond.

9 In the first tranche we all agreed, and the
10 Company asked, that the matter be deferred until a
11 subsequent point in time. It was deferred, from our
12 view, not only because the Company asked but because
13 there were some serious questions if all of the pluses
14 and minuses would be met -- could be met.

15 There were some things that you needed to
16 decide, and better information that needed to be made
17 available before you could make that decision. So it
18 was deferred by an agreement.

19 With respect to that part, that first tranche
20 as we'll call it, we think the law is very clear. We
21 think that the statute provides that when a matter has
22 been deferred that it's deferred to a general rate
23 case. I don't find the word "discretion" in there
24 anywhere. It's deferred for resolution in a general
25 rate case.

1 Now, there is an alternative to that. And
2 that alternative would be if you chose to exercise
3 your authority under 54-4-2, and you commence an
4 investigation. And when you do, you can do as you've
5 done in the past -- not necessarily this Commission
6 but prior Commissions -- investigate the Utility's
7 rates to determine they're reasonable or not.

8 But if you do that, there are a couple of
9 important things that happen. The timelines all
10 disappear. The 150 days we're operating on
11 disappears. And the remedies that are available to
12 you get to be different kinds of remedies.

13 So if we look at ending the deferral, with
14 respect to the first tranche the statute is fairly
15 clear: Unless you exercise authority that you have in
16 the statute. And you haven't done that.

17 So at this point in this case, with respect
18 to the first tranche in the case, it has to be
19 deferred to the next general rate case of the Utility
20 to be resolved there and folded into rates. Or it
21 could be resolved in several cases. I think that
22 the -- I think the statute is actually plural, plural
23 on the issue.

24 Now, the Division agrees with us with respect
25 to the part of the case where the deferral has already

1 accrued -- not the \$15 million fees -- but they say
2 prospectively you've got discretion. Search as I can
3 the part of the statute where it talks about flowing
4 it to a general rate case, I can't find the word
5 "discretion."

6 It seems you have the discretion if you
7 commence an investigation, but that hasn't happened.
8 So I find difficulty with the position of the Division
9 that you can separate between what has accrued and
10 what may accrue, and then exercise discretion with
11 respect to it. That's just not in the statute.

12 And I see nothing in the statute to support
13 the position that Rocky Mountain advances that there's
14 discretion with respect to doing it.

15 That then takes us to the second tranche in
16 the case. The second tranche in the case is the
17 second part of the Gateway project and the associated
18 investments, I think it's Dunlap. Here I concede you
19 have discretion. This is a new case.

20 You get to decide how you want to do it. You
21 get to decide whether or not the Utility has met its
22 burden of coming forward by showing the pluses and
23 minuses in the case and whether or not they've got the
24 appropriate billing determinations.

25 Here we argue, as a matter of fairness and

1 equity, that you should defer it to a fu -- for a
2 future point in time. You should defer that, that
3 tranche. We do that on several bases. The first
4 bases we argue is that the billing components advanced
5 by the Utility in this case are the same billing
6 components that were advanced by the Utility in the
7 last case.

8 In the last case you ordered us, after that
9 case because there was so much controversy, to go out
10 and see if we couldn't find what the problems were,
11 find cures for the diseases that they suffered from,
12 and see if we could find bridges around them. And
13 we've been working to do that. And we hope to have a
14 report by November to do it.

15 But on the case -- on the track that this
16 case is in we won't have completed that work by the
17 time the hearing is completed in this case. So we'll
18 have billing determinants suspect in the last case
19 about which we're working at your direction, and we
20 will not have completed the work.

21 So we suggest, so as to not waste the work
22 we've been doing by looking at those, that we defer
23 the distribution, or the revenue requirement in
24 tranche two, to the next case.

25 You're already going to have to do it with

1 respect to tranche one. If you've got to do it with
2 respect to tranche one and you have inadequate
3 information or less-than-perfect information now, we
4 think that that probably ought to be spread to tranche
5 two.

6 Now, there's two reasons to think about doing
7 that. Number one is that it costs us all money to try
8 a case. I'm not free, and neither is Mr. Hickey. And
9 none of our expert witnesses are free. And so there
10 is no reason to put us all to the expense of trying
11 this case when we're going to have to try it again.

12 And let's talk about a timeline. It is a
13 question of trying it in November or trying it in
14 July. We're not putting it off for a term of years.
15 We're putting it off with the second rate cases filed
16 on January 1.

17 It will probably be heard in July or August,
18 because the rates have to become effective in
19 September. So rather than trying it in November to
20 make rates effective on January 1, you try it in July
21 to make rates effective whatever the date is in
22 September. That date is dependent upon when they
23 filed the case.

24 A second reason that we argue that it needs
25 to be done is that the duplication of costs that will

1 occur in the case. Not only will your efforts be
2 wasted in hearing the same case twice, we're gonna
3 duplicate the costs that we're going through with
4 respect to it. And that's true with respect to all of
5 us.

6 Now, we call your attention that in the midst
7 of this there is a mismatch in years as filed in this
8 case. As filed in this case, the revenue requirement
9 test period looks at a time period different than the
10 test period used for allocating rates.

11 So we think that's an invitation to assess to
12 the wrong people the wrong amounts because of the
13 mismatch in time periods. But there's a more
14 important feature in the middle of this case that we
15 think needs some special attention. And we argue
16 this.

17 This is a case involving, in tranche one and
18 tranche two, largely the allocation of transmission
19 costs. That's a national debate right now, which you
20 know.

21 It began with just -- Justice Posner in the
22 Seventh Circuit when the -- PJM tried to move power
23 from the West to the East. And the people in the
24 midst, in Ohio in particular said, We're not getting
25 any benefit from this. Why should we pay for this

1 transmission expansion?

2 FERC said, We'll just use the traditional
3 allocation between the states and you'll be fine.

4 Posner said, That's not the way it's done.
5 If you don't benefit, you don't pay.

6 Then comes FERC in its notebook and comments
7 on the proposed rule. The proposed rule as published
8 says the same thing: If you don't benefit, you don't
9 pay.

10 Comments are due on that tomorrow. There
11 will be a requirement when Rocky Mountain files its
12 205 application -- Section 205 of the Federal Power
13 Act is the provision of the Federal Power Act under
14 which a utility files to increase its wholesale rates.

15 When it files its Section 205 app. it will
16 likely have to show how it's gonna allocate costs.
17 You're going to have to face that question. Rather
18 than face that question one tranche at a time, you
19 ought to get as much of the puzzle in front of you so
20 you are as fully informed as you can be when you make
21 that decision.

22 That, too, is a reason we suggest that you
23 may want to defer it. Now, when you think about this
24 transmission, it is not a small issue. We've
25 estimated -- and we may be wrong -- but we've

1 estimated that the revenue requirements on this
2 transmission over the period of its construction could
3 be over \$200 million to Utah.

4 We need to look closely at that and see if
5 that \$200 million saddle to be imposed on Utah is
6 reasonable under the circumstances. Now, my opponents
7 say -- in spite of what I say, in spite of the equity,
8 and in spite of the duplication, and in spite of what
9 the statute says -- that you need to flow it through
10 to rates now because of the carrying costs.

11 Now remember, we've got two tranches.
12 Tranche one and tranche two. With respect to tranche
13 two, the carry cost argument is really simple. You
14 have the discretion to determine what the carry cost
15 will be. In an order issued two weeks ago you said
16 zero.

17 When carry costs are a burden you can
18 determine what the appropriate level of carry costs
19 will be so that it's not a burden. I'm not arguing
20 that carry costs should be zero, but I'm suggesting
21 that you've already determined that in one of your
22 orders now.

23 And if you look at what you're earning cash
24 in the bank it's not much greater than zero, if
25 greater than zero. So you get to make that decision.

1 You can decide what that burden of carry will be on a
2 going-forward basis.

3 With respect to tranche one, let's flip the
4 table. And let's say I'm sitting here saying carry
5 costs on that stipulated deferral are burdensome.
6 What are my opponents gonna say?

7 They're gonna say, You've agreed to them.
8 You've got buyer's remorse. You agreed to a level
9 that's too high. But it's your signature. You agreed
10 to it. You're bound by it.

11 And so it is the case that we've got an
12 agreed-upon carry charge. It may not have been the
13 best agreement we've ever made, but we do have an
14 agreement. There isn't an end in there on when it's
15 gonna end. The statute said then to the next general
16 rate case, as the statute says now. And we've all
17 agreed to it.

18 So to hear complaints that there is a
19 burden -- and I don't like carry costs and agree it's
20 a burden -- but we all agreed to it. I think it's
21 kind of something that is probably not something that
22 you ought to have a whole lot of sympathy for.

