

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Rocky
Mountain Power for Approval
to Cancel Schedule 194

Docket No. 13-035-136

~~~~~  
HEARING  
~~~~~

TAKEN AT: Heber M. Wells Building
160 East 300 South, Room 451
Salt Lake City, Utah 84111

DATE: Thursday, September 12, 2013

TIME: 10:00 a.m. to 12:14 p.m.

REPORTED BY: Michelle Mallonee, RPR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

JORDAN WHITE

HEARING OFFICER

FOR ROCKY MOUNTAIN POWER:

DANIEL E. SOLANDER, ESQ.

ROCKY MOUNTAIN POWER

201 South Main Street, Suite 2300

Salt Lake City, Utah 84111

FOR DIVISION OF PUBLIC UTILITIES:

PATRICIA SCHMID, ESQ.

UTAH ATTORNEY GENERAL'S OFFICE

160 East 300 South, 5th Floor

Salt Lake City, Utah 84111

BRIAN W. BURNETT, ESQ.

CALLISTER NEBEKER & McCULLOUGH

10 East South Temple, Suite 900

Salt Lake City, Utah 84133

FOR UTAH CLEAN ENERGY:

SOPHIE HAYES, ESQ.

1014 2nd Avenue

Salt Lake City, Utah 84103

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

FOR OFFICE OF CONSUMER SERVICES:
Cheryl Murray
Utility Analyst

	INDEX	
	WITNESS	PAGE
1		
2		
3	JEFFERY W. BUMGARNER	
4	Direct Examination by Mr. Solander	8
5	Cross-Examination by Mr. Burnett	19
6	Cross-Examination by the Hearing Officer	29
7	Recross Examination by Mr. Burnett	35
8	Redirect Examination by Mr. Solander	40
9	WILLIAM A. POWELL	
10	Direct Examination by Ms. Schmid	41
11	Cross-Examination by Mr. Burnett	46
12	Cross-Examination by the Hearing Officer	51
13	CHERYL MURRAY	
14	Direct Testimony	58
15	Cross-Examination by Mr. Burnett	59
16	Cross-Examination by the Hearing Officer	61
17	KEVIN EMERSON	
18	Direct Examination by Ms. Hayes	65
19	Cross-Examination by Ms. Burnett	67
20	Cross-Examination by the Hearing Officer	67
21	FRANK LACEY	
22	Direct Examination by Mr. Burnett	69
23	Cross-Examination by Mr. Solander	74
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

(All exhibits filed in this matter were 7
entered into the record by stipulation
of the parties.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Hearing

September 12, 2013

PROCEEDINGS

THE HEARING OFFICER: Good morning. This is the time and place for the duly noticed hearing in Docket No. 13-035-136, In the Matter of Application of Rocky Mountain Power for Approval to Cancel Schedule 194. My name is Jordan White. And the Commissioners have asked me to act as the presiding officer of this hearing.

Before we take appearances, are there any procedural housekeeping matters that the parties want to address before we go in that direction?

With that, why don't we just go ahead and start by taking appearances. We'll just start at this end table.

Ms. Murray.

MS. MURRAY: My name is Cheryl Murray with the Office of Consumer Services. And I'm appearing without counsel today.

THE HEARING OFFICER: Thank you.

MS. SCHMID: Patricia E. Schmid from the attorney general's office representing the Division of Public Utilities. And with me as the Division's witness is Dr. William A. Powell.

MR. SOLANDER: Daniel Solander on behalf of Rocky Mountain Power. I have with me at counsel table Jeffrey Bumgarner, who is the director of Demand Side Management,

1 and will be Rocky Mountain Power's witness today.

2 THE HEARING OFFICER: Thank you.

3 MS. HAYES: Good morning. Sophie Hayes with
4 Utah Clean Energy. And alongside me is Kevin Emerson.

5 MR. BURNETT: I'm Brian Burnett with the firm of
6 Callister, Nebeker & McCullough. I am representing Comverge,
7 Inc. With me is Frank Lacey from Comverge.

8 THE HEARING OFFICER: Thank you. Why don't
9 we go ahead. We've got the Company's application that was
10 filed on August 14, 2013. Why don't we go ahead and call that
11 RMP No. 1. Before we go there, actually, is there any--have the
12 parties discussed, just for ease of reference, the potential of
13 just moving into the record all of the comments, reply comments
14 and applications? Or would it be more efficient just to go by
15 document by document for each party?

16 MR. SOLANDER: I think we're happy to stipulate to
17 the admission of everything that's been filed at this point.

18 MR. BURNETT: I think that's a good idea.

19 THE HEARING OFFICER: Any other objections?
20 Okay. Let's just go ahead--

21 MS. SCHMID: It's fine with the Division.

22 THE HEARING OFFICER: Let's go ahead and do
23 that. That will be a lot easier.

24 (Upon stipulation of the parties, all exhibits were received into
25 the record.)

1 THE HEARING OFFICER: Okay. Mr. Solander,
2 since this is the Company's application, it probably makes sense
3 for you to go first. You may proceed.

4 MR. SOLANDER: Okay. Rocky Mountain Power
5 will call Jeffrey Bumgarner. He'll offer testimony to support the
6 application.

7 THE HEARING OFFICER: Mr. Bumgarner, do you
8 want to go ahead and approach the witness stand?

9 THE WITNESS: Sure.

10 THE HEARING OFFICER: Go ahead and raise your
11 right hand. Do you solemnly swear to tell the whole truth and
12 nothing but the truth?

13 THE WITNESS: I do.

14 THE HEARING OFFICER: Be seated.

15 JEFFREY W. BUMGARNER, having been first duly
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY-MR.SOLANDER:

19 Q. Good morning.

20 A. Good morning.

21 Q. Could you please, for the record, state your name
22 and your position with Rocky Mountain Power?

23 A. Yeah. My name is Jeffrey W. Bumgarner. I'm
24 employed with Rocky Mountain Power as the director of Demand
25 Side Management. And my business address is at 825 NE

1 Multnomah, Suite 600, Portland, Oregon, 97232.

2 Q. Did you prepare the application in Docket No.
3 13-035-136, requesting a cancellation of Schedule 194, or was it
4 prepared under your direction?

5 A. Yes.

6 Q. And what is the purpose of your testimony today?

7 A. Today, I'll briefly review the history of events
8 leading up to the filing of the application in this docket; the
9 purpose for the Company's request to cancel Schedule 194, as
10 described in the application; and comments received on the
11 application and Company responses.

12 Q. Can you please recount the events leading up to
13 the filing of the request to cancel Schedule 194, Demand Side
14 Management cost adjustment?

15 A. Yes. Effective June 1 of 2012 in Advice No. 12-07,
16 and in accordance with settlement stipulation Docket No.
17 11-035-T14, the Commission approved Schedule 194, a Demand
18 Side Management, or DSM, cost adjustment credit, to return the
19 over-collected balance of Demand Side Management's
20 surcharge to customers over a 12-month period. When
21 approved, Schedule 194 was deemed as a temporary credit and
22 was set to expire May 31 of 2013.

23 On January 29 of 2013, the Company filed a
24 proposed increase to Electric Service Schedule No. 194 to
25 accelerate the return of the over-collected funds after our

1 November 27, 2012 re-forecast suggested the over-collected
2 balance would be 17.7 million by the end of 2/13 if left
3 unattended.

4 The filing also requested an extension in the
5 expiration date for 194 from May 31 to December 31 of 2013.

6 The Commission approved the January 29, 2013
7 request to increase the cost adjustment credit as well as the
8 change in expiration date to December 31 of 2013, with a target
9 to reduce the DSM balancing account to \$6 million by the end of
10 2013. The target was developed in collaboration with the DSM
11 Steering Committee, who determined it to be an appropriate
12 amount to assist in offsetting a portion of the possible costs
13 associated with a new Cool Keeper contract or costs of other
14 programs the Company might propose during the 2013 DSM
15 program year. Schedule 194 is set to expire without
16 Commission action on December 31 of 2013.

17 Q. Can you describe the purpose for the Company's
18 request to cancel Schedule 194 prior to its expiration on
19 December 31?

20 A. The Company wishes to restate that it's not seeking
21 changes to the Cool Keeper program in this request. The
22 application included a discussion of the Cool Keeper program as
23 background information in support of the request to cancel
24 Electric Service Schedule 194 earlier than its December 31,
25 2013 sunset date.

1 Based on comments from the intervenor in this
2 docket, the Company will not renew--or review the entire Cool
3 Keeper description provided in the application, but will restate
4 the prior contract's configuration.

5 Under the prior contract, the program's delivery
6 vendor owns all physical assets and provided the company with
7 a licensed and hosted load control management system. The
8 Company paid the contractor, based on measured performance
9 during the load control season, based on an estimate of the
10 program's impact derived from a sample set of program
11 participants.

12 The ten-year contract was established in 2003, and
13 the term of performance, which was initially set through March
14 of 2003, was soon extended to August of 2013. Contract pricing
15 was structured in three phases. There was an installation phase,
16 a transition phase, and finally a maintenance phase. The
17 pricing was developed to reflect the up-front capital investment
18 made by the vendor to establish the control infrastructure, with
19 higher costs in the installation and transition phases and lower
20 costs in the maintenance phase. The pricing was structured to
21 provide a vendor an ability to recoup more of their up-front
22 costs over the initial implementation and transition phases,
23 which were the first six years of the program, and recover the
24 remaining investment over the final four years of the contract.

25 As of June 2013, there were 110,797 active load

1 control switches capable of providing approximately 103
2 megawatts of load control. In early 2012, the Company started
3 the process to renew or replace the Cool Keeper contract set to
4 expire the end of August of 2013. As is customary in these
5 cases, the Company's process began with the issuance of--

6 THE HEARING OFFICER: Mr. Bumgarner, can I
7 make sure you--are you okay on the speed, or?

8 THE REPORTER: He could slow down a little bit,
9 and it would be fine.

10 THE HEARING OFFICER: I just wanted to make
11 sure we were okay with that. Sorry about that.

12 THE WITNESS: All right. I can also provide a
13 copy--

14 THE HEARING OFFICER: No problem. Please
15 proceed. I apologize.

16 THE WITNESS: In early 2012, the Company
17 started the process to renew or replace the Cool Keeper
18 contract set to expire the end of August of 2013. As is
19 customary in these cases, the Company's process began with
20 the issuance of a competitive Request For Proposal, or RFP.
21 Twenty-five companies were invited to participate in the Cool
22 Keeper program RFP, including the program's incumbent
23 delivery vendor.

24 As it had been over ten years since the program's
25 last Request For Proposal, the Company sought to broaden its

1 thinking regarding possible delivery alternatives, which
2 ultimately were reflected in the information requested in the
3 RFP. The companies invited to respond to the RFP were
4 allowed to provide proposals based on two delivery structures.

5 Alternative 1, a pay-for-performance contract
6 structure, or a turnkey program with payment based on kilowatt
7 hour reduction.

8 Alternative 2 was a utility-owned program, where
9 the utility owns the load control hardware and the contractor
10 provides the program delivery and related administrative
11 services.

12 Within the two alternative delivery structures,
13 bidders were provided latitude as to whether to provide one-way
14 or two-way communicating load control switches.

