

In the Matter Of:

In Re: Application of Rocky Mountain Power for Accounting Order for Settlement

HEARING DOCKET NO. 18-035-48

April 11, 2019

Job Number: 533226

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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IN THE MATTER OF:)
)Docket No. 18-035-48
Application of Rocky)
Mountain for an Accounting)ORAL ARGUMENT
Order for Settlement Charges)
Related to its Pension)
Plans)
)
)

April 11, 2019
10:00 a.m.

LOCATION:
PUBLIC SERVICE COMMISSION
160 East 300 South, Room 451
Salt Lake City, Utah 84111

* * *

Karen Christensen
- Registered Professional Reporter -
- Certified Shorthand Reporter -

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	ALSO PRESENT:	Nikki Cobliha

1 April 11, 2019

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

3 COMM. LEVAR: Okay. We'll be on the record.
4 Good morning. This is Public Service Commission Docket
5 18-035-48, the Application of Rocky Mountain Power's
6 Request for an Accounting Order for Settlement Charges
7 Related to its Pension Plans, and we have oral argument
8 on this issue this morning from the attorneys
9 representing the parties. As a preliminary matter, we
10 should have Commissioner David Clark on the telephone
11 with us this morning.

12 Can you hear us, Commissioner Clark?

13 COMM. CLARK: I can hear you very well.

14 COMM. LEVAR: We can hear you well, too, so
15 that's good news.

16 COMM. CLARK: Thank you.

17 COMM. LEVAR: Why don't we go to appearances
18 next?

19 MS. HOGLE: Good morning, Commissioners.
20 Yvonne Hogle on behalf of Rocky Mountain Power. And
21 also with me here today is the Vice President and Chief
22 Financial Officer of Pacificorp.

23 I recognize this is oral argument, but in
24 the event that you have any technical questions, we
25 thought it would be a good idea to bring her and have

1 her answer any questions that you may have. Thank you.

2 COMM. LEVAR: Thank you. Just to make sure,
3 can you state her name again? I didn't jot that down.

4 MS. HOGLE: I apologize. I don't think I
5 actually said it. Her name is Nikki Cobliha. Excuse
6 me.

7 COMM. LEVAR: I should have known that from
8 your last hearing, but... Thank you.

9 For the Division?

10 MS. SCHMID: Good morning. Patricia E.
11 Schmid with the Utah Attorneys General's Office on
12 behalf of the Division of Public Utilities.

13 COMM. LEVAR: Thank you.

14 MR. SNARR: Steven W. Snarr, an Assistant
15 Attorney General on behalf of the Office of Consumer
16 Services.

17 COMM. LEVAR: Thank you.

18 MR. RUSSELL: Good morning. Phillip Russell
19 on behalf of the Utah Association of Energy Users.

20 COMM. LEVAR: Okay. Thank you. I think the
21 way we'll structure this morning's oral argument is
22 we'll allow each of you the chance to summarize your
23 arguments in any way you choose to. Please presume that
24 we have read both the comments and replies earlier in
25 the docket and the briefs, but if you'd like to

1 highlight a few points, we'd like to give you the
2 opportunity to do that. I think after each party does
3 so, then we'll go through Commissioner questions one at
4 a time and move forward that way.

5 Are there any other questions or preliminary
6 matters we need to discuss?

7 MS. HOGLE: Just something for your
8 consideration, Chair, and that is that given that this
9 case really involves two sides of an argument, I wonder
10 if it makes sense to give each side a set number of
11 minutes or equal opportunity, based on the fact that it
12 really is two sides, so that effectively, assuming the
13 company gets 15 minutes and -- at your pleasure,
14 whatever you think is appropriate, then the other side
15 would be -- would also get 15 minutes. I'm wondering if
16 you can entertain that and just your thoughts on that.
17 Thank you.

18 COMM. LEVAR: Sure. And we can discuss that
19 among the parties. Another option, rather than doing
20 time limits, would be to give a chance to return to the
21 Applicant after we've concluded. I think it makes sense
22 to start with you, but I think there's also some value
23 to circling back to you at the end, since you're the
24 party with the burden of proof in this docket.

25 I can say, personally, I might prefer that

1 than to try and worry about time limits, unless we
2 start -- if we're back here this afternoon still going,
3 then we may want to talk about time limits. But other
4 than that -- so let me just go to the parties.

5 What are your thoughts on this? Ms. Schmid?

6 MS. SCHMID: I believe it would be
7 appropriate to circle back to Rocky Mountain Power.

8 COMM. LEVAR: Thank you.

9 MR. SNARR: We'll proceed however you
10 decide.

11 COMM. LEVAR: Okay.

12 MR. RUSSELL: UAEU would also prefer to
13 circle back to Rocky Mountain Power after the parties
14 have had an opportunity to kind of discuss their
15 positions. And I say that in part because if there are
16 some positions that UAEU has on this that are actually
17 more aligned with, perhaps, Rocky Mountain Power than
18 with the other parties. So I think it would be better
19 to give us all the time to kind of explain what our
20 positions are, and then just allow Rocky Mountain Power
21 the last words since it is their motion -- or their
22 application.

23 COMM. LEVAR: Okay. Anything else to add,
24 Ms. Hogle?

25 MS. HOGLE: I appreciate that. Thank you.

1 COMM. LEVAR: Okay. I think we'll proceed
2 that way. And, again, we'll let each of you choose how
3 to summarize your arguments in the way you choose. I
4 think you can expect probably the three of us to have
5 some similar questions for each of you, so we'll just be
6 asking all of your perspectives on a few issues, and
7 then we'll circle back at the end and see where we are.

8 So, Ms. Hogle, if you want to go ahead.

9 MS. HOGLE: Thank you. Thank you for the
10 opportunity to present our case this morning.

11 The settlement that occurred partly as a
12 result of the lump-sum distribution payments to retirees
13 in 2018 qualifies for deferred accounting because it was
14 unforeseen, unpredictable, and significant enough to
15 warrant deferral. The parties argue that it does not
16 qualify because it was foreseeable, not extraordinary,
17 it was in the normal operation of the company's
18 retirement plan in that -- allowing deferral amounts to
19 retroactive rate making or single-issue rate making.

20 They also argue that it should not qualify
21 for deferred accounting because it did not impact the
22 company's earnings and that it's actual costs are lower
23 now for pension expenses than they were in the rate
24 case. And, also, that the possibility of recurrence
25 also disqualifies the event from deferred accounting.

1 Rocky Mountain Power disagrees with the
2 Company's positions. First of all, the settlement event
3 was unforeseen because pension accounting rules required
4 RMP to recognize the entire expense of \$22 million total
5 company over one year in 2018, based on a triggered
6 threshold caused in the large part by low interest
7 rates.

8 I want to take you to the Division's brief
9 in several places which incorrectly states that recent
10 history suggests Pension Events were not all that
11 uncommon, and it cites the company's response to a
12 debtor request to the OCS 1.10, I believe, which
13 includes a table. And I believe that's on page 5 of the
14 Division's brief. It cites a table and includes a table
15 at the bottom there which has columns, one of which --
16 or two of which are lump sum distributions.

17 Lump-sum distributions are not Pension
18 Events, they are just one component of three components
19 that could trigger a Pension Event. Before 2018, the
20 sum of interest rates, service costs, and lump-sum
21 payments haven't, in the last ten years, triggered a
22 threshold that required the Company to recognize this
23 type of an expense.

24 The event was unpredictable. Actual
25 interest rates is not something that the Company can

1 predict. But for this accounting rule, which triggers
2 the Settlement Event based on conditions over which RMP
3 has no control, the Company would have continued to
4 amortize the unrecognized historical losses over 21
5 years. RMP's inability to predict interest rates is the
6 same as its inability to predict changes in tax laws,
7 which lowered the corporate tax rate from 35 to 21
8 percent.

9 Third, because settlement events are
10 unforeseeable and unpredictable, RMP does not forecast
11 them as part of pension costs in rate cases. And that's
12 something that the parties, like I said, raised. At the
13 time of the 2014 rate case, RMP had no reason to believe
14 a settlement would occur. It may have had information
15 about lump sum payments, but these are not the main
16 driver of settlement events. What drives them is the
17 interest rates. And, again, you can see this, if you
18 turn back to the table in the Division's brief and even
19 as referenced by the Office.

20 In 2013, you'll see a lump-sum amount of
21 about \$52 million, which is the same lump-sum payment
22 that the Company paid out in 2018. However, the
23 threshold was not triggered in 2013, and that was as a
24 result of interest rates, unlike in 2018.

25 Fourth, a settlement was not caused by

1 mismanagement or inability of Rocky Mountain Power to
2 predict, precisely, pension costs. Any argument or
3 implication that the settlement unforeseeability was in
4 any way caused by the utility's inability to predict it
5 in the rate case or from mismanagement is wrong, because
6 it's based on the false premise that RMP can accurately
7 predict interest rates and that it can predict the
8 amounts of lump sum distributions that are elected by
9 participants and that it can predict the timing of their
10 retirement, even assuming RMP would have included
11 projected costs for a possible settlement event in the
12 2014 rate case.

13 Without recently having had a settlement
14 event, I question if parties would have supported their
15 inclusion. And even assuming they would have, no party
16 would support RMP's recovery of Utah share in rates in
17 one year. They would likely recommend a longer
18 amortization for the full amount to normalize rates,
19 just like we've asked for here.

20 The fact that RMP's actual costs are less
21 than those that were included in the rate case also does
22 not disqualify the event from deferred accounting. In a
23 rate case, as you know, Your Honors, the Commission sets
24 a just and reasonable rate sufficient to permit RMP to
25 recover its cost of service in a reasonable return on

1 its property. The Commission does not, however,
2 authorize revenues to cover, dollar for dollar, each of
3 Rocky Mountain Power's expenses; rather, it sets an
4 overall revenue requirement that is just and reasonable.

5 Also, if you recall, the 2014 case was the
6 settled case. While parties filed testimony, the
7 eventual revenue requirement that was authorized was a
8 settled amount. Parties agreed to an overall revenue
9 requirement, again not a dollar for dollar recovery, for
10 Rocky Mountain Power's expenses, including pension
11 costs. There was no finding regarding the
12 appropriateness of pension costs in that rate case.

13 The fact that a unique unforeseen event does
14 not have an extraordinary effect on a utility's earnings
15 also does not disqualify it from deferred accounting. I
16 use the example of the case in 2010, which is cited in
17 our brief. In that case, the Commission authorized RMP,
18 outside of a rate case, to defer approximately \$6.3
19 million to be amortized over four years.

20 This arose from an unforeseen tax law change
21 eliminating certain tax benefits previously reflected in
22 rates; specifically, the tax deductibility of
23 postretirement prescription drug coverage expenses.
24 Again, this was outside of a rate case, and the
25 Commission did not consider how the effect of this tax

1 law change would impact company earnings.

2 RMP's request is not single-issue rate
3 making. Single issue rate making occurs when the
4 utility seeks rate making treatment of a single expense.
5 That's not what RMP is doing here. It seeks deferred
6 accounting of Utah's share of the settlement costs and
7 to begin amortizing, starting in January 2019, until it
8 seeks recovery of the balance in a rate case.

9 RMP's request is also not retroactive rate
10 making. Deferred accounting does not fall within the
11 prohibition of retroactive rate making. The Utah
12 Supreme Court has articulated the rule on retroactive
13 rate making as follows, and I quote: "To provide
14 utilities with some incentive to operate efficiently,
15 they are generally not permitted to adjust their rates
16 retroactively to compensate for unanticipated costs or
17 unrealized revenues."

18 Deferred accounting allows a deferral of an
19 expense for the possibility of prospective rate-making
20 treatment, not retroactive rate making. RMP has been
21 clear in this case that it doesn't seek that. In
22 addition, in the next rate case, RMP would not be asking
23 the Commission to authorize it to collect the settlement
24 cost it expensed in 2018 or 2020.

25 RMP asks the Commission for an order that

1 affects accounting procedures. Such an order does not
2 foreclose any discussion or presentation of evidence
3 that would normally occur when the Commission conducts a
4 rate-making hearing. Therefore, this does not
5 constitute a backdoor approach to retroactive rate
6 making or single-issue rate making.

7 A deferred accounting of refunds related to
8 the tax law changes in 2017 did not amount to a
9 prohibition against retroactive rate making; neither
10 does RMP's application here. In fact, the company's
11 current request is less of a prohibition against
12 retroactive rate making than the deferred accounting for
13 refunds from the tax law changes in 2017, because in
14 that case rates were adjusted outside of a rate case,
15 and RMP is not asking for that here.

16 The possible reoccurrence of a settlement
17 event -- or this settlement event does not disqualify it
18 from deferred accounting, either. It's uncertain
19 whether another settlement event will occur, but
20 assuming the market continues to reflect low interest
21 rates and assuming the lump-sum payments are large
22 enough to trigger, and assuming we get the right number
23 of people who choose lump-sum payments over annuities,
24 that should not disqualify the event from deferred
25 accounting.

1 RMP has experienced more tax law changes
2 than settlement events, but this does not mean that the
3 refunds or collections that arise from future tax events
4 will no longer qualify for deferred accounting. I don't
5 think anybody here would argue that. And that's
6 because, like with settlement events, tax law changes
7 are unusual and unforeseen events over which RMP has no
8 control.

9 This Commission has authorized deferred
10 accounting in rate cases for amounts that were not
11 substantial that didn't impact the company's earnings
12 and even though they were foreseeable. For example, the
13 pension cost write-off, the Noel Kempff Climate Action
14 Project, the Y2K expenses all occurring and included in
15 the 2000 -- excuse me, the 1999 rate case.

16 It has also authorized deferred accounting
17 when unusual and significant events or revenues are
18 included in the test period of a rate case for
19 normalization purposes, including the EIM costs, the
20 commissioning costs, air quality upgrade costs,
21 depreciation expenses and wheeling revenues. And all of
22 these are cited in our brief or our comments.

23 Finally, it has authorized deferred
24 accounting in between rate cases to account for
25 unforeseen expenses or revenues during the prior rate

1 case and if deferred accounting would have been
2 required, had the expense for revenue been included in a
3 test period during the rate case. That's exactly the
4 situation here.

5 For example, changes in tax laws on at least
6 two occasions, one that arose from the 2017 Tax Reform
7 Act, which resulted in a benefit to customers that was
8 settled, and another litigated case in 2010 that
9 resulted in collections from customers where the
10 Commission authorized RMP to defer the approximately
11 \$6.3 million that I referenced earlier.

12 RMP asks you to continue to apply this
13 approach, this reasonable balanced approach on a
14 case-by-case basis. And, symmetrically, the same
15 standard should apply whether the utility asked for
16 deferred accounting in a rate case or outside of a rate
17 case or in between rate cases and whether the triggering
18 event results in a refund or a collection.

19 We ask you to reject the Division's and the
20 Office's recommendation to treat deferred accounting
21 essentially like you would an exception to retroactive
22 rate making. We submit to you that it's not the same
23 thing. If it is, then deferred accounting would be
24 unnecessary.

25 Finally, I think it's important that you

1 know that Washington's share of the pension costs at
2 issue here on the consent agenda in Washington. They
3 are lumped together with other items on the consent
4 agenda and will be considered all at once. This
5 typically means that no one is challenging these items.

6 Thank you for the opportunity to be with you
7 here today and to make our case to you. And I can
8 respond to questions, if it pleases Your Honors.

9 COMM. LEVAR: Okay. Thank you. I think
10 I'll start with a few questions.

11 MS. HOGLE: Okay.

12 COMM. LEVAR: As we're looking at this and
13 trying to balance a couple issues, one -- one issue we
14 have is your last general rate case we had, the
15 utilities filed application, which had a specified
16 amount for pension costs. But then we had a stipulated
17 settlement that had an overall rate number, but not a
18 number -- not numbers in specific categories, like
19 pension expenses. And parties who signed the
20 stipulation all took the position that they might have
21 taken different paths to that final number.

22 We have the policy where our statutes
23 encourage stipulations, and we don't want to analyze
24 that stipulation in a way that discourages future
25 stipulations. So how should we look at the starting

1 point of approved pension costs compared to what you're
2 asking to defer, considering that we had a stipulation
3 that didn't specify pension costs?

4 MS. HOGLE: I think you look at what other
5 Commissions before you have looked at, and that is
6 whether the event was truly unforeseen, unusual, unique,
7 significant enough. And then also looking at how you've
8 treated, in particular, similar pension events in the
9 past.

10 Now, I recognize that the 2008 Curtailment
11 Event resulted in -- or the deferral that you authorized
12 resulted in a settlement case. However, I think it is
13 important to remember that both the Division and the
14 Office supported that, and it was part of a pension
15 event. And so symmetry would dictate that it's a
16 similar pension event as the one here. One of the
17 differences being that it was a refund to ratepayers and
18 this is a collection.

19 And so I really do think that you -- you're
20 correct that you should not look at the 2014 rate case,
21 because that was not something that -- where you found
22 a specific amount for pension costs, but that you truly
23 look at the situation and circumstances around the
24 pension event and whether we had control over that.

25 And as I've laid out, I mean, a lot of

1 factors go into it that we have no control, and we can't
2 predict the number of people who choose lump-sum
3 payments. We don't know interest rates, what we're
4 going to do, not sure. And then, you know, service
5 costs. And then the timing of the retirement, that is
6 not something we can predict.

7 I don't know if that answers your question,
8 but...

9 COMM. LEVAR: It does. And that leads me, I
10 think, to the next question.

11 Some of the things you said in your summary
12 just now, I think I would like to clarify what your
13 position is on the applicability of the MCI case from
14 the Utah Supreme Court. That case recognized an
15 exemption to retroactive rate making for unforeseeable
16 and extraordinary events.