23 Although I agree that carry costs are something that
24 we really don't like when we, when we can avoid them.

25 Secondly they argue gradualism. Now, Lowell

1 Alt wrote chapters on gradualism. We all remember
2 Lowell Alt from his days here at the Commission.

3 THE REPORTER: I'm sorry, Counsel, I couldn't
4 hear what you said when you put your hand up.

5 MR. REEDER: Sorry. Lowell Alt wrote the
6 chapters on gradualism. We all remember Lowell Alt
7 from his days here at Commission. Lowell Alt wrote on
8 gradu -- gradualism that gradualism was to avoid
9 swings in rates when we had changing billing
10 determinants.

11 When we were moving from summer to winter or
12 night to day. Gradualism was so that we were always
13 giving to the customer the correct decision so we
14 didn't make sudden changes.

15 Here, these are all directionally in the same
16 direction. These are all going up. The question is
17 really a sociological question. And that is, Are we
18 better off with a 5 percent increase in January and
19 another increase of whatever magnitude in September,
20 or are we better off with one increase in September of
21 whatever the amount the Commission determines should
22 be appropriate?

23 That's a sociological question about how best
24 to treat people if you had the discretion to make
25 those decisions. I think one answer that you need to

1 look at is most budgets are set annually.

2 Frequent rate cases are what we were trying
3 to avoid for this major plant addition case. And
4 we're not doing a very job -- very good job of
5 avoiding it if we have a hit in January, then we have
6 a hit in September simply because a new plant comes on
7 line.

8 Now, I can see that the major plant addition
9 case -- major plant addition statute is a statute
10 whose purpose was, in part, to assure that the Utility
11 earned carry on plants that had become used and
12 useful.

13 It is, in financial terms, nothing more
14 really than a continuation of the AFUDC statute. So
15 what we're doing is we're simply continuing and
16 providing the Utility the opportunity to continue to
17 earn by moving this into the next case.

18 Gradualism doesn't fit into that.
19 Gradualism, I think, should be thought about in terms
20 of how best to send signals to the ratepayers and how
21 best to minimize the frequency of cases.

22 Next my colleagues argue that their cash flow
23 requires that we flow this into rates now rather than
24 continue to pay or let them accrue AFUDC. Flowing
25 into rates now would give them some current cash.

1 So I scrubbed their 10-K and attached it to
2 my brief so you could see it. And I scrubbed their
3 federal order to see if there was any hint in their
4 federal order -- or their 10-Q, sorry, their 10-Q to
5 determine that they had -- that they were in a cash
6 position, or that their ability to construct these
7 projects was predicated on cash flow from flowing this
8 to retail ratepayers instantly.

9 I could find not a word. This may be the
10 first time they've alleged a cash flow issue with
11 respect to it, at least as I can scrub their financial
12 position.

13 But there's one more important issue that you
14 need to look at with respect to cash flow. Let's look
15 at the scheme on how this transmission facility is
16 going to be financed. The scheme for financing these
17 transmission facilities, this Gateway project, is to
18 have the retail ratepayer guarantee it.

19 Even though a major part of these facilities
20 will likely be merchant facilities we, the ratepayer,
21 are taking the risk of the non-use of that facility,
22 even though there may be a bill for it through or into
23 the wholesale customers' facilities.

24 We get that kind of information from their
25 first quarter when we look at the size and type of

1 these facilities. So we have to ask ourselves whether
2 having the retail ratepayer as the guarantor of a
3 merchant function is really the correct way to do
4 this.

5 So you need to get all the pieces before you
6 on this transmission before you decide how it should
7 best be done. That question about how it should be
8 allocated between federal and state was a question
9 reserved in the FERC order that granted them a
10 13 percent rate of return on their transmission
11 investments.

12 FERC is going to decide how they'll be split
13 between them. FERC will not do that until they file a
14 Section 205 application. They haven't filed their
15 Section 205 application. And not having filed their
16 Section 205 application one has to ask if really this
17 cash need that they're complaining about is something
18 we need to be driven to making decisions before it's
19 time on.

20 Maybe we should have some insight on what
21 they're going to say to FERC on how it should be
22 allocated. And maybe have some insight from FERC on
23 how those costs are allocated before we let them go
24 forward.

25 So going back to the legal question. Is

1 there discretion to defer -- to end a deferral in a
2 major plant addition in the statute? I don't see it
3 there. You've got the discretion to do it, but you've
4 got to commence a separate proceeding to do it. It
5 hasn't been commenced. That, I think, is the answer
6 on tranche one.

7 On tranche two, we think that's the billing
8 determinant issue. We're not going to have, nor have
9 the opportunity to have, the best information on the
10 billing determinants until we complete our work in
11 November.

12 And we think that the unnecessary effort and
13 unnecessary cost both to us and to the ratepayers of
14 Rocky Mountain can be avoided if you will defer it.
15 That's what we ask. And I am prepared for your
16 questions or to respond to my colleagues.

17 CHAIRMAN BOYER: Thank you, Mr. Reeder.

18 Okay, I think our preference is to defer
19 questions of counsel until we've heard from everyone.

20 MR. REEDER: Thank you.

21 CHAIRMAN BOYER: We've jotted them down.

22 Ms. Schmid?

23 MS. SCHMID: Thank you. Mr. Reeder talked
24 about making decisions before their time. The
25 Division urges the Commission not to make a decision

1 on deferral today because it's before its time. With
2 the exception of the approximately 15 million that has
3 already been deferred, the Division believes there's
4 no need for the Commission to address the deferral
5 issue today.

6 It's not necessary because there's been no
7 testimony by the Division, the Office, UIEC, UA --
8 UEA, or other intervenors concerning whether the
9 \$30.8 million from MPA I and the amount from MPA II
10 should be deferred.

11 There has been no testimony about how
12 resulting rate increases should be spread amongst
13 customers. It is this forthcoming testimony, and
14 responsive testimony by the Company, that the
15 Commission should look to to guide it in deciding the
16 issues -- these issues.

17 It is not necessary for the Commission to
18 decide the deferral issue at this point because,
19 although Utah Code Annotated 54-13.4 has been
20 discussed at length by the parties, it seems that
21 there is a disagreement upon the meaning of the
22 statute.

23 Like with many things, the devil is in the
24 details. The Division, too, looked at the rules of
25 statutory construction when it came up with its

1 position that the Commission can, if it wishes, end
2 the deferral of the MPA I amounts -- except for the
3 \$15 million -- and that the Commission need not wait
4 for a general rate case to authorize recovery.

5 The Division bases this position among
6 things, including the statutory construction rule
7 discussed previously, on the wording of Section 5.
8 Section 5 states:

9 "If the Commission approves, or
10 approves with conditions, cost recovery
11 of a major plant addition the Commission
12 shall do one or all of the following."

13 And then there are two sections: A
14 Section A, which talks about deferring. And a
15 Section B, which talks about adjusting rates or
16 establishing a collection mechanism. One or all.

17 Also, if we look at Section 6, we have to
18 allow the Commission flexibility or Section 6 has no
19 meaning.

20 Finally, when we look at other parts of the
21 statute, such as the requirement that the application
22 for recovery be within 18 months of a final rate case
23 order, we can conclude that this statute is not to be
24 used to rehash and do an entire rate case.

25 This statute is an alternative cost recovery.

1 It is intended to have the decision out of here be
2 close in time to the decision in a major rate case so
3 information does not have to be repeated again.

4 It's not necessary for the Commission to
5 decide the deferral right now because the arguments
6 are unpersuasive that urge the Commission to allow the
7 work groups to present their conclusions and
8 recommendations.

9 There are often, if not always, work groups
10 studying things. Good information can come out of
11 these work groups. Information that can be used to
12 make things better in the future. However, it seems
13 unwise to delay a decision just to wait for a work
14 group.

15 There is no guarantee that a work group will
16 come up with something that is useful, or indeed that
17 a work group may come up with anything at all.

18 One of the work groups is studying cost of
19 service issues. Although in the rate case there were
20 many issues raised about cost of service, the
21 Commission did render a decision on cost of service
22 and did use that in establishing just and reasonable
23 rates.

24 Therefore, the Division believes that that
25 information, along -- from the rate case along with

1 other information through testimony can guide the
2 Commission when it determines it is ripe or time to
3 reach its decision on deferrals.

4 The Division is sensitive to the cost issues
5 raised by some of the intervenors. The Division,
6 however, believes that the importance of this issue
7 necessitates testimony being prepared and presented to
8 the Commission so the Commission can have the guidance
9 of that before it renders its decision.

10 It's not necessary now to decide the deferral
11 issue because the impact of the deferral will have a
12 material effect upon ratepayers and the Commission
13 should have all available information.