15 Proposals were received on March 10 of 2013. The
16 evaluation process was thorough, initially involving
17 cross-functional teams to assess how current the technology
18 and communication solutions were, assess their reliability,
19 commercial application, and possible synergies with other
20 company initiatives.

21 During the April 24, 2013 meeting of the DSM
22 Steering Committee, the Company presented the alternatives
23 being investigated. The intent was to familiarize the Committee
24 with potential contract structures and evolving technology
25 options available. Due to restrictions inherent in the fair

1 procurement process, the Company could not reveal specific
2 companies, brands, or pricing at that time. Committee members
3 present voiced general support for the Company's consideration
4 of a better technology that provided greater assurance of
5 program performance and a contract structure that maintained
6 or improved program cost effectiveness, provided it could be
7 procured at a reasonable cost compared to the Company's other
8 alternatives.

9 Following the Steering Committee meeting in April,
10 further evaluations were done to assess the appropriateness or
11 adequacy of the solutions for delivery of the Cool Keeper
12 program to ensure the solutions proposed did not exceed the
13 program's current need and performance requirements.

14 Finally, proposal specifics, including costs, were
15 assessed to arrive at a short list of proposals for further
16 consideration. The incumbent's top-scoring proposal, a one-way
17 pay-for-performance proposal, did not initially make the
18 Company's short list of the top three proposals. However, to
19 ensure the Company considered all viable alternatives, the
20 incumbent was invited, along with the other short-listed vendors,
21 to present and further explain their proposal prior to the final
22 scoring and contract award.

23 Taking into consideration price, commercial risk,
24 program performance, and the technical evaluations, the
25 winning proposal that emerged was a utility-owned, two-way

1 communicating air conditioning load control system.
2 Negotiations regarding the final agreement are ongoing and
3 began shortly after the vendor selection. Based on the
4 Company's selection of the utility-owned two-way communicating
5 load system, a system equipment upgrade is needed prior to the
6 2014 summer control season.

7 The Company's forecast provided with this
8 application shows if Electric Service Schedule 193 remains
9 unchanged and the Commission grants the Company's
10 application for the early cancellation of Electric Service
11 Schedule 194, the DSM surcredit, the Company expects to have
12 sufficient revenues available to fund the continued operation of
13 its Utah DSM programs, inclusive of the new Cool Keeper
14 contract, and bring the DSM balancing account into balance
15 within 24months.

16 Q. Thank you. Can you address the comments that
17 were received in this docket as they relate to the Company's
18 request to cancel Schedule 194?

19 A. Yes. The Company acknowledges the comments
20 and recommendations of the Division of Public Utilities, the
21 Office of Consumer Services, and Utah Clean Energy. We
22 appreciate their engagement and input.

23 In regards to the comments provided by Comverge
24 in this docket, it appears they are attempting to reopen the
25 procurement process the Company followed in identifying,

1 evaluating, and selecting the preferred vendor for the
2 Company's next contract to administer the Cool Keeper
3 program.

4 The Cool Keeper RFP is not the subject of this
5 proceeding, however, and the Company is not seeking approval
6 of the new Cool Keeper contract in this docket. A summary of
7 the RFP process and results was reviewed by the Demand Side
8 Management Steering Committee, including the Office of
9 Consumer Services, the Division of Public Utilities, and Utah
10 Association of Energy Users. The Company does not believe
11 that Comverge comments addressing the Cool Keeper RFP
12 process are appropriate in this proceeding, and requests that
13 the Commission disregard this attempt to reopen the process.

14 Q. Did you review the portion of Comverge's comment
15 that address the Utah Energy Resource Procurement Act?

16 A. Yes.

17 Q. And are you familiar with the Energy Resource
18 Procurement Act?

19 A. I reviewed it after reading Comverge's comments
20 and discussed it internally with company management.

21 Q. And do you have an opinion on why Comverge's
22 comment does not apply to the Cool Keeper program?

23 A. Yes. In the Energy Resource Procurement Act, the
24 definition for "significant energy resource" only includes new
25 generating capacity or purchases of electricity or generating

1 capacity. The load control devices the Company installs for the
2 Cool Keeper program do not provide generation or otherwise
3 meet the definition of a "significant energy resource" in the
4 Energy Resource Procurement Act.

5 Q. Thank you. Does that conclude your testimony?

6 A. Yes.

7 MR. SOLANDER: Mr. Bumgarner is available for
8 cross-examination by the parties or Commission.

9 THE HEARING OFFICER: Thank you.

10 Ms. Murray, do you have any cross?

11 MS. MURRAY: No questions, thank you.

12 THE HEARING OFFICER: Ms. Schmid?

13 MS. SCHMID: No questions.

14 THE HEARING OFFICER: Ms. Hayes?

15 MS. HAYES: No questions, thank you.

16 THE HEARING OFFICER: Mr. Burnett?

17 MR. SOLANDER: I'm sorry, Mr. White?

18 THE HEARING OFFICER: Yes.

19 MR. SOLANDER: Was Comverge granted
20 intervention in the proceeding? We didn't see an order on the
21 commission website. We checked.

22 THE HEARING OFFICER: You know, I actually
23 don't have it right in front of me. But, I mean, I guess I could
24 sua sponte grant intervention at this point.

25 MR. SOLANDER: Just--it's for the record.

1 THE HEARING OFFICER: I actually don't know. Let
2 me look for the docket for a bit.

3 MR. BURNETT: I didn't see an order. I just
4 assumed I was in.

5 MR. SOLANDER: We did, too.

6 THE HEARING OFFICER: If it hasn't been issued
7 yet, the intervention of Comverge is hereby granted. Okay.

8 Sorry. Back to you.

9 MR. SOLANDER: Sorry.

10 THE HEARING OFFICER: Oh, no that's fine, Mr.
11 Solander.

12 Ms. Hayes did not have questions?

13 MS. HAYES: No. And while we're on the topic of
14 intervention, Utah Clean Energy didn't even enter--petition to
15 intervene. We just responded to the notice to file comments.
16 And so we're happy just to have the comments be considered
17 public comments or request intervention right now.

18 THE HEARING OFFICER: I would assume that if
19 any orders--I mean, if petitions weren't filed, that--either way is
20 fine. If Comverge, again, requests intervention, it's granted.

21 So Mr. Burnett, do you have questions for Mr.
22 Bumgarner?

23 MR. BURNETT: I happen to have a couple.

24 THE HEARING OFFICER: Okay. Great. Thanks.
25 Please proceed.

1 CROSS-EXAMINATION

2 BY-MR.BURNETT:

3 Q. Good morning, Mr. Bumgarner. How are you?

4 A. Good morning, Mr. Burnett.

5 Q. You mentioned you assisted or prepared under your
6 direction the application?

7 A. I did.

8 Q. So I'd like to talk to you a little bit about that. I'm
9 just trying to understand a few things about it, and I was hoping
10 you could enlighten me.

11 A. I'll do my best.

12 Q. I'm trying to get a feel for a couple of aspects.
13 Under paragraph 25 of PacifiCorp's application, could you read
14 that for me, please?

15 A. "The Company forecasted retaining the current
16 Electric Service Schedule 193 and canceling the remaining
17 Electric Service Schedule 194. Cost adjustment will fund the
18 system's transitional costs within 24 months."

19 Q. And those transitional costs would be capital costs?

20 A. Those transitional costs--they're not capitalized,
21 from our perspective. But yes, they're basically equipment,
22 installation, communications, as well as system operations.

23 Q. Are you anticipating these costs would be rate
24 based or are they paid solely through the tariff?

25 A. They're paid solely through the tariff, as were the

1 first contract's costs.

2 Q. Okay. And in looking at the exhibit that was
3 attached to the application--you know, I guess you've requested
4 that from September through December that 194 be canceled so
5 you could collect some extra months. So you're canceling 194
6 for three-and-a-half months. There would be some additional, I
7 guess, expenses through 2014 that would assist in paying for
8 these transitional costs. Can you tell me what the number is?

9 A. The transitional cost number?

10 Q. Yeah.

11 THE WITNESS: Do we want to share that? Is that
12 confidential?

13 MR. SOLANDER: You tell me. I--I ...

14 THE WITNESS: We're still in negotiations, so the
15 pricing is still--hasn't been finalized at this point in time. So I
16 don't know that it's appropriate for us to cite a number at this
17 point.

18 BY MR. BURNETT:

19 Q. So basically--well, let me ask you this question:
20 Are you ever intending to bring any approval over--request
21 approval for what you are proposing to do under the Cool
22 Keeper program to the Commission?

23 A. Are you talking specifically about the contract--

24 Q. Yes.

25 A. --or are you talking about expenditures?

1 Q. Well, either way.

2 A. The Company is not intending to bring--to file the
3 contract for approval. But this is not--this is not unc customary.
4 In fact, we sign--or we issue literally hundreds of contracts
5 every year for the commissioning of company business--

6 Q. Sure.

7 A. --for goods and services. And so this is no
8 different. We do the same with our other Demand Site
9 Management contracts. They're not filed for approval.

10 Our burden is really to procure and deliver company
11 services in the most cost-effective manner. And so we meet
12 that burden through competitive bid processes.

13 Q. And you acknowledge it was a statutory burden. I
14 believe--in your application, I believe the Company mentioned
15 that, "Rocky Mountain files its application pursuant to Utah
16 Code Annotated 54-3-1 and 54-3-3." Those are--

17 A. We acknowledge those--

18 Q. As to--

19 A. --rate requirements.

20 Q. --rates requirements have to be approved and have
21 to be justifiable, right?

22 A. (No audible response.)

23 Q. And in this particular circumstance, you're coming
24 and asking for the Commission to approve a funding mechanism
25 for your decision.

1 A. We are asking the Commission to for the early
2 cancellation of Electric Service Schedule 194 so that we don't
3 have to turn around and have other adjustments in 193 to fund
4 this program. The actual term that it will be funded was within
5 24 months. It could be sooner. We're still working on the final
6 pricing.

7 Q. So it's a funding mechanism for your proposal?

8 A. It is to assist with the funding of the proposal.

9 Q. And you would agree with me that that basically
10 seals the deal, as it will. It's a circumstance the Commission is
11 never going to be presented with again.

12 A. No, it doesn't seal the deal. If the Commission
13 doesn't grant the cancellation of 194, it will just take longer for
14 the--most likely will take longer for the recovery of program
15 costs.

16 Q. And are you proposing that you'd go ahead? Let's
17 say the Commission decides not to cancel this schedule, are
18 you proposing to forge ahead with your alternative Demand Side
19 Management program?

20 A. We are.

21 Q. And at one point, would anybody ever have an
22 opportunity to question whether or not that was a wise decision?

23 A. When we--the recovery of our costs are always
24 eligible for review and disallowance if we're not spending them
25 prudently. So we can be called at any time for that review.

1 Q. Would it be in a rate case?

2 A. Not in a rate case. And it would probably be in a
3 separate docket.

4 Q. Would it require somebody to initiate a docket?

5 A. It would. But we do have periodic audits. And in
6 fact, we're about to undertake one with the Department of Public
7 Utilities for our 2011 and 2012 program expenses. So it's not
8 uncommon.

9 Q. And did you have an independent evaluator on this
10 particular project?

11 A. We didn't have an individual evaluator, we had an
12 independent advisor, who participated in the program--process,
13 excuse me.