17 Now, I thought I heard you arguing that
18 deferred accounting -- a deferred accounting order does
19 not require, in all instances, that standard to be met.
20 Am I correctly stating your position, or do I have that
21 incorrect? And what I'm getting at is: Is there
22 agreement that the MCI standard of unforeseeable and
23 extraordinary applies to this docket and applies to this
24 application?

25 MS. HOGLE: Sure.

1 COMM. LEVAR: Or are you arguing that that
2 exemption to retroactive rate making doesn't apply to
3 deferred accounting?

4 MS. HOGLE: Well, I think from -- generally,
5 as I said before, I don't think deferred accounting is
6 the same as retroactive rate making, and that only if
7 you find exceptions can you approve deferred accounting.
8 I think all of the examples that I've laid out before
9 you and cited make that point -- or prove that point.

10 The MCI dealt with a tax refund, I believe.
11 And I believe that in that case -- and the utility
12 initially did not want to return any refunds from the
13 Tax Reform Act at the time, based on the argument that
14 it was under earning its authorized rate of return. And
15 so I think those are different circumstances here. It's
16 a different case.

17 And so to answer your question directly,
18 again, I don't think that deferred accounting is the
19 same as retroactive rate making. I think that deferred
20 accounting can include authorization of situations or
21 amounts that are extraordinary, just like the exception
22 to retroactive rate making, but I don't think that --
23 again, because they're not the same, that just because
24 something is not extraordinary does not mean that it can
25 be deferred. So I think there's definitely a

1 distinction between those two rate making -- or
2 principles.

3 COMM. LEVAR: Thank you. I think your
4 position was clarified to me on that.

5 MS. HOGLE: Okay.

6 COMM. LEVAR: You know, you talked about
7 interest rates not being foreseeable, although the fact
8 that interest rates are going to change one direction or
9 the other is. How foreseeable was the impact of the
10 interest rates we saw in 2018? So moving beyond whether
11 you could have foreseen that the interest rates did what
12 they did in 2018, was -- the impact of that interest
13 rate on what pension holders chose to do with their
14 cash-outs and other things, was it foreseeable that if
15 interest rates hit this point we're going to see what
16 happened in 2018?

17 MS. HOGLE: Well, no, because, again, you
18 would have to assume that you had foresight into how
19 many people would choose lump-sum payments over
20 annuities, and you would have foresight over the timing
21 of retirements, and we don't. We don't know. We don't
22 know that. And so those two things, along with the
23 interest rate, is what triggers the settlement event,
24 and so I don't think that's predictable. I don't think
25 there's a way to predict that.

1 I mean, I think, perhaps, you know, you can
2 think, okay, maybe we'll have this number of lump-sum
3 payments, but we don't know -- you know, just very
4 general. But, again, the company in rate cases does not
5 go to that level of predicting in terms of what exactly
6 has to happen in order for something like that to be
7 triggered.

8 Again, that \$52 million payment in 2013 did
9 not trigger a Pension Settlement Event. I think that
10 that proves -- or shows that it's unpredictable. It's
11 influenced by a number of factors over which the company
12 has no control.

13 COMM. LEVAR: Thank you. I think that's all
14 the questions I have.

15 Commissioner White, do you have any
16 questions for her?

17 COMM. WHITE: Good morning. Yeah, maybe
18 just a couple follow-up questions.

19 So let me ask this: What is the standard we
20 should be looking at? Is it this -- because I'm -- part
21 of what is driving my question is there's kind of been
22 some nomenclature -- or maybe it's just semantics
23 between the use of the term "unforeseen" verse
24 "unforeseeable." I mean, is this MCI case -- did I hear
25 you say that that's distinguishable and that is not the

1 standard? What is -- when I'm applying the facts of
2 this case, maybe trying to distinguish and applying them
3 to the law, what is the law, I guess, here.

4 MS. HOGLE: What is the law? My goodness.
5 You know, the law is unclear, honestly. Again, I look
6 back at what this Commission has factored into -- in
7 authorized and deferred accounting. And, yes, prior
8 Commissions have looked at a comparison as to whether
9 there's an exception to retroactive rate making
10 application of certain factors of that, like in that
11 2008 case.

12 However, that same Commission -- those same
13 Commissioners deviated from that standard in 2010, when
14 it related to the tax law change. That case -- the 2010
15 case was after that 2008 case, where the same Commission
16 said retroactive rate making and those principles have
17 some application in this case. And they did not use
18 those same principles in the 2010 case, which was, by
19 the way, litigated. And so it's unclear.

20 Again, I don't know whether this Commission
21 has -- or any Commission has landed on a standard. But,
22 certainly, this situation is one in which it's in
23 between rate cases. The last rate case we had was in
24 2014. A lump sum -- excuse me, a settlement event could
25 not have been predicted based on the unpredictability of

1 timing of retirement, the number of lump-sum payments,
2 low interest rates, et cetera.

3 And so, in the past, this Commission has
4 allowed deferred accounting for situations -- or amounts
5 that have been outside of a rate case that are
6 unforeseen, that are significant enough, and so we think
7 that this -- these circumstances exist with respect to
8 this request.

9 We can also -- we believe that deferred
10 accounting would have been required, had this expense or
11 revenue been included in the test period during the rate
12 case, and that the parties would have requested the
13 amortization for a long period of time. So just like it
14 has in the tax law change cases that I mentioned, where
15 it authorized deferred accounting, this is something
16 that occurred in between cases for unforeseen expenses
17 during the prior rate case, and it would have been
18 required -- deferred accounting would have been required
19 if this event would have been included in the test
20 period during the rate case.

21 COMM. WHITE: Believe it or not, the
22 Commission sometimes gets things wrong, and sometimes
23 the Supreme Court or the Court of Appeals tells us
24 otherwise. So is there nothing -- are you aware of no
25 cases where the Commission has -- someone has challenged

1 the Commission's decision on something like this and the
2 Supreme Court has disabused the Commission of where
3 they're heading on that? Is there an old precedent that
4 we can look to towards that? Because it sounds like
5 what we're heading back to is a -- it's a case-by-case
6 policy question.

7 And, you know, before you answer the first
8 question, I guess -- I mean, what is the policy here?
9 What is the -- you know, if we grant the Company's
10 request, what harm are we avoiding, who is it
11 benefiting, who is it hurting? I mean, what's the --
12 because, again, I'm trying to -- I'm groping in the dark
13 for some kind of legal standard to adhere to here.

14 But I'm not -- it sounds like
15 there's -- it's been a little bit back and forth with
16 Commissions in the past. But if there's nothing -- and,
17 again, if you could point me to something that's
18 helpful, because, again, I see unforeseeable,
19 unforeseen, I'm not sure what the difference is. There
20 is a lot of back and forth with the Commissions. But
21 what is the -- give me a policy argument, then, I guess,
22 if there is no legal argument here.

23 MS. HOGLE: Okay. Well, deferring
24 accounting in this case will not hurt customers. It
25 will not, because it's merely an opportunity for Rocky

1 Mountain Power to present costs prospectively in the
2 next rate case. Parties will have the opportunity to
3 review and scrutinize the costs and, if they want,
4 single them out. Customers are not harmed, because
5 there is no rate adjustment in this case.

6 I agree with you that the Commission
7 sometimes gets things wrong. In particular, I thought
8 the 2008 case was -- they went beyond what they needed
9 to and comparing, in a way, deferred accounting with the
10 retroactive rate making. Again, if it's retroactive
11 rate making, then why have deferred accounting? You
12 don't need both. So I don't think that's correct.

13 Rather, I should put it this way: I think
14 you should interpret that case very strictly, because it
15 dealt with a situation more akin to with respect to the
16 severance costs. In particular, the Commission was
17 dealing with a deferred accounting application that was
18 filed in January of 2007 when it had just ordered a
19 2006 -- order in December of 2006 for severance
20 payments.

21 And the Commission noted in that case
22 that -- that, perhaps, the Company's inability to
23 precisely forecast the level of severance payments in
24 the rate case was more akin to a missed forecast. That
25 is not the case here. That last rate case was five

1 years ago, and so this was not foreseeable, because a
2 lot of factors that triggered the event, the company had
3 no way of knowing. Again, it doesn't harm customers in
4 any way.

5 Also, I think noteworthy is the fact that
6 the Company would expense the first -- the 2019 and 2020
7 portion of the expense beginning in 2019 and 2020,
8 meaning the company would not seek recovery of those
9 payments, it would absorb those costs. So if you think
10 about it, if the company were to somehow delay the rate
11 case -- any delay, any continued delay, the company
12 would continue to absorb those costs.

13 All the company is asking for is an
14 opportunity to defer the amount and to -- when it files
15 a rate case, include the balance of that in -- its
16 pension costs in the rate case.

17 And I think it's important to be consistent
18 with and symmetrical with the way that you authorize
19 deferred accounting. If it's not harming customers, if
20 it's significant enough -- and we know that it is,
21 because in other cases the Commission has authorized
22 deferred accounting for much lower amounts, which I cite
23 in my brief. There is no harm to anybody for us to
24 allow the company to defer these expenses.

25 COMM. WHITE: Thank you. That's all the

1 questions I have, Chair.

2 COMM. LEVAR: Commissioner Clark, do you
3 have any questions for Ms. Hogle?

4 COMM. CLARK: Thank you. Let me first
5 apologize for not being physically present, but I'm
6 absolutely attentive to what's proceeding there.

7 I think I have two questions. The first is
8 the threshold that you mentioned, Ms. Hogle, a couple of
9 times in your argument. I'd like to understand that
10 better. And I think you're referring to a threshold
11 that is either requiring or allowing the pension expense
12 to be recognized -- accounted for in this year, and I'd
13 like a technical explanation of the parameters of that
14 threshold. What is its technical definition and how
15 long has that threshold been in place?

16 MS. HOGLE: Thank you, Commissioner Clark.
17 I wonder if it would please the Commissioners if I can
18 have Nikki Cobliha --

19 COMM. CLARK: Yeah, please feel free to have
20 your colleague address that, absolutely.

21 COMM. LEVAR: Let me make sure that
22 that -- yeah. Since this is a little unusual, I want to
23 see if other parties want to weigh in on this.
24 Ms. Schmid, seems like you do.

25 MS. SCHMID: Yes. The Division objects.

1 This was scheduled as an oral legal argument. There was
2 no presentation of witnesses contemplated by the
3 Division, and I believe it was not contemplated by
4 parties other than the Company. I believe that allowing
5 Ms. Cobliha to testify would harm the due process
6 principles that guide us here.

7 COMM. LEVAR: Thank you, Ms. Schmid.
8 Mr. Snarr?

9 MR. SNARR: I agree. We're not in a
10 position to have our expert consulted and brought forth
11 to help deal with this. We did seek some rather pointed
12 questions and data requests on behalf of the Office and
13 got some answers, which we've included in connection
14 with our submission here.

15 There are some interesting factual
16 representations that Rocky has made. There's some
17 interesting factual material that they've presented
18 through data request responses. That's fair game. But
19 to go into live witnesses does put us in a prejudiced
20 position in connection with responding to that.

21 COMM. LEVAR: Mr. Russell?

22 MR. RUSSELL: Thank you. I guess I'm a
23 little of two minds on this. As I understand it, we're
24 not proposing to put Ms. Cobliha under oath, and so I
25 don't think she's testifying per se, so it's not

1 evidence. But if it would help Commissioner Clark or
2 the other Commissioners to understand the issues better,
3 I guess I don't oppose it, from that point of view.

4 But echoing Mr. Snarr's and Ms. Schmid's
5 concerns here, I have some consultants that I work with
6 pretty regularly who have a great deal of expertise in
7 pension issues; far more than I do, certainly. And
8 because this was noticed up as a legal hearing, I didn't
9 ask them to come. They're not lawyers and can't offer
10 legal argument on behalf of UAEU, but they certainly
11 could address questions like this or address factual
12 issues related to these kinds of issues. And I think I
13 otherwise probably would have asked them to come, if it
14 had been noticed up slightly differently.

15 So that probably doesn't give you a lot to
16 work with, but that's kind of -- I'm not really sure
17 what my position is. I want you to have the information
18 you need, but I'd like the opportunity to provide it, if
19 similar questions are lobbed my way, and I don't know
20 that I'm in a position to do that.

21 COMM. LEVAR: Okay. Ms. Hogle, do you want
22 to respond to the concerns that you've heard raised?

23 MS. HOGLE: Yes. First of all, it involves
24 technical questions, which I think having Ms. Cobliha
25 respond to would benefit this Commission.

1 Also, I note that all parties included facts
2 in their legal briefing and nobody's questioning those.
3 And so I think -- on balance, I think it would benefit
4 this Commission, in particular Commissioner Clark, if
5 Ms. Cobliha responded to the question, because it is
6 technical. And I would just advise her not to assume
7 any facts and just respond with respect to the rules or
8 the specific question that Commissioner Clark had.

9 COMM. LEVAR: Okay. I want to be respectful
10 of everybody's time, but I think this is an issue that
11 we probably need a short -- brief deliberation to
12 discuss before we decide to move forward. It's little
13 bit complicated, since we'll have to disconnect
14 Commissioner Clark, get him on another line, and then
15 reconnect him.

16 It's early for a break, but why don't we go
17 ahead and take a ten-minute break while we try to do
18 that, and then we'll try to come up with a resolution to
19 this issue?

20 Thank you. We'll reconvene in ten minutes.

21 (A recess was taken.)

22 COMM. LEVAR: We're back on the record.

23 Since the word of the day is deferral, we're
24 going to defer ruling on the concerns and hit reset on
25 Commissioner Clark's questioning and see where that

1 takes us. Commissioner Clark?

2 COMM. CLARK: Thank you.

3 And my question about threshold was actually
4 a threshold question. But let me just get to the heart
5 of where I wanted to go, and that is that I think -- if
6 I understand the Application, it asks the Commission to
7 make a determination that would apply not only for the
8 pension event under consideration that occurred in 2018,
9 but any like event in the future.

10 And so the heart of my question is,
11 Ms. Hogle: Do you have anything more to say to us
12 beyond what you said in your brief about why we would do
13 that now? Or why we should do that now?

14 MS. HOGLE: Well, when we included that
15 request in the Application, we were thinking that if
16 interest rates remained low and if A, B, C, D happened
17 again, then we might be back. But, again, we don't
18 know. We can't predict many of those things. We don't
19 know if a threshold -- the threshold will be triggered.

20 I think the request was more for expediency.
21 If the event happens again, assuming A, B, C, D, and E,
22 then we thought it would be easier in our Application to
23 ask for authority to defer like events in the future, if
24 they occur.

25 And I recognize that -- you know, that maybe

1 they won't occur and that if they do occur, even -- you
2 know, if they don't occur in 2019 or 2020 or in a rate
3 case, probably -- and so that's sort of a different
4 circumstance, different scenario there. And so, really,
5 it was just for expediency and it was only if the stars
6 aligned and this were to happen again.

7 And, like I said before, you can compare it
8 to tax law changes. I think we can't predict if there
9 will be more tax law changes. But if there are, I think
10 the parties would probably come before you again, asking
11 for -- either RMP or the parties in the room would come
12 before you to ask you for a deferred accounting of that.

13 And the fact that it can reoccur again does
14 not disqualify -- would not disqualify something like
15 that from being considered for deferred accounting, and
16 the same should apply here, for the same reasons.

17 COMM. CLARK: Thank you. Those are all the
18 questions I have.

19 COMM. LEVAR: Okay. Thank you, Ms. Hogle.

20 MS. HOGLE: Thank you.

21 COMM. LEVAR: Ms. Schmid?

22 MS. SCHMID: Thank you -- good morning --
23 for this opportunity to present the Division's position
24 to you in oral argument. I'd like to respond to
25 questions from the Commission when they are asked,

1 rather than try and work them into my presentation now,
2 if that is all right.

3 COMM. LEVAR: Okay. I think our plan is to
4 wait until you finish your summary and then ask
5 questions. Is that what you're requesting?

6 MS. SCHMID: Yes, please.

7 COMM. LEVAR: Thank you.

8 MS. SCHMID: The Division disagrees with
9 Rocky Mountain Power that deferred accounting treatment
10 is warranted for the pension event. There are several
11 foundational issues upon which the Division and the
12 Company disagree. The first is that financial
13 accounting rules dictate regulatory accounting
14 treatment. They are two separate animals, they are two
15 separate worlds; where in the regulatory world, we need
16 to look at the applicable standards here.

17 Second of all, the Division disagrees that
18 the tax changes cited as being akin to what has happened
19 with the pension event is a valid consideration. Tax
20 changes are a completely different animal and truly are
21 uncontrollable, unforeseen, and extraordinary.

22 Rocky Mountain Power has not proved that it
23 is entitled to regulatory deferred accounting treatment
24 for the pension event relating to the ordinary operation
25 of its pension plan. Aside from its failure to meet its

1 burden of proof, granting the Company's Application
2 would not be in the public interest and would conflict
3 with case law and prior Commission orders.

4 And when I say "case law" and "prior
5 Commission orders," I'm referring to the EBA case, the
6 MCI case, other Commission orders and, in particular,
7 the Commission's order addressing the deferral
8 accounting treatment requested for the Powerdale flood.
9 Analyzing the pension event under each applicable test
10 reveals that it does not qualify for deferred accounting
11 treatment, because failing to forecast the specific
12 circumstance for the unchanged preexisting plan is not
13 unforeseen and extraordinary.

14 The Company's failure to include these items
15 in its past general rate case forecast does not warrant
16 a deferred accounting order giving the Company an
17 opportunity to recover these costs in future rates.