14 If we turn back to the DPU's pleading we note
15 that Attachment 1 shows that if UIEC's position were
16 adopted and the deferral balances were amortized over
17 12 months, from accrued interest, the ratepayers would
18 pay an additional 4.8 million. Over 24 months, from
19 accrued interest, the ratepayers would pay an
20 additional 7.6 million. Over 36 months, from accrued
21 interest, the ratepayers would pay an additional
22 10.5 issue -- million.

23 These are important issues before the
24 Commission. And the Commission should have the best
25 available information upon which to make its decision.

1 Not all necessary information is before the Commission
2 now. And the Commission urges the Commission -- and
3 the Division urges the Commission to make a decision
4 regarding deferral of amounts from MPA I -- except for
5 the 15 million -- and amounts from MPA II when more
6 and better information, not now. Thank you.

7 CHAIRMAN BOYER: Thank you, Ms. Schmid.
8 Let's hear from Mr. Hickey, and we'll save
9 Mr. Proctor for the last. Not the least.

10 MR. PROCTOR: Well --

11 MR. HICKEY: Be glad to go with however
12 you --

13 CHAIRMAN BOYER: Oh, I'm sorry, Mr. Dodge.

14 MR. HICKEY: Mr. Dodge, I think --

15 CHAIRMAN BOYER: Yeah, Mr. Dodge.

16 MR. HICKEY: -- is in support of the motion.
17 If you --

18 MR. PROCTOR: Mr. Chairman, if I might -- and
19 excuse me Mr. Dodge -- I guess I'm a bit confused. I
20 think your statement of the schedule was to hear the
21 proponents and then opponents to the thing?

22 CHAIRMAN BOYER: Yeah. And that's what I
23 said. And as I say --

24 MR. PROCTOR: And --

25 CHAIRMAN BOYER: -- I'm a little confused.

1 MS. SCHMID: We --

2 CHAIRMAN BOYER: But let's hear from
3 Mr. Dodge first.

4 MS. SCHMID: I'd like it noted that the
5 Division is not a proponent of the motion but, indeed,
6 opposes it.

7 CHAIRMAN BOYER: Okay. Let's hear from
8 Mr. Dodge and we'll just shift around. We're gonna
9 hear all of the arguments. We'll consider them all.
10 And we'll make a decision based upon that. I
11 apologize for my confusion.

12 Mr. Dodge?

13 MR. DODGE: Thank you, Mr. Chairman. And I
14 will be brief because Mr. Reeder has adequately
15 covered the points.

16 UAE supports UIEC's motion for two primary
17 reasons. The first is that we think it's inescapable,
18 under any reasonable reading of the statute, that the
19 decision made in connection with the first MPA case to
20 defer requires that collection be done in the context
21 of a general rate case.

22 Indeed, any other interpretation reads out of
23 the statute "for recovery in general rate cases" from
24 Section 5(a.) That decision was made, as it's
25 required under the statute, within 150 days of the

1 filing. It's now simply a request to go back and
2 reconsider your prior ruling.

3 I'm not gonna argue whether or not you ought
4 to have the discretion to do that. There may be
5 reasons why you ought to have the discretion to go
6 back and revisit that ruling and change it now, as
7 you're being asked to, but the statute doesn't give it
8 to you.

9 I think it's just -- I don't think there's
10 any other reading of the statute that does justice to
11 the plain words in the, in the statute.

12 Secondly, and perhaps as importantly, UAE
13 believes that anytime a major plant addition case is
14 filed when significant change has happened since the
15 general rate case, that it's inequitable either to the
16 customers or to the Utility to use the billing
17 determinants from that general rate case in collecting
18 a fixed amount of net revenue requirement impact
19 determined in the major plant addition case.

20 Indeed, it was for that very reason that UAE
21 insisted, in the drafting of the statute, that
22 deferral be one of the options. And we said at the
23 time we would likely argue for deferral almost every
24 time, because once the rate case is over you've got up
25 to a hundred and -- excuse me, up to 18 months from

1 that point to deal with a single-item rate case.

2 But every month that passes, especially when
3 the utility's load is changing in any significant way
4 up or down, you build in an absolute guarantee of
5 over-recovery or under-recovery if you choose to use
6 the billing determinants from the rate case but a, but
7 a revenue requirement determination from a current
8 period or from a future period from the rate case.
9 Which is exactly what's being asked of there.

10 We think that that's more damaging to
11 customers than the carrying charge. Which, as
12 Mr. Reeder pointed out, we all agreed to. So we
13 believe that there are strong public policy
14 considerations to say when any significant time has
15 passed, when we're uncertain about whether the billing
16 determinants from the rate case would fairly collect
17 the amount that we determined, then we defer. And
18 that's why that option is there.

19 Lastly, we urge you to decide this now. I
20 respect Ms. Schmid's argument that you don't have to
21 now. I agree with her. You don't have to decide it
22 now. But we urge you to, because we don't want to
23 have to fight this if we don't have to.

24 And I will point out, the statute does not
25 say -- there's been representations the statute

1 intends -- that we use all the data from the rate case
2 and don't have to retry it. Nothing in the statute
3 says that. And, in fact, we couldn't agree upon it.
4 That's why the statute doesn't address that.

5 You will have before you in this case a fight
6 over whether you need a new cost of service study, and
7 new billing determinants, and other projections of
8 revenues and other impacts in order to properly decide
9 the net revenue requirement impact, or to set the
10 billing determinants -- or excuse me, or to set the
11 amounts that you will collect from various customer
12 classes, because the statute doesn't say one way or
13 the other.

14 We agree it's appropriate to determine the
15 net revenue requirement impacts now. We don't think
16 it's appropriate to determine how that will be
17 collected now, given the time that's passed or will
18 have passed from the last rate case.

19 So we do urge you to make that decision now,
20 if you're, if you're persuaded that either the statute
21 or public policy requires deferral or supports
22 deferral, so that we don't have to have that fight now
23 and then again in the rate case. Thank you.

24 CHAIRMAN BOYER: Thank you, Mr. Dodge.

25 Now let's hear from Mr. Hickey, and then

1 Mr. Proctor.

2 MR. HICKEY: Thank you Chairman Boyer,
3 members of the Commission, and the parties. I just
4 would like to try to get maybe 10,000 feet above where
5 we've been for most of the argument and get back to
6 what the intent of the Utah legislature was, from our
7 perspective on behalf of Rocky Mountain Power, when
8 this statute was adopted.

9 I hear Mr. Reeder suggest that this is,
10 effectively, a new law that allows for the imposition
11 of a carrying charge. With all due respect to a very
12 fine advocate, I think that is an unfair and
13 unreasonable -- unreasonably narrow interpretation of
14 the statute.

15 Utah law, certainly prior to the passage of
16 this act, stood for the proposition that single-item
17 rate cases are not favored, not to be encouraged. To
18 be prohibited if -- all of the reasons that all of us
19 have learned for years single-issue rate cases are not
20 favored.

21 What this statute did I think has changed the
22 paradigm. The backdrop I think that you'll recall --
23 and that all in the room will recall -- is major
24 public policy initiatives, like investments in Utility
25 infrastructure, were being discussed in the capital --

1 in all of the capitals throughout the West, with the
2 added push or endorsements of advocacy groups like
3 RMATS, like the Western Governor's Association, and
4 those that saw that the economic development of the
5 states of the West needed new infrastructure.

6 And utilities -- like PacifiCorp and its
7 operating division here, Rocky Mountain Power -- were
8 saying, With all of this capital-intensive investment
9 that we're intending to make in this requested and
10 solicited infrastructure -- transmission lines and
11 additional generation assets -- we really would like
12 to focus on the regulatory lag that we'd experience
13 between when these investments are incurred and when
14 they can ultimately be recovered within rates.

15 And I think that's the context that the
16 legislature then took up the initiative of addressing
17 that in a way that was balanced from a customer
18 perspective, from a regulator perspective, and adding
19 to the tools and the powers of this Commission. And
20 from the vantage point of the Utility that's incurring
21 substantial capital costs in investment, a better way
22 of finding recovery of major plant additions.

23 The statute is not entitled Recovering Charge
24 For Major Plant Additions statute. It's called
25 Alternative Cost Recovery For Major Plant Additions.

1 And the significant language of the statute I think is
2 what was read to you by Ms. Schmid a minute ago.

3 That when you approve, or approve with
4 conditions under subsection 5 of 54-7-13.4, a cost
5 recovery of a major plant addition, the Commission
6 shall do one or all -- and that's the key word here --
7 one or all of the following:

8 "Subject to conditions, authorize
9 the gas or electric corporation to defer
10 the State's share of the net revenue
11 requirement impacts of the major plant
12 addition for recovery in general rate
13 cases, or adjust rates, or otherwise
14 establish a collection method for the
15 State's share of the net revenue
16 requirement impacts that will apply to
17 the appropriate billing components."