14 Q. Was he a PacifiCorp employee?

15 A. He was not.

16 Q. Was he compensated by PacifiCorp?

17 A. Was he compensated by--yes, he was.

18 Q. Now, I'd like to talk a little bit about your decision
19 process in this.

20 So it wasn't just a pricing decision on your part?

21 A. No. It's a performance issue, pricing, customer
22 service, reliability. It had to have all facets of the program's
23 delivery.

24 Q. Thank you. Did you evaluate those 50/50,
25 technical/price?

1 A. We did. And I believe that was in the Department
2 of Public Utilities' comments.

3 Q. Did you look at what would happen if you tweaked
4 that assumption?

5 A. If we moved between commercial terms and
6 pricing?

7 Q. Yeah.

8 A. And technical proposal?

9 Q. Let's say 60/40, pricing/technical; 40/60 pricing, or
10 70 pricing.

11 A. We did not.

12 Q. Did you feel that the current system provided by
13 Comverge was inadequate? Did you feel it was failing to
14 perform adequately?

15 A. The existing system that Comverge was delivering,
16 its contract expired. We were in the process of re-procuring.
17 And Comverge had an opportunity to provide us with their
18 solution going forward. And they did. They provided us several
19 solutions to choose from. And all were evaluated in relation to
20 the other proposals that were received. And the most favorable
21 proposal went forward.

22 Q. But you can't share what that pricing amount is with
23 us today?

24 A. I can't share the pricing amount with you, and we
25 did not run your scenarios. But I can tell it would not have

1 favored Comverge anymore had we had a heavier weighting on
2 pricing.

3 Q. And as you've probably seen from the Comverge
4 comments, there was an option to buy the existing system?

5 A. There was.

6 Q. And it's on over 110,000 homes right now?

7 A. Correct.

8 Q. And the option to purchase was \$4.5 million?

9 A. That's correct.

10 Q. And you elected not to investigate that?

11 A. It's not that we didn't investigate it, we chose not to
12 exercise it.

13 Q. Did you ask Comverge if they'd take a lower price?

14 A. Did we ask if they would lower the price?

15 Q. Uh-huh.

16 A. No. Our solution going forward was done on a
17 competitive basis. We don't have one-off conversations with the
18 bidders in that process.

19 Q. Okay. So in paragraph 14, you mention that--of
20 your application--"The contractor owns all physical assets and
21 provides the Company with a licensed and hosted load control
22 management system."

23 A. Yes.

24 Q. So you acknowledge that Comverge owns the
25 current assets that are on the homes?

1 A. They do.

2 Q. And have you dealt with any of the issues on
3 removing those related to liability?

4 A. We've had conversations with Comverge on options
5 to remove the equipment. And we've also had conversations
6 regarding liability to remove the equipment.

7 Q. And I assume that would extend to indemnification
8 of disposal issues?

9 A. It would. Our offer was to remove and either
10 return, if they had inventory value to Comverge, the switches, or
11 to remove and recycle them in a responsible manner, if that was
12 their choosing.

13 Q. And would you provide indemnification for
14 Comverge in that proposal?

15 MR. SOLANDER: I'm going to object to that
16 question.

17 THE WITNESS: I can't answer that question. I
18 can't answer that question, I guess.

19 MR. SOLANDER: I think it calls for a legal
20 conclusion.

21 MR. BURNETT: I'm just asking what they agreed
22 to, if they would agree to that.

23 THE HEARING OFFICER: Could you restate your
24 question, Mr. Burnett?

25 BY MR. BURNETT:

1 Q. Would any proposal involve your indemnification of
2 Comverge for those assets?

3 A. No.

4 THE WITNESS: Is that what my answer is?

5 MR. SOLANDER: I'm saying to answer. I don't
6 know your answer.

7 THE WITNESS: I think what we agreed to is that
8 we would enter into an agreement with Comverge on the
9 disposal and the liability associated with removing any damage
10 associated with the removal. That was my understanding of the
11 agreement that our--or the discussion that our legal department
12 had with Comverge.

13 BY MR. BURNETT:

14 Q. Getting back to the pricing a little bit.

15 So you have a DSM Steering Committee that you
16 involved to some degree?

17 A. We do.

18 Q. And did they see any of the underlying bids?

19 A. They did.

20 Q. Did you have them do an independent analysis of
21 the decision?

22 A. We did not.

23 Q. So is your testimony today that your proposal is
24 going to cost less than transition costs, less than \$4.5 million?

25 A. That's not my testimony today.

1 Q. Is your testimony that it will cost more than \$4.5
2 million?

3 A. It will cost more than \$4.5 million.

4 Q. So the cheapest alternative would be to purchase
5 the existing system?

6 A. The \$4.5 million does not represent the total costs
7 of going forward with the proposal. That is simply buying out
8 the equipment, having ownership of the existing switches, which
9 means we'll own 114,000 cell phones. That doesn't incorporate
10 all the rest of the costs of managing and running that program.

11 Q. And when you analyzed the costs of managing that
12 program, did you include those as company employees doing
13 that? How do you factor in the costs of going forward of those
14 expenses? How were those analyzed?

15 A. The costs of managing the Cool Keeper program
16 over the--you know, going forward, are based on the proposals
17 that we received, including those of Comverge that they
18 provided for the next ten years.

19 Q. And you're going to do that yourself?

20 A. We are not going to do that ourselves. We are
21 going to own the network and the system in this particular
22 configuration. But we will be hiring subcontractors to perform
23 the work.

24 Q. Did you discuss the disposal issues with the
25 Committee, the DSM Committee?

1 A. I don't recall if we discussed them with the Steering
2 Committee. I think we discussed them with Comverge.

3 MR. BURNETT: I have no further questions.

4 THE HEARING OFFICER: Okay. Thank you.

5 Mr. Bumgarner, I have a few questions.

6 THE WITNESS: Okay.

7 CROSS-EXAMINATION

8 BY-THE HEARING OFFICER:

9 Q. Are you familiar with Rocky Mountain Power's
10 Schedule 193?

11 A. I am.

12 Q. I don't have copies for everyone. I'm just looking at
13 the purpose on the sheet, 193-1. And it says, "The DSM cost
14 adjustment is designed to recover the costs incurred by the
15 Company since August 1, 2001, associated with Commission-
16 approved Demand Site Management expenditures."

17 Is it Rocky Mountain Power's contention that any
18 changes to the Cool Keeper program discussed in the
19 Company's application would be approved by the Commission if
20 the Company's application here today is approved; in other
21 words, the cancellation of 194?

22 A. No. The Company's assertion is that the Cool
23 Keeper program has already been approved by the Commission.
24 And it's the Company's responsibility to manage it in an
25 appropriate manner going forward.

1 Q. So does that mean any changes would not result in
2 a new program or alteration of program or any kind of
3 requirements to actually approve the suggested changes to the
4 program?

5 A. At this time we don't anticipate any tariff changes
6 to the actual program itself.

7 Q. I think I heard the answer previously. But is it also
8 the Company's contention that if the program--it sounds like
9 you're saying that the program will not be changed. In other
10 words, there will be no tariff changes, et cetera.

11 Is it the Company's intention that the program will
12 continue to be cost-effective?

13 A. It is the Company's intention that the program will
14 continue to be cost effective.

15 Q. Okay. Let me ask you this. Mr. Burnett touched on
16 this a little bit.

17 We've had some discussion here today about
18 evaluation of costs, et cetera. And you just testified that it
19 would be cost-effective.

20 Do you know if the Commission will have an
21 opportunity at some point to see, you know--or to analyze the
22 cost-effectiveness of the information at some point?

23 A. I'm sorry, the cost effectiveness of what?

24 Q. Of the continuation of the program, inclusive of the
25 changes to the Cool Keeper program.

1 A. Yes. The Company provides cost-effective analysis
2 in our annual performance report filings. And we intend on
3 reviewing with the DSM Steering Committee the performance of
4 the program on a pretty regular basis.

5 Q. Are those costs included in the Company's recent
6 filing for the forecasts in Docket 13-35-130?

7 A. I'm sorry. Are they in which docket?

8 Q. The forecast. The Company recently filed a
9 forecast for DSM. Are these new costs included within that
10 forecast?

11 A. Was that--is that our November forecast, our
12 November 1 forecast? Or is that the forecast in this docket?

13 Q. No. It was the one that was recently filed in
14 13-35-130, which is, I believe, the annual forecast.

15 A. I don't have the docket number here to confirm
16 which one.

17 MR. SOLANDER: Mr. White, I think we refer to that
18 internally as the "Semiannual."

19 THE HEARING OFFICER: Okay. Semiannual.

20 MR. SOLANDER: The reconciliation.

21 THE WITNESS: Yeah. And I'm sorry. I understand
22 we have a semiannual, but I don't have that in front of me. So I
23 can't reflect. But I believe the first time that we provided these
24 costs is in the forecast associated with Docket 13-035-136, so
25 this docket.

1 BY THE HEARING OFFICER:

2 Q. Okay. And so, again, just so I can--I'm kind of
3 scratching my head a little bit.

4 If the Commission approves the cancellation of
5 Schedule 194, it's your testimony that ultimately any kind of
6 review of prudence, et cetera, or cost recovery purposes would
7 occur subsequent in a review or in the--I guess I'm just trying to
8 figure out the timing of the actual expenditures versus the
9 Commission's review of those.

10 A. Yeah. I mean, I think that's--I believe you are
11 correct on that. I mean, just as they are for all of our
12 programming expenses of the approved programs that are
13 currently running in the state, they're generally reviewed post
14 their expenditure and evaluated at that time and determined
15 whether or not they are appropriate.

16 Q. Okay. Thank you. Can I--going to your application
17 right now. I'm going to Attachment A. I just wanted to confirm
18 one thing. Just let me know when you're there.

19 A. Okay. I'm there.

20 Q. Attachment A under the column titled, "Rate
21 Recovery."

22 A. This is in the application?

23 Q. Yeah. This is Attachment A.

24 A. Is there an article number?

25 Q. I think it's just referred to as "Attachment A" of the

1 application.

2 A. Oh, "Attachment A"?

3 Q. Yeah. Sorry about that.

4 A. I'm sorry. Okay. I'm there.

5 Q. And there's a column titled, "Rate Recovery."

6 A. "Rate Recovery," uh-huh.

7 Q. Okay. That's listed with numbers on how the total--
8 the 2012 total. The question that I have is: Is that net of 194
9 balances? In other words, is that--I'm just trying to understand
10 what that number is.

11 A. Yes. This Exhibit A assumes that Schedule--that
12 you grant the Schedule 194 cancellation. If it is not granted,
13 then the balances within this Attachment A would change.

14 Q. Okay. Thank you. I just have one last question.

15 Do you believe that if the Commission were to
16 approve cancellation of Schedule 194, is it the intent of the
17 cancellation to fund any kind of changes or incremental costs to
18 the program?

19 A. Well, we don't have a contract for the program right
20 now. So we have a program as far as a tariffed program. What
21 we're working on is a re-procurement of the delivery of that
22 program. And so, you know, I can compare it to--if I'm looking
23 for a base case to compare those costs to, it's to the
24 alternatives that I received within the procurement process to
25 select that delivery vendor. So if I'm comparing it to that, then

1 there's no incremental cost.

2 If I'm comparing it to not spending anything until I
3 get a contract in place, then there would be the incremental
4 costs of the program's continued operation.

