

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of: The Application) Docket No:
of Rocky Mountain Power to Increase) 12-035-67
Rates by \$29.3 Million or 1.7)
Percent Through the Energy Balancing)
Account)

TRANSCRIPT OF HEARING PROCEEDINGS

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

DATE: August 15, 2012

TIME: 9:01 a.m.

REPORTED BY: Kelly L. Wilburn, CSR, RPR

APPEARANCES

Commissioners:

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RIC CAMPBELL
RON ALLEN

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1 AUGUST 15, 2012

9:01 A.M.

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

3 CHAIRMAN BOYER: This is the time and place
4 for the hearing In the Matter of: The Application of
5 Rocky Mountain Power to Increase Rates by
6 29.3 Million, or 1.7 Percent, to the Energy Balancing
7 Account, Docket No. 12-035-67.

8 And in fact we're here to -- we are here
9 today to hear legal arguments on a couple of issues
10 that we mentioned in our -- one of our June orders.
11 Why don't we -- well, let's -- what we have in mind
12 today is to hear all of the arguments first, and then
13 we'll pepper you with questions if we have any.

14 The main issues that we're talking about are
15 whether or not we, the Commission, have -- has
16 authority to set interim rates in an EBA proceeding.
17 And if so, what is the, what is the burden of proof.
18 And there may be some corollary issues that you want
19 to touch upon.

20 I was in a bit of a conundrum yesterday
21 trying to figure out who should go first, because it's
22 the Company's request for recovering the EBA in rates,
23 but it's UIEC who raised these issues before us.

24 And so what we've decided to do is consider
25 UIEC the moving party, and so you'll have the

1 opportunity to go first, followed by the Company, and
2 then the Division, who are the only parties who have
3 filed pleadings.

4 Mr. Proctor contacted me early this morning
5 and said that they did not intend to participate
6 inasmuch as they hadn't filed any comments in this
7 case.

8 We'll try to stick with the 20 minutes in the
9 notice. You know, we can be a little bit flexible on
10 that if you need a little bit more time, but we have
11 been summoned to the legislature this afternoon and so
12 we'll have to dash up there and make a presentation on
13 telecommunications issues.

14 But let's enter appearances. Does anyone
15 have any questions about how we intend to proceed this
16 morning?

17 Okay. Well, let's enter appearances then,
18 starting with Mr. Evans.

19 MR. EVANS: I'm William Evans of Parsons,
20 Behle & Latimer for the Utah Industrial Energy
21 Consumers.

22 MR. MONSON: Gregory Monson of Stoel Rives
23 for Rocky Mountain Power.

24 MS. SCHMID: Patricia Schmid and Justin
25 Jetter for the Division of Public Utilities, from the

1 Attorney General's Office.

2 CHAIRMAN BOYER: Representing the Division of
3 Public Utilities, right?

4 MS. SCHMID: Yes.

5 CHAIRMAN BOYER: I'm glad you pronounced
6 Mr. Jetter's name because I was -- I thought it would
7 be Jetter, inasmuch as there are two "t's" following
8 an "e," but you never know. There's Derek Jeter, who
9 spells it a little differently, but. Different guy,
10 okay.

11 All right, with that -- with those
12 formalities out of the way why don't you begin,
13 Mr. Evans?

14 MR. EVANS: All right, thank you
15 Mr. Chairman. We, we think that we've covered the
16 ground in the briefs that we filed, but --

17 CHAIRMAN BOYER: And I should say -- pardon
18 me for interrupting -- that we have read all of the
19 comments of all the parties.

20 MR. EVANS: Okay, thank you. But let me
21 start by quoting a passage from 1980, the Supreme
22 Court looking at the, what has been known around the
23 Commission as the "wage case." It was a look at a
24 very early EBA that the Company had. And the language
25 from the Court is this:

1 "The first prerequisite of a rate
2 order is that it be preceded by a
3 hearing and findings. At such a hearing
4 there must be evidence adduced which
5 could reasonably be calculated to
6 resolve the issue presented for
7 determination.

8 "Findings required by statute must
9 be made in accordance with the evidence
10 so presented. If there be no
11 substantial evidence to support an
12 essential finding that finding cannot
13 stand and a rate order predicated upon
14 it must fall."

15 This is the minimum required for due process
16 when there's a contested issue before the Commission.
17 That parties who are -- have an interest in the
18 proceeding and those who have intervened be allowed to
19 receive notice and present evidence on their position.

20 And as the Court said early on, the first
21 prerequisite of the rate order is that the hearing be
22 held and findings made. Now, there are exceptions to
23 that that are explicit in the statute. And the
24 obvious one is the interim procedure that's set out in
25 the general rate case statute.

1 But the question for decision today is
2 whether the EBA lets you dispense with this first
3 prerequisite, the necessity to hold a hearing and make
4 findings before issuing a rate order.

5 Rocky Mountain Power is asking the Commission
6 to put a rate increase into effect for approximately
7 \$9 million of alleged EBA costs subject to a later
8 determination that these are costs for actual
9 prudently-incurred fuel, purchased power, credited by
10 wheeling revenues.

11 If this were the general rate case the
12 Commission could order an advance against those co --
13 those costs, I might say, have not yet been determined
14 yet. They've been presented to the Commission in the
15 Company's application at \$9 million, but there has
16 been a challenge to that.

17 We think that the appropriate amount should
18 be something less. And the amount hasn't been
19 determined. So if this were a GRC, a general rate
20 case, the Commission could, after a short hearing and
21 a review of the application, allow a rate to go into
22 effect pending the outcome of the rate case.

23 The actual amount to be recovered could be
24 determined at the end of the rate case. And
25 adjustments made so that the amount paid during the

1 rate case was credited against what the Company -- the
2 amount that the Company was determined to be allowed
3 to recover.

4 That -- and let me point out, we -- we're
5 calling that an "interim rate." And I know there's
6 been some confusion, and part of it is our fault. I
7 think we all have loosely used that term as we
8 approached these EBA proceedings because we know that
9 there are true ups at the end. We have to let the
10 rate go into effect for a time and there will be true
11 ups later.

12 But I think we should draw the contrast
13 between what the Company is asking for this 9 million
14 and what we just did with the 20 million that was
15 allowed to go into rates on June 1st. That 20 million
16 was the result of a stipulation that the parties
17 agreed to 20 mill -- 20 million for this tranche of
18 EBA costs would be just and reasonable and
19 appropriate.

20 We brought that number to the Commission, not
21 to be determined. We didn't ask the Commission to
22 determine the appropriate amount for recovery. We
23 brought the Commission a stipulation and asked the
24 Commission to determine whether the stipulation was
25 just and reasonable and would result in just and

1 reasonable rates.

2 So the issue on the 20 million was never
3 before the Commission for determination. All the
4 Commission had to do in that case was determine
5 whether the stipulation would be accepted. So in that
6 case those -- that 20 million could go into rates
7 right away.

8 But it is subject to a true up. Because if
9 over the two-year period that the Commission has set
10 for collection of that the 20 million isn't fully
11 amortized, or the Company over-collects it, there will
12 have to be a proceeding to determine how much more to
13 collect or to refund to ratepayers to fully amortize
14 the 20 million.

15 In the -- in that sense the rate -- the
16 surcharge now for the 20 million is temporary, it's
17 interim, because it's subject to true up later. But
18 that is a far cry from allowing the 9 million to go
19 into rates before the appropriate number has been
20 determined. We have not had a determination of
21 whether those are actual prudently-incurred costs.

22 So the question is then whether the
23 statute -- whether there is a way that the Commission
24 can allow the Company to begin to collect on that 9
25 million before a determination has been made that that

1 is the amount of actual prudently-incurred costs.

2 And our contention, of course, is that there
3 is no mechanism by which that can be done. We've
4 discussed in our brief that under these circumstances
5 the Commission's statutes do not allow a rate change
6 to go into effect, you cannot issue a rate order,
7 before you've had a hearing. Adduced the evidence
8 reasonably calculated to resolve the issue of the
9 appropriate amount of EBA costs to be recovered out of
10 that 9 million.

11 The EBA statute itself is silent on that
12 procedure. So we have to look to other of the
13 Commission's statutes for guidance about how that's
14 done. The GRC interim rate statute doesn't apply.
15 And I think it's clear that it doesn't apply. For
16 this reason. Let me go into that just a little bit.

17 When the EBA statute was enacted in 2009
18 Senate Bill 75 also contained amendments to the
19 general rate case statute. At that time, in the same
20 bill that created the EBA, the interim rate provision
21 in the GRC was amended to make it clear that it
22 applies only to general rate increases or general rate
23 decreases.

24 At the same time the first section of the
25 general rate case statute was amended to define a

1 general rate increase or decrease as a change in base
2 rates. And base rates were defined to remove from
3 base rates balancing accounts and deferred accounts.

4 So at the same time the legislature created
5 the EBA statute it made it impossible for the
6 Commission to apply the GRC interim rate provision to
7 the EBA. I don't think it can be any more clear that
8 the legislature intended that the Commission not use
9 that kind of a procedure to collect EBA costs.

10 So if that statute isn't available both the
11 Company and the Division have suggested that the
12 Commission, under its general authority to set rates,
13 may, may order an interim rate to go into effect
14 before actual and prudently-incurred costs have been
15 determined.

16 We disagree with that. There isn't anything,
17 other than the 191 account used by Questar, that would
18 provide any precedent or any reason for the Commission
19 to do so. And the 191 account is a creature unique to
20 Questar. It's a result of a kind of a longstanding
21 practice. It's never been challenged. It's -- I know
22 it's been before the Supreme Court. I know the
23 Supreme Court has commented on it.

24 It's our view that that issue, though, has
25 never been brought to the Supreme Court for a

1 decision. And that the language in those Supreme
2 Court decisions do not authorize the Commission to use
3 a similar procedure on its own.