18 This Commission's powers that were delegated
19 to the Commission expanded with the passage of this
20 law. This Commission has more discretion and more
21 authority than it had as a limited agency, as all
22 agencies are, by only the powers the legislature
23 chooses to give you.

24 They gave you more power with this statute,
25 in my view. They did not restrict your powers. So

1 against that effort to state what I believe, on behalf
2 of the Company, the legislative intent of this new
3 2009 legislation was, I think the issues before you
4 today become pretty limited.

5 I don't think we need to go down some of the
6 rabbit holes that are suggested by UIEC. I don't
7 think we need to worry about when the working group's
8 gonna come back. I don't think we need to worry about
9 some of these other offered excuses to delay your
10 acting under the new authority given you by the
11 legislature in this statute.

12 The two legal questions that I think are here
13 today are, Can the major plant addition costs deferred
14 in MPA I be collected in an order entered in this
15 docket? I think that's the first legal question.

16 And the second, and I would say based on
17 arguments of Counsel I think possibly the conceded
18 argument is, Can the major plant addition costs for
19 which recovery is sought in this docket -- for
20 convenience, MPA II -- be recovered in an order
21 entered in this docket?

22 The answer I think I heard from Counsel was,
23 Yes, you could do it if you want, but based on
24 principles of equity they encourage you not to
25 exercise that authority.

1 Let me first address the 39 million of major
2 plant addition costs for which collection is requested
3 in this docket. Those being additional transmission
4 investments of Populus to Ben Lomond, and a wind farm
5 entitled the Dunlap I Wind Generation Farm in Wyoming.

6 No serious question can be made to you under
7 subsection 5(b) of the statute that you have the
8 authority to adjust rates. Or, in the language as it
9 exists in the subsequent section -- a provision of
10 that section:

11 "Or otherwise establish a collection
12 method for the State's share of those
13 net revenue requirements."

14 Clearly that authority is there. The
15 question is whether or not, for all of these other
16 speculative reasons, you should re -- you should
17 determine not to exercise that authority. And I would
18 say you shouldn't.

19 If you were to defer, as requested by UIEC,
20 that's effectively turning all of these major plant
21 addition proceedings into general rate cases. And I
22 think that's what the legislature intended to avoid by
23 giving you additional authority to act in these areas
24 where an investment in a major plant would exceed one
25 percent of the Company's rate base.

1 And so the real question, the tougher
2 question, is whether or not you have the authority to
3 act in this docket on what was deferred in the MPA I
4 case. And I would suggest that you do.

5 In order to make any sense out of the words
6 "the Commission shall do one or all of the following,"
7 when you read all of Section 5 and all of Section 6
8 together it seems to me that you have the authority to
9 defer, you have the authority to adjust rates, and you
10 have the authority to otherwise establish a collection
11 method.

12 Now, if they intended to say you could do
13 either an adjustment of rates or in otherwise
14 establish a collection method they would have limited
15 you there. But the legislature didn't. They said
16 that you have the authority to do one or all of the
17 following.

18 So as to the amount that was deferred in the
19 first order, it seems that the deferral is now being
20 addressed in this order by having you establish the
21 collection of that deferred amount. That's an
22 adjustment of rates. Or, at a minimum, it's the
23 establishment of a collection method for that
24 previously-determined cost of the major plant addition
25 allocated on a Utah-specific basis.

1 And why should you act in that way? What
2 public purpose or public interest reason would justify
3 that order? And I think, again, the Division has
4 articulated those reasons quite well. If you look at
5 the two attachments to their resistance to this motion
6 they present what the rate implications would be for
7 customers.

8 They've quantified in detail, as did the
9 attachment that was a data request from the Company --
10 it's the second attachment to the Division's papers --
11 they've quantified what that carrying charge means to
12 customers. And it's significant.

13 I believe, in reviewing papers for this
14 argument today, that it was Commissioner Campbell who
15 raised the question in the first docket of, Why should
16 we defer at all? Why shouldn't we get this carrying
17 charge out so that isn't embodied within rates? And I
18 think it's a proper question to ask.

19 And when you look at this from a perspective
20 of another rate case that will be filed by Rocky
21 Mountain Power early in 2011, and on the timeline
22 suggested by Counsel that we would be in hearings next
23 summer with rates effective the early part of next
24 fall, there is a real purpose to getting these
25 agreed-upon amounts established in rates and

1 collected. So that when customers are confronted next
2 fall with the consequences of the general rate case
3 docket there has been an attempt to mitigate some of
4 that impact.

5 So for all of these reasons I would suggest
6 that the motion be denied. That the narrow
7 interpretation of the major plant addition statute
8 that is offered within the motion and through Counsel
9 be rejected for the reason that the legislature wanted
10 to empower you with additional powers to provide for
11 alternative cost recovery for major plant additions.

12 And the major plant additions that PacifiCorp
13 brought before you in MP I and is now bringing before
14 you in MP II meet the conditions of this statute, and
15 the recovery of the costs associated therewith should
16 be recovered now and not later.

17 Happy to answer any questions.

18 CHAIRMAN BOYER: Thank you, Mr. Hickey. I
19 think we will have a question or two for you.

20 Let's hear from Mr. Proctor now.

21 MR. PROCTOR: I had not planned to do
22 anything this afternoon other than state that the
23 Office would rest on its memorandum in response to the
24 motion from UIEC, but having heard some of the
25 argument today I think I have a few very short

1 comments.

2 First of all, as we said, the Office
3 generally agrees with UIEC's legal argument as
4 correct. And, having heard the responses to it from
5 the Division and the Company, I would have to say it's
6 not a general agreement. It's a very precise
7 agreement that section -- or subsection 5 and
8 subsection 6 of the particular statute at issue are
9 quite discrete.

10 Five says you can do it one of two ways, or
11 you can combine the two. But if you defer it, then 6
12 merely talks about the terms of the collection. Not
13 when, because that's been determined by Section 5. It
14 says if you defer it, it's the next general rate case.
15 Period.

16 There is no question about statutory
17 interpretation or legislators' intent in that
18 particular case. It is plain. And the law in the
19 State of Utah is when it is plain you have to follow
20 that particular procedure that the legislature has
21 established.

22 Second, this issue, deferral or not, is ripe.
23 I would suggest that it must be answered now if the
24 Commission is to, one, provide the Company, and more
25 importantly the customers, with a plain indication of

1 what their rates are going to be and when those rates
2 are going to go up.

3 Now, as we stated, it's hard to quantify the
4 customers' interest at this point in time. The social
5 problem that Mr. Reeder speaks about is, Are you
6 better to have serial small rate increases or one
7 really large one?

8 The carrying costs that have been thrown
9 about pertaining to MPA II are still uncertain. The
10 Office is not persuaded at all by the Division's
11 spreadsheet defining them as somewhere between
12 2 million and 10 million.

13 We think that the Commission should consider
14 that as an important part of your decision whether to
15 defer or place into rates MPA II, because that really
16 is your only question. It then falls upon the
17 question of, Well, will we gain more accurate results
18 if we defer it as opposed to not?

19 And Mr. Reeder's arguments are -- they're
20 very well taken. The Office is not persuaded by
21 them -- with all due respect, Mr. Reeder -- because
22 our issue is, Yeah, business budgets deferred for a
23 year. But Widow Jones is budgeting for the next two
24 weeks, depending upon whether her employer has stayed
25 in business and whether her paycheck's gonna clear.

1 I mean, that's maybe an exaggeration of the
2 situation. But, you know, people budget on a biweekly
3 basis in order to pay their rates. So that's an issue
4 that they're taking into account at the present point
5 but also, Well, you know, should I suffer now and
6 hopefully not pay a lot more in the future years? The
7 three years out of the amortization of the deferral,
8 for example?

9 We can't answer that question. It's --
10 there's no clear answer to it. But nevertheless, the
11 case of whether or not this matter should be deferred
12 or collected immediately for MPA II is ripe. And you
13 shouldn't wait because, well, you don't have enough
14 information.

15 This is a legal question. And then you make
16 that judgment. Because you know essentially what it's
17 going to do to rates. Accuracy is important in the
18 regulatory realm and you should look to that very
19 carefully. Which is going to be the most accurate
20 rate for the consumer? What is going to be the better
21 result for that consumer, you know, again, the serial
22 smaller increases or the one large one?

23 We simply defer to your wisdom about that
24 particular matter, as our response provided. That's
25 the Office's comment. We're not opposed, we're not a

1 proponent of one position or another. We're not quite
2 Switzerland, but we're approaching it.

3 CHAIRMAN BOYER: Thank you, Mr. Proctor.

4 We -- you know, obviously we could have
5 decided on the, on the pleadings but we wanted to hear
6 legal arguments. It is kind of an arcane and narrow
7 legal question here, so we appreciate you adding your
8 comments here.