5 Q. And I spoke too soon. One more question.

6 Do you believe that the Commission's approval of
7 the cancellation of Schedule 194 to fund changes in this
8 program would be in the public interest? And if so, why?

9 A. We do. We--as I said in my testimony, we
10 undertook an extensive request for a proposal process, similar
11 to what we do any time that we have, you know, the delivery--
12 goods and services to procure. We had an extensive evaluation
13 of that--of those proposals. We rated many, many factors, from
14 cost, which was very important in the rating process, to
15 performance, data management, customer service--you name it.
16 All the aspects you might expect when a utility is delivering a
17 program of this nature to its ratepayers and expecting certain
18 performance out of it for that in order to justify its cost
19 effectiveness as a resource.

20 So we think we've done a thorough job in
21 evaluating those proposals. And although there are proposals
22 today, for instance, that have been brought up as alternatives,
23 those were not presented to the Company in a request for
24 proposal process in the exact way that they were presented
25 today, so.

1 THE HEARING OFFICER: Okay. Thank you. I
2 have no further questions.

3 MR. BURNETT: I have a follow-up question to your
4 questions, if I may.

5 THE HEARING OFFICER: That's fine. I'll allow
6 that. Yeah, that was my last question. So that's fine.

7 RECROSS EXAMINATION

8 BY-MR.BURNETT:

9 Q. So I believe what you were saying is you were
10 going to file semiannual reports, which deal with prudence and
11 cost recovery. Is that a fair statement?

12 A. I'm saying we do file semiannual forecasts. We file
13 annual performance reports--

14 Q. On those annual--

15 A. --on all of our programs, including the Cool Keeper
16 program.

17 Q. And the annual reports would analyze this program
18 vis-a-vis buying or building a power plant to deal with the 100
19 megawatts of cost--100 megawatts of demand you would
20 normally have. Isn't that accurate?

21 A. I'm not sure I understand the question.

22 Q. Your analysis in your reports going forward will
23 simply be an analysis of whether or not this system makes
24 sense economically vis-a-vis buying power for market or building
25 a power plant?

1 A. The report would provide program costs and an
2 assessment of cost effectiveness against the alternatives for
3 meeting the customers'--or Company's needs.

4 Q. Which at that point is buying power on the market
5 or building a power plant?

6 A. It might be. It might be other measures. But this is
7 a peak capacity product, not an energy product; therefore, it
8 doesn't have the flexibility. And if the temperature is not there
9 and the load is not there, it's a very specific use of a product of
10 this nature.

11 Q. But never again will the Commission have an
12 opportunity to compare an alternative Demand Side
13 Management provider versus what you've chosen. This is it.

14 A. I can't say never. Again, all contracts have terms
15 and all contracts have--will have another procurement process.

16 Now, in regards to the program, the Commission
17 always has a right to review the program. The Commission
18 always has a right to review the costs within a program. But the
19 Commission has approved the Cool Keeper program under Utah
20 Power. So we wouldn't be in to ask for a re-approval of an
21 existing program. If we had changes to that program,
22 modifications to that program at some point, we would come in
23 and request the Commission's approval to change those facets
24 of the program.

25 Q. But at that point, you would have removed the

1 option to use a Converge system because the system would
2 have been duplicated or replaced?

3 A. The Converge system--

4 Q. That's a yes or no question.

5 A. I guess I'm a little lost on the system. We're
6 talking about 114,000 small receiver boxes on the system and
7 their operation. So, you know--

8 Q. If those systems aren't available, you can't compare
9 them anymore. It's not an option at that point, right? It's a
10 simple question.

11 A. Yes, that's correct. If they're gone, they're gone.

12 Q. So this is the only opportunity the Commission has
13 to look at this issue vis-a-vis the Converge system, the system
14 that's on 110,000 homes right now. This is it.

15 A. Again, I don't completely understand the question.
16 We re-procure for the delivery of programs every year in every
17 one of our programs and every one of our jurisdictions. So this
18 is no different.

19 Q. In all of those circumstances, do you have
20 \$110,000 and \$13.5 million in investments sitting there waiting
21 to be wasted?

22 A. The \$13.5 million, that's Converge's investment.

23 Q. Uh-huh.

24 A. That's not the cost that we paid for those services.

25 Q. But it's certainly an investment that could be taken

1 advantage of, wouldn't you think?

2 A. And it has been. We've leveraged it for ten years.
3 And we've got our--what we've paid has been cost-effective as a
4 resource for those ten years.

5 Q. And could you leverage it further if you chose to?

6 A. We could have leveraged it further had we had a
7 proposal that was--had they had a proposal for that system
8 come forward that was competitive with the other alternatives,
9 then they would have considered it.

10 Q. Was the Comverge proposal the cheapest proposal
11 you received?

12 A. I can answer that it was not the cheapest proposal
13 that we received.

14 Q. And it was the cheapest capital proposal you had
15 received? The \$4.5 million--was somebody cheaper than 4.5
16 million bucks?

17 A. Again, the \$4.5 million was a buyout option that the
18 Company had. That was not the cost to run the program for the
19 next ten years.

20 Q. So you're claiming that their O&M expenses going
21 forward would offset that, or?

22 A. I'm claiming that, in looking at the proposals that
23 we received, we looked at the least cost, best performing, most
24 reliable. We took all those considerations into account in the
25 selection of the preferred vendor going forward in the delivery of

1 the program.

2 Q. So your testimony today is that--let's exclude for
3 moment, if you will--if you'll let allow me to set up my own
4 hypothetical. As my contracts professor used to always say,
5 "It's my hypothetical. You can't fuss with it."

6 A. Okay.

7 Q. All right. So the hypothetical is: I come into you
8 today with a \$4.5 million proposal--

9 MR. SOLANDER: I'm going to object. We're far
10 beyond Mr. Bumgarner's direct testimony or the questions that
11 were asked by the Commission. If we're going to into
12 hypothetical universes, that's far beyond Mr. Bumgarner's direct.

13 THE HEARING OFFICER: Mr. Burnett, can you
14 help us understand what point you're trying to get to just so we
15 can focus there?

16 MR. BURNETT: Well, I guess the point I'm trying to
17 get to is that this was the cheapest proposal.

18 MR. SOLANDER: I don't believe Mr. Bumgarner's
19 testified to that. I believe his testimony directly contradicts that
20 statement.

21 BY MR. BURNETT:

22 Q. Okay. Let's go back. Capital costs, is somebody
23 cheaper than 4.5 million bucks?

24 A. We had a more cost-competitive proposal than
25 those forwarded by Comverge in the Request For Proposals

1 going forward. Comverge had an opportunity to forward us their
2 best case in their proposals. They gave us three proposals.
3 We evaluated all three. We took one beyond the top three
4 candidate list they were four of. We brought them into the
5 process and gave them an opportunity to present their
6 top-performing proposal, which was the existing system. And
7 we re-rated all the proposals following those, and they were not
8 selected.

9 Q. And in every circumstance, you factored in other
10 types of things, not just costs?

11 A. In every circumstance, we factored in performance,
12 data management--all aspects, not just cost. Cost was 50
13 percent of the evaluated factor.

14 Q. But did you run scenarios looking at costs and
15 other factors in the 50 percent?

16 MR. SOLANDER: That's been asked and answered.

17 THE HEARING OFFICER: Sustained, yeah.

18 Sustained, yeah. The objection is sustained.

19 MR. BURNETT: Okay. I have no further questions.

20 THE HEARING OFFICER: Thank you.

21 Mr. Bumgarner, you are excused.

22 MR. SOLANDER: I just have one redirect.

23 THE HEARING OFFICER: Redirect, sure.

24 REDIRECT EXAMINATION

25 BY-MR.SOLANDER:

1 Q. Does the Comverge system that's in place have any
2 value to the company without a contract with Comverge?

3 A. No.

4 Q. That's all I have. Thank you.

5 THE HEARING OFFICER: Thank you. You are
6 excused, Mr. Bumgarner. Thank you. Let's see.

7 Ms. Schmid?

8 MS. SCHMID: Thank you. The Division would like
9 to call Dr. William A. Powell as its next witness.

10 THE HEARING OFFICER: Okay.

11 MS. SCHMID: May he please be sworn?

12 THE HEARING OFFICER: Yes.

13 Would you raise your right hand. Dr. Powell, do
14 you solemnly swear to tell the whole truth and nothing but the
15 truth?

16 THE WITNESS: Yes.

17 THE HEARING OFFICER: Thank you.

18 You may proceed.

19 DR. WILLIAM A. POWELL, having been first duly
20 sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY-MS.SCHMID:

23 Q. Good morning.

24 A. Good morning.

25 Q. Would you please state your full name, business

1 address, employer, and position for the record?

2 A. My name is Artie Powell. I'm the manager for the
3 energy section within the Division of Public Utilities. The
4 address is here at the Heber Wells Building, 160 East 300
5 South.

6 Q. Have you participated on behalf of the Division in
7 this docket?

8 A. Yes, I have.

9 Q. Could you please describe that participation.

10 A. I'm a member--or I attend most of the DSM Steering
11 Committee meetings and the DSM advisory meetings, where
12 we've discussed the issues that are before the Commission in
13 this particular docket. And I also prepared the memo, the
14 Division's memo that was filed on August 29.

15 Q. Thank you. Do you have testimony to present
16 today?

17 A. Yes.

18 Q. What is the purpose of that testimony?

19 A. The purpose of the testimony is in support of the
20 Company's application to cancel Schedule 194, and also to offer
21 a couple recommendations on--I guess they're conditional
22 recommendations on that approval of the cancellation of the
23 schedule.

24 Q. Please proceed.

25 A. Okay. The Company's witness went over a short

1 history of Schedule 194, so I won't go into that. That's also
2 contained in our memo of August 29.

3 We did offer two recommendations, and I'll come
4 back to some specific points in the memo in just a second.

5 The first recommendation, we asked that the
6 Commission direct the Company to track any costs and
7 expenditures under the new Cool Keeper vendor contract,
8 including the total funds made available from the cancellation of
9 Schedule 194.

10 On page 4 of the Division's memo, I indicated that
11 as of June of this year, there was approximately \$9.2 million in
12 the over-collected balance for the DSM account. And in the
13 footnote on that page, I indicated that the Company was
14 projecting out approximately a \$5.5 million balance at the end of
15 this year, 2013. The intent of our first recommendation is to--let
16 me back up one step.

17 If I remember correctly, the Company has asked for
18 an effective date for canceling 194 of September 15. And so
19 we're not--what we want to know and what the first
20 recommendation is designed to do is just inform us of exactly
21 what the balance in that DSM account is as of the effective date
22 of the Commission's order or September 15th.

23 The second recommendation, we asked that the
24 Company file a detailed report of all the expenditures and funds
25 associated with the new contract as the Company moves

1 forward. After talking with the Company after we filed our
2 particular comments, the Division is agreeable to amending this
3 recommendation to have the Company bring that information to
4 the DSM Steering Committee. Under the statutory authority of
5 the Division, if we feel that there's anything that needs to be
6 investigated, we can undertake that investigation on our own
7 account, or we can also petition the Commission for agency
8 action. So we think that would be an agreeable alternative to
9 the way we presented that second recommendation.