4 And that is especially true when the
5 legislature has handed us a simple and elegant statute
6 for EBA cost recovery. It is complete by itself. And
7 applying the principles generally -- and the authority
8 generally given to the Commission we can craft a
9 procedure that's fair to the Company, that's fair to
10 the ratepayers, and allows the Company to avoid the
11 risk of recovery of its prudently-incurred actual fuel
12 and purchased power costs.

13 But this is not the 191 account. What we,
14 what we have in this case is not gas costs only, or
15 expenses associated with the acquisition of physical
16 supplies of natural gas.

17 Rocky Mountain Power has been advocating
18 since the beginning, and as it stands right now,
19 financial products are included in this EBA. And
20 these bolted-on financial products to the EBA statute
21 have turned a simple, easy-to-apply statute into a
22 virtual Frankenstein.

23 This thing is gonna be hard to apply with
24 financial products in it. Some of these financial
25 products -- and what we -- a year ago, before the last

1 general rate case, we knew far less about what these
2 financial products involved than we know today.

3 Now, we still don't know everything. Here's
4 what we think: That some of these financial products
5 involve the purchase and sale of natural gas before
6 any delivery is taken on it. They're buying and
7 selling natural gas before taking delivery. They
8 never take it. Same with some electric products.

9 They -- some of them involve transmission
10 rights. Some are electric swaps. Some, as we know,
11 are natural gas swaps. Some are book outs that it's
12 not clear what they're for or whether they're properly
13 chargeable against ratepayers.

14 These transactions are opaque. We don't
15 know, and the Commission probably doesn't know,
16 whether they're for the purpose of serving ratepayers,
17 what the net result of all these transactions and
18 financial products is, and whether ratepayers are
19 paying more than they should because of the trading
20 activities of the Company.

21 The losses from these trading and financial
22 products have not been insubstantial, as the
23 Commission knows. It's a lot of money. And it makes
24 a huge difference in what ratepayers need to pay for
25 fuel and purchased power. And the ratepayers are now

1 at risk for them, dollar for dollar, in the EBA.

2 So UIEC have put them in issue. We have
3 said, This needs to be looked at. There, there needs
4 to be a way that we can understand whether these are
5 actual prudently-incurred costs, properly chargeable
6 against ratepayers.

7 I might add that with the magnitude of these
8 losses it's a little hard to show there's been any
9 benefit to this. And when we have a situation in the
10 EBA that the Company has already guaranteed
11 dollar-for-dollar recovery of its actual
12 prudently-incurred costs, the value of hedging seems
13 to diminish.

14 They are already hedged by the EBA. And now
15 they're double hedged by these financial products,
16 which appear to be hurting the ratepayers. And here
17 we are about to let them go into rates without even
18 hearing about whether they are actual prudently-
19 incurred costs.

20 We, we submit that that would be error. A
21 violation of the Commission's statutes that require
22 hearing and findings before a rate order. And a
23 violation of due process to parties who are gonna be
24 injured by this.

25 The Commission has to hear evidence that's

1 reasonably calculated to demonstrate the prudence or
2 the lack of it to, to allow it to enter findings about
3 these costs. And it's Rocky Mountain Power that has
4 the burden to show this. To show that these are
5 actual prudently-incurred costs.

6 In the EBA -- under the EBA statute the
7 proofs are explicit in at least two aspects: One is
8 that they show they're actual. And two, that they
9 show they're prudently incurred. That is an
10 affirmative burden that the Company has under the EBA
11 statute to come forward with evidence and show that
12 that's the case before cost recovery is allowed.

13 And the Commission statutes elsewhere, in
14 54-4-4(4)(a), set out what the Commission must
15 consider in making a prudence determination. Four
16 things there that the Commission must determine. You
17 have no evidence before you to make that determination
18 today because it wasn't filed with the application.
19 Unfortunately, it isn't in the minimum filing
20 requirements, and probably should be.

21 But we're all coming a little bit -- and we,
22 we, like all the parties, are coming to this procedure
23 fresh. And trying to grope our way along and get
24 something that works under the EBA statute. And if
25 we'd been thinking about this we would have suggested

1 that you add into minimum requirements that the
2 Company submit a *prima facie* showing of actual
3 imprudence.

4 They haven't. And there's nothing in the
5 record from which the Commission can make this
6 determination at this point. Until it does, the
7 Commission cannot and should not approve a rate
8 increase for EBA cost recovery, whether it's subject
9 to refund or not.

10 For the UIEC, a surcharge for a year before
11 there's been a finding that the amount is actual and
12 prudently incurred amounts to quite a lot of money.
13 It's not insignificant. And that's the same for
14 residential classes or others.

15 The fact is, we don't know what the amount
16 will be. And we don't know what would -- what might
17 be disallowed as imprudent. And until we know, it
18 shouldn't go in. We should not be here undertaking a
19 practice of allowing the Company to take ratepayers'
20 money first and then try to show that it was justified
21 in taking it. It's a violation of due process and the
22 Commission's statutes don't allow it.

23 So to order a surcharge now, without hearing
24 the evidence, and entering a finding that the
25 surcharge is for actual prudently-incurred costs

1 creates a due process problem that the Commission can
2 and should easily avoid by setting this for hearing
3 and let's determine what those actual prudently-
4 incurred costs are. Thank you.

5 CHAIRMAN BOYER: Thank you Mr. Evans.

6 Mr. Monson?

7 MR. MONSON: Thank you. I think there's
8 something ironic about this argument that UIEC is
9 making today. We all recognize that the Company --
10 that the Commission has authority to use interim
11 ratemaking in connection with balancing accounts.

12 It does it in the 191 account. It does it --
13 it used to do it in the Company's EBA account. It
14 used -- it does it still with other balancing accounts
15 that other utilities have, including the CET, the -- I
16 can't remember the name, but the infrastructure,
17 pipeline upgrades account.

18 It uses it all the time. The Commission uses
19 interim ratemaking all the time in connection with
20 balancing accounts. It does it and has done it
21 without any express statutory authority to do so.

22 And the Supreme Court has reviewed this,
23 not -- and I agree with Mr. Evans, it hasn't reviewed
24 that precise question. But it has reviewed the use of
25 balancing accounts and interim ratemaking processes in

1 connection with those balancing accounts. Both in
2 connection with the EBA that, that Rocky Mountain
3 Power/Utah Power used to have, and in connection with
4 the gas balancing account, the 191 account, that
5 Questar Gas has.

6 And it's never found a problem with that.
7 And it said that the Commission could do that under
8 its ample ratemaking and accounting authority. If you
9 need some statutory basis for that you can look at
10 54-4-4.1, which says:

11 "The Commission may, by rule or
12 order, adopt any method of rate
13 regulation that is consistent with this
14 title, in the public interest, and just
15 and reasonable."

16 And then in Part 2 of that section it goes
17 down and lists some various components or methods.
18 And the, and the last one, (e), is: "Other
19 Components, methods, or mechanisms approved by the
20 Commission."

21 The UIEC argued in its brief that the
22 Commission has limited authority. It's limited to
23 what's either -- what's stated in the statute.

24 I made that argument many, many times before.
25 Sometimes successfully. And what I know is that, that

1 when I've been successful it's been in cases that
2 didn't involve ratemaking. It involved things like
3 the Commission's authority to regulate municipal power
4 systems.

5 Or, or it may -- or it was in a case of where
6 the Commission could get involved in a contract
7 between a private entity and a utility that didn't
8 affect rates. Or in issuing a certificate or
9 something like that.

10 Actually, the Basin Flying case was one where
11 the Commission was considering whether it had
12 authority to regulate an unscheduled air carrier.

13 But when it's been ratemaking that's been
14 involved the Supreme Court has always recognized that
15 the Commission has broad authority and broad
16 discretion.

17 So the reason it's ironic is this: If we had
18 never had the EBA statute passed, the only party that
19 would have questioned the Commission's authority to
20 enact the EBA, or the 191 account, or whatever, would
21 have been UIEC.

22 Because you recall that after -- when the
23 Company came back in the mid-2000s and wanted to get
24 an EBA again, UIEC always opposed it on the ground the
25 Commission didn't have authority to do it. As a

1 result of settlements in, in those cases the issue
2 never came to the Commission for a decision, but that
3 was UIEC's position.

4 So in 2009, in connection with a kind of a
5 big body of legislation which kind of all the
6 stakeholders got together and discussed and generally
7 agreed upon, one issue that was dealt with was, Okay,
8 let's get that argument out of the way. Let's now say
9 the Commission has authority to do an EBA explicitly.

10 And so to satisfy UIEC's concern a stat -- a
11 statute was enacted. That statute was done in
12 conjunction with, with other statutes. And one of the
13 things that happened was that the fuel cost
14 pass-through provision that used to be in 54-7-12 was
15 taken out. Why? Because it was no longer needed.
16 Because now this other statute addressed it.

17 There certainly were interim rates under that
18 provision. And all the parties who, who presented
19 evidence during the EBA docket understood there was
20 interim rate processes involved in a balancing account
21 because there always is in a balancing account.

22 And so it's ironic that because we now have a
23 statute passed, now somehow the Commission has lost
24 the authority that it had before, without a statute,
25 to use interim rates.

1 Now, that could happen if in the statute
2 enacting the EBA the legislature said, Oh, and by the
3 way, you no longer have authority to use the interim
4 ratemaking process. But the legislature didn't say
5 that. The legislature was silent on that issue.

6 So since you have used your broad authority
7 to, to use interim ratemaking in a variety of contexts
8 with balancing accounts, unless there's some express
9 prohibition that says you can no longer do that I
10 think it's pretty logical to assume you can still do
11 it. And it makes sense.

12 And then, and then UIEC talks about due
13 process. Mr. Evans in his argument today he said,
14 Now, if this were done in a general rate case there
15 wouldn't be any problem because you would set the,
16 you'd set the interim rate and then it'd be subject to
17 refund later after a full hearing.