18 The company failed to predict that
19 continuing pension settlement would eventually result in
20 a Pension Settlement Event requiring recognition of the
21 event in the year in which it occurred, 2018. The rules
22 surrounding calculating the reporting threshold for the
23 pension settlements remained constant. The Company has
24 not alleged that the pension plan changed. The pension
25 event was due to an existing accounting rule framework

1 that was in place at the time of the Company's last rate
2 case.

3 The question before the Commission is
4 whether the pension event qualifies for a deferred
5 accounting order in the regulatory world. The answer is
6 that the pension event fails to qualify for a deferred
7 accounting treatment here. It fails to qualify under
8 the Commission's tests. Even without those tests,
9 granting the deferred accounting request would not be in
10 the public interest.

11 The Commission's primary test requires that
12 an event be both unforeseeable and extraordinary to
13 qualify for regulatory deferral accounting treatment.
14 The pension event simply doesn't qualify. The pension
15 event was foreseeable. It resulted from the normal
16 operation of the pension plan the Company established.

17 As you may recall and as -- the interest
18 rates dipped in the early 2000s, crashed in 2008, and
19 have remained low. Under these economic conditions, it
20 was foreseeable that people would elect to take the
21 lump-sum distribution opportunity provided in the
22 pension plan. Because the pool was closed to new
23 participants, continued lump-sum settlements would
24 change the plan's funding levels and demographics and
25 change threshold.

1 The Company has not asserted in this docket
2 that the pension plan has changed. Neither did the law
3 change. Instead, settlements eventually accumulated to
4 the point where existing law applied to the company's
5 existing plan required the company to treat expenses
6 differently.

7 The Company says it was out of the company's
8 control. That's not true. The pension event was
9 foreseeable. The pension event also was not
10 extraordinary. The Company's Application even admits it
11 was not extraordinary by requesting deferral accounting
12 treatment for any subsequent similar pension events.

13 The same theme that even the Company doesn't
14 think the event was extraordinary or unforeseeable can
15 be found in the Company's Application and in the
16 Company's reply comments. The Company's facts don't
17 support its claim.

18 Looking forward, the pension event was not
19 extraordinary. Looking back, we can see that it wasn't
20 extraordinary. The Company's own data provided to the
21 OCS in response to debtor request 1.10 shows that the
22 number of people taking distributions in the past and
23 the number taking distributions in 2018 were in a fairly
24 tight range.

25 Also, notably, the Company's brief doesn't

1 use the word "extraordinary" to describe the pension
2 event. Instead, the Company's brief uses words like
3 "significant," "unusual," "sufficiently large." The
4 Company seems to be saying there is a different standard
5 and the Division disagrees.

6 Because the pension event was not both
7 unforeseen and extraordinary, it doesn't qualify for
8 deferred accounting treatment under the Commission's
9 primary test.

10 The Commission also has an expanded test.
11 The pension event fails to qualify for deferred
12 accounting treatment under that test, too. Under the
13 first option in the expanded test, an event can qualify
14 for deferred accounting treatment if it causes an
15 unforeseen and extraordinary effect upon the Company's
16 costs and revenues.

17 Looking again at the company's data
18 requests, we can see that the \$9 million impact of the
19 pension event to the Utah ratepayers is lower than some
20 of the past impacts. The pension event doesn't qualify
21 under the first option, from the Commission's expanded
22 test.

23 Under the expanded test's second option to
24 qualify, the event's actual manifestations vary from
25 their projections in an unforeseeable and extraordinary

1 way. Well, pension variability is the rule, not the
2 exception. Interest charges are the rule. Not knowing
3 the exact contours of when an event will happen is
4 different than unforeseeable.

5 There was no unforeseeable and extraordinary
6 variance between actual manifestations and projections
7 here. The threshold changed. The pension event does
8 not qualify for deferred accounting treatment under this
9 second option.

10 So why do we care if the pension event
11 qualifies or doesn't qualify for regulatory deferred
12 accounting treatment? We care because deferred
13 accounting treatment is an exception to the public
14 interest rule against retroactive rate making and
15 single-item rate making.

16 Granting a request for deferral accounting
17 treatment permits a mismatch of revenues and expenses
18 and should be granted rarely and only under certain
19 circumstances -- special circumstances, indeed. To do
20 otherwise could turn the rate-making process into a
21 cost-recovery exercise. That would not be in the public
22 interest.

23 The Division is not arguing, contrary to
24 what the Company alleges, that the deferred accounting
25 consideration process here is a rate change. No, any

1 rate change would occur in a general rate case. We also
2 care if the pension event qualifies or doesn't qualify,
3 because we're bringing just one slice of the past into a
4 future rate case. Under the Company's deferral
5 accounting request, other expense events and other
6 revenue events are ignored, and only this one set of
7 costs related to the pension event jumps into the future
8 test-year period that the Company is likely to use when
9 it files its next rate case.

10 As the Division noted in its brief, the
11 Company is not proposing to capture revenues from a
12 special contract executed since the last rate case and
13 move those revenues forward. That's just one example of
14 the myriad changes of expenses and revenues that are not
15 reflected in current rates.

16 Finally, we care because, as the Commission
17 said and as Rocky Mountain Power made sure to point out
18 in its brief, granting deferral accounting treatment is
19 at least a tentative implication that the costs will be
20 recovered during the next rate case.

21 Allowing selective recovery of past expenses
22 and revenues in future rates is not in the public
23 interest. Rather, rates should generally be set on a
24 forward-looking basis to determine what constitutes a
25 just and reasonable rate. Rate making, by its nature,

1 is forward looking.

2 In the absence of special circumstances that
3 are well outlined in the Commission's past orders,
4 deferred accounting for future recovery of selected
5 items should not be allowed. The pension event doesn't
6 qualify for this special treatment. The Application
7 should be denied.

8 In conclusion, the Division opposes deferred
9 accounting treatment because the pension events fail the
10 Commission's qualifying tests. Because the pension
11 events fail the Commission's qualifying tests, the
12 company, I believe, would not be able to indicate in its
13 financial records that recovery is likely.

14 Approving this Application, particularly
15 with its please-approve-similar-things-in-the-future
16 request is not in the public interest. Deferred
17 accounting treatment should be examined on a
18 case-by-case basis to see if it's warranted. The
19 Company's request for future treatment of similar events
20 shows it's not -- the pension event is not
21 extraordinary, not unforeseeable, and the Application
22 should be denied.

23 Thank you.

24 COMM. LEVAR: Thank you, Ms. Schmid.

25 Commissioner Clark, do you have any

1 questions for Ms. Schmid?

2 COMM. CLARK: I don't have any questions.
3 Thank you very much.

4 COMM. LEVAR: Commissioner White?

5 COMM. WHITE: Yeah. Just one question I
6 think I asked.

7 Do you see a difference in the term
8 "unforeseeable" versus "unforeseen"? Because, again, I
9 see these terms used interchangeably. Is there a
10 difference? Because I know the Supreme Court used the
11 word "unforeseeable." But is there a difference.

12 MS. SCHMID: I don't believe there is a
13 difference, and I have not made a distinction in my
14 arguments and in my brief. I believe that they are the
15 same.

16 COMM. WHITE: Thanks. That's all I have.
17 Thank you.

18 COMM. LEVAR: To clarify your -- well, I
19 think you made this clear. I don't think it needs
20 clarification, but your position is a deferred
21 accounting order that occurs outside of a general rate
22 case always requires an exception to both retroactive
23 rate-making rule and the single-item rate making rule.
24 Am I stating your position correctly?

25 MS. SCHMID: Yes, for the reasons I

1 expressed.

2 COMM. LEVAR: Okay. And looking at the MCI
3 case that established the foreseeable and extraordinary
4 standard, that case didn't involved deferred accounting,
5 correct?

6 MS. SCHMID: It did not. It involved
7 retroactive rate making.

8 COMM. LEVAR: Okay. Has -- are you aware of
9 any appellate case that states deferred accounting
10 requires an exception to those two doctrines?

11 MS. SCHMID: I am not. However, I am aware
12 of the Commission's order issued in 2008 addressing, in
13 particular, the Powerdale case where the Commission
14 quoted from the MCI and the EBA case extensively and, in
15 my opinion, set those, the unforeseeable and
16 extraordinary standard, and then the secondary test as
17 the standards that must be met for a deferred accounting
18 request to be granted.

19 COMM. LEVAR: So your argument is that that
20 2008 PSC case established those tests for any deferred
21 accounting outside of a general rate case?

22 MS. SCHMID: I believe so.

23 COMM. LEVAR: Okay. When we approved the
24 docket on the tax law changes -- and I should know the
25 answer to this -- did that docket include a Commission

1 finding that the tax law changes were unforeseeable and
2 extraordinary?

3 MS. SCHMID: I do not recall.

4 COMM. LEVAR: Okay. Were the EIM costs
5 deferred outside of the GRC?

6 THE WITNESS: Unfortunately, I don't recall
7 that, either. I can check -- because I do have the
8 order, but I'd have to check.

9 COMM. LEVAR: Let me ask it this way: Have
10 we, as a matter of practice, granted a number of
11 deferred accounting orders outside of GRCs without
12 making a finding that the facts were unforeseeable and
13 extraordinary?

14 MS. SCHMID: If we look at the cases that
15 the Company cited, I believe that most of the cases the
16 Company cited resulted from settlements. And as you
17 said, settlements, by their terms, are not precedential,
18 and we don't want to impair the ability of the parties
19 to trade horses to make sausage and make deals to
20 present to the Commission.

21 As to whether or not the cases that were
22 litigated contained the unforeseeable and extraordinary,
23 regrettably, I do not know. I do have them with me and,
24 again, I could check, if you would like.

25 COMM. LEVAR: Thank you. Let me just take a

1 moment and see if I have any other questions.

2 Are the facts that led to the pension event
3 in 2018 -- well, compare those facts to the facts of the
4 2008 pension event. And so I'm assuming you're -- you
5 believe that the 2008 event was more foreseeable and
6 more extraordinary than what we're looking at in 2018.
7 Is that correct? More unforeseeable and more
8 extraordinary? I don't know if I said that right.

9 MS. SCHMID: Yes. Yes. As referred to in
10 the Powerdale case, or are you talking about the 2008
11 case, which is where the company talks about pension
12 expenses being awarded deferred accounting treatment,
13 but that deferred accounting treatment was part of a
14 settlement? I'm not quite sure what you're asking.

15 COMM. LEVAR: Yeah. I'm talking about the
16 facts around the 2008 pension event.

17 MS. SCHMID: Okay. The 2008 pension event
18 facts were totally different. Importantly, that was
19 when the pension plan changed. There were changes with
20 the union's accessibility to the pension plan. There
21 were changes to nonunion employees' access to the
22 pension plan. The pension plan was closed.

23 I think that those sorts of changes are --
24 should be considered unforeseeable and extraordinary, as
25 compared to the events regarding this 2018 pension event

1 where the plan just continued to go along as it had and
2 then the company makes its filing.

3 COMM. LEVAR: Thank you. I appreciate those
4 answers. I don't have anything further.

5 MS. SCHMID: Thank you.

6 COMM. LEVAR: Thank you, Ms. Schmid.

7 Mr. Snarr?

8 MR. SNARR: Yes. I'm going to modify my
9 preplan approach and deal with some of the issues that
10 have been raised. I agree with much of what Trish
11 Schmid has said, but I want to zero in on some of the
12 issues that we are now focusing on.

13 First of all, with respect to the 2008 prior
14 rate case -- prior case involving pensions, the plans
15 themselves changed, the offerings were changing, and
16 there was an accounting change required. I see this as
17 like jumping off a cliff into a new era, much like the
18 tax changes which are totally unforeseeable or
19 unforeseen, and we jump off into a new way of doing
20 business.

21 Certainly, we in the regulatory arena have
22 to catch up with the jump and assume new things for now
23 and for -- forever, at least the future forever, until
24 we have another cliff to jump off. And those things
25 sometimes require us to resort to deferred accounting to

1 accommodate these significant cliff-jumping changes in
2 life -- regulatory life.

3 Let me address one other thing. I'm not
4 sure if this is really significant, but the difference
5 between foreseeable and foreseen is whether you're
6 looking forward or looking back. But I don't think
7 that's really the key to distinguishing or figuring out
8 how to sort out the extraordinary and unforeseen events.
9 What we're dealing with oftentimes are nonrecurring
10 events.

11 Let me take you to a rate case. Let's think
12 about a historic test year, and let's think about
13 something that's happened within the test year that
14 gives us a significant blip in expenses. And some would
15 argue this is not representative of anything that's
16 going to happen in the future, and so we're on the horns
17 of a dilemma, oh, then we ought not to include any of
18 those kinds of expenses in a forward-looking recovery
19 mechanism, and the Company says, Oh, but we did have
20 \$20 million worth of expenses in the historic year. You
21 can't just deny that that might not happen again.

22 Sometimes we resort to deferred accounting
23 to basically take nonrecurring event kinds of issues and
24 spread the costs out over several years so that we can
25 be fair to the Company and we can be fair to the

1 ratepayers and ensure that there might be some recovery.

2 Think about a general rate case and how
3 we're able to look at all the issues that might have
4 predictability year after year, and all the other issues
5 that don't have predictability, including revenues that
6 might spike up or expenses that might spike up and how
7 we look at all those issues and sometimes have to blend
8 them back and forth and consider what the right answer
9 is, including answers that might incorporate some
10 recognition of a single event -- a nonrecurring event
11 that should be recognized and included in connection
12 with the magic formula that comes up with a right answer
13 for just and reasonable rates.

14 Now, I want you to not think about any of
15 that as we're looking at this unique -- this request,
16 and I want you to think about the rate case that was --
17 the last rate case where there was a settlement. The
18 Office does not suggest that we need to bind with
19 shackles the Company and whatever it filed in its
20 initial filing, and we aren't trying to contravene any
21 kind of black box settlement.

22 We don't know what the pension costs might
23 have been that were included in the settlement or
24 whether it was a specific amount, but we do know that
25 Rocky Mountain decided they could live with it and move

1 on with the just and reasonable rates that were a result
2 of that settlement. We do know that the various parties
3 were also in agreement. I'm going to suggest that maybe
4 there was something in the range of \$20 million in that
5 to cover the possibilities of what might occur in
6 pensions.

7 Now, as to the predictability of certain
8 specific events as it relates to pensions and whether or
9 not anything rises to the level of an event that we
10 ought to get worried about, I'd like to -- well, the
11 simple thing would be to look at page 5 of the legal
12 brief that was submitted by the Office. And while this
13 goes back prior to the last rate case, it shows the
14 predictability or lack of predictability of actual
15 pension expenses over time.

16 2014 pension expenses were \$11.6 million,
17 went up in 2015, went down in 2016, went way the other
18 way in 2017. And, by the way, we didn't have any
19 requests for deferred accounting coming in then. And
20 then in 2018, there's two possibilities. Even without
21 any special accounting treatment, it's still down there
22 in the same direction it was going in 2017.

23 The question you have to figure out these --
24 are the way it plays out in actual expenses, are any of
25 these nonrecurring or significantly different than the

1 other ones, and should we carve out any particular year
2 for specialized treatment? Should we have been carving
3 out for specialized treatment the \$18.5 million in 2015
4 or the negative \$12.4 in 2017?

5 And I would submit to you that all of these
6 numbers are falling well within what I'm going to guess
7 might have been included in the minds of people
8 associated with that black-box settlement recently
9 entered into. And if it's not or if there are other
10 significant changes occurring in the financial success
11 of the Company, they can come in and file a rate case
12 and we can look at it very carefully and ensure that the
13 company is going to be made whole in connection with
14 whatever events are occurring that may not have
15 specifically been contemplated when they entered into
16 that last settlement. That's just the nature of rate
17 making. Sometimes things go up, sometimes things go
18 down.

19 The suggestion here has been that there's
20 something different or unique or unforeseeable about the
21 pension plan or the people retiring. The pension plan
22 was there. It contemplated that people would retire.
23 As pointed out by Ms. Schmid and -- the reality of the
24 history is that those entitled to a defined pension plan
25 are limited and they seem to be diminishing in numbers

1 as people retire.

2 What happens is there's some specialized
3 accounting that takes place and relies upon actuarial
4 assumptions or predictions for financial accounting and
5 the number of people who retire. And the financial
6 impact of those people retiring are accounted for in
7 actuality against whatever those actuarial assumptions
8 may have been. I believe that's what triggered the
9 settlement charge that we talk about in this case.

10 So when the actuary -- you say it might be
11 one thing and it turns out to be 20 some odd million
12 dollars going the other way, the Company's concerned.
13 Maybe there is a surprise or an unforeseeability here,
14 but it's not a rate unforeseeable event. It's an event
15 where the Company was surprised by the -- what the
16 actuary said versus what actually happened, and that's
17 just part of business.

18 We know that the pension plan is there. We
19 know that it provides for retirement for certain
20 people -- a diminishing number of certain people. We
21 know that they're entitled to an annuity as part of that
22 pension plan.

23 We also know that if they calculate and
24 think, based upon an accounting of present value, of
25 that stream of annuities, that the present value of that

1 stream of annuities might be real hefty today because
2 the interest rate assumption used for that calculation
3 says, Hey, I got a pot of gold I can get my hands on
4 instead of take the annuity, that maybe those retirees
5 will choose the lump-sum payment.

6 That's what happened, because interest rates
7 were low, all pursuant to the plan that was inked and
8 put in place and was operating within the foreseeable
9 confines of the plan. Did we know the interest rates
10 would go this low? No. Did the plan contemplate that
11 if it went that low there would be a way to calculate
12 it? Absolutely.