9 Let's turn back to Mr. Reeder and see if you
10 have any concluding remarks or arguments.

11 MR. REEDER: Briefly, if I may. The genesis
12 for the statute, from those of us who were present at
13 its birth, is a little different than that described
14 by my colleague.

15 In 2006 we were confronted with a major plant
16 addition, the Lakeside Plant, becoming used and useful
17 after the conclusion of a general rate case. We
18 struggled about how to bring that into rates because
19 of the major -- because of the bar against single-item
20 rate cases.

21 We came up with a solution -- of questionable
22 legality at that time -- of a negative surcharge.
23 That's what spawned the statute, was how to do it.

24 Those major generation plants go through
25 SB 26 procedures and get vetted pretty well. And when

1 one of those comes online immediately following a rate
2 case we were sympathetic that the Utility ought to be
3 able to earn on those as quickly as they come into
4 service.

5 With respect to things other than those that
6 go through the SB 26 process, we were struggling.
7 Mr. Dodge and I struggled immensely with this. And
8 I -- this whole argument is kind of proof that no good
9 deed goes unpunished. Those were never -- those were
10 things that we did not have good information about,
11 and we knew we wouldn't have good information about.

12 And if they came at us with something other
13 than a plant that had been through SB 26, we knew that
14 it had to go to a general rate case -- at least in our
15 mind -- because you would have no chance of
16 determining what rates were just and reasonable in the
17 150 days when those things were coming at you.

18 Hence you'll see the Division in the statute
19 about plants that go through the SB 26 process and
20 plants that don't. That's the reason for that. It
21 came to us because of our attempt to allow the Utility
22 to earn on assets after the AFUDC earning opportunity
23 ended. We thought it was fair that they, that they
24 earn on it.

25 That's where the statute comes from. It was

1 not Ormat knocking at our door, it was simply a
2 fundamental sense of fairness. But, you know,
3 sometimes no good deed goes unpunished.

4 With respect to the Commission's ability now
5 to reconsider its decision to defer MAP I (sic), I
6 don't see, in the section read to you, anywhere that
7 says, After you've made the decision to defer you can,
8 on your own motion, on the application of a party, or
9 simply because it would be convenient, change the
10 deferral to a recovery in a major plant addition case.

11 It says you make a decision. If you've
12 deferred it, then it goes to a general rate case.
13 That's just what the statute says. I think there is
14 no other alternative.

15 With respect to carry charges, there is a
16 document attached to the DPU's brief that is a
17 response to our discovery requests. It's got two
18 parts to it:

19 The carry costs on the second tranche,
20 \$925,000, totally in your discretion. That assumes a
21 6 percent charge and a period of a year. You can
22 decide what that's gonna be. If that's burdensome,
23 that's your decision.

24 With respect to the first tranche, one-year
25 carry is \$1.7 million. And part of that is already

1 accrued. There's about \$1.4 million that will accrue
2 as we're going forward.

3 I think I'm bound by my stipulation that
4 they're entitled to earn that until that goes into
5 rates. So I don't think we ought to be heard to
6 argue, as some are arguing, that that's a burden.

7 Now, I'm sympathetic and I appreciate the
8 Company's concern about the, about the interest for we
9 ratepayers and the carry charges associated with it.
10 Trust us, we'll have more to say about that at the
11 appropriate time.

12 With respect to the decision to be made now
13 or later. You're going to have to hear MAP I later.
14 You might as well hear MAP II on the cost of service
15 study later, and avoid the duplication of cost and
16 avoid the duplication of effort, because it's just
17 gotta happen.

18 There is just no convincing alternative
19 construction to the statute, unless you choose to
20 commence an investigation to do that kind of thing.

21 I think at the end of the day the question
22 becomes simply the question that Justice Maughan posed
23 in the single-item rate case: Are you going to have
24 comfort that the rates that you're going to approve
25 are just and reasonable in the absence of your having

1 the opportunity to have what we're learning as we're
2 going forward and all of the information in front of
3 you? And I'd submit it.

4 CHAIRMAN BOYER: Thank you, Mr. Reeder.
5 We'll turn now to Commissioner questions.
6 Commissioner Allen?

7 COMMISSIONER ALLEN: Thank you, Mr. Chairman.
8 Previously I had written a few questions down
9 here, and now that we've had an opportunity to have
10 you discuss your prefiled testimony I might have to
11 alter these just a little bit to see if I get to the
12 core of the problem.

13 Mr. Reeder, when I look at -- when we look at
14 the issue of legislative intent it appears that you
15 and Mr. Hickey disagree on what that may have
16 initially been, at least to some degree.

17 And when I look at this, not as an attorney,
18 but just looking at what I would interpret as trying
19 to decide what the legislative intent was or trying to
20 read through this, it seems to me with the, with the
21 major plant additions section as an entirely new law
22 what would be the benefit of having that without
23 specific or new cost recovery?

24 Wouldn't it have just been -- if we take your
25 assertion that we have to follow the plain language of

1 the law, wouldn't a major plant addition case simply
2 be a subset of ongoing rate cases otherwise?

3 I guess what I'm saying is there's an
4 implication there, when you look at the whole new law,
5 that there should have been or could be alternate
6 recovery as well as the single-item rate case. How do
7 you explain that?

8 MR. REEDER: The reason that was persuasive
9 to those of us present is for -- you're the only
10 person in the room who's been in the legislature, so
11 you understand legislative intent better than anyone.

12 But the reason it was persuasive to us and
13 the reason argued most persuasively was the Utility
14 stops earning AFUDC -- allowance for funds used during
15 construction -- when a plant becomes commercial or
16 goes operational.

17 So when it comes into service there needs to
18 be some way for them to get return of and return on
19 their assets. That's the reason for the statute.
20 It's the functional equivalent of a deferred
21 accounting order.

22 And you decide whether or not you're going to
23 adjust rates now, like you did in Lakeside, or whether
24 you're gonna adjust them later when you get better
25 information. That's the function -- that's the

1 financial purpose of the statute.

2 That was what was persuasive to us as we sat
3 with the Company drafting the statute. That there was
4 some unfairness that we would have the use of their
5 assets and not have to pay the return of and return on
6 those assets.

7 That's what we tried to solve in Lakeside I.
8 That's what I think the legislative intent was,
9 together with avoiding proliferating cases. We didn't
10 want to see a case every six months. We didn't
11 succeed at that, but.

12 COMMISSIONER ALLEN: So I suppose in
13 fairness, Mr. Hickey, do you have some insight on how
14 you see that response?

15 MR. HICKEY: Well, I would just accept the
16 premise of your question that the legislature intended
17 to do something that changed the State of Utah law by
18 passing this act.

19 And I think what they changed was they
20 further empowered the Commission in the area of rates,
21 and your ability to establish just and reasonable
22 rates by carving out a major plant addition cost
23 alternative/cost recovery methodology.

24 And that methodology gives you substantial
25 discretion in this subsection 5 and subsection 6

1 provision of the law. The other point that I've
2 alluded to, Commissioner Allen, but didn't make as
3 clearly as I probably could have or should have was if
4 you look at the language in subsection 6, and it again
5 talks of deferral. It says:

6 "The deferral or collection of the
7 State's share of the net income
8 requirement which impacts the -- or the
9 impacts of the major plant addition
10 under this section shall commence the
11 day on which a Commission order is
12 entered approving the deferral or
13 collection amount."

14 There's no reference there to saying entry of
15 a Commission order in a general rate case. And I
16 think the fair reading of the entire statute is that
17 you were given authority to do any or all of the
18 following: Defer, adjust rates, or establish a
19 collection methodology.

20 And that you have that ability both in a
21 general rate case deferral, or a deferral that ends
22 prior to that by the entry of an order as you could
23 enter in this case to end the deferral in MPA I.

24 MR. REEDER: If I may, there's a distinction
25 that we seem to be missing here. This statute is to

1 give the Utility the opportunity to earn. It can also
2 give the Utility the opportunity to turn those
3 earnings into cash flow.

4 It earns return and can accrue that return
5 like it does on any asset. It can also turn it into
6 cash flow if you turn it into rates. That's the
7 decision the Commission gets to make.

8 I think what Mr. Hickey is arguing is that
9 it's got to go to cash flow. I don't agree it's got
10 to go to cash flow. I think you can simply give them
11 the opportunity to earn.

12 And as you look at 6(b), that opportunity to
13 earn the return ends when it becomes a part of the
14 general rate case and becomes part of the recovery
15 pursuant to the return of and the return on the rate
16 base in general.

17 That deferral, that opportunity to earn -- to
18 accrue, if you will, earnings ends at that point.
19 Unless, of course, you've let them cash flow it in the
20 meantime. So we're talking about two independent
21 concepts here: Earning and cash flow.