18 Well, there's nothing different about this
19 process. We're not saying that once you set this
20 interim rate and allow it to go into effect it'll
21 never be subject to question. A full hearing, a full
22 evidentiary proceeding, discovery, whatever parties
23 want to do. That will happen. And so what's the
24 difference in due process in those two circumstances?
25 I don't understand it. I don't see it.

1 He talks about harm to their -- to UIEC
2 members. In my view there's just as much harm in
3 going for an extended period paying a rate that's too
4 low as there is in paying a rate that's too high,
5 because you still make your business plans based upon
6 what you're paying.

7 And it isn't helpful to customers to pay a
8 rate that's lower than what they should be paying.
9 They're getting the wrong signal. And as you recall
10 from the EBA proceeding, parties were concerned that
11 by only having an annual adjustment we might lose one
12 of the benefits of an EBA because it wasn't, it wasn't
13 often enough to give signals quickly enough to
14 customers.

15 One of the main proponents of that view in
16 the EBA docket, as you recall, was UIEC. They wanted
17 monthly adjustments. Monthly. And now they're here
18 telling you, No, don't put this in on an interim
19 basis. Let's delay it until who knows when, after we
20 have some proceeding that has no time frame on it, no
21 statutory limitation. Let's, let's, let's wait until
22 some time way out in the future, and then let's change
23 the rate.

24 Well, that's totally inconsistent with the
25 position they took in the EBA docket, when they wanted

1 monthly adjustments in the EBA.

2 They also say, Well, so what's different
3 about this than the 191 account? Well, there are some
4 differences. But one of the things they point out is
5 that it's more complex. What does that mean then?
6 Right now when Questar makes a 191 account filing you
7 have a hearing. Some *prima facie* evidence is
8 presented.

9 And you -- after hearing that evidence and
10 any adjustments the Division proposes -- or any other
11 party could propose some, I suppose. They don't ever
12 do it, but. Then you put that rate into effect on an
13 interim basis.

14 And then there's an audit. And as you know,
15 those audits sometimes take years. Well, this one's
16 more complex, how long will it take? How long will
17 this, how long will this audit take? I don't know how
18 long it'll take. We're just starting this pilot
19 program. It could take years.

20 And so if UIEC gets their way this rate might
21 not go into effect for three or four years. Because
22 there's no pr -- there's no deadlines on this process.
23 People would do an audit, and then I suppose UIEC
24 would send out 500 data requests. And then we'd file
25 testimony, probably five rounds of testimony. And

1 then you'd make a decision. And I don't know how long
2 that would take, but it would take a long time.

3 Certainly the increased net power costs
4 associated with, with the EBA deferral mechanism would
5 not -- the signal for those increased costs would be
6 delayed so long they would be of little use to
7 customers.

8 Oh, Mr. Evans said two or three times in his
9 argument that there is a contest on the amount. Now
10 first of all, two points. First of all, the base
11 amount of net power costs was approved by the
12 Commission in the last rate case. So the vast bulk of
13 net power costs have already been reviewed and
14 approved after a thorough review in a general rate
15 case.

16 So we're talking here about the increment,
17 the difference. And the difference is not that much.
18 But, I mean, it -- 70 percent of the difference is
19 about \$9 million, okay? So that's what's at issue.
20 And, and Mr. Evans says, Well, that's in dispute.
21 It's -- there's a dispute about whether that's the
22 right amount.

23 Where? Where's this dispute? Is this
24 dispute raised by the fact that UIEC has filed
25 comments in which they say, We don't know if that's

1 right? I don't know where that dispute exists.

2 The Division reviewed the filing, just as the
3 Division does -- reviews Questar's 191 account filing,
4 and it found a, it found an error. And the Company,
5 working with the Division, found another error. And
6 those have been corrected. So the amount went from
7 9.3 million down 8.9 million.

8 There's no dispute about that amount. There
9 may be a dispute about some underlying question of
10 whether the Company's swap transactions were prudent.

11 Most of those were -- well, first there's two
12 things about that: One, they were, they were all
13 there during the general rate case when the amount of
14 base net power costs was set.

15 But two, UIEC entered into a stipulation, as
16 did all the principal parties in the last general rate
17 case, in which they said, We're not going to challenge
18 the prudence of swap transactions or other hedging
19 transactions that were entered into prior to the date
20 of the stipulation.

21 So they've already agreed they aren't gonna
22 challenge the prudence of those transactions. So what
23 are they left with? They're left with the argument
24 that was made during the general rate case in the
25 testimony, if you, if you reviewed it. You may not

1 have because the case was settled.

2 But the argument was made, Well, okay, we
3 won't challenge the prudence of you entering into
4 those swap transactions, but we're gonna challenge the
5 prudence of you not getting out of those swap
6 transactions.

7 Well, that was creative and interesting. But
8 if -- you know, and this isn't the place to argue the
9 merits of that issue. But if the Commission reviewed
10 the testimony that was filed in response to that it
11 very clearly demonstrated that if the Company had done
12 what UIEC said they should have done and gotten out of
13 those swap transactions they not only would not have
14 decreased net power costs, they probably would have
15 increased them because they would have had additional
16 transaction costs associated with getting out and
17 getting back in.

18 And so, you know, if we have to have a
19 hearing some day on that issue we're, we're happy to
20 do that. But I don't think there's any substance to
21 that argument, or any concern that the Commission
22 ought to have.

23 So the point is, the Commission had authority
24 to do this without a statute. Has that statute taken
25 away that authority? The statute says that you can,

1 you can implement the EBA through any appropriate
2 Commission proceeding.

3 And I submit that an interim proceeding that
4 involves a *prima facie* showing -- which the Company
5 made in its filing -- that these, that these costs
6 were incurred, that they were in excess of the amount
7 that was included in the, in the last rate case in the
8 base rates, that you can allow those to go into
9 effect, subject to audit and reconciliation, and
10 subject to any further proceeding that's necessary.

11 That's the way the 191 account works. It
12 works very effectively, efficiently. This -- the EBA
13 statute wasn't meant to make life more difficult. It
14 was meant to make life more easy by, by taking that
15 issue out of the context of always a big fight in
16 general rate cases and putting it in the context of a
17 balancing account. Which could be audited in an
18 orderly manner, with, with final results subject to
19 refund or surcharge.

20 And, and that was the process that was
21 contemplated. So I don't think the Commission lost
22 any authority through the EBA statute. I think it
23 already had the authority to do an EBA, but at least
24 the statute clarified that it did.

25 And then there's one other issue and that is

1 this issue about estimates. The Company's required to
2 follow the uniform system of accounts. And the
3 uniform system of accounts says this:

4 "The Utility is required to keep its
5 accounts on the accrual basis. This
6 requires the inclusion in its accounts
7 of all known transactions or appreciable
8 amount -- of appreciable amount which
9 affect the accounts.

10 "If bills covering such transactions
11 have not been received or rendered the
12 amounts shall be estimated and
13 appropriate adjustments made when the
14 bills are received."

15 That's accrual accounting. So when the
16 Company prepares its financial statements, both for
17 the financial community and for regulators, it uses
18 accrual accounting. It is required in accrual
19 accounting to estimate amounts where, where a service
20 has been rendered or a bill issued where a payment has
21 not been made.

22 What UIEC wants is they want the Company to
23 use cash accounting. Well, the Company can't use cash
24 accounting, it's ordered to use accrual accounting.

25 When the statute -- when, when the EBA

1 statute talks about actuals it's talking about actuals
2 compared to forecasts that are used to set the NPC
3 amount in a rate case. It's not talking about the
4 difference between what's accrued in one month and
5 what's reconciled in the next month. Which, by the
6 way, is relatively immaterial in any event.

7 And because of the matching principle, which
8 the Commission is very familiar with, accrual
9 accounting is appropriate. You're supposed to match
10 costs and revenues for the same period in the same
11 period. And that's all we're doing.

12 And those are the only estimates involved.
13 And they're just estimates that will be reconciled
14 when actual bills are received or actual payments are
15 made. And, and they'll be trued up in the, in the
16 next year. And they won't be significant. It's just
17 part of the normal accrual accounting process.

18 Let me just have a moment to see if there's
19 anything else I needed to say.

20 So, so the burden of proof and the, and the
21 standard, are they changed by interim ratemaking?
22 They aren't. And the reason they're not is because
23 the interim step is just the first step, it's not the
24 whole process.

25 There's going to be -- there has to be a

1 *prima facie* showing -- which there has been -- a *prima*
2 *facie* showing simply showing that if, if no evidence
3 is filed that controverts the showing, it's
4 sufficient.

5 Well, the Company has filed its testimony and
6 its schedules showing the amount of money that it,
7 that it incurred in net power costs above the amount
8 that was allowed in the last rate case. That's a
9 *prima facie* showing.

10 If someone files testimony controverting that
11 then it would no longer be *prima facie*, but no one's
12 done that. No one's filed any testimony or any
13 evidence showing that that amount is incorrect. And
14 in the case, as I mentioned, where there was a small
15 error, an inadvertent error, that the Division -- it
16 was the Division observed, the Company's corrected it.
17 So it's an a *prima facie* showing.

18 So does that change our burden of proof? No,
19 not at all. Because before those rates can become
20 final we will have to satisfy the Division in its
21 audit process that they're accurately recorded and
22 they're prudently incurred. Just as, just as Questar
23 Gas does in the 191 account process.

24 So there's no change in burden of proof or
25 standard, standard for recovery. And anyway, I, I

1 think we need to keep, I think we just need to keep in
2 mind that the process of interim ratemaking was
3 contemplated when the EBA statute was enacted and when
4 the EBA proceeding took place. It was just
5 understood. And no one objected to it during that
6 process.