13 Now, what do we do about this? I think from
14 a rate-making perspective -- and this is a rate issue --
15 we need to figure out whether or not this settlement
16 event where something squared differently against the
17 actuary's projections is so significant that we need to
18 save the Company from financial ruin. No one is
19 claiming that. We need to figure out whether or not
20 that event that has occurred and triggered the
21 recognition in this year of those costs is something we
22 need to square against the ratepayers because they need
23 to be paying for this. The numbers that they're giving
24 us in terms of settlement charges still fall below -- or
25 the effect of those numbers as shown in this chart still

1 fall below what we're guessing may have been included in
2 the last rate case settlement.

3 Now, the unforeseeable part of this, or the
4 worrying concern, is interest rates. If we wanted to
5 examine whether the low interest rates have caused
6 something that really is unforeseeable, then let's bring
7 in a couple of more issues to be considered in
8 related -- as we relate to this single-issue rate case
9 question and decide what is really unforeseeable and
10 extraordinary.

11 We might look at whether or not these same
12 low interest rates have significantly or extraordinarily
13 affected the short-term borrowing of the Company. Oh,
14 that goes the other way, doesn't it? Right. Because if
15 the calculation of the present value of the stream of
16 annuities goes real big for the lump-sum decision for
17 the retiree, that same low interest rate could be having
18 other effects -- very positive effects on the Company
19 because it's a low interest rate they might be charged
20 on other things.

21 Now, all this happens within a rate case.
22 And when we get beyond the parameters that are
23 acceptable to ongoing business, we file a rate case and
24 we come in and look at everything. And all the pluses
25 and all the minuses are then looked at very carefully,

1 and we make sure that the rates we set from there going
2 forward are going to be just and reasonable and fair to
3 the Company and fair to the ratepayers.

4 There's been no showing that the current
5 rates are not just and reasonable still. There's a
6 failure of a burden of proof. This does constitute
7 single-issue rate making. There's no reason for the
8 company to seek deferred accounting except for as it
9 relates to rates, except for as it relates to I want to
10 isolate the costs that we incurred in 2018 and set them
11 aside so that we can include them in possible rate
12 recovery in the future, when we look at that other rate
13 case and balance everything out, but we want this as an
14 additional expense brought from the past.

15 There's something about retroactive in that
16 scenario I just kind of went through. It's retroactive
17 rate making, it's single-issue rate making. It does not
18 involve an extraordinary or unforeseeable event. We
19 should not set this up as an accounting treatment where
20 the presumption is you'll be able to recover this in
21 your next rate case.

22 In the event, when they file their next rate
23 case, the historic test year comes up with X, Y, Z and
24 as it relates to pensions, it seems to be an aberration
25 the Company will be able to seek a known and measurable

1 adjustment to that historic period saying, you know, We
2 can't live with just \$10 million of pension expenses
3 when the test period shows that. We need a little bit
4 more because, and here is why.

5 They have the opportunity to make those
6 arguments in the next rate case. We don't need to
7 single it out at this time. It does not meet the
8 standards of unforeseeable and extraordinary. It fits
9 within the function and operation of the pension plan
10 that was approved and is part of the just and reasonable
11 rates and part of what the Company was doing.

12 The number of retirees that actually retired
13 in 2018, it's almost the average. If you throw out the
14 outlying year of 2014, it is one person different than
15 the average of the other five years. We're not having a
16 different number of employees retiring. We're not
17 having any different pension plan. There's no change in
18 the pension plan. There is no change in the accounting
19 rules. We just have an event that the Company's
20 experience is a square against the actuarial projections
21 that causes them to recognize some expenses this year.
22 So be it.

23 It's not an extraordinary event that
24 requires us to say, Hey, wait a minute, let's save your
25 bacon in a future rate case so you can recover past

1 costs that you didn't get to recover specifically in
2 2018. That's the heart of this case.

3 COMM. LEVAR: Thank you, Mr. Snarr.
4 Commissioner White, do you have any questions for him?

5 COMM. WHITE: I just want to follow up on
6 the way the facts were distinguished -- and I think that
7 Ms. Schmid looked at this and you carried forward --
8 between the 2008 case and the 2018 case we're dealing
9 with now, which is -- is it incorrect for me to
10 understand that the argument is that, in one case --
11 even though the subject matter was the same pensions,
12 one was extraordinary or unforeseeable because it's
13 caused by, you know, whether -- and I'm -- it could be a
14 natural disaster or some kind of human event that is
15 outside the control of the Company, where this case was
16 more of just a -- subject to a miscalculation or
17 misforecasting? In other words, there is no change in
18 rules or events, it's just a naturally occurring event
19 that was misjudged. Is that --

20 MR. SNARR: I think you're on the right
21 track. In the 2008 case, there were significant changes
22 to the pension plan, the number of participants in plans
23 and things. And it's much more akin to, like a change
24 in the tax law, jumping off a cliff. We're changing the
25 world, we're changing the game, and we're going forward

1 with a different game plan. That's what happened in
2 2008.

3 In this case -- and we can talk about, you
4 know, unforeseen or nonpredictable or whatever. I'm not
5 suggesting that the Company should have or could have
6 predicted what interest rates would have been in 2018,
7 but they knew that in whatever year and whatever
8 interest rate they might be, that interest rates were an
9 appropriate -- that there is an appropriate opportunity
10 for pensioners who are seeking to retire to choose a
11 lump sum distribution and use a present value
12 calculation of the monetary value of that lump sum and
13 compare it to the annuity retirement that they have
14 under the pension plan.

15 And that's all part of what's spelled out in
16 the pension plan. Nothing has changed in the plan in
17 terms of the actual dollars that might shake out. They
18 could say, Oh, I would have never guessed that it would
19 have been that much. That's not really what we're
20 talking about when we're talking about unforeseeable or
21 extraordinary events.

22 And we aren't requiring the company to guess
23 all levels of their revenues or expenses for the future
24 at the time of a rate case, but we do have to require
25 them to move on and function within the broad parameters

1 that are part of the just and reasonable setting of that
2 rate case settlement, and this all falls within those
3 parameters.

4 COMM. WHITE: Let me ask you this: Is this
5 a -- is this is a problem you need to ask Pacificorp? I
6 only ask that because, of course, with the tax change
7 that came, we saw filings throughout the country for
8 something similar. Is this something very unique?

9 I mean, obviously, this wasn't, I don't
10 believe, part of the brief, but is this something that
11 other utilities -- investor-owned utilities have
12 experienced with respect to, you know, changes in -- you
13 know, in pension events being triggered requiring
14 different accounting? Is this something that's, again,
15 very specific, unique, or have you heard of this and
16 researched this in other investor-owned utilities.

17 MR. SNARR: I can't give you an answer on
18 the investor-owned utilities and uniqueness of these
19 events as may have been recognized by the Commissions.
20 I can tell you that pension plans with a defined benefit
21 were a regular part of most of the utility plans in
22 years past. And they operate just like this one
23 operates.

24 And in years when interest rates were low,
25 there was a swing towards the taking of lump-sum

1 settlements as those who were considering retirement
2 made the decision. And it may have even affected
3 decisions to retire in that blip of low interest rates.
4 That's just the way the pension plans operated.

5 All I can tell you is in 2008, Northwest
6 Pipeline did not go to seek a special deferred
7 accounting rule when interest rates were low and a
8 number of people retired at a low blip of interest rate
9 back when I retired.

10 COMM. WHITE: That's the only question I
11 have.

12 COMM. LEVAR: Commissioner Clark, do you
13 have any questions for Mr. Snarr?

14 COMM. CLARK: No further questions. Thank
15 you very much.

16 COMM. LEVAR: Thank you. Sir, tell me if
17 you agree with this summary of a potential legal
18 standard. Do you agree that the Commission, in 2008,
19 interpreted the MCI case in a way that said any deferred
20 accounting order outside of a general rate case requires
21 an exception to retroactive rate making and single-item
22 rate making and, therefore, requires unforeseeable and
23 extraordinary events?

24 MR. SNARR: I think that's the law. I think
25 that's what the Commission did. I can't go back and

1 recall and tell you you did a great job in saying that
2 or you failed to say that. That's the law.

3 COMM. LEVAR: Okay. Has the Commission
4 operated in accordance with that in the deferred
5 accounting orders that it's done outside of general rate
6 cases since 2008?

7 MR. SNARR: I can't give you a specific
8 answer on that. I hope so.

9 COMM. LEVAR: In terms of us deciding what
10 legal standard applies to this, what relevance should we
11 give to other recent deferred accounting orders since
12 2008?

13 MR. SNARR: You ought to apply the MCI
14 extraordinary and unforeseeable tests that we've talked
15 about. These deferred accounting orders outside of a
16 rate case ought to have some reason or justification.

17 Deferred accounting is a useful tool, but
18 within the rate case it can be used so many different
19 ways, and equities can always be looked at carefully.
20 And outside of a rate case, it has to be looked at even
21 more carefully, and I believe it requires that
22 extraordinary and unforeseeable kind of event to really
23 get into it.

24 You're prejudging an opportunity for the
25 company to include in its next rate case, or in some

1 kind of future rate recovery, the opportunity to recover
2 expenses that occurred in this year. Now, tell me that
3 that's not retroactive rate making. It might be. If
4 you can find that it's extraordinary, it's permissible
5 retroactive rate making, but it really ought to be the
6 exception rather than the rule to be permitted. So I
7 stand by that standard.

8 COMM. LEVAR: Thank you. I appreciate those
9 answers.

10 Mr. Russell.

11 MR. RUSSELL: Thank you, Chairman Levar. I
12 want to start where we just left off, with what we
13 believe to be the standard to apply here, and it is the
14 standard -- as Mr. Snarr just stated, the unforeseeable
15 and extraordinary standard. And, in fact, that is the
16 standard that UAEU cited in the motion that we filed
17 seeking a deferred accounting order in the tax docket
18 back in 2017. We cited the MCI case.

19 And you had asked whether the Commission's
20 order applied that standard. I tried to look that up.
21 It's hard to see on my phone, but I can tell you that we
22 cited it and we believed then and believe now that that
23 is the standard.

24 Commissioner White, you've asked a couple of
25 times if there is a distinction between the terms

1 "unforeseen" and "unforeseeable." I think there
2 probably is a dictionary definition. I think one
3 dictionary definition is whether the cost is
4 anticipated, and one is whether it is able to be
5 anticipated.

6 However, I think the way that those terms
7 are used by Courts probably mashes that distinction, and
8 I guess -- and I think that's particularly true here
9 when we're talking about a -- whether an event is
10 foreseeable in the context of a general rate case where
11 the parties stipulate to the end result.

12 It's very difficult, I think, for the
13 Commission to go back and look at, Well, what were the
14 parties anticipating? What could the parties have
15 anticipated? And I think you have to reach beyond, as
16 well, the numbers that the parties throw out in terms of
17 what they think various costs will be. It's more of a
18 range of what the parties could have foreseen those
19 costs were. And that "could have foreseen," I think,
20 gets into that issue of foreseeability.

21 So all of that is to say I think -- while I
22 think there is a difference in the dictionary definition
23 of those terms, I think the way it gets applied in this
24 there may not be any distinction at all.

25 So let's talk for a second about whether a

1 change in interest rates -- or the change in interest
2 rates at issue here was foreseeable or foreseen. As I
3 understand the Company's Application, all of this is
4 driven by what they claim to be an unforeseen or
5 unforeseeable change in interest rates such that the
6 interest rates go -- are low enough to drag the
7 threshold for the accounting of pension events that then
8 triggers this requirement that those who retire early
9 and take the lump-sum option goes into -- outside of the
10 regulatory asset or liability category and puts it into
11 an expense category against earnings.

12 That's what I understand the company to be
13 saying, that there are certain factors that go into that
14 threshold and that the interest rates -- the change in
15 the interest rates really are what's driving this. So
16 the change in the interest rate drives that threshold
17 down, and it also incentivizes the employees to take the
18 lump sum instead of the annuity. And I will posit to
19 you that changes in interest rates are not new. I've
20 heard the Company compare them to the changes in the tax
21 rate, and I'm going to push back against that.

22 A change in the tax rate requires -- at
23 least on the federal corporate level, requires an act of
24 Congress. The changes in the interest rate -- one thing
25 you know about interest rates is they do change. Now,

1 you may not be able to anticipate the exact changes in
2 the interest rate, but the Company is very practiced in
3 attempting to do just that.

4 Changes in interest rates are built into the
5 Company's projections about construction costs, about
6 the costs of resources, the costs of labor, the costs of
7 construction, et cetera. Those are built, in turn, into
8 the rates that are applied to the -- to the ratepayers.
9 The Company doesn't always get those right, but it's not
10 that -- their projections about whether they pegged the
11 interest rate correctly in some out year is not an issue
12 of does the underlying foundation of the law change
13 because the tax rates change.

14 I submit to you that the changes in interest
15 rates are quite a bit more like changes in labor costs.
16 There is an anticipation about what labor costs will be
17 when you go into a general rate case. And they may be
18 different. The union may demand some greater amount
19 than what had been anticipated. And that may trigger a
20 change in the Company's expectations that it had when it
21 went into the general rate case, but those changes can
22 be foreseen. And, in fact, they are often anticipated,
23 that we're going to have a labor dispute coming up and
24 we're going -- we're anticipating what those costs are
25 going to be.

1 And so the interest rate changes, as I'm
2 trying to get to, are certainly understood. What I
3 haven't seen from the Company is evidence about what the
4 rate is and why they weren't able to foresee it going
5 below a certain amount.

6 As Mr. Snarr, I think, very articulately
7 pointed out, the pension plan here hasn't changed. The
8 fact that employees retire hasn't changed. The fact
9 that employees can elect to take the lump-sum payment
10 hasn't changed. Even the level of the lump-sum payment
11 is not extraordinary here.

12 As we've seen and we can see from -- I think
13 it's the footnote on page 5 of the Division's brief, the
14 lump-sum payment at issue here is very similar to the
15 lump-sum distribution -- I guess I should use the
16 correct words -- lump-sum distribution that was seen in
17 2013, the year before the settlement of the most recent
18 rate case.

19 The only thing that's changed is the
20 interest rate. And I guess in order to put a finer
21 point on it, if what we're saying is that the -- we
22 fully expect the Company to anticipate changes in
23 interest rates. We don't, I don't think, expect them to
24 get it right all the time, but if they get it wrong in a
25 way that harms them, are we going to allow them to come

1 in and seek a deferred accounting order every time they
2 do that? I think the answer to that ought to be no.

3 I do want to point out one thing before I
4 move too much farther. I indicated at the outset that
5 there are some issues here where UAEU agrees with the
6 Company, and that issue is whether the company --
7 whether it's reasonable to amortize these types of costs
8 over a period of time. And I believe -- I believe it
9 is. And, in fact, if the Company had asked to amortize
10 these sorts of pension events at the last rate case, I
11 think we would have said yes. And if they ask us going
12 forward at the next rate case, I think we would say yes.

13 There is a problem that occurs when they try
14 to do it in between rate cases, because we set rates
15 based on the way that we're going to account for certain
16 expenses. I don't know that we can put a particular
17 expectation on what the pension costs are going to be.
18 We know what the company at least put in their
19 Application. Others may have put a number out there.
20 We have a settlement that doesn't express what the
21 parties' expectations were, and so I don't think we can
22 peg a certain number, but we can get an idea of what
23 that number was going to be. And so, you know, is the
24 number that we're dealing with here so far outside that
25 for it to be extraordinary? We think not.

1 And I do -- I want to touch on one last
2 point, and that's this: I think what the Company is
3 asking to do -- the reason I think it's difficult to ask
4 for this in between rate cases -- there are two reasons.

5 One, if we allow the Company to do it this
6 way, only they know what their pension expenses are
7 going to be in any given year. You have to file that
8 deferred accounting order for the end of the year, and
9 that's why they filed it right at the end of 2018. The
10 parties are not in a position to file at the end of any
11 other year, a year in which the pension expenses would
12 be significantly lower in the expectation.

13 We can see from, I think it's the -- if you
14 have the exhibits that the Office attached to their
15 brief, and it's -- the document, it's -- I'll hold it
16 up, but it's attached. OCS 1.4, with 1 in parentheses.
17 And it's not the bottom-line number that I want to point
18 your attention to, which is the total net periodic
19 benefit, it's the number just above that. There are two
20 years in which there are regulatory asset liability
21 creation.

22 The 2018 is the year that we see a
23 regulatory asset creation of \$20 million. There is a
24 another year in which there was a liability creation.
25 The Company can't come in and ask for a deferred

1 accounting order to set those liabilities out over a
2 course of time, and the parties were not in a position
3 to do that. So if we allow the company to come in and
4 ask for a deferred accounting order when it's going to
5 experience this level of pension expense, the parties
6 are not in a position to ask for it when the pension
7 expense goes the other way. And I just wanted to point
8 to some evidence we have where there are years when that
9 happens.

10 And, finally, I want to address where I
11 think what the company is asking for is incomplete. And
12 that is, the company is asking to amortize the pension
13 expense here. This is going to be slightly complicated,
14 but I think it's worth walking through.

15 The pension expense occurs because more
16 people than anticipated have said, We're going to retire
17 or, We're going to take the lump sum instead of the
18 annuity. Now, I say that -- "more people than
19 anticipated." So there was this anticipation at the
20 last general rate case that there would be these pension
21 expenses that occur every year. And as I said, I don't
22 think we can pay a certain amount, but there was an
23 amount, whatever it was.

24 And the Company is here saying more people
25 than have been anticipated are taking that lump sum, and

1 it causes to occur this pension expense in 2018. But
2 what that means is that more people than were expected
3 will not be getting an annuity next year or the year
4 after that or the year after. The Company's only asking
5 for a deferred accounting order with respect to the
6 pension expenses, but the rates are anticipating pension
7 expenses going forward, the current rates that will
8 apply for the next couple years until we have our next
9 general rate case.