10 As the Company's witness pointed out this morning,
11 Schedule 194 was intended to be a temporary schedule to return
12 over-collected funds to customers. It was scheduled to expire
13 at the end of this year. He also indicated that earlier this year
14 we increased the rate on 194 to return certain funds back to
15 customers with the idea or the target that we would achieve a
16 balance of about \$6 million towards the end of the year.

17 It was our understanding, the Division's
18 understanding, that that money, then, would be available, either
19 to help fund or offset some of the costs of a new contract under
20 the Cool Keeper program or to fund new programs that the
21 Company might bring forward for approval before the
22 Commission. So with that, I think I can conclude my summary
23 of our comments.

24 Q. Dr. Powell, were you present in the hearing room
25 when Rocky Mountain Power's witness was asked a series of

1 questions concerning additional opportunities for review by the
2 Commission?

3 A. Yes.

4 Q. Do you have any comments to make on that
5 subject?

6 A. Yes, thank you. I think, as was mentioned, the
7 Company filed semiannual and annual reports on their DSM
8 programs. We have an opportunity--well, the Commission gives
9 us an opportunity, through an action request, to review those
10 and report back any recommendations or concerns that we might
11 have with those. I believe that that review of those reports is an
12 opportunity to evaluate any new program or a new contract
13 under the Cool Keeper program going forward.

14 It was also mentioned earlier that the Division
15 performs an annual audit of the DSM expenditures. Certainly we
16 can raise questions there if we feel the need to.

17 Even though the DSM expenditures themselves are
18 not evaluated in a rate case, we do make sure that the
19 accounting treatment of the DSM expenditures are correctly
20 identified and accounted for in the rate case. And it's also an
21 opportunity where we could explore whether or not there were
22 imprudent costs that arose as a result of the transition to a new
23 contract. And in particular, it would be an opportunity to review
24 the net power costs that the company incurs.

25 And again, as I mentioned before, the Division has

1 its own authority under statute to investigate what it feels needs
2 to be investigated with the Company or to petition the
3 Commission for agency action. So thank you.

4 Q. Thank you.

5 MS. SCHMID: Dr. Powell is now available for
6 cross-examination and questions from the hearing officer.

7 THE HEARING OFFICER: Thank you, Ms. Schmid.
8 Ms. Murray?

9 MS. MURRAY: No questions. Thank you.

10 MR. SOLANDER: No questions.

11 MS. HAYES: No questions.

12 THE HEARING OFFICER: Mr. Burnett?

13 MR. BURNETT: I have a couple questions.

14 CROSS-EXAMINATION

15 BY-MR.BURNETT:

16 Q. Good morning, Dr. Powell.

17 A. Good morning.

18 Q. If you'll turn to page 5 of your comments.

19 A. Sure.

20 Q. Okay. Last paragraph, first two sentences. Would
21 you read those for me please?

22 A. "This endorsement"?

23 Q. Yes.

24 A. Okay. "This endorsement of the Company's RFP
25 process should not be misconstrued or interpreted as a

1 recommendation of approval for either the Company's choice of
2 a final winning bid or the unknown costs associated with a new
3 contract. These decisions are subject to future review when the
4 Company files for a cost recovery."

5 Q. You didn't do an independent review of PacifiCorp's
6 decision, did you?

7 A. Not an independent review, no.

8 Q. You didn't have an opportunity to change the
9 weighting factors that PacifiCorp used when they evaluated the
10 proposals?

11 A. No.

12 Q. So you don't know if a 50/50 split, if we moved that
13 to a 60/40 or a 70/30 would result in a different decision?

14 A. I did see some pricing on the contracts that were--
15 or the bids that were provided. I don't believe a heavier
16 weighting on price would change the Company's decision.

17 Q. Did you just see a summary of what the proposals
18 were from PacifiCorp?

19 A. Yes.

20 Q. You never saw the underlying bids?

21 A. No.

22 Q. Would you agree with me, Dr. Powell, that if the
23 Comverge system is removed from these 110,000 or 120,000
24 homes, that it's not going to be available in the future for
25 comparison or use?

1 A. I believe that there's an opportunity to compare.
2 That's one of the reasons for our recommendation, is that they
3 track the costs under a new contract. We know what the costs
4 were under the old contract. So for--as my own hypothetical, we
5 would know what the contract costs were, say, for 2014. And
6 we could compare that to costs under the Comverge contract
7 from the past. So I'm not--I'm disagreeing with what you're
8 saying, I believe.

9 Q. Okay. All right. Let's explore that for a minute.
10 Let's assume that there's a cheaper alternative out there. At
11 that point in time, you just would make a cost adjustment, not
12 allowing PacifiCorp to recover as much money if you thought
13 that their expenditures were imprudent?

14 A. Yes, I agree with that.

15 Q. But the system itself, the ability to use the system,
16 is gone once it's replaced?

17 A. Yes.

18 Q. So as far as Comverge goes, it's not going to help
19 them.

20 A. True.

21 Q. So you're saying--and you're--and what happens
22 when PacifiCorp says, "Well, that was an old contract. It's not
23 really applicable now, not in 2014. You know, different deal,
24 different time frame."

25 How are you going to analyze an apples-and-apples

1 comparison at that point? You've got an old contract, old
2 pricing with a new proposal. How are you going to do that?

3 A. I'll turn it over to the auditors and let them do it.
4 No.

5 I recognize that it will be difficult. You'll be
6 comparing, again, my hypothetical with the 2014 costs under the
7 new contract and the costs of Comverge's old contract. And you
8 will have to make some assumptions to make that comparison.

9 Q. Okay. Thank you. Would you agree with me that
10 the normal cost analysis that occurs in the semiannual report is
11 an analysis which compares the cost of this program versus
12 alternatives in the market or building their own power plant?

13 A. I'm not sure I can answer that. I'm not the one that
14 usually goes through the annual and semiannual filings with that
15 much detail.

16 Q. Would you agree with me that the semiannual and
17 annual reports don't compare other contract alternatives which
18 once existed?

19 A. I believe that's true.

20 Q. So the normal filing wouldn't have some kind of
21 cost comparison?

22 A. No. I don't believe it would.

23 Q. And you recognize that PacifiCorp has no intention
24 of ever bringing this contract arrangement to the Commission for
25 approval?

1 A. I understand that that's their position, yes.

2 Q. So unless you initiate something yourself as the
3 Division or some other intervenor, this is it. This is the only
4 time that you really can review this particular decision?

5 A. Again, no, I disagree with that. I outline at least
6 four areas where we can review the decision that the companies
7 make.

8 Q. But there are cost adjustments at that point.

9 A. Yes.

10 Q. As far as the opportunity to use this system now,
11 today, the Comverge system going forward, this is it?

12 A. This is it. Once--yes.

13 Q. And if you were Comverge, would you feel a little
14 uncomfortable that they haven't provided you with any other
15 costs of the winning bidder?

16 MS. SCHMID: Objection. Speculation.

17 THE HEARING OFFICER: Sustained.

18 BY MR. BURNETT:

19 Q. Do you feel uncomfortable, as the Division, that
20 there has not been disclosure to the Commission about this
21 decision about how much it's going to cost? For example, we
22 don't have a simple capital cost number here today, nor do we
23 have an O&M cost versus a hard number. I've got a \$4.5 million
24 hard number. We've got, "Trust me." Do you think the
25 Commission should accept that, "Trust me"?

1 A. Nobody's going to object?

2 I wouldn't characterize it as, "Trust me." I think we
3 put forward two recommendations that do implicitly express our
4 concerns that we have. And they are, similar to what you are
5 bringing out, we don't know what the costs of the new contract
6 will be going forward. And we don't know if that--if the new
7 vendor will be able to meet the heating load season starting
8 next year. You look puzzled.

9 Q. No. I'm always puzzled. So let's deal with the
10 heating load season next year for a second.

11 Do you have experience on whether or not it's
12 possible to replace 120,000 units in eight months?

13 A. I have no--

14 MS. SCHMID: Objection. This goes beyond the
15 scope of the witness's testimony.

16 THE HEARING OFFICER: Yes. Sustained.

17 MR. BURNETT: I have no further questions.

18 THE HEARING OFFICER: Dr. Powell, I have a few
19 questions, if it's okay.

20 THE WITNESS: Sure.

21 CROSS-EXAMINATION

22 BY-THE HEARING OFFICER:

23 Q. Going to page 5 of the Division's comments filed on
24 August 29--and I'm scratching my head right now. It's for a
25 reason, because I guess I'm just trying to--and let me back up

1 by saying we've had a lot of cross-examination, et cetera, with
2 respect to this RFP and the cost-effectiveness, et cetera. And
3 the truth is that the reason, partially, why I've allowed it to go
4 forward is that, from the Commission's perspective, we're a little
5 bit unsure about what we're approving right now. In the
6 comments that the Division makes, it indicates that the
7 decisions are subject to future review when the Company files
8 for cost recovery. So I'm just trying to understand.

9 Again, I think you probably already, you know,
10 touched on that in your testimony. But I'm just trying to
11 understand exactly--you know, is the Commission approving
12 anything right now with respect to the prudence, the recovery, et
13 cetera? When does the Division anticipate, or what context
14 would that be for review of these potential incremental costs?

15 A. I think there's--if I can divide it into two questions.

16 Q. Sure. I didn't mean to ramble. Sorry about that
17 compound question. Sorry.

18 A. What is the--from the Division's point of view, what
19 is it that the Commission is actually approving today? And I
20 think the only thing that the Commission is approving today is
21 whether or not to cancel Schedule 194. And the cancellation of
22 that schedule, all that does is free up funds that the Company,
23 then, can use in the way that it deems appropriate at this time.

24 We're not approving--or the Division--and this is the
25 purpose of that last paragraph on there. We're not

1 recommending, and I don't think the Company is asking for,
2 approval of how those funds might be spent at this particular
3 time. There are some up-front costs that will come from the
4 new contract. We've discussed those with the Company. And
5 the intent, I think, of the Company is to use those funds to help
6 offset some of those costs. That will mitigate the necessity of
7 increasing the collection rate under Schedule 193. So that's
8 kind of that first part--

9 Q. Okay.

10 A. --of that question.

11 The second part is the review process. Under the
12 way PacifiCorp's DSM program is structured, they don't
13 specifically come in and ask for cost recovery in the same sense
14 that they do when they file a rate case and they have their
15 expenditures laid out. But they do file for review. And the
16 Commission does issue action requested of the Division and
17 invites other parties to review the filings. And again, those are
18 the semiannual and annual reports that the company files.

19 And then, again, we have our own ability to
20 investigate those things. And, in particular, the Division
21 undertakes an annual audit of the DSM programs and their
22 expenditures. And so we review whether or not those
23 expenditures are in compliance with what the Commission has
24 ordered and whether or not we think they are prudent or not.

25 Q. Now, would that just be if the Company were to,

1 you know, reformat this as a new program? Or is that just the
2 existing 114 Cool Keeper? In other words, does that trigger the
3 Division's review of those costs only if it's a new program? Or if
4 there's an existing, they're just drawing off of 193 for the
5 existing Cool Keeper?

6 A. No. I think in this case, we monitor closely the
7 DSM expenditures on an ongoing basis. The Company files--let
8 me make sure I've got the right utility.

9 PacifiCorp does file on a monthly basis a summary
10 report of its expenditures, and we review those. So it's an
11 ongoing process that we undertake that leads up to, then, the
12 annual audit that we do of the program.