7 Now UIEC has come up with a creative argument
8 to further try to delay the implementation of the EBA.
9 And I just think the Commission should reject it and
10 should allow us to implement those rates. Thank you.

11 CHAIRMAN BOYER: Thank you Mr. Monson.

12 Ms. Schmid, were you speaking, or Mr. Jetter?

13 MS. SCHMID: I will.

14 CHAIRMAN BOYER: Okay.

15 MS. SCHMID: Good morning. The legislature
16 has set forth the duties, powers, and responsibilities
17 of the Division of Public Utilities, and it is in this
18 context that the Division has filed its brief and will
19 make its argument.

20 The legislature has stated that the duties of
21 the public -- the duties of the Division of Public
22 Utilities include:

23 "To promote the safe, healthy,
24 economic, efficient, and reliable
25 operation of all public utilities. To

1 provide for just, reasonable, and
2 adequate rates and charges. To make the
3 regulatory process as simple and
4 understandable as possible. Make it
5 feasible, expeditious, and efficient to
6 apply."

7 From that point of view the Division
8 generally concurs with the comments made by the
9 Company regarding the Commission's authority to
10 implement interim rates for the EBA, and the process
11 through which those interim rates can and should be
12 implemented.

13 Rather than repeating the arguments that the
14 Company has made, the Division would like to turn to a
15 few specific points to illustrate that the Commission
16 has the power and authority to establish interim rates
17 for the EBA.

18 We can look at the Mountain States case that
19 was cited by the parties as standing for the
20 proposition that the Commission's powers are not
21 unlimited. The parties agree that the Commission's
22 powers are not unlimited.

23 And when we compare and contrast the facts in
24 the statutes there with the facts in the statutes
25 before us today it is apparent that interim rates are

1 appropriate and can be implemented.

2 Before us today we have an explicit interim
3 rate -- sorry, pardon me, an explicit EBA statute.
4 The legislature has determined that an EBA may be in
5 the public interest, and has delegated that decision
6 making to the Commission.

7 The Commission here has determined that an
8 EBA is in the public interest. Here we have an E --
9 within the EBA statute itself there are specific
10 provisions that talk about reconciling, and refunding,
11 and surcharging if the dollars collected do not match
12 the dollars that constituted prudently-incurred actual
13 costs. There's mention of, of a true up.

14 In Mountain States, though, the Commission
15 sought to implement a public policy goal. There was
16 no legislative determination, like here, that a
17 discounted phone service was good public policy.

18 In Mountain States the Commission tried to
19 knit together statutes to achieve the Commission's
20 goal. But the court found that those statutes,
21 when -- did not knit together and did not support the
22 Commission's goal.

23 Here, as the Company has stated, not only do
24 we have the EBA statute that talks about refunding and
25 surcharging if amounts do not match what was

1 collected, but we have 54-4-4.1, which, as the Company
2 stated, specifically empowers the Commission to
3 establish ratemaking methods.

4 Thus, the Commission has the power and
5 authority to establish interim rates for an EBA. How
6 that can be done is through looking at the general
7 rate case statute for guidance. In the general rate
8 case statute the legislature has established a
9 two-step process, and has indicated that that process
10 is acceptable, and it has been used to meet due
11 process requirements.

12 This two-step process, through which rates
13 are first determined on a *prima facie* basis and then,
14 after the traditional prudence review, implemented on
15 a final basis, meets due process requirements and
16 comports with the Commission's authority and duties.

17 The rates that are established through this
18 process must be just and reasonable. And just as with
19 other rates, the burden is on the company.
20 Importantly, these just and reasonable rates will
21 match cost causation to cost recovery and minimize
22 carrying charges.

23 Without interim rates there could be issues
24 of intergenerational inequality and carrying charges
25 could be accrued. These issues can be avoided by

1 implementing, as authorized and as permitted by the
2 legislature, an interim rate process for the EBA.
3 Thank you.

4 CHAIRMAN BOYER: Thank you Ms. Schmid.

5 Mr. Evans, we'll give you the last word.

6 MR. EVANS: Thank you. I might use it to
7 respond to some things that Mr. Monson said. First, I
8 think we need to remove this question about 54-4-4.1
9 giving the Commission, supposedly, authority to
10 implement interim rates. That says:

11 "The Commission may, by rule or
12 order, adopt any method of regulation
13 that's consistent with this title, in
14 the public interest, and just and
15 reasonable."

16 And then it lists some things. Some various
17 methods of rate regulation. Volumetric rate
18 components. Rate designs, okay, rate designs, rate
19 stabilization methods, decoupling, incentive based,
20 and other components, methods, or mechanisms.

21 With -- this is not what we're talking about
22 with an interim rate. Interim rates are not in this
23 class of -- method of rate regulation. An interim
24 rate is way to collect a, an amount that the
25 Commission has determined is just and reasonable. So

1 I don't think it gets us very far to say that.

2 And let me address while we're on this. We
3 all acknowledge here that the Commission has no
4 authority except as is granted by statute. And as we
5 work our way through these statutes the one that talks
6 about classification and setting rates says:

7 The Commission shall take an action described
8 in 1(b) -- that is, determining rates -- if the
9 Commission finds, after a hearing, that the current
10 rate is just and unreasonable and then it can take --
11 it can set a new rate. But it must determine after a
12 hearing. That is the fundamental criteria of
13 ratemaking.

14 Mr. Monson says, The Commission has
15 everything it's -- it needs. If someone thought that
16 these weren't appropriate costs or that we weren't
17 prudent, where's the evidence? Why didn't UIEC file
18 evidence?

19 The answer is, we had no proceeding in which
20 to file evidence. This is our complaint. Due process
21 has been circumvented by this procedure. And it is
22 different than a GRC, where the Company is at risk
23 while the Commission spends the 240 days adjudicating
24 the rate case. In the EBA the ratepayers are at risk
25 indefinitely. It's a different set of circumstances.

1 And a word about base rates. Yes, we have
2 base rates. They've been stipulated in the last two
3 rate cases, and they're there. They do not imply
4 prudence. They do not imply actual. What they are,
5 in light of the EBA statute, is a target that the
6 parties in the last two cases have worked hard to set
7 so that at the end of the year the Company will have
8 collected in base rates what its anticipated power
9 costs will be. Net power costs will be.

10 But it's a target. Based on projections,
11 based on a test period. Something we anticipate that
12 the Company will incur. It is not the actuals.
13 Actuals are what we determine in the EBA proceeding.
14 And we go back and we look at what actually happened
15 during the year, not what was projected from the test
16 year. That's in base rates. It's the target.

17 We look what actually happened and see how
18 far we diverged from the target. And once we've
19 ascertained that, and we've ascertained that those
20 were all prudent, they go into rates and get
21 recovered.

22 And, as Ms. Schmid points out, later on
23 there's a reconciliation proceeding where we true up
24 and we make sure that the amount of the deviation has
25 been amortized over the period of time that the

1 Commission sets.

2 But we set base rate -- we set base rates as
3 a target, and we ascertain actuals in the EBA. Now,
4 let me point this out too. This need not be, as
5 Mr. Monson suggests, a long, long drawn-out procedure.
6 This statute allows us to -- it requires the
7 Commission to determine actuals.

8 When the Company files in March -- on
9 March 15, 2013, to recover its 2012 costs, we will
10 look at what was in base rates, our target, we will
11 look at the actuals, and we will determine the
12 deviation.

13 At that time we will know what the actuals
14 for 2012 were. We will know. We can adjust that for
15 known and measurable changes and that can become our
16 base rate for the next year. And we just hold that
17 proceeding and we just keep moving forward, actuals to
18 actuals to actuals to actuals.

19 No need for interim. No need to draw this
20 out forever. And in fact, now that we're keeping
21 track of this monthly, we can determine month to month
22 to month what's actuals against what is the target in
23 base rates.

24 And Mr. Monson is right, we have always
25 pushed for monthly, because we think that the

1 deviation can be ascertained monthly. It can be
2 billed and it can be paid monthly. So that we can
3 avoid carrying charges altogether.

4 Carrying charges are driving the rush toward
5 the interim rate, and there's no reason for it. The
6 Commission has not yet determined when carrying
7 charges are to go into effect. So if you craft this
8 in the right way -- and I believe you have latitude
9 under the statutes without setting interim rates,
10 which I believe you don't have authority to do -- we
11 can make this an easy process.

12 It would especially be easy if it were just
13 fuel and purchased power. The financials have made
14 this difficult. And we don't yet know how difficult
15 it will be. But we must take a run at it this first
16 time and get to actuals before we let it go into
17 rates.

18 Now, one final comment and then I'll stop.
19 We have always opposed an interim rate for -- this is
20 the UIEC -- have always opposed an interim rate or
21 energy balancing account that is not a creature of
22 statute because we don't believe the Commission has
23 authority to do that. Just like Mr. Monson said.

24 And then we go to the legislature, and the
25 legislature gives a balancing account for fuel and

1 purchased power. But it did not give them an interim
2 process. It removed the EBA from the only explicit
3 interim process in the statute. And it was
4 purposeful.

5 It also apparently removed the 191 account.
6 Ms. Schmid I think is mistaken to say that the 191
7 account has gone, the pass through is gone. The pass-
8 through statute for natural gas is not gone, it's been
9 moved into the EBA statute. And I can quote if you'd
10 like. But the gas company, under the EBA statute,
11 says:

12 "The Commission may establish a gas
13 balancing account for a gas corporation
14 and set forth procedures for a gas
15 corporation's balancing account in the
16 gas corporation's Commission-approved
17 tariff."

18 And then it sets up that. Those words do not
19 appear for an electric corporation. I think that's
20 purposeful. I think this is to allow Questar to
21 retain its 191 account, but it requires the Commission
22 to rely on other procedures generally set out in the
23 Commission's statutes for the EBA.