10 Those rates are not going to go down to
11 account for the fact that there's lower costs from fewer
12 employees taking those annuity payments. The company is
13 going to continue to collect the same amount in pension
14 expense in rates that anticipate a certain pension
15 expense. I guess I should be more precise. And so --
16 but it's going to push the expenses that would otherwise
17 occur in 2018. Either -- if this Commission denies the
18 Application or if the Application hadn't been denied,
19 those expenses would surely be incurred in 2018, and
20 we'd never be asked to put them into rates.

21 But the Company here is asking, Well, let's
22 put the vast majority of those into rates. They've said
23 today, for the first time, I think in this docket
24 anyway, that they're not going to ask to collect the
25 portion of those expenses that are amortized on an

1 annual basis and realized between 2018 and the next
2 general rate case. But that still leaves the vast
3 majority of the \$21 million and the whatever they ask
4 for next year and the year after that to be put into
5 rates.

6 Now, their assertion here is, Well, it's not
7 going to hurt ratepayers to amortize it. In just the
8 amortization, if we're sitting in a rate case, I would
9 say I think that's true. It's not true in between rate
10 cases precisely because you're going to take expenses
11 that occur between rate cases, which should be addressed
12 by the first rate case, and you're going to put them
13 into the second rate case.

14 Now, the Company has said multiple times,
15 Not seeking rate treatment here. But what else are we
16 doing if we're taking expenses from the time that it
17 should be covered by the first rate case or that were
18 anticipated to be recovered by the first rate case and
19 putting them into the next one? That's the reason that
20 deferred accounting orders are -- that the Commission
21 ought to apply the same sort of rules or standards
22 related to the rule against retroactive rate making,
23 because we're going to take those expenses, we're going
24 to put them into the next rate case, and the Commission
25 is going to be asked to allow the company to recover

1 those, if they're prudent, rather than some other
2 standard.

3 So we're taking expenses that were sort of
4 anticipated from the first rate case and we're just
5 going to move them forward. So, yeah, they're not
6 asking for rate treatment of them now, but they are
7 going to be asking for rate treatment. They've asked
8 you specifically to allow them to ask for rate treatment
9 later. So for that very reason, we think the standard
10 that I mentioned at the outset should apply.

11 And with that, I'll take questions if you
12 have them.

13 COMM. LEVAR: Thank you. Commissioner
14 White, do you have any questions for Mr. Russell?

15 MR. WHITE: Yeah. Let me see if I can --
16 there's a lot to unpack here, but one thing I want to
17 try to articulate, and just kind of a general theme here
18 and make sure I'm correct here, is it -- is it your
19 argument that really what we're talking about here is
20 not a calculable, specific harm that we're trying to
21 prevent, it's more of a -- we're trying to withhold, you
22 know, rate-making principles that, ultimately, it's more
23 appropriate to look at these types of adjustments in the
24 context of all of the puts and takes, the mechanics of a
25 rate case, and we only vary from that if there's

1 something that's completely beyond the control of the
2 utility and that it would be unfair, otherwise, than --
3 to allow them to do it in deferred accounting and to do
4 it outside the rate case? Is that what we're trying to
5 protect here, is more of the general regulatory, you
6 know, good rate-making practice? Is that what we're
7 trying to -- is that what we're holding the line here
8 on?

9 MR. RUSSELL: Yeah. That's how I see it.
10 As I've said, I don't have a problem with amortizing
11 these particular types of expenses, but I would want to
12 do it in an environment where I can look at how that's
13 going to interact with other issues. And I don't mean
14 issues that are unrelated to pension. I mean, I do mean
15 those as well, but not just issues that are unrelated to
16 pensions.

17 As I kind of alluded to earlier, this issue
18 of this -- the number of employees that take -- that
19 retire before they expect them to or take the lump-sum
20 payment before they expect them to, that has a knock-on
21 effect on what the expense is from year to year after
22 that, based on fewer people take the annuity and more
23 taking the lump sum. I'd want to know how all that
24 shakes out before I agree to a particular type of
25 treatment. But, conceptually, I think that treatment

1 works, but I think you need all the data, you know, have
2 the smart people look at it who know how to look at
3 these things.

4 And so, yes, to answer your question, it is
5 sort of the regulatory principles here that I think
6 we're defending, rather than the specific costs.
7 Although, I think these specific costs are emblematic of
8 why we don't permit this type of deferred accounting for
9 things like variations in interest rates, which do vary,
10 and everybody knows they vary.

11 MR. WHITE: Thank you. That's all the
12 questions I have, Chair.

13 COMM. LEVAR: Thank you.

14 Commissioner Clark, do you have any
15 questions for Mr. Russell?

16 COMM. CLARK: Yes, I have one question. I
17 think so far I've been alluded to a couple of different
18 categories of costs that are influenced by interest
19 rates, or can be influenced by interest rates, that
20 might work in the opposite direction of the pension
21 expense in question. One was short-term debt. I think,
22 Mr. Russell, you referred to labor costs that might be
23 influenced by changes in the Consumer Price Index and
24 other things that are interest-rate related.

25 Are there any other cost categories that

1 come to your mind that have this interest rate
2 connection that would be -- would be influenced either
3 up or down by interest rate changes --

4 MR. RUSSELL: Sure. I think --

5 COMM. CLARK: -- that would not -- that are
6 not being considered here?

7 MR. RUSSELL: Off the top of my head,
8 borrowing costs, certainly costs of construction for
9 various resources, are the two that come to mind, in
10 addition to the ones that you mentioned I think are
11 influenced by interest rates and in anticipation of what
12 interest rates will be in out years. There may be
13 others, but those are the ones that come to mind.

14 COMM. CLARK: Thanks. That concludes my
15 questions.

16 COMM. LEVAR: Thank you. And I don't have
17 any other additional questions for you, Mr. Russell.
18 Thank you.

19 Ms. Hogle?

20 MS. HOGLE: There is a lot to cover --
21 excuse me, a lot to cover. Do you want to do it now or
22 do you want to come back?

23 COMM. LEVAR: Would you like a brief break?

24 MS. SCHMID: The Division would not.

25 MR. SNARR: I'd like to wrap it up now.

1 I've got another commitment this afternoon.

2 MS. HOGLE: All right. Well, I think I'll
3 start with response to the Division, the Office, and
4 then the UAEU.

5 First of all, Rocky Mountain Power agrees
6 with the Division that financial accounting is different
7 from regulatory accounting. The only reason why we are
8 here talking about these legitimate costs that are on
9 our balance sheet now is because of a pension accounting
10 rule that was triggered from the financial perspective.

11 And, really, the reason for that rule is to
12 present a clear picture to investors about the Company's
13 financial situation. In this case, it was to present to
14 the investors the situation where the company's no
15 longer -- the company no longer has that obligation.
16 That's a financial accounting rule that should not --
17 and we submit to you should not have an effect on how we
18 have been treating this obligation, but for the
19 financial accounting rule.

20 And that is, to continue to sit on our
21 regulatory asset and continue to amortize over 21 years.
22 But for this financial accounting requirement, we
23 wouldn't be here. And as the Division noted, financial
24 accounting is different from regulatory accounting.

25 Ms. Schmid also mentioned the 2008 case, and

1 I think it's worth just going to that 2008 case and
2 talking about -- a little bit about the details of that.
3 And, again, in that case, the Company filed a deferred
4 accounting Application. And I don't know if I went
5 through this before, but the deferred accounting for
6 NAHC transition costs related to severance payments.
7 The Company filed that Application in January 2007.

8 The Commission had just issued its order in
9 the 2006 case in December 2006. The Company had already
10 included severance payments in that case, and I believe
11 that one of the reasons why the Commission, in the 2008
12 order for this deferred accounting Application, as well
13 as the Powerdale and the Great West loans, indicated
14 that because the Company did not correctly -- and I'm
15 paraphrasing here -- did not correctly assume the level
16 of severance expenses that it would have in that -- in
17 the prior rate case that had just been completed, that
18 was more akin to a mismanagement of the Company.

19 Same with the Great West loan expense, that
20 the Company had known at the time that it filed its rate
21 case that had just been completed and it was now asking
22 for those costs.

23 In that 2008 order, by the way, the
24 Commission also stated that, in deciding whether to
25 issue accounting orders, it would take into

1 consideration when the utility became aware of the
2 events or circumstances and when related expenses occur
3 in relation to the timing of past and future rate-making
4 proceedings. In this case that we have before you, this
5 occurred five years after our rate case.

6 Finally, since that case, the Commission,
7 with the same Commissioners, issued at least one order
8 -- I think this was a question that was brought up by
9 one of the Commissioners -- in which it authorized the
10 company to defer approximately \$6 million to be
11 amortized over four years. Again, this was -- this
12 arose out an unforeseen tax law change that dealt with
13 the tax deductibility of postretirement prescription
14 drug coverage expenses that was no longer available.

15 I've also heard -- I also heard Ms. Schmid
16 talk about it being the normal operation of pension
17 expense. And I submit to you that it wasn't normal,
18 because a pension settlement event, or a pension event,
19 for that matter, had not been triggered for ten years.
20 The settlement was actually extraordinary, in the sense
21 that it was unusual and unique. And the fact that it
22 hadn't occurred in ten years bears that out.

23 Another thing that was brought up by
24 Ms. Schmid was that sometimes we have revenues that
25 don't come before you and, specifically, that contract

1 that she mentioned, revenues from that contract that
2 occurred in between rate cases. That was a contract
3 that we brought before the Commission and that parties
4 agreed would be in the public interest. The parties
5 agreed that not executing the contract would result in a
6 customer leaving our system along with a load. So that
7 was in the public interest, and they knew about it.

8 And it was not in a rate case. It did not
9 occur during a rate case. Therefore, those revenues
10 were not accounted for. But not being in a rate case
11 for five years, that's a good thing. Keeping rates
12 stable, that's a good thing. That's in the public
13 interest.

14 And so I will transition to responding to
15 Mr. Snarr now. He went over a list of the pension
16 expense -- or the pension costs, and we also don't know
17 if the Company's costs in other areas increased in
18 between cases. And those are not here before you, but
19 as compared to the rates that are included in the rates
20 from the 2014 general rate case.

21 I think another question that I heard him
22 respond to and that was asked by the Commissioners is
23 the distinction between the 2008 curtailment and this
24 pension settlement event and foreseeability -- or the
25 unforeseeability and extraordinary nature of the 2008

1 event. That is not at all correct. That event was
2 foreseeable. Absolutely, that was foreseeable, because
3 it was caused by a change by the Company in 2008. That
4 was and resulted from RMP actions.

5 We triggered that event, because RMP changed
6 the options for that plan. And so foreseeability is not
7 the test, obviously; otherwise, that Commission would
8 not have authorized that curtailment event. And I also
9 submit to you that that was outside of a general rate
10 case, just like it is here.

11 The standard that the Commission used in the
12 2008 case, that is not something that this Commission
13 has followed in all cases. Again, I remind you of the
14 2010 case, and that was a decision by the same
15 Commissioners who ruled in the 2008 case. That was the
16 tax change. That was for \$6 million. The Company was
17 allowed to amortize and collect that over four years, I
18 believe, and that was outside of a rate case.

19 Now, going on to respond to Mr. Russell.
20 And, yes, he highlighted the change in interest rates.
21 The change in interest rates was one of the drivers of
22 the settlement event; however, there were
23 combination -- a combination of other factors that I've
24 provided and I've given you that -- I will remind you
25 again, a combination of factors, including the number of

1 people who elect to take lump-sum payments, the number
2 of retirees, we don't know. These are all -- are all
3 outside of the company's control.

4 We agree with folks here that our costs go
5 up and down and the Company manages those costs that go
6 up and down. The fact of the matter is that the event
7 that occurred in 2018 was unforeseen and extraordinary
8 and beyond the Company's ability to manage on a total
9 company basis. Again, these costs would have been part
10 of our expenses over 21 years, but for that accounting
11 rule that triggered immediate recognition required by
12 GAAP.

13 And then I also want to go back to
14 Mr. Russell's reference to that \$4.9 million accounting
15 liability. Because the Company had already been through
16 the 2008 curtailment, it had an order from the
17 Commission which determined how an event such as that
18 should be treated. And that is, that it should be
19 amortized over three years. And that's what the Company
20 did. It booked that liability on its books and
21 amortized it over three years. The fact that there was
22 no rate case, that's something that was a fact, but, you
23 know, the Company treated it consistent with how the
24 Commission treated an exact event in 2008.

25 Thank you again for the opportunity to

1 present our case and we respectfully request that you
2 allow our request to defer in the expense and to allow
3 us to begin amortizing it, the share for 2019 and 2020
4 and so on and so forth, until we come in for a review in
5 a rate case of the balance of that.

6 Again, I just want to be clear that by
7 amortizing, meaning that we will recognize that expense
8 every year until we come before you in the next rate
9 case. Thank you.

10 COMM. LEVAR: I'd just like to do a couple
11 of follow-up questions.

12 MS. HOGLE: Yes.

13 COMM. LEVAR: To what extent do you see the
14 foreseeable and extraordinary standard as intuitive for
15 this type of Application? We've had discussion about
16 whether -- what MCI does and doesn't say, what the
17 Commission did or didn't say in 2008. But is that
18 standard intuitive for what we're being asked to do with
19 respect to allowing potential recovery in the next rate
20 case of a cost that was incurred in 2018?

21 MS. HOGLE: In this case, yes. In this
22 case, I think we've established that it was
23 unforeseeable, particularly because we're asking for
24 prospective treatment and not asking to recover anything
25 prior to what's on our books in 2020, 2021.

1 And it was extraordinary in the sense that
2 it's unique and unusual. The fact that it -- the
3 potential that it could occur in the future doesn't make
4 it any more not unique or not extraordinary, just like a
5 tax law change.

6 And so, yes, I think in this case, with
7 these facts, the Company has met its burden because it
8 can show that the event was unforeseeable and
9 extraordinary in the sense that it was unusual, borne
10 out by the fact that something like that had not
11 happened since 2008.

12 COMM. LEVAR: Okay. Thank you. I don't
13 have anything else.

14 Commissioner Clark, do you have anything
15 else for Ms. Hogle?

16 COMM. CLARK: No further questions on that
17 one. I want to thank the counsel for the arguments.

18 COMM. LEVAR: Okay. Thank you.

19 Commissioner White, do you have anything
20 else?

21 MR. WHITE: No further questions. Thank
22 you.

23 COMM. LEVAR: Thank you all for your
24 participation today. We recognize that none of you
25 asked for this oral argument, so we appreciate your

1 indulging our questions as we consider this. We'll be
2 adjourned today. Thank you.

3 MS. SCHMID: Thank you.

4 MS. HOGLE: Thank you.

5 (The oral argument was concluded at 12:07 p.m.)

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C E R T I F I C A T E

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

This is to certify that the foregoing proceedings were taken before me, KAREN CHRISTENSEN, a Registered Merit Reporter, a Registered Professional Reporter, and Notary Public in and for the State of Utah.

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting.

That a full, true and correct transcription of said proceedings so taken and transcribed to the best of my ability is set forth in the foregoing pages, numbered 3 through 82, inclusive.

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

Witness my hand and official seal at Taylorsville, Utah, this 29th day of April 2019.