13 So I don't--so no. I guess the short answer, to
14 answer your question directly, is: No, it's not necessarily just
15 triggered by the action of the Company.

16 Q. And the audit, does that include a prudence review
17 in addition and a recommendation, or is it simply--is it more of
18 an accounting practice for whether they're in the right accounts,
19 drawing down, et cetera?

20 A. It's primarily the latter that you're talking about.
21 You know, have they accounted for all the costs appropriately,
22 and that. But those can raise issues, then, that we review for
23 prudence. And I can't recall off the top of my head. I know that
24 there have been a couple of times that we've challenged costs
25 with the company, both PacifiCorp and for Questar.

1 Q. Not to beat a dead horse here, but--sorry, Patricia--
2 but if the Division were to make such an audit and make a
3 determination of imprudence, the mechanism by which they
4 would--I guess, what, they would make a recommendation for
5 some sort of a refund? I guess I'm just trying to understand that
6 if it's not within the context of a rate case, what is the
7 proceeding, or what does that mechanism look like to actually--if
8 prudence is determined, where would that be refunded or
9 determined?

10 A. Yeah. It could be--it could actually be in a rate
11 case. That might be debatable. We could make an adjustment
12 in the rate case. But we could also initiate another proceeding,
13 where, in a sense, we create another Schedule 194 and take
14 whatever costs have been disallowed and put it into that
15 mechanism and then refund those to customers. So there's
16 probably a couple different ways that it could be done.

17 Q. Okay. Let me ask you this: Does the Division have
18 an opinion as to whether the proposed changes to the program
19 will allow the continuation of what we've understood to be
20 unchanged Cool Keeper to continue to be cost-effective?

21 A. I believe it will continue to be cost-effective, yes.

22 Q. Will the Commission have an opportunity at some
23 point to see an analysis of cost-effectiveness or some other--
24 you know, I mean I understand there's the Steering Committee.
25 But will there be results of that or an analysis?

1 A. Yes. Again, in the annual filings that the Company
2 does, I believe that's where those cost-effectiveness tests are
3 laid out.

4 Q. Okay. The. Division believes the--because what
5 we're talking about here is potential future review of incremental
6 costs associated with the changes.

7 Does the Division believe that's consistent with the
8 previous orders addressing Schedule 193? And like, for
9 example, in the original docket establishing this, the 02-35-T12,
10 there's a paragraph in the stipulation agreed to by the parties
11 that says that, "Any DSM expenses and interests included in
12 Schedule 193 balancing account shall not be included in the
13 calculation of the Company's revenue requirements for general
14 rate cases."

15 So, I mean, it sounds like the Commission has
16 already said that it's not their intention that this would be, you
17 know, to examine these costs in the rate case. Is that right?

18 A. That's true. It's my understanding the way the
19 Company does that and what we review in the rate case is that
20 all of the DSM expenditures are removed from the Company's
21 revenue requirement.

22 And then, again, like I was saying, if we thought
23 there was a problem with the new program while we were in a
24 rate case, we could explore the impacts of those problems on
25 the Company's revenue requirement--and in particular, I think,

1 the net power cost.

2 Q. Okay. And do you believe--is it the Division's
3 contention that--and again, I think you've already answered this--
4 -that this would not result--this application, or this new
5 incremental change, or whatever you want to call it, new
6 contract, would not result in triggering a need for a new
7 application or new tariff for a, quote, unquote, new program?

8 A. There is a difference of opinion between the
9 Division and the Company on that particular issue. The
10 Company's position has already been stated that they don't
11 intend to file for approval of the contract. They don't believe it's
12 a new program. We discussed that in the Steering Committee
13 meetings. And the Division is not convinced that the Company
14 does not need to--there's a double negative in there--but we're
15 not convinced that the Company should not have to file that
16 contract.

17 Q. So again, this wasn't in your comments. But is it
18 the Division's recommendation that that may be a potential
19 option, that this is a new program that would be requiring a new
20 tariff filing and all of the review that goes along with that?

21 A. Yes.

22 Q. Okay. Thank you. One last question.

23 If at the end of the day we determine that what we
24 really are doing is approving incremental costs today of
25 essentially this program, do you believe that such an approval

1 would be in the public interest and just and reasonable?

2 A. Without knowing exactly what those incremental
3 costs are, I can't say from that perspective that it's in the public
4 interest. I think what's in the public interest today is to allow
5 the Company an opportunity to continue the Cool Keeper
6 program. And part of that, I believe, in the public interest would
7 be the cancellation of 194 to make available those funds that
8 are there.

9 Q. Okay. Thank you very much. I have no further
10 questions, Dr. Powell. You are excused unless ...

11 MS. SCHMID: No redirect.

12 THE HEARING OFFICER: Okay. Thank you.

13 Okay. Ms. Murray, do you solemnly swear to tell
14 the whole truth and nothing but the truth?

15 MS. MURRAY: Yes.

16 THE HEARING OFFICER: Be seated.

17 CHERYL MURRAY, having been first duly sworn,
18 testified as follows:

19 DIRECT TESTIMONY

20 MS. MURRAY: My name is Cheryl Murray. I'm a
21 utility analyst with the Office of Consumer Services. My work
22 address is 160 East 300 South, Salt Lake City, Utah. I have
23 participated in the DSM Steering Committee meetings, and I
24 prepared the Office's August 29, 2013 memo on this subject.

25 Mr. Bumgarner and Dr. Powell have, I think,

1 thoroughly explained the elements in the actual application, so I
2 will briefly summarize our position.

3 As we stated in our memo of August 29, the Office
4 supports the Company's request to cancel Schedule 194. In our
5 view, canceling Schedule 194 may avoid or delay an increase in
6 Schedule 193, the DSM surcharge, that could become necessary
7 as a result of a potential contract for the Cool Keeper program
8 with currently unknown costs. Because there has been some
9 mingling of the request to cancel Schedule 194 and a potential
10 future contract for the Cool Keeper program, the Office
11 reiterates that our support of canceling Schedule 194 is not an
12 endorsement for a new or amended Cool Keeper contract or
13 program changes. The Office does recommend that the
14 Commission approve the Company's request to cancel Schedule
15 194. That concludes my statement.

16 THE HEARING OFFICER: Thank you, Ms. Murray.
17 Ms. Schmid?

18 MS. SCHMID: No questions.

19 MR. SOLANDER: No questions.

20 THE HEARING OFFICER: Ms. Hayes?

21 MS. HAYES: No questions.

22 THE HEARING OFFICER: Mr. Burnett?

23 MR. BURNETT: I have a couple questions.

24 THE WITNESS: Okay.

25 CROSS-EXAMINATION

1 BY-MR.BURNETT:

2 Q. I believe I heard Dr. Powell state that he thought
3 that PacifiCorp should file the contract for approval--whatever
4 they select ultimately going forward--for approval with the
5 Commission. Would you agree with that?

6 A. I think that the Office has a similar view. We have--
7 -what we have stated to the Company is that we think they are
8 at risk of having some disallowances if they don't do something
9 in front of the Commission.

10 Q. Do you think that--would you recommend to the
11 Commission that they review this, or just simply trust PacifiCorp
12 that they've got the best interest of the ratepayers in mind?

13 A. Isn't it the trust that thereby--I think that--well, I
14 think that the Commission will likely be interested in what the
15 terms of the contract would be. It's really up to them what they
16 do with that. But there has been a good deal of discussion
17 about what's in the contract, what's in the RFP. So I'll leave it
18 at that.

19 Q. If there were options out there that were cheaper
20 but effective, would you recommend to the Commission that they
21 request that those be pursued?

22 A. Cheaper but effective. I think that you would have
23 to look at the entire package of what's included. Because
24 something may be cheaper and effective, but I think we should
25 be looking sort of long-term at what are we going to be able to

1 do with whatever program the utility ends up selecting. There is
2 a fair amount of money involved in this, and there's also
3 reliance on this product.

4 If you listen to or read any of the articles that are
5 out there, there are some potentials for advancements in
6 technology that certain systems may be able to accommodate
7 better than others. So I think that simply looking at cost and--
8 even costs and effective, I think you want to look a little broader
9 than that before you make a decision.

10 Q. Would you recommend the Commission have an
11 opportunity to look at that?

12 A. I think it would be--I think that would be a good
13 idea.

14 Q. I have no further questions.

15 THE HEARING OFFICER: Thank you, Ms. Murray.
16 I just have a couple questions I think you've already answered
17 them.

18 CROSS-EXAMINATION

19 BY THE HEARING OFFICER:

20 Q. I know in your comments of August 29 that I don't
21 believe--I may be mis-recalling--but I don't believe that the
22 Office goes into such explicit details about potential recovery.
23 But you stated earlier that there may be unknown costs.

24 What is the Office's position with respect to if there
25 are indeed unknown costs associated with this? Does the Office

1 have an opinion as to whether the Commission would have an
2 opportunity at some point to review those?

3 A. I think that yes, that there would be opportunities.
4 Because, as Dr. Powell, and I think Mr. Bumgarner also
5 indicated, in the semiannual filings when the Company presents
6 its cost-benefit analysis, there's the opportunity to see what the
7 costs are. Is it still being cost effective?

8 And there was a discussion earlier with Dr. Powell.
9 And I think one of the things--regarding audits. I think one of
10 the things that the Division, when they do review those things or
11 audit the reports, they're looking at does something sort of seem
12 substantially different than a prior report? And in this case, if
13 there are--if there is a substantial cost increase, they're going to
14 be asking some questions and looking into why.

15 Now, it may be that they can understand it, and so
16 it wouldn't trigger any kind of a filing. But there is that potential
17 that they could file and say, "We found that this does not appear
18 to be prudent. We want to have an investigation." And they
19 could get more information from the Company. There are
20 different things that could be done in that regard.

21 Q. Do you believe that--again, we're not privy to--the
22 Commission is not privy to the Steering Committee and a lot of
23 the details around the new program--I said new program--the
24 changes to Cool Keeper. Is it the Office's position that this is
25 not a change to Cool Keeper? Or does the Office see this as

1 potentially a new program that needs to be reviewed by
2 Commission?

3 A. Based on everything we have been told, we don't
4 view it as a new program. But, because of the costs involved--
5 potentially involved in this, we still think that, as we've said, that
6 the Company is at risk if they don't ask the Commission to
7 approve the contract. We understand that there are lots of
8 contracts that the Company enters into in their normal course of
9 business. And, you know, we don't know that it's necessary for
10 the Commission to review everything. But this is an increase in
11 a particular type of a program--or delivery mechanism, I think is
12 how it's been referred to--and I think it would be prudent for the
13 Company to bring it forward for the Commission to see.

14 Q. And so when you say "at risk," by that, you mean
15 that there--again, going back to Dr. Powell's testimony--that
16 there would be a potential filing of some sort for--if there was
17 discovered something that was imprudent, et cetera, costs, that
18 there would be a potential for some type of disallowance, some
19 type of mechanism?

20 A. Right. That is what I am referring to, a
21 disallowance.

22 Q. I think you've already testified about this, but it
23 sounds like the Office has no opinion as to whether this is a
24 cost-effective change?

25 A. I can only go by the limited information that we

1 have seen. Oh, we have seen some recaps of analyses and that
2 type of information, and it does appear that it will be
3 cost-effective. And the Company has assured us that it will. Of
4 course, we'll wait until we see their actual analysis. We haven't
5 seen what the final costs will be, either.