24 And the reason for that is that the EBA is
25 broader. It includes fuel purchase -- fuel, purchased

1 power, and wheeling expenses. So I disagree that,
2 that the 191 account is now a matter of -- it's not a
3 Commission created account. It has statutory
4 authority here which the legislature withheld from
5 electric EBA.

6 So I think the issue was decided, when the
7 EBA bill was passed, not to allow recovery of
8 unliquidated, undemonstrated costs through an interim
9 process. There's no need to do it. The EBA works
10 better without it.

11 We should be going down this road and doing
12 it once a year, determining actuals, setting actuals
13 as base rates for the next year, and moving forward
14 with this. And we can do it in a reasonable manner.

15 If we toss it over to the Division for an
16 audit it could take a long, long time. If you put it
17 to the parties and give them a process to file
18 testimony and do discovery, you can get it done.

19 CHAIRMAN BOYER: Okay, very well. Thank you
20 Mr. Evans.

21 Kelly, are you doing okay?

22 THE REPORTER: Uh-huh.

23 CHAIRMAN BOYER: All right. I think the
24 Commissioners have a few questions. Commissioner
25 Allen?

1 COMMISSIONER ALLEN: Thank you Mr. Chairman.
2 Although the heart of the matter today, of course, is
3 a question about interim rates, still another
4 assertion dealing with due process has been the,
5 whether or not we have reasonably calculated the
6 8.9 million.

7 And Mr. Monson, I don't know if you're
8 prepared to discuss this today, but I did have some
9 questions after rereading the testimony from the
10 Company, and it has to do with specificity. Are you
11 comfortable that the number that was calculated very
12 specifically falls in the fourth quarter between
13 October 1, 2011, and December 31st? I could not find
14 that.

15 MR. MONSON: That's what the number's based
16 on, and it's based on accrual accounting. So it's the
17 amounts that were booked in the fourth quarter.

18 COMMISSIONER ALLEN: Okay. And then I had a
19 question for the Division. Again, I don't know if
20 you're prepared to answer this because it's kind of a
21 40,000-foot question.

22 But in the process of preparing an audit and
23 looking at comparing the data after it's occurred is
24 there -- are there major constraints in getting the
25 audits done more quickly, something that might be four

1 months instead of six or eight months? Is this
2 something you've discussed in the Division?

3 MS. SCHMID: We have discussed it generally.
4 We know that limitations on Division staff, both in
5 terms of number and other duties, will affect the time
6 in which the audit can be completed.

7 COMMISSIONER ALLEN: Have you ever discussed
8 the possibility of a two-stage audit, where you get an
9 early audit return based on statistically-significant
10 samples and then re-circle later as you have more
11 information, or have you discussed possible
12 efficiencies of approach?

13 MS. SCHMID: Not to my knowledge. At least I
14 have not been involved in those discussions, if any.

15 COMMISSIONER ALLEN: Okay, great. Let me see
16 if I've got another one here. I was also curious,
17 real quickly -- and again, 40,000-foot question so I
18 don't know if you've discussed this with staff.

19 But has the Division made an attempt to look
20 at what's happening nationally with these energy
21 trackers? Whether or not there's information that's
22 available to see what a reasonable range of swings
23 would be when we're looking at, at the reasonable
24 nature of these charges or when we have to decide on
25 new numbers? Is someone watching this to see what's

1 happening in other energy trackers?

2 MS. SCHMID: I know that the Division pays
3 attention to such things generally. I don't know
4 specifically, nor have I been involved in those sorts
5 of discussions.

6 COMMISSIONER ALLEN: Okay, great. Well, this
7 is a pilot and this is new, so these questions are
8 kind of out there as I contemplate what this new
9 universe looks like too, so thank you.

10 CHAIRMAN BOYER: Commissioner Campbell?

11 COMMISSIONER CAMPBELL: Let me follow up
12 first with the questions related to the audit. I
13 guess -- we have a general rate case that we have a
14 statutory requirement to handle in eight months.

15 And so I guess I'd like to understand from
16 the Division, in a case where it's limited, it's
17 focused to a few accounts, why, why a process can't be
18 established where we could do that in say four months,
19 in half the time.

20 MS. SCHMID: I think it is possible that such
21 a process could be established; however, as I am not
22 the one doing the work I cannot say that a four-month
23 period of time would be an appropriate amount of time.
24 The Division does recognize the need for speed, but
25 also the need for certainty and accuracy.

1 COMMISSIONER CAMPBELL: Okay. Let me go over
2 a few other issues. Let me start with Mr. Evans.
3 Have you, have you filed any data requests as it
4 relates to the 8.9 million? Have you done any
5 discovery?

6 MR. EVANS: Yes. Yes, we have. We're --
7 we've sent out six, seven sets of data requests, and
8 we have prepared more that are going out. We, we kind
9 of took a hiatus from that on June 1, when we
10 discovered that there isn't gonna be a way for us to
11 use that and create evidence and put it in. But we
12 have restarted that. But we have done data requests.

13 COMMISSIONER CAMPBELL: And I don't know when
14 you did those data requests, but did you have
15 sufficient information when we had the previous
16 hearing in June to provide input on the 8.9 million?

17 MR. EVANS: No, we did not. These -- every
18 time we turn over a rock there's a new type of
19 financial product there, and so we have to go back.
20 We have to ask another round. And we don't
21 understand -- we're trying to understand what all of
22 these transactions are.

23 COMMISSIONER CAMPBELL: You confused me by a
24 statement that you made that when this Commission
25 accepts a stipulation and we're saying just and

1 reasonable rates based on representations of all the
2 parties, that that somehow doesn't imply prudence.

3 And I'd like to understand why, why when this
4 Commission does set just and reasonable rates that the
5 parties aren't representing that they've done their
6 due diligence and that, that they believe that the
7 costs that are in those rates in that stipulation are
8 not prudent. I mean, why wouldn't they be prudent?

9 MR. EVANS: They're not prudent because
10 prudence requires a specific finding to get there.
11 These, these settlements occur -- without talking too
12 much about what goes on in settlement discussions --
13 we challenge the prudence. And we challenge it to a
14 certain amount.

15 And the -- and we are working toward a, a
16 reduction in net power costs in the revenue
17 requirement because we think that some of those costs
18 might not be prudent. What we wind up with is a
19 reduced revenue requirement number, which satisfies us
20 that it's close enough to be just and reasonable. But
21 we never drill down and get to the bottom of prudence.

22 And what's in base rates as a result of a
23 settlement and what's in a stipulation agreed to no
24 one has really examined the prudence. What we --

25 COMMISSIONER CAMPBELL: So you're saying that

1 just and reasonable does not have some sort of implied
2 prudence in what the Company's level of costs are?

3 MR. EVANS: It doesn't, it doesn't carry with
4 it an implication of imprudence or prudence. All it
5 says is that we've agreed not to bring the prudence
6 issue to the Commission for a decision. We're gonna
7 agree that this number is just and reasonable without
8 a specific finding of it's prudence, yes.

9 COMMISSIONER CAMPBELL: So does it make a
10 difference whether a general rate case then is
11 stipulated versus whether it's litigated? Because as
12 I read the EBA statute I guess I assume that you're
13 just looking at the delta for prudently-incurred
14 actual costs.

15 That, that when we went through the general
16 rate case that the base costs at that point are deemed
17 prudent. And then when we go to the EBA and we're
18 looking at that trueing up of the actual that, that
19 the language about, about, you know, whether
20 they're -- that they're actual and if they're prudent
21 we're just dealing with the costs that are either more
22 or less than the base rates that we've already looked
23 at.

24 MR. EVANS: I, I understand. No, there is no
25 prudence in the base -- there is -- you cannot assume

1 that what's in base rates is prudent. No. What's in
2 base -- especially in a stipulated case.

3 And if it's a, if it's a tried case and the
4 parties bring prudence to the Commission, and the
5 Commission decides it and disallows or allows after
6 that examination, then you can say, We've determined
7 that those costs are prudent.

8 But remember, what we're looking at is
9 projected costs. These are not actual. And so I
10 think it is not productive, necessarily, to look at
11 prudence in a GRC because you have to look at it again
12 in the EBA case. These are not actual costs. These
13 are projected costs that are meant to be a target.

14 COMMISSIONER CAMPBELL: Mr. Monson, I, I
15 don't have before me the, the gas pass-through statute
16 that went away. And my question -- and you made a
17 statement, and I want to follow up on that and
18 understand that a little better based on that
19 statement and based on what you wrote in your, in your
20 filing.

21 And that is, in that pass-through statute
22 that went away was there explicit language related to
23 interim rates?

24 MR. MONSON: It didn't, it didn't use the
25 word "interim," it said "tentative." And I'm

1 quoting -- I don't have the statute book the way it
2 existed just prior to 2009, but I have the EBA case
3 which quotes the statute. Here's what it says:

4 "If a public utility files a
5 proposed rate increase based upon an
6 increased cost to the utility for fuel
7 or energy purchased or obtained from
8 independent contractors, other
9 independent suppliers, or any supplier
10 whose prices are regulated by a
11 governmental agency, the Commission
12 shall issue a tentative order with
13 respect to the proposed increase within
14 ten days after the proposal is filed,
15 unless it issues a final order with
16 respect to the rate increase within
17 20 days after the proposal is filed.

18 "A public hearing shall be held by
19 the Commission within 30 days after
20 issuance of the tentative order to
21 determine if the proposed rate increase
22 is just and reasonable."

23 So that's the way it was in 1985. I don't
24 think it changed too much after that, but.

25 COMMISSIONER CAMPBELL: Okay. I'm gonna come

1 back to you because I have a specific question, I want
2 to hear you respond to something Mr. Evans said. But
3 let me go back to Mr. Evans for a minute on that, on
4 that point.

5 So, so the Company in their filing points to
6 the fuel cost pass-through legislation as an example
7 where the Supreme Court permitted interim rate changes
8 while it's not explicitly stated in that part of the
9 statute.