Karen Christensen, RMR
My Commission Expires:
February 15, 2020

#	-	2000s 35:18	49:3	12
#2300 2:5	--oo0oo-- 1:2	2006 25:19 75:9	2016 48:17	35 9:7
\$	1	2007 25:18 75:7	2017 13:8,13 15:6 48:18,22 49:4 60:18	4
\$10 54:2	1 66:16	2008 17:10 22:11,15 25:8 35:18 42:12, 20 44:4,5,10, 16,17 45:13 55:8,21 56:2 58:5,18 59:6, 12 74:25 75:1,11,23 77:23,25 78:3,12,15 79:16,24 80:17 81:11	2018 7:13 8:5, 19 9:22,24 12:24 20:10, 12,16 31:8 34:21 36:23 44:3,6,25 48:20 53:10 54:13 55:2,8 56:6 66:9,22 68:1,17,19 69:1 79:7 80:20	400 2:15 451 1:12
\$11.6 48:16	1.10 8:12 36:21			5
\$12.4 49:4	1.4 66:16			5 8:13 48:11 64:13
\$18.5 49:3	10:00 1:10 3:1			533226 1:25
\$20 46:20 48:4 66:23	11 1:9 3:1			5th 2:8,12
\$21 69:3	12:07 82:5	201 2:5	2019 1:9 3:1 12:7 26:6,7 32:2 80:3	8
\$22 8:4	15 5:13,15	2010 11:16 15:8 22:13, 14,18 78:14	2020 12:24 26:6,7 32:2 80:3,25	801 220-4050 2:6
\$4.9 79:14	160 2:12	2013 9:20,23 21:8 64:17	2021 80:25	801 363-6363 2:16
\$52 9:21 21:8	18-035-48 1:3 3:5	2014 9:13 10:12 11:5 17:20 22:24 48:16 54:14 77:20	21 9:4,7 74:21 79:10	801 366-0353 2:9,13
\$6 76:10 78:16	1999 14:15		3	84101 2:16
\$6.3 11:18 15:11	2	2015 48:17	300 1:12 2:8,	84111 1:13
\$9 37:18	20 50:11			
	2000 14:15			

2:5,9,12	accommodate 46:1	46:22 48:19, 21 50:3,4,24 53:8,19 54:18 57:14 58:7,20 59:5,11,15,17 60:17 62:7 65:1 66:8 67:1,4 68:5 69:20 71:3 72:8 74:6,7,9, 16,19,22,24 75:4,5,12,25 79:10,14	76:20	13:14
A	accordance 59:4		actuarial 50:3,7 54:20	adjustment 25:5 54:1
a.m. 1:10 3:1	account 14:24 65:15 68:11		actuary 50:10,16	adjustments 70:23
aberration 53:24	accounted 27:12 50:6 77:10		actuary's 51:17	admits 36:10
ability 43:18 79:8	accounting 1:4 3:6 7:13, 21,25 8:3 9:1 10:22 11:15 12:6,10,18 13:1,7,12,18, 25 14:4,10, 16,24 15:1, 16,20,23 18:18 19:3,5, 7,18,20 22:7 23:4,10,15,18 24:24 25:9, 11,17 26:19, 22 32:12,15 33:9,13,23 34:8,10,16,25 35:5,7,9,13 36:11 37:8, 12,14 38:8, 12,13,16,24 39:5,18 40:4, 9,17 41:21 42:4,9,17,21 43:11 44:12, 13 45:16,25	accumulated 36:3	add 6:23	advise 30:6
able 40:12 47:3 53:20,25 61:4 63:1 64:4		accurately 10:6	addition 12:22 73:10	affected 52:13 58:2
above 66:19		act 15:7 19:13 62:23	additional 53:14 73:17	affects 13:1
absence 40:2		Action 14:13	address 27:20 29:11 46:3 67:10	after 5:2,21 6:13 22:15 47:4 68:4 69:4 71:21 76:5
absolutely 27:6,20 51:12 78:2		actions 78:4	addressed 69:11	afternoon 6:2 74:1
absorb 26:9, 12		actual 7:22 8:24 10:20 37:24 38:6 48:14,24 56:17	addressing 34:7 42:12	again 4:3 7:2 9:17 11:9,24 19:18,23 20:17 21:4,8 22:5,20 24:12,17,18 25:10 26:3 31:17,21 32:6,10,13 37:17 41:8 43:24 46:21 57:14 75:3
acceptable 52:23		actuality 50:7	adhere 24:13	
access 44:21		actually 4:5 6:16 31:3 50:16 54:12	adjourned 82:2	
accessibility 44:20			adjust 12:15	
			adjusted	

76:11 78:13, 25 79:9,25 80:6	aligned 6:17 32:6	allows 12:18	amortize 9:4 65:7,9 67:12 69:7 74:21 78:17	annuities 13:23 20:20 50:25 51:1 52:16
against 13:9, 11 38:14 50:7 51:16,22 54:20 62:11, 21 69:22	all 6:19 7:6 8:2,10 14:14, 21 16:4,20 18:19 19:8 21:13 26:13, 25 29:23 30:1 32:17 33:2,17 41:16 45:13 47:3,4,7 49:5 51:7 52:21, 24,25 56:15, 23 57:2 58:5 61:21,24 62:3 64:24 70:24 71:23 72:1,11 74:2,5 78:1, 13 79:2 81:23	alluded 71:17 72:17	amortized 11:19 68:25 76:11 79:19, 21	annuity 50:21 51:4 56:13 62:18 67:18 68:3,12 71:22
agenda 16:2, 4	alleged 34:24	almost 54:13	amortizing 12:7 71:10 80:3,7	another 5:19 13:19 15:8 30:14 45:24 66:24 74:1 76:23 77:21
ago 26:1	alleges 38:24	along 20:22 45:1 77:6	amount 9:20 10:18 11:8 13:8 16:16 17:22 26:14 47:24 63:18 64:5 67:22,23 68:13	answers 18:7 28:13 45:4 47:9 60:9
agree 25:6 28:9 45:10 58:17,18 71:24 79:4	allow 4:22 6:20 26:24 64:25 66:5 67:3 69:25 70:8 71:3 80:2	already 75:9 79:15	amounts 7:18 10:8 14:10 19:21 23:4 26:22	anticipate 63:1 64:22 68:14
agreed 11:8 77:4,5	allowed 23:4 40:5 78:17	also 2:18 3:21 5:15,22 6:12 7:20,24,25 10:21 11:5,15 12:9 14:16 17:7 23:9 26:5 30:1 36:9,25 37:10 39:1 48:3 50:23 62:17 74:25 75:24 76:15 77:16 78:8 79:13	analyze 16:23	anticipated 61:4,5,15 63:19,22 67:16,19,25 69:18 70:4
agreement 18:22 48:3	allowing 7:18 27:11 28:4 39:21 80:19	although 20:7 72:7	Analyzing 34:9	anticipating 61:14 63:24 68:6
agrees 65:5 74:5		always 41:22 59:19 63:9	animal 33:20	anticipation 63:16 67:19 73:11
ahead 7:8 30:17		among 5:19	animals 33:14	anybody 14:5
air 14:20		amortization 10:18 23:13 69:8	annual 69:1	
akin 25:15,24 33:18 55:23 75:18				

26:23	34:1 36:10,15 40:6,14,21 62:3 65:19 68:18 75:4,7, 12 80:15	approved 17:1 42:23 54:10	arise 14:3	49:8
anything 6:23 31:11 45:4 46:15 48:9 80:24 81:13, 14,19	applied 36:4 60:20 61:23 63:8	Approving 40:14	arose 11:20 15:6 76:12	Association 2:14 4:19
anyway 68:24		approximatel y 11:18 15:10 76:10	around 17:23 44:16	assume 20:18 30:6 45:22 75:15
apologize 4:4 27:5	applies 18:23 59:10	April 1:9 3:1	articulate 70:17	assuming 5:12 10:10,15 13:20,21,22 31:21 44:4
Appeals 23:23	apply 15:12, 15 19:2 31:7 32:16 59:13 60:13 68:8 69:21 70:10	areas 77:17	articulated 12:12	assumption 51:2
appearances 3:17	applying 22:1,2	arena 45:21	articulately 64:6	assumptions 50:4,7
appellate 42:9	appreciate 6:25 45:3 60:8 81:25	argue 7:15,20 14:5 46:15	aside 33:25 53:11	attached 66:14,16
applicability 18:13		arguing 18:17 19:1 38:23	asks 12:25 15:12 31:6	attempting 63:3
applicable 33:16 34:9	approach 13:5 15:13 45:9	argument 1:4 3:7,23 4:21 5:9 10:2 19:13 24:21, 22 27:9 28:1 29:10 32:24 42:19 55:10 70:19 81:25 82:5	asserted 36:1	attention 66:18
Applicant 5:21	appropriate 5:14 6:7 56:9 70:23		assertion 69:6	attentive 27:6
application 1:4 3:5 6:22 13:10 16:15 18:24 22:10, 17 25:17 31:6,15,22	appropriatene ss 11:12	arguments 4:23 7:3 41:14 54:6 81:17	asset 62:10 66:20,23 74:21	Attorney 2:8, 11 4:15
	approve 19:7		Assistant 4:14	attorneys 3:8 4:11
			associated	

authority 31:23	22:6 24:5,15, 20 30:22 31:17 36:19 46:6 47:8 48:13 58:9,25 60:18 61:13 62:21 73:22 79:13	before 1:1 8:19 17:5 19:5,8 24:7 30:12 32:7, 10,12 35:3 64:17 65:3 71:19,20,24 75:5 76:4,25 77:3,18 80:8	60:22 below 51:24 52:1 64:5 benefit 15:7 29:25 30:3 57:20 66:19	30:13 54:3 63:15 75:2 black 47:21 black-box 49:8 blend 47:7
authorization 19:20		begin 12:7 80:3	benefiting 24:11	blip 46:14 58:3,8
authorize 11:2 12:23 26:18	backdoor 13:5	beginning 26:7	benefits 11:21	booked 79:20
authorized 11:7,17 14:9, 16,23 15:10 17:11 19:14 22:7 23:15 26:21 76:9 78:8	bacon 54:25	behalf 3:20 4:12,15,19 28:12 29:10	better 6:18 27:10 29:2	books 79:20 80:25
available 76:14	balance 12:8 16:13 26:15 30:3 53:13 74:9 80:5	being 17:17 20:7 27:5 32:15 33:18 44:12 57:13 73:6 76:16 77:10 80:18	between 14:24 15:17 20:1 21:23 22:23 23:16 38:6 46:5 55:8 60:25 65:14 66:4 69:1,9,11 77:2,18,23	borne 81:9
average 54:13,15	balanced 15:13	believe 6:6 8:12,13 9:13 19:10,11 23:9,21 28:3, 4 40:12 41:12,14 42:22 43:15 44:5 50:8 57:10 59:21 60:13,22 65:8 75:10 78:18	beyond 20:10 25:8 31:12 52:22 61:15 71:1 79:8	borrowing 52:13 73:8
avoiding 24:10	based 5:11 8:5 9:2 10:6 19:13 22:25 50:24 65:15 71:22	believed	big 52:16	both 4:24 17:13 25:12 35:12 37:6 41:22
awarded 44:12	basically 46:23		bind 47:18	bottom 8:15
aware 23:24 42:8,11 76:1	basis 15:14 39:24 40:18 69:1 79:9		bit 24:15	bottom-line 66:17
B	bears 76:22			box 47:21
back 5:23 6:2, 7,13 7:7 9:18	became 76:1			break 30:16,

17 73:23	45:20 50:17 52:23	carve 49:1	61:10 63:17, 21 64:18	category 62:10,11
brief 8:8,14 9:18 11:17 14:22 26:23 30:11 31:12 36:25 37:2 39:10,18 41:14 48:12 57:10 64:13 66:15 73:23	<hr/> C <hr/>	carving 49:2	65:10,12 67:20 68:9 69:2,8,12,13, 17,18,24 70:4,25 71:4 74:13,25 75:1,3,9,10, 17,21 76:4,5, 6 77:8,9,10, 20 78:10,12, 14,15,18 79:22 80:1,5, 9,20,21,22 81:6	caused 8:6 9:25 10:4 52:5 55:13 78:3
briefing 30:2	calculable 70:20	case 5:9 7:10, 24 9:13 10:5, 12,21,23 11:5,6,12,16, 17,18,24 12:8,21,22 13:14 14:15, 18 15:1,3,8, 16,17 16:7,14 17:12,20 18:13,14 19:11,16 21:24 22:2, 11,14,15,17, 18,23 23:5, 12,17,20 24:24 25:2,5, 8,14,21,24,25 26:11,15,16 32:3 34:3,4,5, 6,15 35:2 39:1,4,9,12, 20 41:22 42:3,4,9,13, 14,20,21 44:10,11 45:14 46:11 47:2,16,17 48:13 49:11 50:9 52:2,8, 21,23 53:13, 21,23 54:6,25 55:2,8,10,15, 21 56:3,24 57:2 58:19,20 59:16,18,20, 25 60:18	74:13,25 75:1,3,9,10, 17,21 76:4,5, 6 77:8,9,10, 20 78:10,12, 14,15,18 79:22 80:1,5, 9,20,21,22 81:6	causes 37:14 54:21 68:1
briefs 4:25	calculate 50:23 51:11		case-by-case 15:14 24:5 40:18	causes 37:14 54:21 68:1
bring 3:25 52:6	calculating 34:22		cases 9:11 14:10,24 15:17 21:4 22:23 23:14, 16,25 26:21 43:14,15,21 59:6 65:14 66:4 69:10,11 77:2,18 78:13	certain 11:21 22:10 38:18 48:7 50:19,20 62:13 64:5 65:15,22 67:22 68:14
bringing 39:3	calculation 51:2 52:15 56:12	came 57:7		certainly 22:22 29:7,10 45:21 64:2 73:8
broad 56:25	can't 18:1 29:9 31:18 32:8 46:21 54:2 57:17 58:25 59:7 66:25	can't 18:1 29:9 31:18 32:8 46:21 54:2 57:17 58:25 59:7 66:25		Certified 1:16
Broadway 2:15	capture 39:11	capture 39:11	cash-outs 20:14	cetera 23:2 63:7
brought 28:10 53:14 76:8,23 77:3	care 38:10,12 39:2,16	care 38:10,12 39:2,16	catch 45:22	Chair 5:8 27:1 72:12
built 63:4,7	carefully 49:12 52:25 59:19,21	carefully 49:12 52:25 59:19,21	categories 16:18 72:18, 25	Chairman 60:11
burden 5:24 34:1 53:6 81:7	carried 55:7	carried 55:7		challenged 23:25
business				challenging

<p>16:5</p> <p>chance 4:22 5:20</p> <p>change 11:20 12:1 20:8 22:14 23:14 35:24,25 36:3 38:25 39:1 45:16 54:17, 18 55:17,23 57:6 62:1,5, 14,16,22,25 63:12,13,20 76:12 78:3, 16,20,21 81:5</p> <p>changed 34:24 36:2 38:7 44:19 45:15 56:16 64:7,8,10,19 78:5</p> <p>changes 9:6 13:8,13 14:1, 6 15:5 32:8,9 33:18,20 39:14 42:24 43:1 44:19, 21,23 45:18 46:1 49:10 55:21 57:12 62:19,20,24 63:1,4,14,15, 21 64:1,22 72:23 73:3</p> <p>changing</p>	<p>45:15 55:24, 25</p> <p>charge 50:9</p> <p>charged 52:19</p> <p>charges 1:5 3:6 38:2 51:24</p> <p>chart 51:25</p> <p>check 43:7,8, 24</p> <p>Chief 3:21</p> <p>choose 4:23 7:2,3 13:23 18:2 20:19 51:5 56:10</p> <p>chose 20:13</p> <p>Christensen 1:15</p> <p>circle 6:7,13 7:7</p> <p>circling 5:23</p> <p>circumstance 32:4 34:12</p>	<p>circumstance s 17:23 19:15 23:7 38:19 40:2 76:2</p> <p>cite 26:22</p> <p>cited 11:16 14:22 19:9 33:18 43:15, 16 60:16,18, 22</p> <p>cites 8:11,14</p> <p>City 1:13 2:5, 9,12,16</p> <p>claim 36:17 62:4</p> <p>claiming 51:19</p> <p>clarification 41:20</p> <p>clarified 20:4</p> <p>clarify 18:12 41:18</p> <p>Clark 2:3 3:10,12,13,16 27:2,4,16,19 29:1 30:4,8, 14 31:1,2</p>	<p>32:17 40:25 41:2 58:12,14 72:14,16 73:5,14 81:14,16</p> <p>Clark's 30:25</p> <p>clear 12:21 41:19 74:12 80:6</p> <p>cliff 45:17,24 55:24</p> <p>cliff-jumping 46:1</p> <p>Climate 14:13</p> <p>closed 35:22 44:22</p> <p>Cobliha 2:18 4:5 27:18 28:5,24 29:24 30:5</p> <p>colleague 27:20</p> <p>collect 12:23 68:13,24 78:17</p> <p>collection 15:18 17:18</p>	<p>collections 14:3 15:9</p> <p>columns 8:15</p> <p>combination 78:23,25</p> <p>come 29:9,13 30:18 32:10, 11 49:11 52:24 64:25 66:25 67:3 73:1,9,13,22 76:25 80:4,8</p> <p>comes 47:12 53:23</p> <p>coming 48:19 63:23</p> <p>COMM 3:3, 13,14,16,17 4:2,7,13,17, 20 5:18 6:8, 11,23 7:1 16:9,12 18:9 19:1 20:3,6 21:13,17 23:21 26:25 27:2,4,19,21 28:7,21 29:21 30:9,22 31:2 32:17,19,21 33:3,7 40:24 41:2,4,5,16, 18 42:2,8,19, 23 43:4,9,25</p>
---	--	--	--	---

<p>44:15 45:3,6 55:3,5 57:4 58:10,12,14, 16 59:3,9 60:8 70:13 72:13,16 73:5,14,16,23 80:10,13 81:12,16,18, 23</p> <p>comments 4:24 14:22 36:16</p> <p>Commission 1:1,12 3:4 10:23 11:1, 17,25 12:23, 25 13:3 14:9 15:10 22:6, 12,15,20,21 23:3,22,25 24:2 25:6,16, 21 26:21 29:25 30:4 31:6 32:25 34:3,5,6 35:3 37:10 39:16 42:13,25 43:20 58:18, 25 59:3 61:13 68:17 69:20, 24 75:8,11,24 76:6 77:3 78:7,11,12 79:17,24 80:17</p> <p>Commission's 24:1 34:7</p>	<p>35:8,11 37:8, 21 40:3,10,11 42:12 60:19</p> <p>Commissioner 3:10,12 5:3 21:15 27:2,16 29:1 30:4,8, 14,25 31:1 40:25 41:4 55:4 58:12 60:24 70:13 72:14 81:14, 19</p> <p>Commissioners 2:2 3:19 22:13 27:17 29:2 76:7,9 77:22 78:15</p> <p>commissioning 14:20</p> <p>Commissions 17:5 22:8 24:16,20 57:19</p> <p>commitment 74:1</p> <p>company 5:13 8:5,22, 25 9:3,22 12:1 21:4,11 26:2,6,8,10, 11,13,24 28:4 33:12 34:16,</p>	<p>18,23 35:16 36:1,5,7,13 37:4 38:24 39:8,11 40:12 43:15,16 44:11 45:2 46:19,25 47:19 49:11, 13 50:15 51:18 52:13, 18 53:3,8,25 54:11 55:15 56:5,22 59:25 62:12,20 63:2,9 64:3, 22 65:6,9,18 66:2,5,25 67:3,11,12,24 68:12,21 69:14,25 74:15 75:3,7, 9,14,18,20 76:10 78:3,16 79:5,9,15,19, 23 81:7</p> <p>company's 7:17,22 8:2, 11 13:10 14:11 24:9 25:22 34:1,14 35:1 36:4,7, 10,15,16,20, 25 37:2,15,17 39:4 40:19 50:12 54:19 62:3 63:5,20 68:4 74:12,14 77:17 79:3,8</p> <p>compare 32:7</p>	<p>44:3 56:13 62:20</p> <p>compared 17:1 44:25 77:19</p> <p>comparing 25:9</p> <p>comparison 22:8</p> <p>compensate 12:16</p> <p>completed 75:17,21</p> <p>completely 33:20 71:1</p> <p>complicated 30:13 67:13</p> <p>component 8:18</p> <p>components 8:18</p> <p>conceptually 71:25</p> <p>concern 52:4</p> <p>concerned</p>	<p>50:12</p> <p>concerns 29:5,22 30:24</p> <p>concluded 5:21 82:5</p> <p>concludes 73:14</p> <p>conclusion 40:8</p> <p>conditions 9:2 35:19</p> <p>conducts 13:3</p> <p>confines 51:9</p> <p>conflict 34:2</p> <p>Congress 62:24</p> <p>connection 28:13,20 47:11 49:13 73:2</p> <p>consent 16:2, 3</p> <p>consider</p>
---	---	---	---	---