22 COMMISSIONER ALLEN: And Mr. Reeder, if I put
23 my accounting hat on, though, the cash flow issue can
24 be an important issue. It's one thing to have an
25 asset on your books that says you're gonna get some

1 money one day, or someday out in the future, as
2 opposed to having it in the rates at the time.

3 So I was a little surprised, to be honest
4 with you, that there wasn't more discussion about the
5 cash flow issue. Is this a small number -- this is a
6 question for both of you -- so that the cash flow is
7 not as relevant?

8 But -- I want you to explain more why the
9 cash flow is not an important issue for the --

10 MR. REEDER: I think --

11 COMMISSIONER ALLEN: -- in terms of creating
12 new borrowing, those issues.

13 MR. REEDER: I think cash flow may be an
14 important issue to them. That is not an issue that
15 they've chosen to confess in their 10-Q that we
16 attached to our brief.

17 There's not one word in there that, The
18 construction of these facilities is dependent upon us
19 getting prompt relief from retail ratepayers.

20 Second -- secondly, there was not one word in
21 their FERC order, where they sought authority from
22 FERC to get a bonus rate of return, that this was
23 predicated upon getting retail rate relief in order to
24 do it.

25 This is the first place we've heard the

1 allegation that there's a cash flow requirement. I
2 don't deny that cash flow is important, but cash flow
3 is not usually used for construction. Cash flow is
4 usually used for operation.

5 They're borrowing. And they've attached in
6 their application they're borrowing. And they don't
7 concede or confess any, any lack of access to the
8 capital market appears to me that way.

9 Now, to the cash flow issue, they just
10 haven't raised it anywhere but in one paragraph in
11 their brief. But I agree with you that it's
12 important.

13 COMMISSIONER ALLEN: I understand that
14 distinction, too, between capital and operation.

15 So Mr. Hickey, did you want to?

16 MR. HICKEY: Thank you, Commissioner Allen.
17 I do want to respond on behalf of the Company to the
18 cash flow issue. And it was one that we had
19 anticipated. And through the assistance of Mr. Bruce
20 Williams, the Company treasurer, have some
21 observations that I can pass along and make these
22 representations into the record this afternoon.

23 During 2009 PacifiCorp invested \$2.3 billion,
24 while it generated 1.5 billion of cash from
25 operations. That difference was funded, in part,

1 through external borrowing. The cost and availability
2 of which depends, in a large part, upon the investors'
3 perceptions of the risks that PacifiCorp has and the
4 support that it receives from its regulators.

5 And Moody's and Standard & Poor's have both
6 made a -- made references to the fact that from a
7 rating perspective -- as you've heard from our cost of
8 equity folks and Mr. Williams in the context of
9 general rate proceedings -- the ratings this company
10 receives from the rating agencies is, in fact, tied to
11 an expectation of those agencies that there will be
12 favorable treatment, favorable regulatory treatment
13 throughout the operating territory on these very heavy
14 capital costs that are being invested.

15 COMMISSIONER ALLEN: Okay, thank you.

16 Does the -- does either the Division or the
17 Office have anything to add on those issues of intent
18 or cash flow?

19 It doesn't appear so. Thank you,
20 Mr. Chairman.

21 CHAIRMAN BOYER: Thank you, Commissioner
22 Allen.

23 Commissioner Campbell?

24 COMMISSIONER CAMPBELL: I have no questions.

25 CHAIRMAN BOYER: Well, I guess I'm the only

1 one who's confused -- and I was confused earlier in
2 the hearing as to who was supporting and who wasn't --
3 but I do have a couple questions.

4 And this one is just general to all counsel
5 present. I would have expected to see more of a
6 discussion of the legislative, legislative history of
7 this particular portion of the statute.

8 I listened to some of them during that
9 legislative session, and my memory was that the whole
10 purpose of this change was to address regulatory lag.
11 To get these major plant addition costs into rate base
12 sooner than later, and not have to wait till a rate
13 case.

14 And I didn't remember that if deferral was
15 used you had to wait till the rate case, but if you
16 use some other -- one of the other alternatives you
17 didn't. Nobody -- but nobody really raised that. I
18 mean, you've talked about it in argument a little bit.

19 MR. DODGE: And I'd like to address that,
20 Mr. Chairman. And I think it's obvious. The
21 complaint the Utility had was that regulatory lag
22 meant that it received nothing from the day a new
23 plant addition came --

24 CHAIRMAN BOYER: You're gonna, you're gonna
25 say that the carrying charge makes them whole --

1 MR. DODGE: Well, not just the carrying
2 charge but recovery of the net revenue requirement
3 impact. So in other words, under the old rule if they
4 couldn't get a new plant into the test period, or even
5 if they got it into the test period but it was the
6 last month of the test period, they got one-twelfth of
7 the cost.

8 Then until they could get through the next
9 general rate case -- even if they filed the day after
10 you entered your order -- there would be eight months
11 when they would be recovering zero as to the let's say
12 \$30 million investment they just made -- \$30 million
13 revenue requirement -- a much larger investment that
14 produces a \$30 million revenue requirement, as in
15 MPA No. I.

16 So the old scenario was they lost
17 \$2.5 million a month, if you assume a \$30 million
18 requirement. They lost \$2.5 million a month while
19 the, the item was being used and useful and
20 benefitting customers. And it was an at least eight
21 month regulatory lag that they could not be made whole
22 from.

23 That was the argument. And so we agreed, in
24 that kind of a context, that the day it becomes used
25 and useful they start recovering \$2.5 million. And

1 then the issue of how and when they recover it was
2 what was left to the Commission's discretion.

3 You can either choose to adjust rates right
4 then, so rates go up by \$2.5 million a month. Or you
5 can choose to defer it. In which case 2.5 million
6 goes into a deferred account, plus a 6 percent
7 carrying cost.

8 At the end of -- when the rate case comes and
9 it says it will be deferred to a general rate case,
10 then you take all of that deferred \$2.5 million plus
11 the carrying charge and roll those into rates. So
12 they do recover that.

13 And so the legislative intent didn't even
14 address the issue of whether it's important for them
15 to recover it immediately upon the MPA case being
16 completed or during the rate case. It gave you that
17 discretion.

18 And the point that I made earlier was we
19 insisted upon the deferral option because we didn't
20 like the notion of adjusting rates in the middle,
21 sometimes maybe up to 18 months after a general rate
22 case, especially when the data you'd be using might be
23 very stale if the Commission chose not to require a
24 brand new cost of service study and brand new
25 arguments on rate design, et cetera.

1 So the Company is whole, and the whole
2 argument's about rating agencies. It's not
3 unfavorable regulatory treatment to let them recover
4 every cent that they have -- of the revenue
5 requirement impact plus interest.

6 Unless they come before you and show a cash
7 flow problem that is hampering their style, I don't
8 think that -- I think that's a red herring. They are
9 recovering this money. The MPA statute allows them
10 to.

11 It's a huge concession to the Company that
12 very few states have. And I don't believe one other
13 state in their service territory gives them this
14 option. They'll have to go through the regular
15 regulatory lag route, as far as I understand, in every
16 other jurisdiction.

17 So it shouldn't be heard that this Commission
18 is not supporting them in their investment efforts.
19 We're the state that stood up and allowed them to
20 start recovering it immediately.

21 CHAIRMAN BOYER: So they don't, they don't
22 have the money in their account immediately, but since
23 it's accruing and accruing carrying costs they're
24 whole anyways?

25 MR. DODGE: Exactly. And the statute

1 requires you to let them recover it. There's no
2 option. Once you approve the net revenue requirement
3 amount and enter the deferral order -- it's not like a
4 normal deferred accounting order where you reserve
5 ratemaking treatment whether they will or will not
6 recover it? This is one where they do get to recover
7 it.

8 The only question is when, and how, and which
9 customers pay it. And those issues are best decided
10 in a general rate case. That's why that option was
11 given.

12 CHAIRMAN BOYER: I know Mr. Hickey wants to
13 say something.

14 MR. HICKEY: Thank you, Chairman Boyer. Just
15 a couple of other comments, one to be fair of what
16 I've learned about the Legislative history. And it's
17 that there was a very cooperative working group, of
18 which Mr. Reeder and Mr. Dodge -- I don't know from
19 what's been shared with me how active the Division and
20 the Office were, but I assume they were equally active
21 at the table.

22 And that that cooperative effort did lead to
23 what went through your legislative services office and
24 came back. Has been in a bill that I think passed 27
25 to nothing in the Utah State Senate. So I think a

1 fair discussion of Legislative intent with these
2 parties here requires somebody to acknowledge that. I
3 think we're the party that should.

4 That said, there is a substantial difference
5 in opinion, based on what I hear the argument today,
6 about this is a chance to get a carrying charge on
7 your major plant addition charges cost and what the
8 Company believes the opportunity and the intent of the
9 statute was.