10 And I guess my question is, isn't, isn't,
11 isn't that very similar to -- I mean, isn't that
12 similar to what we have here? We have a statute that
13 doesn't explicitly say "interim rates," but the
14 Supreme Court already allowed it for the fuel
15 pass-through statute that didn't call them "interim
16 rates," as well as abbreviated rate cases. Would you
17 respond to that?

18 MR. EVANS: So the fact that there might have
19 been a pass-through statute that -- under which
20 interim rates were allowed? We have, we have briefed
21 this that the Supreme Court's view of this, I believe,
22 is that although there is no explicit statutory
23 authority for the Commission to order an interim rate
24 in a pass-through case, either the old electric EBA or
25 the 191 account case, the Commission has been doing it

1 for a long time.

2 And prior practice becomes -- has some force
3 going forward, so that the Commission has to
4 explain -- there has to be a reason to diverge from
5 that prior practice. This went on so long without
6 being challenged because it was simple.

7 And let me say this about that procedure.
8 That when the Company filed and there was a tentative
9 order issued in ten days, someone had the opportunity
10 to come in and object to it and then the thing could
11 be set for hearing.

12 The final order didn't issue unless there had
13 been a tentative order and no objection within ten
14 days. If there's an objection I think the Commission
15 would have to hold a hearing and take evidence on the
16 objection before it allowed the rate to go into
17 effect.

18 And I think we're, I think we're missing --
19 we have a statute that says the Commission has to have
20 a hearing before it issues an order changing a rate.
21 Now, what we're -- what Mr. Monson is saying that,
22 Well, because there's no statute that addresses
23 interim you can assume interim. You can assume the
24 authority to do that.

25 And I say, You cannot in the face of a

1 statute that requires you to have a hearing before you
2 change the rate. The, the express statute is contrary
3 to what Mr. Monson is asking you to imply.

4 COMMISSIONER CAMPBELL: Well, I -- that's my
5 question for Mr. Monson and that's where I was going.
6 I, I haven't heard a response to the statement
7 Mr. Evans made that not only does the statute not talk
8 about interim rates, but the interim process in the
9 general rate case statute was changed at the same time
10 that made it very specific that it just covered base
11 rates.

12 And so I haven't heard you respond to that
13 argument that the legislature, through those two
14 mechanisms, clearly did not want interim in the EBA
15 statute.

16 MR. MONSON: Okay. Well, if they didn't want
17 it they could have said so, first of all. But -- and
18 they didn't say that. They said any appropriate
19 proceeding before the Commission.

20 There's also -- there is a hearing in interim
21 rates, by the way. Mr. Evans keeps talking about a
22 hearing. There's a hearing -- there was a hearing.
23 And the hearing was on May 14th, I think. The
24 Commission I think deferred -- I can't remember
25 exactly.

1 But I think the Commission did defer the
2 issue of the interim rates for the, for the
3 8.9 million during that hearing, so. But there is a
4 hearing before interim rates take place in the 191
5 account, and there would be under the EBA.

6 But the question you're asking is because the
7 legislature, when it amended the statute, included --
8 or referenced interim rates in connection with general
9 rate cases but then took the EBA out of that section
10 and created its own section, does that mean they
11 didn't want you to use an interim rate process?

12 I don't think so. I think it's the opposite.
13 I think that they were saying, Now 54-7-12 is only
14 dealing with general rate cases. Base rates. And so
15 we're specifying here that there's an interim rate
16 process -- which there's always been -- and we want to
17 make it clear what that is.

18 But the fact that they took the EBA out, the
19 fuel cost pass through out. Which is different, by
20 the way. The fuel cost increase statute was not the
21 same as the gas balancing account of the EBA. They
22 were separate.

23 They were tied, they were like each other,
24 but they weren't the same. And the Supreme Court said
25 that twice. They said it in the EBA case and in the

1 Questar Gas case.

2 But anyway, the fact that they took that out
3 and now created its own special statute for the EBA I
4 don't think means -- I don't think there's any
5 implication in that that they intended to take away
6 the commonly-used practice of balancing accounts,
7 which is interim rates. So.

8 COMMISSIONER CAMPBELL: Let me just follow up
9 on just one other thing. I just want to confirm, you
10 said that the estimates that -- versus the actual
11 argument that we've heard that those estimates deal
12 only with the accrual accounting process.

13 None of them are like -- because in the
14 Questar Gas balancing account they actually do
15 estimates and project like we would do in a general
16 rate case. But the estimates as it relates to this
17 EBA are just part of accrual accounting?

18 MR. MONSON: That's right. They're not --
19 there are no estimates for the future, there are no
20 forecasts. They're just the typical kind of estimates
21 you make in accrual accounting when you, when you've
22 issued a bill but haven't been paid. Or you haven't
23 been issue -- you haven't been issued a bill yet but
24 you know you're gonna have to pay it.

25 COMMISSIONER CAMPBELL: Right, thank you.

1 CHAIRMAN BOYER: I have a, I have a few
2 questions. Let me start with Mr. Evans. You
3 mentioned in your first presentation -- or you spoke
4 about the use of interim rates in the general rate
5 case.

6 In that setting aren't those -- wouldn't
7 those interim rates be put into effect before they've
8 actually been tested for prudence and actuality and so
9 on in a general rate case as well?

10 MR. EVANS: Yes, it's my understanding that
11 they would go into effect on a *prima facie* showing and
12 an abbreviated hearing review by the Commission.

13 CHAIRMAN BOYER: So how is that different
14 from EBA being put into rates without that testing?

15 MR. EVANS: I think the difference can best
16 be understood by looking at why that interim procedure
17 was put into effect in the first place. Early on
18 when, when the Commission was deciding rate cases and
19 the electric company was having very quickly rising
20 costs it would come to the Commission and ask for
21 interim rate relief.

22 And the statute then was different than it is
23 now, it wasn't explicit about how that's done. And
24 the requirement for allowing interim rates to go into
25 effect was that the Company had to show serious

1 financial harm would result if it didn't allow -- if
2 the Commission didn't allow the increase to go in
3 first pending the outcome of the rate case.

4 So the standard was serious financial harm.
5 And still even to this day the Company very rarely
6 asks for interim rates because they have to show how
7 they would be harmed if that rate didn't go into
8 effect immediately.

9 In the EBA case the Company is not harmed by
10 not having the rate go into effect. They have full
11 cost recovery of actual prudently-incurred costs
12 eventually. Now the ratepayers are at risk for it,
13 not the Company.

14 The serious financial harm is all on the
15 ratepayers' side now. And so to allow them to put the
16 rate into effect immediately is harm to the ratepayers
17 and doesn't -- isn't done for the purpose of
18 mitigating harm to the Company anymore. That's out
19 the window. The purpose for the interim rate is no
20 longer with us in the EBA.

21 CHAIRMAN BOYER: And I urge the parties not
22 to read too much into these questions because at this
23 moment I haven't decided where I'm gonna go on this.
24 But let me ask another question.

25 If, for example, we were to determine that we

1 had authority to set interim rates, you know, based on
2 all of the arguments that have been made, what would
3 the -- what standard of -- but we thought that -- but
4 we decided that there had to be some sort of a finding
5 on actuality and prudence and so on before we set
6 those interim rates, what would the standard -- or
7 burden of proof be?

8 MR. EVANS: In our briefs we kind of skirted
9 that because it's a question that we hesitate to
10 answer at all. We don't think it can be done. And to
11 try to articulate a standard of proof that would be
12 appropriate is very difficult.

13 Just let me say this, though. Mr. Monson
14 keeps saying that, We have -- that the Company has
15 submitted everything they need to. And that there's
16 been no substantive concern expressed, and somehow
17 that we are to take that as evidence of prudence.

18 The statute requires the Commission in making
19 a determination of prudence -- which they must in this
20 case -- to determine -- you have to determine this:

21 "Whether a reasonable utility,
22 knowing what the utility knew or
23 reasonably should have known at the time
24 of the action, would reasonably have
25 incurred all or some of the portion of

1 the expense in taking the same or some
2 other prudent action."

3 This is what you must determine. This is
4 what you must require the Company to demonstrate.
5 Explain those financials to you. Tell you why it's
6 prudent to do that in light of the current situation
7 and its guaranteed recovery of the EBA.

8 Tell us why it's prudent. What are you doing
9 with the hedging? Why are you making those book outs
10 that are showing a million dollar losses? Why are you
11 buying and selling gas before you take delivery on it?
12 And tell us why that's prudent.

13 We don't have anything in this record to show
14 that. And I think that if you were to contemplate an
15 interim rate you would at the very least require a
16 *prima facie* showing of that kind of information.
17 Explain what all of this is and why it's necessary and
18 prudent. And why the ratepayers, who are now at risk
19 for all of it, are gonna be helped by this.

20 CHAIRMAN BOYER: One more question for you,
21 Mr. Evans. We fairly clearly described the interim
22 ratemaking process in our March 2011 order. Why
23 shouldn't UIEC now be estopped from raising it now
24 since there was no objection made way back when?

25 MR. EVANS: Well, that's a real good

1 question. We, we, we could have raised it earlier, as
2 you've said in your order. And we were wrong not to
3 do so. But I think as we did our discovery for that
4 rate case and for this and as things evolved it just
5 looked like a bigger problem than we originally
6 anticipated.

7 And let me say this, too. That the meaning
8 of "interim" wasn't clear to us. If -- "interim" is
9 not a defined term, and what we've done with this
10 20 million dollars that went into rates on June 1
11 could well be deemed an interim rate.

12 So that's what we were thinking. It's
13 interim because it's temporary, it's subject to
14 adjustment after an audit. But it's not interim in
15 the sense that the amount hasn't been fully
16 ascertained and liquidated.

17 So we got cross purposes with that early on
18 and just never picked up on it.

19 CHAIRMAN BOYER: Mr. Monson, do we have
20 evidence before us in this proceeding that the
21 \$8.9 million were actually and prudently incurred?
22 And if so, where is it?