11:25 47:8 82:1	2:11 4:15 72:23	contrary 38:23	14:19,20 16:1,16 17:1, 3,22 18:5	48:5 73:20,21
consideration 5:8 31:8 33:19 38:25 76:1	contained 43:22	contravene 47:20	25:1,3,16 26:9,12,16 34:17 37:16 39:7,19 43:4 46:24 47:22 51:21 53:10	coverage 11:23 76:14
considered 16:4 32:15 44:24 52:7 73:6	contemplate 51:10	control 9:3 14:8 17:24 18:1 21:12 36:8 55:15 71:1 79:3	55:1 61:17,19 63:5,6,15,16, 24 65:7,17 68:11 72:6,7, 18,22 73:8 74:8 75:6,22 77:16,17 79:4,5,9	covered 69:17
considering 17:2 58:1	context 61:10 70:24	corporate 9:7 62:23		crashed 35:18
consistent 26:17 79:23	continue 15:12 26:12 68:13 74:20, 21	correct 17:20 25:12 42:5 44:7 64:16 70:18 78:1	counsel 81:17	creation 66:21,23,24
constant 34:23	continued 9:3 26:11 35:23 45:1	correctly 18:20 41:24 63:11 75:14, 15	country 57:7	current 13:11 39:15 53:4 68:7
constitute 13:5 53:6	continues 13:20	cost 10:25 12:24 14:13 61:3 72:25 80:20	couple 16:13 21:18 27:8 52:7 60:24 68:8 72:17 80:10	curtailment 17:10 77:23 78:8 79:16
constitutes 39:24	continuing 34:19	cost-recovery 38:21	course 57:6 67:2	customer 77:6
construction 63:5,7 73:8	contours 38:3	costs 7:22 8:20 9:11 10:2,11,20 11:11,12 12:6,16	Court 12:12 18:14 23:23 24:2 41:10	customers 15:7,9 24:24 25:4 26:3,19
consultants 29:5	contract 39:12 76:25 77:1,2,5		Courts 61:7	<hr/> D <hr/>
consulted 28:10			cover 11:2	dark 24:12
Consumer				data 28:12,18 36:20 37:17 72:1

David 2:3 3:10	78:14	35:4,6,9 37:8, 11,14 38:8, 11,12,24	demographic s 35:24	24:19 41:7, 10,11,13 46:4 61:22
day 30:23	decisions 58:3	40:4,8,16 41:20 42:4,9, 17,20 43:5,11	denied 40:7, 22 68:18	differences 17:17
deal 28:11 29:6 45:9	deductibility 11:22 76:13	44:12,13 45:25 46:22 48:19 53:8	denies 68:17	different 16:21 19:15, 16 32:3,4 33:20 37:4 38:4 44:18 48:25 49:20 54:14,16,17 56:1 57:14 59:18 63:18 72:17 74:6,24
dealing 25:17 46:9 55:8 65:24	defending 72:6	58:6,19 59:4, 11,15,17 60:17 65:1 66:8,25 67:4	deny 46:21	
deals 43:19	defer 11:18 15:10 17:2 26:14,24 30:24 31:23 76:10 80:2	68:5 69:20 71:3 72:8 75:3,5,12	depreciation 14:21	
dealt 19:10 25:15 76:12		deferring 24:23	describe 37:1	
debt 72:21	deferral 7:15, 18 12:18 17:11 30:23 34:7 35:13 36:11 38:16 39:4,18	defined 49:24 57:20	details 75:2	differently 29:14 36:6 51:16
debtor 8:12 36:21		definitely 19:25	determination 31:7	difficult 61:12 66:3
December 25:19 75:9	deferred 7:13,21,25 10:22 11:15 12:5,10,18 13:7,12,18,24 14:4,9,16,23 15:1,16,20,23 18:18 19:3,5, 7,18,19,25 22:7 23:4,9, 15,18 25:9, 11,17 26:19, 22 32:12,15 33:9,23 34:10,16	definition 27:14 61:2,3, 22	determine 39:24	dilemma 46:17
decide 6:10 30:12 52:9		delay 26:10, 11	determined 79:17	diminishing 49:25 50:20
decided 47:25		deliberation 30:11	deviated 22:13	dipped 35:18
deciding 59:9 75:24		demand 63:18	dictate 17:15 33:13	direction 20:8 48:22 72:20
decision 24:1 52:16 58:2			dictionary 61:2,3,22	directly 19:17
			difference	

disabused 24:2	77:23	4:25 5:24 18:23 36:1 42:24,25 60:17 68:23	driving 21:21 62:15	EBA 34:5 42:14
disagree 33:12	distinguish 22:2		drug 11:23 76:14	echoing 29:4
disagrees 8:1 33:8,17 37:5	distinguishable 21:25	doctrines 42:10	due 28:5 34:25	economic 35:19
disaster 55:14	distinguished 55:6	document 66:15	during 14:25 15:3 23:11, 17,20 39:20 77:9	effect 11:14, 25 37:15 51:25 71:21 74:17
disconnect 30:13	distinguishin g 46:7	DODGE 2:15		effectively 5:12
discourages 16:24	distribution 7:12 35:21 56:11 64:15, 16	dollar 11:2,9	E	effects 52:18
discuss 5:6, 18 6:14 30:12	distributions 8:16,17 10:8 36:22,23	dollars 50:12 56:17	each 4:22 5:2, 10 7:2,5 11:2 34:9	efficiently 12:14
discussion 13:2 80:15	Division 2:7 4:9,12 17:13 27:25 28:3 33:8,11,17 37:5 38:23 39:10 40:8 73:24 74:3,6, 23	done 59:5	earlier 4:24 15:11 71:17	EIM 14:19 43:4
dispute 63:23		down 4:3 48:17,21 49:18 62:17 68:10 73:3 79:5,6	early 30:16 35:18 62:8	either 13:18 27:11 32:11 43:7 68:17 73:2
disqualifies 7:25		drag 62:6	earning 19:14	
disqualify 10:22 11:15 13:17,24 32:14	Division's 8:8,14 9:18 15:19 32:23 64:13	driven 62:4	earnings 7:22 11:14 12:1 14:11 62:11	elect 35:20 64:9 79:1
distinction 20:1 41:13 60:25 61:7,24	docket 3:4	driver 9:16	easier 31:22	elected 10:8
		drivers 78:21	East 1:12 2:8, 12	eliminating 11:21
		drives 9:16 62:16		

emblematic 72:7	49:24 50:21	26:2 31:8,9, 21 33:10,19, 24 34:9,20, 21,25 35:4,6, 12,14,15 36:8,9,14,18 37:2,6,11,13, 19,20 38:3,7, 10 39:2,7 40:5,20 44:2, 4,5,16,17,25 46:23 47:10 48:9 50:14 51:16,20 53:18,22 54:19,23 55:14,18 59:22 61:9 76:18 77:24 78:1,5,8,22 79:6,17,24 81:8	34:19 36:3	exception 15:21 19:21 22:9 38:2,13 41:22 42:10 58:21 60:6
employees 54:16 62:17 64:8,9 68:12 71:18	environment 71:12		every 65:1 67:21 80:8	exceptions 19:7
employees' 44:21	equities 59:19		everybody 72:10	excuse 4:5 14:15 22:24 73:21
encourage 16:23	era 45:17		everything 52:24 53:13	executed 39:12
end 5:23 7:7 61:11 66:8,9, 10	Esq 2:7,11,14		evidence 13:2 29:1 64:3 67:8	executing 77:5
Energy 2:15 4:19	established 35:16 42:3,20 80:22	event's 37:24	exact 38:3 63:1 79:24	exemption 18:15 19:2
enough 7:14 13:22 17:7 23:6 26:20 62:6	even 9:18 10:10,15 14:12 32:1 35:8 36:10,13 48:20 55:11 58:2 59:20 64:10	events 8:10, 18 9:9,16 14:2,3,6,7,17 17:8 18:16 31:23 36:12 39:5,6 40:9, 11,19 44:25 46:8,10 48:8 49:14 55:18 56:21 57:13, 19 58:23 62:7 65:10 76:2	exactly 15:3 21:5	exercise 38:21
ensure 47:1 49:12	event 3:24 7:25 8:2,19, 24 9:2 10:11, 14,22 11:13 13:17,19,24 15:18 17:6, 11,15,16,24 20:23 21:9 22:24 23:19	eventual 11:7	examine 52:5	exhibits 66:14
entered 49:9, 15		eventually	examined 40:17	exist 23:7
entertain 5:16			example 11:16 14:12 15:5 39:13	existing 34:25 36:4,5
entire 8:4			examples 19:8	expanded 37:10,13,21, 23
entitled 33:23			except 53:8,9	expect 7:4

64:22,23 71:19,20	48:15,16,24 54:2,21 56:23 60:2 65:16 66:6,11 67:21 68:6,7,16,19, 25 69:10,16, 23 70:3 71:11 75:16 76:2,14 79:10	extraordinarily 52:12	21:11 22:10 26:2 62:13 78:23,25	false 10:6
expectation 65:17 66:12		extraordinary 7:16 11:14 18:16,23 19:21,24 33:21 34:13 35:12 36:10, 11,14,19,20 37:1,7,15,25 38:5 40:21 42:3,16 43:2, 13,22 44:6,8, 24 46:8 52:10 53:18 54:8,23 55:12 56:21 58:23 59:14, 22 60:4,15 64:11 65:25 76:20 77:25 79:7 80:14 81:1,4,9	facts 22:1 30:1,7 36:16 43:12 44:2,3, 16,18 55:6 81:7	far 29:7 65:24 72:17
expectations 63:20 65:21				farther 65:4
expected 68:2	experience 54:20 67:5		factual 28:15, 17 29:11	federal 62:23
expediency 31:20 32:5	experienced 14:1 57:12		fail 40:9,11	feel 27:19
expense 8:4, 23 12:4,19 15:2 23:10 26:6,7 27:11 39:5 53:14 62:11 67:5,7, 13,15 68:1, 14,15 71:21 72:21 75:19 76:17 77:16 80:2,7	expert 28:10		failed 34:18 59:2	few 5:1 7:6 16:10
	expertise 29:6		failing 34:11	fewer 68:11 71:22
	explain 6:19		fails 35:6,7 37:11	figure 48:23 51:15,19
	explanation 27:13	F	failure 33:25 34:14 53:6	figuring 46:7
expensed 12:24	express 65:20	fact 5:11 10:20 11:13 13:10 20:7 26:5 32:13 60:15 63:22 64:8 65:9 68:11 76:21 79:6,21,22 81:2,10	fair 28:18 46:25 53:2,3	file 49:11 52:23 53:22 66:7,10
expenses 7:23 11:3,10, 23 14:14,21, 25 16:19 23:16 26:24 36:5 38:17 39:14,21 44:12 46:14, 18,20 47:6	expressed 42:1		fairly 36:23	filed 11:6 16:15 25:18 47:19 60:16 66:9 75:3,7, 20
	extensively 42:14	factored 22:6	fall 12:10 51:24 52:1	files 26:14 39:9
	extent 80:13	factors 18:1	falling 49:6	filing 45:2
			falls 57:2	

47:20	54:15 76:5 77:11	78:6	63:12	G
filings 57:7	flood 34:8	foreseeable 7:16 14:12 20:7,9,14 26:1 35:15,20 36:9 42:3 44:5 46:5 51:8 61:10 62:2 78:2 80:14	foundational 33:11	GAAP 79:12
final 16:21	Floor 2:8,12		four 11:19 76:11 78:17	game 28:18 55:25 56:1
finally 14:23 15:25 39:16 67:10 76:6	focusing 45:12		Fourth 9:25	general 4:15 16:14 21:4 34:15 39:1 41:21 42:21 47:2 58:20 59:5 61:10 63:17,21 67:20 68:9 69:2 70:17 71:5 77:20 78:9
financial 3:22 33:12 40:13 49:10 50:4,5 51:18 74:6, 10,13,16,19, 22,23	folks 79:4	foreseen 20:11 46:5 61:18,19 62:2 63:22	framework 34:25	
find 19:7 60:4	follow 55:5	foresight 20:18,20	free 27:19	
finding 11:11 43:1,12	follow-up 21:18 80:11		full 10:18	
finer 64:20	followed 78:13	forever 45:23	fully 64:22	General's 2:8,11 4:11
finish 33:4	follows 12:13	formula 47:12	function 54:9 56:25	generally 12:15 19:4 39:23
first 8:2 24:7 26:6 27:4,7 29:23 33:12 37:13,21 45:13 68:23 69:12,17,18 70:4 74:5	footnote 64:13	forward 5:4 30:12 36:18 39:13 40:1 46:6 53:2 55:7,25 65:12 68:7 70:5	funding 35:24	getting 18:21 68:3
	forecast 9:10 25:23,24 34:11,15	forward- looking 39:24 46:18	further 45:4 58:14 81:16, 21	give 5:1,10,20 6:19 24:21 29:15 57:17 59:7,11
	foreclose 13:2		future 14:3 16:24 31:9,23 34:17 39:4,7, 22 40:4,19 45:23 46:16 53:12 54:25 56:23 60:1 76:3 81:3	given 5:8 66:7 78:24
fits 54:8	foresee 64:4	found 17:21 36:15		
five 25:25	foreseeability 61:20 77:24	foundation		gives 46:14

giving 34:16 51:23	24:12	harm 24:10 26:3,23 28:5 70:20	help 28:11 29:1	53:23 54:1
goes 48:13 52:14,16 62:9 67:7	guess 22:3 24:8,21 28:22 29:3 49:6 56:22 61:8 64:15,20 68:15	harmed 25:4	helpful 24:18	historical 9:4
gold 51:3	guessed 56:18	harming 26:19	here 3:21 6:2 10:19 12:5 13:10,15 14:5 15:4 16:2,7 17:16 19:15 22:3 24:8,13, 22 25:25 28:6,14 29:5 32:16 33:16 35:7 38:7,25 49:19 50:13 54:4 60:13 61:8 62:2 64:7,11,14 65:5,24 67:13,24 68:21 69:6,15 70:16,17,18, 19 71:5,7 72:5 73:6 74:8,23 75:15 77:18 78:10 79:4	history 8:10 49:24
good 3:4,15, 19,25 4:10,18 21:17 32:22 71:6 77:11,12	guessing 52:1	harms 64:25		hit 20:15 30:24
goodness 22:4	guide 28:6	HATCH 2:15		Hogle 2:4 3:19,20 4:4 5:7 6:24,25 7:8,9 16:11 17:4 18:25 19:4 20:5,17 22:4 24:23 27:3,8,16 29:21,23 31:11,14 32:19,20 73:19,20 74:2 80:12,21 81:15 82:4
grant 24:9	H	having 10:13 29:24 52:17 54:15,17		hold 66:15
granted 38:18 42:18 43:10	hands 51:3	head 73:7		holders 20:13
granting 34:1 35:9 38:16 39:18	happen 21:6 32:6 38:3 46:16,21	heading 24:3, 5		holding 71:7
GRC 43:5	happened 20:16 31:16 33:18 46:13 50:16 51:6 56:1 81:11	hear 3:12,13, 14 21:24	Hey 51:3 54:24	honestly 22:5
GRCS 43:11	happens 31:21 50:2 52:21 67:9	heard 18:17 29:22 57:15 62:20 76:15 77:21	highlight 5:1	Honors 10:23 16:8
great 29:6 59:1 75:13,19	hard 60:21	hearing 4:8 13:4 29:8	highlighted 78:20	hope 59:8
greater 63:18		heart 31:4,10 55:2	historic 46:12,20	
groping		hefty 51:1		