6 Q. Okay. And that analysis--again, I think I asked Dr.
7 Powell--is that analysis that would be presented to the Steering
8 Committee, do you have a view on when that would be
9 presented, or if at all, to the Commission for review?

10 A. I do not know.

11 Q. Okay. One last final question, I promise.

12 Do you believe that the potential approval of this
13 application to cancel it, to cancel Schedule 194, do you believe
14 it's in the public interest?

15 A. I do.

16 Q. Okay. Thank you.

17 THE HEARING OFFICER: You are excused, Ms.
18 Murray.

19 THE WITNESS: Thank you.

20 THE HEARING OFFICER: Okay. Ms. Hayes?

21 MS. HAYES: Thank you. Utah Clean Energy calls
22 Kevin Emerson as its witness. Can he please be sworn?

23 THE HEARING OFFICER: Absolutely.

24 Will you raise your right hand, Mr. Emerson. Do
25 you solemnly swear to tell the whole truth and nothing but the

1 truth?

2 THE WITNESS: I do.

3 THE HEARING OFFICER: Thank you. You can be
4 seated.

5 KEVIN EMERSON, having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY-MS.HAYES:

9 Q. Would you please state your name, business
10 address, and position at Utah Clean Energy?

11 A. Yes. My name is Kevin Emerson. My place of
12 business is Utah Clean Energy, 1014 2nd Avenue, Salt Lake
13 City, Utah, 84103. My business is a senior policy regulatory
14 associate with Utah Clean Energy, where I lead energy
15 efficiency related policy and program efforts for the
16 organization.

17 Q. Thank you. In your capacity at Utah Clean Energy,
18 did you participate in filing comments on August 29 in this
19 docket?

20 A. Yes.

21 Q. Do you have a brief summary you would present to
22 the Commission?

23 A. I do.

24 Q. Please proceed.

25 A. Utah Clean Energy is--I think I just turned this off.

1 THE HEARING OFFICER: Do you want to just push
2 the green button.

3 THE WITNESS: Utah Clean Energy is an active
4 member of the Company's Demand Side Management Steering
5 Committee as well as its advisory groups and has participated in
6 the discussions that has led up to this application that's the
7 subject of this hearing.

8 Utah Clean Energy supports the accelerated
9 acquisition of cost-effective Demand Side Management
10 resources and programs and has an interest in maintaining a
11 steady collection rate for DSM program funding.

12 And Utah Clean Energy recommends that the
13 Commission approves the Company's application to cancel
14 Schedule 194 surcredit to fund the transition to a new two-way
15 communication residential load control program. And that
16 concludes my remarks.

17 THE HEARING OFFICER: Thank you, Mr.
18 Emerson.

19 Ms. Murray?

20 MS. MURRAY: No, thank you.

21 THE HEARING OFFICER: Ms. Schmid?

22 MS. SCHMID: No questions.

23 THE HEARING OFFICER: Mr. Solander?

24 MR. SOLANDER: No questions.

25 THE HEARING OFFICER: Mr. Burnett?

1 CROSS-EXAMINATION

2 BY-MR.BURNETT:

3 Q. Good morning. I just have a couple questions.

4 Did you do an independent analysis on the decision
5 to select a provider for the demand response provider?

6 A. No. Utah Clean Energy didn't conduct an
7 independent analysis.

8 Q. And so you don't know whether or not they changed
9 the percentage to what they would consider--whether they would
10 have made a different decision?

11 A. No.

12 Q. Is your recommendation that they select a
13 particular provider?

14 A. We don't have any opinion on that matter.

15 Q. And this particular system that they're proposing,
16 it's a replacement for the current system?

17 A. Our comments deal with the cancellation of the 194
18 surcredit. And I don't have any opinion right now to express on
19 the, kind of, description of any program.

20 Q. I have no further questions.

21 CROSS-EXAMINATION

22 BY-THE HEARING OFFICER:

23 Q. Mr. Emerson, I just have a couple of questions. I
24 don't want to sound like a broken record. These are going to
25 sound familiar.

1 You just testified that UCE recommends approval of
2 cancellation of 194 to fund the transition to this new program.

3 So, you know, again, I guess the question from the
4 Commission is: If this is a funding mechanism, ultimately what
5 we're approving here for this new program, is it UCE's belief or
6 position that this is the forum to actually address prudence,
7 costs, et cetera, cost-effectiveness, all of those elements?

8 A. Well, I guess I would state that I would agree with
9 some of the comments from the other witnesses, that there are
10 other opportunities to address cost-effectiveness, such as the
11 semiannual reports and the other opportunities that have been
12 expressed by the Division and others.

13 We do think it is in the public interest, rather than
14 increasing Schedule 193 potentially at a later date, to cancel
15 the surcredit now to enable to funding of this transition.

16 Q. Okay. Does UCE have a position as to whether or
17 not the proposed changes, which would result in incremental
18 costs, does UCE have a position as to whether or not that would
19 allow for the cost-effective continuation of this program? And I
20 apologize. I can rephrase that.

21 I guess my question is--let me state it again. We've
22 had testimony here today about incremental costs associated
23 with changes. And I won't say a new program, let's just say
24 changes to the Cool Keeper. Does UCE have an opinion as to
25 whether those incremental costs associated with that results in

1 a cost-effective program?

2 A. At this point, we do not have an opinion.

3 Q. Okay. I don't think I have any further questions for
4 you, Mr. Emerson. Appreciate it. You are excused.

5 A. Thanks.

6 THE HEARING OFFICER: Okay. 11:30 here.

7 So we've got--Mr. Burnett, do you want to proceed?

8 MR. BURNETT: Do you want to forge ahead, or do
9 you want to take a break?

10 THE HEARING OFFICER: No, let's proceed.

11 MR. BURNETT: Comverge calls Frank Lacey. Ask
12 that he be sworn, please.

13 THE HEARING OFFICER: Sure. Raise your right
14 hand. Thank you. Do you solemnly swear to tell the whole truth
15 and nothing but the truth?

16 THE WITNESS: I do.

17 THE HEARING OFFICER: You may be seated.

18 FRANK LACEY, having been first duly sworn, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 BY-MR.BURNETT:

22 Q. Mr. Lacey, would you give your name and business
23 address for the record?

24 A. Yes. My name is Frank Lacey, L-A-C-E-Y. I work
25 for Comverge, Inc., which is C-O-M-V-E-R-G-E, Inc. My

1 business address is 415 McFarlan, M-C capital F-A-R-L-A-N,
2 Road, Suite 201, Kennett Square, Pennsylvania, 19348.

3 Q. And could you tell me what your position is at
4 Comverge?

5 A. Yes. I'm the vice president of regulatory and
6 market strategy for Comverge.

7 Q. And would you talk a little bit--did you participate in
8 formulating the comments and reply comments for Comverge
9 filed in this docket?

10 A. Yes, I did.

11 Q. Would you briefly talk about who Comverge is?

12 A. Sure. Comverge is a global demand response
13 provider serving in this country in competitive ISO markets and
14 serving utilities, servicing their demand response programs
15 around the country. We've been running the Cool Keeper
16 program here in Utah for ten years. We built that program out
17 with Utah employees. We maintain it here. Generally,
18 Comverge is committed to the success of the Cool Keeper
19 program.

20 We believe that there are many issues, many open
21 items that are not being addressed by the Company in this
22 proceeding, and some are associated with the current contract
23 and some are not. And we believe that without resolution of
24 these issues, material harm and risk will occur to ratepayers and
25 to Comverge.

1 For example, the 110,000 devices in place by June
2 of 2014, we view that as highly improbable at this point,
3 especially given the testimony earlier that there's still no
4 contract in place. By our calculation, installing 110,000 devices
5 would take approximately 65 man years to do. And that is just
6 the deployment of the devices. That doesn't include software
7 testing, quality assurance, procurement logistics, deployment of
8 the teams, hiring the teams, et cetera.

9 We also believe that under the new program, which
10 is a different kind of program, it requires a different outreach to
11 the customer. We don't believe, for example, that you can have
12 a one-way communication device on a customer's house and
13 replace it with a two-way communication without the customer's
14 consent. So clearly, customer consent adds to that time line.

15 There is a system in place that's owned by
16 Comverge. And while we've expressed our willingness to work
17 with the utility, we can't just accept that the utility will destroy
18 the asset that we've invested millions of hours in over the last
19 ten years. And of course, there are the disposal issues that we
20 talked about earlier as well.

21 Q. Has the Comverge system been reliable and
22 working here?

23 A. It has. And I believe this past summer it was called
24 nine times.

25 Q. And there are comments in here that were filed that

1 deal with those particular issues?

2 A. They do, yes.

3 Q. In your opinion, is it possible for PacifiCorp to
4 replace the Comverge system cost-effectively, or do you think
5 your proposal is the most cost-effective?

6 A. It's hard for me to fathom that there is a system
7 that's more cost-effective than the system that currently exists.
8 I haven't seen the RFP responses. I haven't seen the
9 proposals. But the cost to the deploy 110,000 devices is zero
10 with the Comverge system, and it's obviously significantly
11 greater than zero with a new system.

12 Q. And you were here for testimony today that--well,
13 let's review that. In the current contract, there's an option for
14 PacifiCorp to purchase the assets of Comverge for \$4.5 million?

15 A. Yes, there is. And I heard that testimony.

16 Q. And did you hear testimony that the capital costs,
17 at least, be would be greater to purchase another new system?

18 A. Yes, I did.

19 Q. And if these costs end up being more, you would
20 have the negative ratepayer impact?

21 A. That's my understanding, yes.

22 Q. Is it your opinion that the decision to move to a
23 different provider is in the public interest?

24 A. It is hard for me to comprehend that it could be in
25 the customer interest in comparison to the existing program.

1 Q. Did you offer any transition opportunities to
2 PacifiCorp?

3 A. We have had several discussions with them offering
4 transition services. We've specifically addressed this risk,
5 which we see as insurmountable about how you get 110,000
6 devices installed by next June. Clearly, the program is needed.
7 It was called nine times this year. So we have addressed
8 transition issues with them. They've largely gone unresponded
9 to.

10 Q. Do you think that--would you recommend that the
11 Commission ask for approval of this new program?

12 A. Yeah. I think--I think there are a lot of issues that
13 are, again, not being addressed in this docket--intentionally or
14 not, I'm not sure. But they're just not there. So I think in order
15 for the Commission to make an informed decision, they should
16 request a hearing specifically on the new contract.

17 Q. Do you think that after the--well, does this
18 approval, which provides funding mechanism, if they move
19 forward, does that kind of remove the opportunity to use the
20 Comverge system?

21 A. It does to the extent that they stop funding the
22 maintenance, the development, the--to the extent that they start
23 dismantling the asset. It can't be--you know, we have the same
24 issues. You'd have to replace them. So in effect, yes. Once
25 it's done, it's done. Once it's removed, it's removed.

1 Q. So this is kind of the only opportunity to really
2 evaluate whether or not retaining the current system makes
3 sense?