10 Which is consistent with your introduction of
11 the question, Chairman Boyer, of wasn't this about how
12 to get away from regulatory lag yet a chance to
13 recover. Yes, it was. And I think the proof of that
14 is in further detail in the statute.

15 You can't even qualify for this statute if
16 you don't have an investment that's one percent of
17 your rate base. So the beginning point was this is
18 going to be a major plant investment.

19 Then another condition of the statute is you
20 can't file this if you haven't had an order in a
21 general rate case within 180 days of the filing. That
22 is so that you do have some confidence that the rates
23 have been reviewed, the expenses of the Company have
24 been reviewed recently, and there's some confidence
25 that when you act on the cost recovery component of

1 this statute that you're not in a great distance from
2 when the last time the rates were reviewed.

3 And that, of course, the other requirement
4 that within 90 days of the application the plant has
5 to go into service.

6 COMMISSIONER CAMPBELL: I think you meant to
7 say 18 months, not 180 days.

8 MR. HICKEY: I'm sorry, I misspoke. Yeah, it
9 is 18 months. Thank you, Commissioner Campbell. But
10 those additional conditions of the statute were placed
11 in, in the law for the specific reason of addressing
12 how is the cost recovery going to occur, and what's
13 the timeline that it's going to occur in.

14 You were given the discretion to do that
15 outside of general rate cases, and we encourage you to
16 act on that authority.

17 CHAIRMAN BOYER: Thank you. Thank you,
18 Mr. Hickey.

19 MR. PROCTOR: If I might, Chairman Boyer?

20 CHAIRMAN BOYER: Mr. Proctor?

21 MR. PROCTOR: Yeah, if I could address that?
22 What Mr. Hickey says is correct, except subsection 6
23 does not say, And by the way, the Company can change
24 its mind. And instead of deferring it to the next
25 general rate case, we're gonna defer it till the next

1 filing we make.

2 That section doesn't say anything about that.
3 The deferral in MPA I is set in stone, if you will.
4 And as Mr. Dodge described, they're getting that
5 recovery in the next general rate case. That's a
6 bargain, but that's the statute.

7 There is no exception for the Company
8 deciding they don't -- they want to get it now.
9 That's the decision that they should have requested in
10 the very first place.

11 So his descrip -- Mr. Hickey's description of
12 the way the statute's supposed to work is correct, and
13 Mr. Dodge is very correct in his interpretation. But
14 the Company is simply in error when it reserves for
15 itself the right to request early collection. Thank
16 you.

17 CHAIRMAN BOYER: Okay. I want to ask a few
18 questions on the express language of the statute, but
19 I have a couple of other questions as well. And I'd
20 like to hear from Rocky Mountain Power on this
21 question, and it's one raised by UAE.

22 And I'm putting words in their mouth, but
23 essentially they're saying that it is inappropriate to
24 use stale -- shall we say stale billing determinants
25 in a load growth environment because that will assure

1 over-collection.

2 What's the Company response to that?

3 MR. HICKEY: Well, I think it's back to the,
4 the 18 months since you last visited the cost of
5 service study. And the cost of service study that has
6 been -- would be available to create the rate spread
7 in this docket would have the adjustment that you
8 directed out of the last general rate case order in
9 February on the adjustment for income taxes.

10 So I would say that you have a cost of
11 service study that was satisfactory in the last rate
12 case. The -- one of the two major points that you
13 criticized on it in directing it into the working
14 group has been addressed. And so we have something
15 that you have the confidence of having seen recently
16 in the context of a general rate case.

17 The position of UIEC to go ahead and just
18 wait until the working group comes back and then let
19 you see what the working group's recommendations are
20 is just another black hole, if you will, to cause
21 further delay.

22 We don't know what the working group's
23 recommendation is gonna be. We don't know, if they
24 had one, whether or not you would ultimately adopt the
25 working group's recommendation.

1 We do know that you've had the confidence of
2 seeing sworn testimony and applying your own expertise
3 and reviews of the study that's in place and would be
4 applied to develop the spread of these additional
5 increases.

6 CHAIRMAN BOYER: Okay. Thank you.

7 Anything further, Mr. Dodge?

8 MR. DODGE: Well, I guess I'll just point out
9 that I think Mr. Hickey has tacitly conceded the
10 point. And I think there's no argument that when you
11 have a test period, in order to look at the net
12 revenue requirement impact of a new plant addition, to
13 make any sense I think the Company properly said,
14 We've gotta be looking forward. This doesn't come
15 into effect until the end of 2010, and so we've gotta
16 look forward from that to know what the revenue
17 requirement impact is. So we're looking through the
18 year 2011.

19 But the billing determinants that were
20 determined in the last rate case were effective for
21 the test period June '09 through June '10. Or
22 July '09 through June '10. So by definition there's
23 going to be a great lag between the, you know, the
24 average numbers you use in that test period and a test
25 period looking forward into 2011.

1 And in an increasing sales environment that
2 this company has had consistently through -- even
3 through the recession, it will guarantee
4 over-recovery. I don't -- it's a mathematical
5 certainty. You can't dispute it.

6 It will likewise guarantee under-recovery if
7 they're -- if they have declining load. In which case
8 I'm sure they'd be here arguing for a deferral so they
9 aren't assured of under-recovery.

10 You have the discretion to defer to a general
11 rate case in large part so that you can make that
12 match again. You can match the revenue requirement
13 impacts with the proper billing determinants and set
14 just and reasonable rates.

15 MR. HICKEY: Chairman Boyer, could I just
16 take a --

17 CHAIRMAN BOYER: You may.

18 MR. HICKEY: Try to do it very quickly.
19 There is another point that -- to the credit of the
20 Commission and your procedural schedule I believe it's
21 the hearing on the 13th of December -- that is
22 contingently set on the assumptions of no settlement,
23 and on the assumption that there is still a cost of
24 service rate spread issue in the case.

25 You will hear from Craig Paice again, the

1 cost of service witness for the Company. You'll hear
2 from Bill Griffith again, the rate spread person. And
3 have the ability, with that record in front of you and
4 any questions that intervenors may ask at that time,
5 to know that you're going to look at this
6 contemporaneously with, hopefully, the entry of the
7 order or near the entry of the order approving cost
8 recovery.

9 MR. REEDER: But therein lies the problem.
10 That testimony is already on this record. We have
11 looked at that testimony. That testimony uses the
12 billing determinants from 2007 and 2008, and we've got
13 the revenue requirements from 2010. So we've got this
14 gross mismatch in years.

15 If I were the Company arguing your test year
16 selection I'd direct your attention to 54-4-4, where
17 the description for billing determinants talks in
18 language of the test year being appropriate to the
19 period when the rates will be in effect.

20 I think you need to think about that language
21 as you talk about what the appropriate test year is.
22 Taking into consideration Mr. Dodge's point that if
23 you don't, it's a mathematical certainty with the
24 rising -- the growing environment, there will be an
25 over-earning.

1 MR. DODGE: Can I just respond briefly?
2 Because this kind of gives illustration to the point
3 here, or the problem here. When we have a rate case
4 we have a very short time to do it in. But at least
5 it's eight months, right?

6 And we have to go through a major revenue
7 requirement battle, and a major cost of service
8 battle, and a major rate design battle. And often you
9 end up segregating those latter two because the
10 statute doesn't require them to be determined in
11 advance.

12 It's difficult to have and complete all of
13 the things necessary to do an adequate job in a rate
14 case and for you to reach a reasonable conclusion on
15 just and reasonable rates in that time frame.

16 Here we've got one -- here we've got five
17 months to do the entire thing. And you've heard the
18 Division and the Company argue this was not intended
19 to duplicate a general rate case. And in their filing
20 they did not use a new cost of service study. They
21 did not come up with new billing determinants, they
22 used the old ones.

23 And yes we could, in theory, come up and do
24 our own load growth projections, and they'd laugh at
25 them. What did you use to make your load growth

1 projections?

2 Well, we don't have any basis for it. The
3 Company comes up with those and then we can, we can
4 critique it. We don't have access to the data
5 necessary to project the load growth determinant.

6 So if they're intending in December to come
7 back with new load billing determinants, and a new
8 cost of service study, and a new rate design position,
9 we won't have had a chance to look at it before then
10 or respond to it.

11 So that's why you were given the discretion,
12 with only 150 days to resolve this, to put that kind
13 of a battle off to a general rate case when you decide
14 deferral is the appropriate option.

15 CHAIRMAN BOYER: Okay, thank you.

16 Did you want to say anything else,
17 Mr. Hickey?

18 MR. HICKEY: Oh, I probably should exercise
19 good discretion and not. But if you're not completely
20 worn out of this argument yet, I would take half of a
21 minute to say something.

22 CHAIRMAN BOYER: Go ahead.

23 MR. HICKEY: I think we're back to what the
24 fundamental tensions are about the differing views of
25 the statute. This end of the room wants all these

1 issues pushed to a general rate case.