23 MR. MONSON: You have, you have evidence that
24 those were the actual costs incurred during the fourth
25 quarter. You, you have evidence that they were

1 prudent in, in the fact that they are simply a
2 carryover of the amounts that were already approved in
3 the general rate case. And on that point, by the way,
4 I totally disagree with Mr. Evans.

5 When you accept a stipulation that rates are
6 just and reasonable, parties do not have a right to
7 come back after the fact and request -- question the
8 prudence of those costs that went into making those
9 rates. That is, that is subsumed in the finding that
10 they're just and reasonable.

11 And so in the 2010 rate case, 2011 rate case,
12 the Commission accepted a stipulation, entered an
13 order. Set an amount of net power costs that was
14 gonna be determined to be the base amount. And that
15 was, in my view, an absolute finding that they were
16 prudent.

17 And we're now talking about the delta, and
18 so -- although I guess there's no -- I don't think
19 there was any change. But perhaps the Company could
20 be more explicit in the future in its testimony in
21 these EBA filings and say, And these were prudent
22 costs.

23 But that's all you need for a *prima facie*
24 showing. So -- and they certainly are. We represent
25 they were, so. Because they're the same costs that

1 were included, they just turned out slightly different
2 than was estimated.

3 MR. EVANS: Mr. Chairman, may I respond to --

4 CHAIRMAN BOYER: Mr. Evans, go ahead.

5 MR. EVANS: I didn't mean to say that the
6 Commission's -- when the Commission accepts a
7 stipulation that the parties are not foreclosed from
8 challenging the prudence of those rates.

9 What I'm saying is that in the EBA the
10 prudence determination goes to actual costs, not to
11 the target costs that are in base rate. Those are not
12 actuals, those are projected. And we can say, Yeah,
13 that's prudent, that would seem like a prudent amount
14 to put into base rates, but it's not actual.

15 The EBA statute makes you look retroactively,
16 not prospectively, at actuals to determine prudence.
17 It isn't a base rate prudence determination, it's an
18 actual retroactive look.

19 CHAIRMAN BOYER: Back to you, Mr. Monson.
20 Do -- in your view of the world do customers have due
21 process rights in -- if we were to set interim rates?
22 And if so, what are they? Cross-examination, filing
23 testimony, what would it be?

24 MR. MONSON: Well, there's, there's two
25 steps. And the first, first step is that anyone can

1 show up at the hearing to set the interim rates and
2 can do any cross-examination they wish to. So that's
3 a first step.

4 Second step is that after the audit is
5 conducted, and after parties have an opportunity
6 during that audit to do whatever discovery they want
7 to, then they can present evidence if they wish to.
8 And they can cross-examine any evidence that's
9 presented at that time as well.

10 So the point is, these aren't final rates
11 until they're final rates. And just as the Commission
12 does in the 191 account proceedings, after the audit's
13 completed the Company and the Division come in and
14 they say, Okay, we've completed our audit and we have
15 some adjustments or we don't.

16 And then the Commission enters an order
17 saying those rates are now final. That same process
18 would follow here. And during that process customers
19 have an opportunity to present any evidence they wish
20 to.

21 CHAIRMAN BOYER: I confess that I don't know
22 the answer to this question, and we're not supposed to
23 ask questions to which we don't know the answers. You
24 may not know either. But what does the process look
25 like in Wyoming, and what kind of filings, and are

1 there interim rates established?

2 MR. MONSON: I, I appreciate that question,
3 actually, it's something I left out of my, my opening
4 argument. In Idaho and Wyoming there's an interim
5 process that's used, just as was planned and proposed
6 in Utah and which the Commission adopted in its order
7 in Utah. Same process.

8 There's no statute in Wyoming or Idaho that
9 says anything about interim rates. But those
10 processes are used in both states, and then an audit
11 follows, and then the rates become final.

12 It's -- I, I think the point is the interim
13 ratemaking process is commonly used. I, in fact, I
14 don't know of any balancing account that doesn't use
15 an interim ratemaking process. That's just the normal
16 efficient process that's used. And -- with balancing
17 accounts.

18 CHAIRMAN BOYER: Do you have any idea how
19 long those processes take in Idaho?

20 MR. MONSON: I don't know.

21 CHAIRMAN BOYER: Do they file annually, or
22 monthly, or quarterly, or?

23 MR. MONSON: I can -- yeah, I can find out.
24 They're annual filings.

25 CHAIRMAN BOYER: Yeah.

1 MR. MONSON: And the interim rates are set
2 promptly. I think the Wyoming -- I mean the filing in
3 Idaho is in February, isn't it? Or something. And
4 the filing in Wyoming I think is the same time as in
5 Utah, so.

6 CHAIRMAN BOYER: Okay. Thank you Mr. Monson.
7 Ms. Schmid, I have a question or two for you.
8 How does the Division plan to evaluate the prudence of
9 the, of the Company's actual EBA-incurred costs? Is
10 that part of the audit process, or?

11 MS. SCHMID: Yes, that would be part of --
12 pardon me. That would be part of the audit process.
13 And I believe that the Division would follow the
14 process that it has used with regard to the Questar
15 balancing account.

16 CHAIRMAN BOYER: Would you agree with me,
17 Ms. Schmid, that -- I mean, I don't know what the
18 intention of the drafters of the EBA statute were
19 because they haven't confided in me. But would you
20 agree that it is likely that one of the objectives of
21 the EBA was to get these additional costs or
22 reductions in cost into rates sooner, rather than
23 later, and avoid regulatory lag?

24 MS. SCHMID: I agree. I believe that that is
25 a general principle of balancing accounts. And I

1 believe that the specific provisions of the EBA
2 statute itself that I mentioned, including the
3 surcharges and refunds, provide support to that point.

4 CHAIRMAN BOYER: So the issue that I'm
5 struggling with a little bit is the, the Company files
6 once a year in March for the last year's -- whatever
7 that delta is. And then the Division has estimated
8 it'll take about a year to do the audit. So you've
9 got a two-year swing there.

10 Up to now it hasn't been an issue because
11 there's been a new general rate case every year and,
12 you know, actual costs get into rates very quickly
13 that way. But you agree that that's a problem, that
14 time lag is a problem, the two-year span before actual
15 costs are actually put into rates?

16 MS. SCHMID: I agree that the lag is a
17 problem. I hope that with experience as the EBA pilot
18 process progresses that perhaps the audit time can be
19 reduced; however, there are constraints on that. But
20 I do agree that a two-year lag is definitely a
21 problem.

22 CHAIRMAN BOYER: Now, the Company gives
23 monthly reports to the Division, do they not?

24 MS. SCHMID: Yes, they do.

25 CHAIRMAN BOYER: Has the -- does the Division

1 or could the Division start looking at those, start
2 auditing those on a monthly basis as they come in,
3 rather than accumulate them for an entire year and
4 then dig in and take another year to audit them? Do
5 you know if that's been discussed or if that's a
6 possibility?

7 MS. SCHMID: I do not know. But if I might
8 have a moment to turn around I might be able to
9 provide some additional information.

10 CHAIRMAN BOYER: Please do.

11 (Pause.)

12 MS. SCHMID: I've just spoken with the
13 manager of the energy section, and he reminded me that
14 one of the reasons for having the monthly filings was
15 to permit the EBA audit to be done on a most-
16 expeditious fashion. And that the annual filing -- or
17 that the monthly filings would be examined as they
18 were filed.

19 CHAIRMAN BOYER: So in a general rate case
20 you're, you know, you're auditing much more than, than
21 just fuel costs and wheeling credits, and yet the
22 Division is able to do that in about a four-month
23 period from the filing of the rate case to when you
24 file your testimony.

25 I'm struggling with why it takes so long. I

1 remember we had a lot of testimony on this during the
2 initially EBA hearings, but I'm struggling with
3 that -- the time frames.

4 MS. SCHMID: I'll note that the Division
5 hires outside consultants often for a rate case. That
6 has not been done because we haven't had an EBA
7 process before us here. I'll also note that during a
8 rate case that pretty much is all that is done during
9 that brief period. Whereas an EBA, by its nature,
10 gets dovetailed into regular workings.

11 I agree that the audit lag is of concern, and
12 I wish to assure you that the Division intends to
13 audit as expeditiously as possible.

14 CHAIRMAN BOYER: And I'll ask this to all of
15 the parties. Going forward what kind of a process do
16 we need? What would that process look like if we
17 consider UIEC's concerns about evidence and prudence
18 and so on, and the Company's concerns about getting
19 additional costs or reductions in costs into the rates
20 quickly, and, and the Division's practical concerns
21 about actually doing the legwork on this.

22 What would that process look like? Let's
23 start with you, Ms. Schmid, and then we'll let
24 Mr. Evans and Mr. Monson respond.

25 MS. SCHMID: I think that the process would

1 ideally have not only the EBA filing but testimony
2 from the Company in support of that. Then there would
3 be a limited period during which the Division and
4 other parties could examine the Company's filing,
5 audit, ask questions, but on an expedited basis.

6 And then have the *prima facie* case hearing,
7 the first step. And then a longer period, but
8 hopefully within a one-year period, a hearing to put
9 into effect final rates. It would be during that
10 second hearing that the traditional prudence review
11 would be done.

12 If the review were as complete in the first
13 step as in the second, it would render the second step
14 meaningless. So I propose a phased sort of process
15 with a different standard of inquiry. But regardless,
16 the rates must be just and reasonable. As that is the
17 applicable standard.

18 CHAIRMAN BOYER: Okay. Mr. Evans? And, and
19 I'm wondering, under your view of the world, how can
20 we avoid having two hearings, two duplicative
21 hearings?