4 A. I believe that's correct, yes.

5 Q. I have no further questions.

6 THE HEARING OFFICER: Thank you.

7 Ms. Murray?

8 MS. MURRAY: No, thank you.

9 THE HEARING OFFICER: Ms. Schmid?

10 MS. SCHMID: No questions.

11 THE HEARING OFFICER: Mr. Solander?

12 MR. SOLANDER: Yes, thank you.

13 CROSS-EXAMINATION

14 BY-MR.SOLANDER:

15 Q. Earlier a few minutes ago in your testimony, you
16 mentioned disposal issues?

17 A. Yes.

18 Q. What exactly were you referring to there?

19 A. If the Utility's intent is to take our devices off of
20 houses, what are they going to do with them? Where are they
21 going to dispose of them? I think each of the devices has
22 Comverge's name on them, and I don't remember if it was
23 PacifiCorp or Rocky Mountain Power. It has the utility name on
24 it as well. So it's a co-branded asset sitting on the side of the
25 house. And obviously, we're concerned with proper disposal, if

1 that's the Utility's plan.

2 Q. And did the Company offer to remove those devices
3 and either return them to you at no cost or dispose of them in
4 an environmentally certified landfill or disposal unit?

5 A. I think--I mean, those discussions have been--
6 whether or not there is a formal offer, I don't know. But I know
7 those discussions have taken place.

8 Q. So are you disputing that the Company offered to
9 return them to you at no cost?

10 A. No. I'm saying I don't know exactly what the offer
11 was. I know that there were some discussions that took place
12 between the two companies.

13 Q. Would you agree that that would eliminate the
14 disposal issues that you are referring to, if that was the case?

15 A. If the Company disposed of them in a responsible
16 manner?

17 Q. I don't know. Sure. Responsible, legal, I don't
18 know what the requirements are for disposing of--

19 A. Yes. That's obviously a concern, that they be
20 disposed of in a proper manner.

21 Q. And so if the Company was willing to offer to do
22 that at no cost to Comverge, you would agree that would
23 eliminate disposal issues?

24 A. It would eliminate some of the disposal issues, yes.

25 Q. What other disposal issues would be remaining?

1 A. Well, I think general indemnification issues related
2 to disposal.

3 Q. Thank you.

4 THE HEARING OFFICER: Ms. Hayes?

5 MS. HAYES: No questions. Thank you.

6 THE HEARING OFFICER: I have no questions right
7 now.

8 I would like to just reserve. I'd like to, with your
9 indulgence, to take a recess at this point. I don't anticipate
10 having any further questions. So I won't excuse you right now,
11 but you're welcome to sit back over with counsel. But if I could
12 just take a short recess at this time, I would appreciate it and
13 return shortly. Off the record at this time.

14 MR. BURNETT: Your Honor, we will be allowed to
15 make some closing argument?

16 THE HEARING OFFICER: Let me think on that.

17 MS. SCHMID: I would object to that. The other
18 witnesses have not--

19 MR. BURNETT: No. No, I mean counsel.

20 THE HEARING OFFICER: Let me--

21 MR. BURNETT: I wanted to give you the
22 opportunity to make your closing argument. I want one, too.

23 MS. SCHMID: Okay.

24 THE HEARING OFFICER: Let me consider that.
25 Let me take a short recess and consider that, if that's okay.

1 Thanks.

2 (A break was taken from 11:38 a.m. to 12:04.)

3 THE HEARING OFFICER: We'll go ahead and go
4 back on the record. First of all, I really appreciate everyone's
5 patience.

6 With respect to Mr. Burnett's request for closing
7 arguments, I'm not opposed to that. If counsel for each party
8 would like to go forward with that, I'd request that let's try to
9 limit it to five minutes apiece, if that's acceptable to all parties.

10 In keeping with, I guess, the order that we started
11 with, I would suggest that we be consistent and allow Rocky
12 Mountain Power, if that's their wish, if they decide to make an
13 argument, to proceed first. And then we'll continue in the same
14 order as we began it this morning.

15 Mr. Solander, do you have an argument you want to
16 make?

17 MR. SOLANDER: I do. I have a few points that I'd
18 like to raise.

19 First of all, I'd like to clarify that there is no current
20 contract with Converge. That contract that they delivered the
21 program on since 2003 is expired.

22 (Counsel turned on his mic.)

23 MR. SOLANDER: That contract that they
24 administered the program under since 2003 is expired. And they
25 were not the winning bidder on the new Cool Keeper contract

1 that has not yet been filed for approval and the Company
2 contends does not need to be filed for approval.

3 The contract that the Company had in place with
4 Comverge was never filed for approval back in 2003. And we
5 don't see the need to change the practice of what's been done
6 previously in this program. As Mr. Bumgarner stated in his
7 testimony, the Cool Keeper program has been approved. And
8 we don't see the need for the Commission to go in and examine
9 individual contracts.

10 The analogy we discussed--I discussed with Mr.
11 Bumgarner, it's similar to the Company replacing old meters with
12 the AMR meters. We don't get approval of that contract from
13 the Commission. It's more cost-effective, new technology. The
14 Company puts the AMRs on, replacing the old meters
15 system-wide, and it's a benefit to all ratepayers. And similarly,
16 the new contract the Company is negotiating for the Cool
17 Keeper is cost-effective and will benefit all the ratepayers going
18 forward. Thank you.

19 THE HEARING OFFICER: Thank you, Mr.
20 Solander.

21 Ms. Schmid?

22 MS. SCHMID: Thank you. The Division supports
23 the cancellation of Schedule 194. It's important to focus on
24 what is actually before us today. What's before us today is the
25 cancellation of that schedule.

1 The Division's recommendations that the Company
2 track any costs and expenditures under a new Cool Keeper
3 vendor contract, including the total funds made available from
4 the cancellation of Schedule 194, and file a detailed, audible
5 report of all expenditures and funds used under or associated
6 with the Cool Keeper contract--and we've modified that to be
7 with the DSM Committee--provide a mechanism for the Division
8 and the Commission, if appropriate, to review the actions of the
9 Company with regard to implementing new mechanisms to do
10 the Cool Keeper program. The Company has represented that
11 there will be no changes to the program at this point.

12 Through Dr. Powell's testimony and the testimony
13 of other witnesses, you have heard that there are several
14 opportunities for the Company's actions to be scrutinized. The
15 Division urges the approval of the cancellation of Schedule 194
16 for these reasons.

17 THE HEARING OFFICER: Thank you, Ms. Schmid.
18 Ms. Murray?

19 MS. MURRAY: No, thank you.

20 THE HEARING OFFICER: Ms. Hayes?

21 MS. HAYES: Thank you, Mr. White.

22 Utah Clean Energy has taken a fairly narrow
23 position in this docket in support of the cancellation of Schedule
24 194, based on two primary public policy goals, which Mr.
25 Emerson discussed in his summary.

1 The first being that Utah Clean Energy supports the
2 accelerated acquisition of cost-effective Demand Side
3 Management programs, and so supports allowing the Company
4 to access funds that it has collected in pursuit of that
5 acquisition. And the second is our interest in maintaining a
6 relatively steady Demand Side Management collection rate. And
7 that concludes my closing statement.

8 THE HEARING OFFICER: Thank you, Ms. Hayes.
9 Mr. Burnett--and no, you can't use the left-over
10 time from each of the counsel.

11 MR. BURNETT: Well I intend to be brief. I just
12 want to touch on a few things.

13 First of all, I recognize PacifiCorp's intent is that
14 this docket be fairly narrow, and some of the parties have
15 addressed that.

16 I think the practical matter is this is the funding
17 mechanism for what they want to do. If you fund it, it's going to
18 happen. And you lose the opportunity to be able to utilize the
19 Comverge system, which we believe is a cheaper and effective
20 system.

21 I recognize that the Comverge contract wasn't filed
22 years ago, but you didn't have an existing \$13.5 million build-out
23 system on 110,000 homes ready, willing, and able, and reliably
24 operating. And we believe that a review of this would be
25 beneficial to the ratepayers. We think that ultimately--

1 obviously, it's going to be in Comverge's interest. We recognize
2 that.

3 We think that a review of this by the Commission
4 would be a beneficial thing. And I really think at this point in
5 time they're just saying, "Trust me. Trust me. We've had a
6 vigorous solicitation process, and we've made a correct
7 decision." And they pulled the curtain back just enough to let
8 the agencies look around the corner a little bit and go, "Looks
9 okay." But they have not done an independent analysis. They
10 all said they didn't do an independent analysis. They don't
11 know what would happen if you utilized different assumptions. I
12 mean, I've been doing this a long time. It's amazing what you
13 can prove if you change your assumptions. It's really
14 remarkable.

15 But this is a system that's worked well. It's
16 functioning. There's testimony that the new capital costs are
17 more than 4.5 million bucks. That, right there, should be a red
18 flag. The capital costs are more than 4.5 million bucks. That's
19 acknowledged on the stand. That means--you know, maybe the
20 other considerations outweighed it. What are they afraid of?
21 You know, let me have an opportunity to win straight up, fair
22 and square. Give me a shot. If we lose fair and square, that's
23 fine. But what's happening is they're never going to bring it to
24 the Commission, and you are losing the opportunity to ever
25 utilize the system. It's not going to be there.

1 And generally, their semiannual and annual or
2 monthly things analyze the system vis-a-vis what it would cost to
3 procure megawatts in the market or build a Demand Side
4 Management system. They aren't saying, "We had these other
5 bids. We had this other system," and they ended up spending
6 more on that system.

7 This is the only shot you're going to have,
8 realistically. And they might want to buy the Mercedes Benz
9 with all the bells and whistles, but the Honda we've got is
10 working just fine. And I don't think we should impose these
11 costs on ratepayers without, you know, a full vetting of that
12 system. So I think that, as a practical matter, this is the only
13 time the Commission is going to really realistically be able to
14 look at the issue.

15 As we mentioned, there are other issues that
16 haven't been resolved, liability and other things. Comverge
17 currently owns those systems. They can't just take them off
18 without their approval.

19 And I know that these parties are focused on just
20 canceling the current 194 schedule. But I think as a realistic
21 matter, this is the only shot you're going to have to look at this.
22 And I don't think it's in the public interest. And I would urge you
23 to require PacifiCorp to come forward with the--you know, I
24 mean, you don't have to disclose the person or the company
25 involved. But certainly let's look at some costs. And we think

1 we can beat them. And we think we have a reliable system that
2 works and it's in the public interest to utilize that system as we
3 do this. And I submit it on that.

4 THE HEARING OFFICER: Thank you, Mr. Burnett.

5 First of all, I just wanted to thank everyone for their
6 participation and testimony today. It was very helpful. As a
7 result, I've got a lot to think about, a lot of different arguments
8 to mull over and put that in the context of we understand we
9 have a very short fuse on this tariff filing. I know the parties are
10 anxious to hear. And I know that PacifiCorp prefers bench
11 rulings.

12 But we will--at this time, we'll take it under
13 advisement and we plan on issuing an order by tomorrow,
14 obviously. So with that, we're adjourned. Thank you.

15 (The hearing concluded at 12:14 p.m.)

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

State of Utah)

ss.

County of Salt Lake)

I, Michelle Mallonee, a Registered Professional Reporter in and for the State of Utah, do hereby certify:

That the proceedings of said matter was reported by me in stenotype and thereafter transcribed into typewritten form;

That the same constitutes a true and correct transcription of said proceedings so taken and transcribed;

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

Michelle Mallonee, RPR, CSR