2 At least this table and I think a portion of
3 the table to my left want to give effect to what the
4 legislature intended, which was an alternative to a
5 general rate case.

6 And the answer to the, the fear of Mr. Dodge
7 and Mr. Reeder is, again, the last time you looked at
8 these issues was within a general rate case that was
9 tried last December and an order that was entered in
10 February. So these aren't stale issues, they're
11 issues that you have recently reviewed.

12 And I think that's why that further
13 limitation was embedded in the statute. So that you
14 had confidence that the Commission had seen the issues
15 in a relatively short period of time. And that you
16 could then act on that confidence to select a cost
17 recovery vehicle or mechanism for these major plant
18 addition costs.

19 CHAIRMAN BOYER: Okay. I think we understand
20 everyone's position on that. Let me, let me ask
21 another couple of questions then. As I read
22 54-7-13(4)(5) I think we have four alternatives.
23 Someone said we have two, someone said we have three,
24 someone said we have four.

25 I think that we can defer the net revenue

1 requirement for recovery in a general rate case.
2 That's one alternative. The second is we can adjust
3 rates under 5(b.) A third is we can otherwise
4 establish a collection method that will apply the
5 appropriate billing components. And that's three. Or
6 four, all of the above.

7 I mean, that's the way I'm reading it is that
8 we have four alternatives. Now, having said -- and I
9 may be wrong on that, but I -- that's the way I'm
10 reading it. Now, having said that, does the language
11 show do one or all of the following require that they
12 all be done at the same instant?

13 Or can we do something for a while and then
14 change to something else a little bit later?
15 Particularly I ask this question in the context of
16 reading subsection 6(b.) We're clearly talking about
17 deferral here.

18 And it says the deferral described in this
19 section -- and the deferral is, under 5(a), deferred
20 to a general rate -- deferred to recovery in a general
21 rate case. Okay, (b) -- 6(b) says:

22 "The deferral described in this
23 section shall terminate upon a final
24 Commission order that provides for
25 recovery in rates of all or any part of

1 the net revenue requirement impacts of a
2 major plant addition."

3 Now, that -- I suppose that Commission order
4 could be in a general rate case, but I don't
5 understand why it couldn't be in another order. For
6 example, an order now.

7 To Mr. Reeder.

8 MR. REEDER: It could be in a general rate
9 case. It could be in an investigation case. But
10 other than that, I don't see any authority for you to
11 do it. So I think that's where, where the answer to
12 your question lies in terms of your authority to do
13 it.

14 But let's, let's go back and look at your
15 proposition about what your choice is. I think you're
16 right, I think you do have a number of choices. I
17 think we outlined in our brief a number of choices.
18 We may have come up with five, or three, but I think
19 you do have a number of choices.

20 You may allow it in part. You may allow it
21 in whole. You may allow it with conditions. But
22 after you've made that decision on what you're going
23 to do, you make a second decision. Are we going to
24 allow it to flow into rates, or are we going to defer
25 it?

1 You don't reconsider that decision every time
2 a major plant addition is filed. You've deferred it.
3 It's deferred to a general rate case, unless you go to
4 an investigation. And then, if it's deferred to a
5 general rate case or an investigation, then you flow
6 it into rates. Following your decision on the rate
7 order or the revenue requirement to allow it all,
8 allow some part of it, or allow none of it.

9 You could well say in this case, We're going
10 to allow you to accrue earnings on the total amount of
11 your investment, subject to our determination in a
12 general rate case that you're not entitled to recover
13 all of it because we want to slice off the merchant
14 part of this plant and not allow you to do it.

15 But we don't want you to be barred by the bar
16 against retroactive ratemaking, as we've done before.
17 We'll allow you to recover it. We'll allow you to
18 accrue it all in this account. But that doesn't mean
19 you're going to get it all when it comes to a general
20 rate case. We're just trying to get past the bar on
21 retroactive ratemaking.

22 So you're right, you do have discretion on
23 how you can do it. But I don't know there that you
24 can get -- unwind it anywhere except in a general rate
25 case or in an investigation.

1 CHAIRMAN BOYER: Let me restate my question.
2 Why does 6(b) contemplate the termination of the
3 deferral by order if it's not in a general rate case?

4 MR. REEDER: Because the deferral is an
5 account deferral where they're setting up and creating
6 a regulatory asset. You have to end the life of that
7 regulatory asset. And that regulatory asset's life
8 ends when it becomes part of the rate base.

9 CHAIRMAN BOYER: And your position is that
10 that's at the end of the general rate case?

11 MR. REEDER: No, that's when you issue an
12 order deciding when it goes into rates. That can be a
13 general rate case, it can be subsequent general cases
14 because you could allow it to accrue for a period of
15 time, or it could be an investigation.

16 You could flow it in in tranches, you could
17 flow it in all at once, you could flow it in a general
18 rate case. But the termination language is -- and
19 here I'm blending Commissioner Allen's expertise.
20 This simply says, We're ending the accrual of the
21 creation of a regulatory asset and we're folding it
22 into rate base. That's what that says.

23 So we're stopping the carry charge because
24 it's now in rate base. That's an accounting
25 convenience. It isn't a separate grant of authority.

1 It simply says at that point you stop accruing and
2 should begin earning.

3 CHAIRMAN BOYER: I'm reading Mr. Dodge's body
4 language. I think you want to say one more thing.

5 MR. DODGE: I do, if you don't mind. I mean,
6 I take a simplistic approach -- it's what I was taught
7 in law school -- about reading the statutes. You start
8 in 4, and it says "The Commission shall." This is
9 your order.

10 This is what you're required by statute to
11 do: One, review the application. Two, approve,
12 approve with conditions, or deny cost recovery. And
13 three, enter an order on cost recovery. All within
14 150 days. Okay?

15 So you -- you're required by statute, within
16 150 days, to do those three things, including entering
17 an order on cost recovery. Which you did. And then
18 it goes on to say, In that order on cost recovery,
19 which must be entered within 150 days, you're allowed
20 to do one of those four things you described.

21 Which did you choose? You chose deferral.
22 And under 5(a) what does it say about deferral? It's
23 to defer the State's share for recovery in general
24 rate cases.

25 I'm not gonna argue today -- I haven't

1 thought it through -- whether back when you entered
2 your order on deferral if you had said, We're going to
3 defer it until the MPA II case is resolved and then
4 put it into rates, I'm not gonna argue whether you
5 could or could not have done that. I haven't thought
6 it through.

7 But you didn't. You said, We're gonna defer
8 it. And by the statute it's only for recovery in
9 general rate cases.

10 If you then try and read 6(b) the way that
11 it's been suggested that the deferral shall terminate
12 upon any final Commission order -- meaning you can
13 enter an order anytime terminating it -- then you've
14 written out of 5(a) "for recovery in general rate
15 cases."

16 That makes that clause meaningless if you
17 interpret 6(b) to be, We can enter an order anytime we
18 want and stop the deferral and put it in rates.
19 Again, I'm not here arguing whether you should or
20 shouldn't have that discretion if we were doing this
21 statute all over again. But you don't.

22 It says you -- if you defer it, which you
23 have to decide within 150 days, it goes to general
24 rate cases for resolution of how it's collected.

25 CHAIRMAN BOYER: Okay, thank you.

1 Any further comments?

2 MR. HICKEY: Let me just say I agree with the
3 premise of your question. I think you do have at
4 least those four options.

5 And I would say that the interpretation
6 that's offered by both Mr. Dodge and Mr. Reeder wants
7 to add language to the statute in 6 and insert a
8 phrase after deferral order that has been entered in a
9 general rate case. And that is, by any principle of
10 statutory construction, not allowed.

11 What would be rendered meaningless under
12 their interpretation of the statute is this delegation
13 of authority to the Commission to -- that is in 5,
14 where it says: "The Commission shall do one or all of
15 the following."

16 And "all" becomes meaningless if you cannot
17 defer and then enter a collection vehicle. Either
18 adjusting rates or some other methodology.

19 CHAIRMAN BOYER: Okay. Well, this has been
20 very, very helpful to me, and I'm sure to my
21 colleagues here on the bench. We will take this
22 matter under advisement. And that will conclude this
23 hearing. Thank you all for your participation.

24 (The hearing was concluded at 4:29 p.m.)

25

C E R T I F I C A T E

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

This is to certify that the foregoing proceedings were taken before me, KELLY L. WILBURN, a Certified Shorthand Reporter and Registered Professional Reporter in and for the State of Utah.

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting. And that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, numbered 1 through 76, inclusive.

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

SIGNED ON THIS **6th** DAY OF **October**, 2010.

Kelly L. Wilburn, CSR, RPR
Utah CSR No. 109582-7801

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