22 MR. EVANS: We hear it all at once. We
23 just -- we -- here's my view. Let me, if I might,
24 preface this with one point of disagreement I have
25 with Ms. Schmid. I don't believe that the EBA statute

1 was meant to address regulatory lag.

2 I think it was meant to address volatility in
3 power costs, and giving the Company a guarantee that
4 it would recover its power costs. The price it has to
5 pay for that. There was nothing about regulatory lag
6 there.

7 We're removing all of the risk from the
8 Company of recovery. But there's nothing about
9 regul -- there's nothing that says they need to
10 recover it fast. Or that they shouldn't be subject to
11 regulatory lag on those amounts. So I disagree with
12 that.

13 That said, we envision a proceeding where on
14 March 15th the Company files for its actuals.
15 Testimony is taken. Set up like a regular case, with
16 very limited issues. What are these power costs? Are
17 they actual and prudent?

18 The Company files its minimum filing
19 requirements, which includes a description of what
20 those are and why they're prudent. The Commission
21 determines it. The amount of actual net power costs
22 is compared against what has been collected in rates
23 to that point from base rates. And the difference is
24 put into a surcharge or a refund after the amount has
25 been determined.

1 It's put in for over a period of time that
2 the Commission determines it needs to be amortized.
3 If there are carrying charges to be put on that the
4 carrying charges should go on it at the time the
5 amount is liquidated, but not before.

6 And then at the end of the period that the
7 Commission has set for amortization there's another
8 hearing, or another opportunity to evaluate and true
9 up the amount collected actually with the amount that
10 was determined in the EBA proceeding initially to be
11 the delta.

12 And we just do that year after year. And it
13 avoids the necessity to do any of this in a general
14 rate case. Which I believe is what was intended by --
15 as the Senate Bill 75 amendment of the general rate
16 case statute. We pull it out. Pull it out of that.
17 And we set base rates each time we come in because we
18 know the actuals. We determine them then. Even if it
19 takes three or four months, which it might.

20 Now, this process could be a lot faster and a
21 lot simpler and we could get a lot more comfortable
22 that this is the right and quick way to do it if
23 financial products weren't in there. Which I don't
24 think they were ever intended to be.

25 I think the statute is all you need to set

1 this up anyway. But you can't give them everything.
2 You have to let them suffer the regulatory lag while
3 you determine the amount of actual prudently-incurred
4 power costs.

5 CHAIRMAN BOYER: Mr. Monson, your turn.

6 MR. MONSON: Thank you. Can -- I'm gonna, if
7 I can, I want to respond to the comment about
8 financial products. We've tried that issue. We went
9 over -- went the rounds for two years on that issue.
10 And the Commission decided finally, based on a
11 stipulation, that they could be included.

12 UIEC can't argue now they shouldn't be
13 included. They stipulated they could be.

14 MR. EVANS: We haven't done that.

15 MR. MONSON: They can argue that they're not
16 prudent if they want to, but that's -- they don't --
17 they can't argue they can't be included. But the
18 process that we envisioned was based on the 191
19 account process.

20 And that was that the Company would make a
21 filing. The Division and any other party who wished
22 to would have an opportunity to review it. And then
23 there would be a hearing to set interim rates. Any
24 party could make any claim it wished to at that time.

25 I, I fully acknowledge that we're in a new

1 process here, but everyone's familiar with the 191
2 account process. If anybody wanted to come in and
3 file testimony or say we need to file testimony they
4 could, I suppose. But it's, it's a *prima facie*
5 standard.

6 And then an audit takes place as quickly as
7 is reasonable. And that allows for a prudence review
8 or whatever kind of review the parties want to do.
9 And then there's a final hearing. And that's the
10 process I envision.

11 If there were no interim step then we would
12 urge the Commission to adopt a very truncated, short
13 process. Which UIEC I know would object to on the
14 grounds that they didn't have time to do what they
15 needed to do. But nonetheless, if that's the step the
16 Commission wants to take I think the Commission is --
17 it's fully within the Commission's authority to say,
18 This is gonna be a 90-day process, or whatever it is.

19 But we think the statute when it was enacted
20 and the process that was contemplated in the EBA case
21 was a similar process to the 191 account process, and
22 we think that's appropriate.

23 And incidentally, the REC balancing account,
24 the Commission just created that without express
25 statutory authority. And it includes an interim

1 process. I don't think there's any question the
2 Commission has the right to do interim rate processes
3 when it wants to, when it believes it's appropriate
4 and in the public interest, unless the legislature
5 said you can't do them. And they haven't said that.

6 CHAIRMAN BOYER: Well, I know Mr. Evans' view
7 of this but I was gonna ask this sort of question out
8 of left field. We vacillated a bit on whether or not
9 to put the hedging strategies and devices in. It was
10 in and then -- I mean it was out and then it was in.

11 Did we get that wrong, Ms. Schmid? Does it
12 unduly complicate the Division's task in the audit
13 function?

14 MS. SCHMID: I believe that it adds an
15 additional layer of complication. I believe that as
16 we go through the process we will learn more. And
17 because the EBA is a pilot process perhaps if
18 necessary that issue can be revisited.

19 But at the current time the financial
20 products are in, and it's under that circumstance the
21 Division will audit and fulfill its statutory
22 responsibilities.

23 CHAIRMAN BOYER: Well, I can guess your
24 position, Mr. Monson, but go ahead and say it.

25 MR. MONSON: Well, but this all boils down to

1 whether the Company -- the Commission and the
2 ratepayers want us to do hedging. If we want -- if
3 they want us to do hedging then we have to have the
4 ability to use those financial products. That's part
5 of a sound industry- accepted hedging program.

6 If -- Mr. Evans said now that we have an EBA
7 we don't need to hedge anymore. Remember, that was
8 one of the concerns. That was one of the concerns in
9 the EBA case was that if we got an EBA what would we
10 care anymore if the costs were volatile?

11 And that is one perspective, but that -- we
12 don't think that's a prudent approach to managing
13 costs and the volatility of costs. We think a hedging
14 program is appropriate, and we've had a separate
15 proceeding now to discuss what ought to be included in
16 the hedging program. And there wasn't a complete
17 consensus, mostly because UIEC, although it
18 participated, would never commit to anything.

19 So. But we think they're an absolutely
20 essential part of a hedging program. If the
21 Commission tells us not to hedge, then they don't need
22 to be included. But if the Commission tells us to
23 hedge it's impossible to hedge and not use those in an
24 appropriate hedging program, and therefore they should
25 be included in the EBA.

1 CHAIRMAN BOYER: Mr. Evans?

2 MR. EVANS: Mr. Chairman, may I respond to
3 what I've just heard from Mr. Monson? He's right, we
4 stipulated, we stipulated that hedging costs could be
5 recovered through the EBA. And we're not here arguing
6 today that they shouldn't, although this is a pilot
7 program and we need to rethink things as we go
8 forward.

9 But they do immensely complicate this. And
10 what should be a simple procedure that you could get
11 done with an evidentiary hearing affording the parties
12 due process in three or four months is gonna be vastly
13 complicated because of that.

14 I'm not saying that it should not be done.
15 It must be done this first time if these hedging costs
16 are gonna be allowed in. But let me say this about
17 hedging. We didn't -- we do not oppose the hedging.
18 We are not trying to tell the Company what to do.

19 The reason we backed off in that hedging
20 collaborative is because it became obvious to us early
21 on that nobody around the table knew what they were
22 talking about in terms of how to prudently manage
23 these kinds of risks. Very, very difficult to do.

24 And the parties are in no position to tell
25 the Company how to do that. The Company needs to act

1 prudently in incurring its power costs. And if that
2 includes hedging some of them, then that's what it
3 must do. But we're not here to tell them that.

4 The question is, you know, whether they are
5 in or out of the EBA. And for now we, we've
6 stipulated that we won't oppose hedging costs to be in
7 the EBA. That may turn out to be a mistake, but
8 that's where we are today with it.

9 And let me make one final point. He says --
10 Mr. Monson wants you to think that setting interim
11 rates is routine and you can do it anytime you want.
12 And that is just not the case. And this is -- he
13 uses, for example, we've just done it in the REC
14 docket.

15 We've just set interim rates in the REC
16 docket without a hearing. We've let all that go into
17 rates. But let me point out that the amount that
18 we're allowing to be recovered through RECs is an
19 amount that was stipulated. Nobody came in here
20 challenging that amount or asking the Commission to
21 determine that amount. There was no determination
22 needed.

23 And that is the case with all of these
24 interim rates. You decide on what will be counted as
25 a regulatory asset for Klamath. Once you've

1 determined that, you can do whatever you want. They
2 can earn on it, you can put it into an interim.

3 But you can't put an indeterminant amount
4 into an interim rate unless you've got statutory
5 authority to do it. And we don't here. So we
6 disagree on how routine this ought to be for the
7 Commission.

8 MR. MONSON: Can I just say one thing about
9 that?

10 CHAIRMAN BOYER: You can. And may.

11 MR. MONSON: It's -- thank you. It's not an
12 indeterminant amount. It's \$8.9 million, which was
13 the amount the Company has filed testimony was the
14 amount of its net power costs in excess of the amount
15 included in rates. It's the actual amount.

16 MR. EVANS: But it's challenged.

17 MR. MONSON: It's challenged on the grounds
18 of maybe it was imprudent. Maybe. There's no
19 evidence before you that it was imprudent. It's --

20 MR. EVANS: Or that it was.

21 MR. MONSON: No, there's evidence it was
22 because it was based on the amounts included in the
23 general rate case.

24 CHAIRMAN BOYER: Okay. Well, the -- these
25 arguments have been very instructive and very helpful,

1 so we appreciate that and the way you've conducted
2 yourselves this morning. We are going to take this
3 under advisement, however. And thank you very much,
4 we'll be adjourned.

5 (The hearing was concluded at 10:41 a.m.)

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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 78, 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 22nd DAY OF August, 2012.

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

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