horns 46:16	implication 10:3 39:19	47:5,9 78:25	21:11 72:18, 19,23 73:2,11	19,24,25 63:2,4,11,14 64:1,20,23 72:9,18,19 73:1,3,11,12 77:4,7,13 78:20,21
horses 43:19	important 15:25 17:13 26:17	inclusion 10:15	information 9:14 29:17	
however 6:9 9:22 11:1 17:12 22:12 42:11 61:6 78:22	Importantly 44:18	incomplete 67:11	initial 47:20	
human 55:14	inability 9:5,6 10:1,4 25:22	incorporate 47:9	initially 19:12	interest-rate 72:24
hurt 24:24 69:7	incentive 12:14	incorrect 18:21 55:9	inked 51:7	interesting 28:15,17
hurting 24:11	incentivizes 62:17	incorrectly 8:9	instances 18:19	interpret 25:14
I		increased 77:17	instead 36:3 37:2 51:4 62:18 67:17	interpreted 58:19
idea 3:25 65:22	include 19:20 26:15 34:14 42:25 46:17 53:11 59:25	incurred 53:10 68:19 80:20	interact 71:13	into 18:1 20:18 22:6 28:19 33:1 38:20 39:3,7 45:17,19 49:9,15 59:23 61:20 62:9, 10,13 63:4,7, 17,21 68:20, 22 69:4,13, 19,24 75:25
ignored 39:6	included 10:10,21 14:14,18 15:2 23:11,19 28:13 30:1 31:14 47:11, 23 49:7 52:1 75:10 77:19	Index 72:23	interchangeably 41:9	
immediate 79:11	includes 8:13,14	indicate 40:12	interest 8:6, 20,25 9:5,17, 24 10:7 13:20 18:3 20:7,8, 10,11,12,15, 23 23:2 31:16 34:2 35:10,17 38:2,14,22 39:23 40:16 51:2,6,9 52:4, 5,12,17,19 56:6,8 57:24 58:3,7,8 62:1, 5,6,14,15,16,	intuitive 80:14,18
impact 7:21 12:1 14:11 20:9,12 37:18 50:6	including 11:10 14:19	indicated 65:4 75:13		investor-owned 57:11, 16,18
impacts 37:20		indulging 82:1		
impair 43:18		influenced		

investors 74:12,14	<hr/> J <hr/>	kind 6:14,19 21:21 24:13 29:16 47:21 53:16 55:14 59:22 60:1 70:17 71:17	landed 22:21	leaving 77:6
involve 53:18	JAMES 2:15		large 8:6 13:21 37:3	led 44:2
involved 42:4,6	January 12:7 25:18 75:7		last 4:8 6:21 8:21 16:14 22:23 25:25 35:1 39:12 47:17 48:13 49:16 52:2 65:10 66:1 67:20	left 60:12
involves 5:9 29:23	job 1:25 59:1	kinds 29:12 46:18,23		legal 24:13,22 28:1 29:8,10 30:2 48:11 58:17 59:10
involving 45:14	Jordan 2:2	knew 56:7 77:7		legitimate 74:8
isolate 53:10	jot 4:3	knock-on 71:20	later 70:9	less 10:20 13:11
issue 3:8 12:3 16:2,13 30:10,19 51:14 61:20 62:2 63:11 64:14 65:6 71:17 75:25	jump 45:19, 22,24	knowing 26:3 38:2	law 11:20 12:1 13:8,13 14:1,6 22:3,4, 5,14 23:14 32:8,9 34:3,4 36:2,4 42:24 43:1 55:24 58:24 59:2 63:12 76:12 81:5	let 6:4 7:2 21:19 27:4,21 31:4 43:9,25 46:3,11 57:4 70:15
issued 42:12 75:8 76:7	jumping 45:17 55:24	known 4:7 53:25 75:20		Levar 2:2 3:3, 14,17 4:2,7, 13,17,20 5:18 6:8,11,23 7:1 16:9,12 18:9 19:1 20:3,6 21:13 27:2,21 28:7,21 29:21 30:9,22 32:19,21 33:3,7 40:24 41:4,18 42:2, 8,19,23 43:4, 9,25 44:15 45:3,6 55:3 58:12,16
issues 7:6 16:13 29:2,7, 12 33:11 45:9,12 46:23 47:3,4,7 52:7 65:5 71:13, 14,15	jumps 39:7	knows 72:10	laws 9:6 15:5	
items 16:3,5 34:14 40:5	justification 59:16	<hr/> L <hr/>	lawyers 29:9	
	<hr/> K <hr/>	labor 63:6,15, 16,23 72:22	leads 18:9	
	Karen 1:15	lack 48:14	least 15:5 39:19 45:23 62:23 65:18 76:7	
	Keeping 77:11	laid 17:25 19:8	leaves 69:2	
	Kempff 14:13	Lake 1:13 2:5, 9,12,16		
	key 46:7			

<p>59:3,9 60:8, 11 70:13 72:13 73:16, 23 80:10,13 81:12,18,23</p> <p>level 21:5 25:23 48:9 62:23 64:10 67:5 75:15</p> <p>levels 35:24 56:23</p> <p>liabilities 67:1</p> <p>liability 62:10 66:20,24 79:15,20</p> <p>life 46:2</p> <p>like 4:25 5:1 9:12 10:19 14:6 15:21 16:18 18:12 19:21 21:6 22:10 23:13 24:1,4,14 27:9,13,24 29:11,18 31:9,23 32:7, 14,24 37:2 43:24 45:17 48:10 55:23 57:22 63:15 72:9 73:23,25 78:10 80:10</p>	<p>81:4,10</p> <p>likely 10:17 39:8 40:13</p> <p>limited 49:25</p> <p>limits 5:20 6:1,3</p> <p>line 30:14 71:7</p> <p>list 77:15</p> <p>litigated 15:8 22:19 43:22</p> <p>little 24:15 27:22 28:23 30:12 54:3 75:2</p> <p>live 28:19 47:25 54:2</p> <p>load 77:6</p> <p>loan 75:19</p> <p>loans 75:13</p> <p>lobbed 29:19</p> <p>LOCATION 1:11</p>	<p>long 23:13 27:15</p> <p>longer 10:17 14:4 74:15 76:14</p> <p>looked 17:5 22:8 52:25 55:7 59:19,20</p> <p>looking 16:12 17:7 21:20 36:18,19 37:17 40:1 42:2 44:6 46:6 47:15</p> <p>losses 9:4</p> <p>lot 17:25 24:20 26:2 29:15 70:16 73:20,21</p> <p>low 8:6 13:20 23:2 31:16 35:19 51:7, 10,11 52:5, 12,17,19 57:24 58:3,7, 8 62:6</p> <p>lower 7:22 26:22 37:19 66:12 68:11</p> <p>lowered 9:7</p>	<p>lump 8:16 9:15 10:8 22:24 56:11, 12 62:18 67:17,25 71:23</p> <p>lump-sum 7:12 8:17,20 9:20,21 13:21,23 18:2 20:19 21:2 23:1 35:21,23 51:5 52:16 57:25 62:9 64:9,10,14, 15,16 71:19 79:1</p> <p>lumped 16:3</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>made 28:16 39:17 41:13, 19 49:13 58:2</p> <p>magic 47:12</p> <p>main 2:5 9:15</p> <p>majority 68:22 69:3</p> <p>make 4:2 16:7 19:9 27:21 31:7 43:19</p>	<p>53:1 54:5 70:18 81:3</p> <p>makes 5:10, 21 45:2</p> <p>making 7:19 12:3,4,10,11, 13,20 13:6,9, 12 15:22 18:15 19:2,6, 19,22 20:1 22:9,16 25:10,11 38:14,15 39:25 41:23 42:7 43:12 49:17 53:7,17 58:21,22 60:3,5 69:22</p> <p>manage 79:8</p> <p>manages 79:5</p> <p>manifestation s 37:24 38:6</p> <p>many 20:19 31:18 59:18</p> <p>market 13:20</p> <p>material 28:17</p> <p>matter 1:3 3:9</p>
--	---	--	--	--

43:10 55:11 76:19 79:6	mechanics 70:24	13	56:12	47:25 56:25 65:4 70:5
matters 5:6	mechanism 46:19	minds 28:23 49:7	more 6:17 14:1 25:15,24 29:7 31:11,20 32:9 44:5,6,7 52:7 54:4 55:16,23 59:21 61:17 63:15 67:15, 18,24 68:2,15 70:21,22 71:5,22 75:18 81:4	moving 20:10
may 4:1 6:3 9:14 35:17 49:14 50:8 52:1 57:19 58:2 61:24 63:1,17,18,19 65:19 73:12	meet 33:25 54:7	minuses 52:25		much 26:22 41:3 45:10,17 55:23 56:19 58:15 65:4
maybe 21:2, 17,22 22:2 31:25 48:3 50:13 51:4	mentioned 23:14 27:8 70:10 73:10 74:25 77:1	minute 54:24		multiple 69:14
MCI 18:13,22 19:10 21:24 34:6 42:2,14 58:19 59:13 60:18 80:16	merely 24:25	miscalculatio n 55:16	morning 3:4, 8,11,19 4:10, 18 7:10 21:17 32:22	mushes 61:7
mean 14:2 17:25 19:24 21:1,24 24:8, 11 57:9 71:13,14	met 18:19 42:17 81:7	misforecastin g 55:17	morning's 4:21	must 42:17
meaning 26:8 80:7	might 5:25 16:20 31:17 46:21 47:1,3, 6,9,22 48:5 49:7 50:10 51:1 52:11,19 56:8,17 60:3 72:20,22	misjudged 55:19	most 43:15 57:21 64:17	myriad 39:14
means 16:5 68:2	million 8:4 9:21 11:19 15:11 21:8 37:18 46:20 48:4,16 49:3 50:11 54:2 66:23 69:3 76:10 78:16 79:14	mismanagem ent 10:1,5 75:18	motion 6:21 60:16	<hr/> N <hr/>
measurable 53:25	mind 73:1,9,	mismatch 38:17	Mountain 1:4 2:4 3:5,20 6:7,13,17,20 8:1 10:1 11:3, 10 25:1 33:9, 22 39:17 47:25 74:5	NAHC 75:6
		missed 25:24	move 5:4 30:12 39:13	name 4:3,5
		modify 45:8		natural 55:14
		moment 44:1		naturally 55:18
		monetary		nature 39:25 49:16 77:25
				need 5:6 25:12 29:18

30:11 33:15 47:18 51:15, 17,19,22 54:3,6 57:5 72:1	30:2	noted 25:21 39:10 74:23	74:15,18	60:12 73:7
needed 25:8	Noel 14:13	noteworthy 26:5	obviously 57:9 78:7	offer 29:9
needs 41:19	nomenclature 21:22	nothing 23:24 24:16 56:16	occasions 15:6	offerings 45:15
negative 49:4	none 81:24	noticed 29:8, 14	occur 9:14 13:3,19 31:24 32:1,2 39:1 48:5 67:21 68:1,17 69:11 76:2 77:9 81:3	Office 2:8,11 4:11,15 9:19 17:14 28:12 47:18 48:12 66:14 74:3
neither 13:9 36:2	nonpredictabl e 56:4	number 5:10 13:22 16:17, 18,21 18:2 21:2,11 23:1 36:22,23 43:10 50:5,20 54:12,16 55:22 58:8 65:19,22,23, 24 66:17,19 71:18 78:25 79:1	occurred 7:11 23:16 31:8 34:21 51:20 60:2 76:5,22 77:2 79:7	Office's 15:20
net 66:18	nonrecurring 46:9,23 47:10 48:25	numbers 16:18 49:6,25 51:23,25 61:16	occurring 14:14 49:10, 14 55:18	Officer 3:22
never 56:18 68:20	nonunion 44:21	oath 28:24	occurs 12:3 41:21 65:13 67:15	often 63:22
new 35:22 45:17,19,22 62:19	normal 7:17 35:15 76:16, 17	objects 27:25	OCS 8:12 36:21 66:16	oftentimes 46:9
news 3:15	normalization 14:19	obligation	odd 50:11	old 24:3
next 3:18 12:22 18:10 25:2 39:9,20 53:21,22 54:6 59:25 65:12 68:3,8 69:1,4, 19,24 80:8,19	normalize 10:18	oath 28:24	off 45:17,19, 24 55:24	once 16:4
Nikki 2:18 4:5 27:18	normally 13:3	oath 28:24		one 5:3 8:5, 15,18 10:17 15:6 16:5,13 17:16 20:8 22:22 39:3,6, 13 41:5 46:3 50:11 51:18 54:14 55:10, 12 57:22 61:2,4 62:24 65:3 66:1,5
nobody's	Northwest 58:5	oath 28:24		
	notably 36:25	oath 28:24		
	note 30:1	oath 28:24		

<p>69:19 70:16 72:16,21 75:11 76:7,9 78:21 81:17</p> <p>ones 49:1 73:10,13</p> <p>ongoing 52:23</p> <p>only 19:6 31:7 32:5 38:18 39:6 57:6 58:10 64:19 66:6 68:4 70:25 74:7</p> <p>operate 12:14 57:22</p> <p>operated 58:4 59:4</p> <p>operates 57:23</p> <p>operating 51:8</p> <p>operation 7:17 33:24 35:16 54:9 76:16</p> <p>opinion 42:15</p>	<p>opportunity 5:2,11 6:14 7:10 16:6 24:25 25:2 26:14 29:18 32:23 34:17 35:21 54:5 56:9 59:24 60:1 79:25</p> <p>oppose 29:3</p> <p>opposes 40:8</p> <p>opposite 72:20</p> <p>option 5:19 37:13,21,23 38:9 62:9</p> <p>options 78:6</p> <p>oral 3:7,23 4:21 28:1 32:24 81:25 82:5</p> <p>order 1:5 3:6 12:25 13:1 18:18 21:6 25:19 34:7,16 35:5 41:21 42:12 43:8 58:20 60:17, 20 64:20 65:1 66:8 67:1,4 68:5 75:8,12, 23 76:7 79:16</p>	<p>ordered 25:18</p> <p>orders 34:3,5, 6 40:3 43:11 59:5,11,15 69:20 75:25</p> <p>ordinary 33:24</p> <p>others 65:19 73:13</p> <p>otherwise 23:24 29:13 38:20 68:16 71:2 78:7</p> <p>outlined 40:3</p> <p>outlying 54:14</p> <p>outset 65:4 70:10</p> <p>outside 11:18,24 13:14 15:16 23:5 41:21 42:21 43:5,11 55:15 58:20 59:5,15,20 62:9 65:24 71:4 78:9,18 79:3</p> <p>over 8:5 9:2,4</p>	<p>11:19 13:23 14:7 17:24 20:19,20 21:11 46:24 48:15 65:8 67:1 74:21 76:11 77:15 78:17 79:10, 19,21</p> <p>overall 11:4,8 16:17</p> <p>own 36:20</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>p.m. 82:5</p> <p>Pacificorp 2:4 3:22 57:5</p> <p>paid 9:22</p> <p>parameters 27:13 52:22 56:25 57:3</p> <p>paraphrasing 75:15</p> <p>parentheses 66:16</p> <p>part 6:15 8:6 9:11 17:14 21:20 44:13</p>	<p>50:17,21 52:3 54:10,11 56:15 57:1, 10,21 79:9</p> <p>participants 10:9 35:23 55:22</p> <p>participation 81:24</p> <p>particular 17:8 25:7,16 30:4 34:6 42:13 49:1 65:16 71:11, 24</p> <p>particularly 40:14 61:8 80:23</p> <p>parties 3:9 5:19 6:4,13, 18 7:15 9:12 10:14 11:6,8 16:19 23:12 25:2 27:23 28:4 30:1 32:10,11 43:18 48:2 61:11,14,16, 18 66:10 67:2,5 77:3,4</p> <p>parties' 65:21</p> <p>partly 7:11</p>
---	--	--	---	--

<p>party 5:2,24 10:15</p> <p>past 17:9 23:3 24:16 34:15 36:22 37:20 39:3,21 40:3 53:14 54:25 57:22 76:3</p> <p>paths 16:21</p> <p>Patricia 2:7 4:10</p> <p>pay 67:22</p> <p>paying 51:23</p> <p>payment 9:21 21:8 51:5 64:9,10,14 71:20</p> <p>payments 7:12 8:21 9:15 13:21,23 18:3 20:19 21:3 23:1 25:20,23 26:9 68:12 75:6,10 79:1</p> <p>peg 65:22</p> <p>pegged 63:10</p>	<p>pension 1:5 3:7 7:23 8:3, 10,17,19 9:11 10:2 11:10,12 14:13 16:1, 16,19 17:1,3, 8,14,16,22,24 20:13 21:9 26:16 27:11 29:7 31:8 33:10,19,24, 25 34:9,19, 20,23,24 35:4,6,14,16, 22 36:2,8,9, 12,18 37:1,6, 11,19,20 38:1,7,10 39:2,7 40:5,9, 10,20 44:2,4, 11,16,17,19, 20,22,25 47:22 48:15, 16 49:21,24 50:18,22 54:2,9,17,18 55:22 56:14, 16 57:13,20 58:4 62:7 64:7 65:10,17 66:6,11 67:5, 6,12,15,20 68:1,6,13,14 71:14 72:20 74:9 76:16,18 77:15,16,24</p> <p>pensioners 56:10</p> <p>pensions</p>	<p>45:14 48:6,8 53:24 55:11 71:16</p> <p>people 13:23 18:2 20:19 35:20 36:22 49:7,21,22 50:1,5,6,20 58:8 67:16, 18,24 68:2 71:22 72:2 79:1</p> <p>percent 9:8</p> <p>perhaps 6:17 21:1 25:22</p> <p>period 14:18 15:3 23:11, 13,20 39:8 54:1,3 65:8</p> <p>periodic 66:18</p> <p>permissible 60:4</p> <p>permit 10:24 72:8</p> <p>permits 38:17</p> <p>permitted 12:15 60:6</p>	<p>person 54:14</p> <p>personally 5:25</p> <p>perspective 51:14 74:10</p> <p>perspectives 7:6</p> <p>Phillip 2:14 4:18</p> <p>phone 60:21</p> <p>physically 27:5</p> <p>picture 74:12</p> <p>Pipeline 58:6</p> <p>place 27:15 35:1 50:3 51:8</p> <p>places 8:9</p> <p>plan 7:18 33:3,25 34:12,24 35:16,22 36:2,5 44:19, 20,22 45:1 49:21,24 50:18,22</p>	<p>51:7,9,10 54:9,17,18 55:22 56:1, 14,16 64:7 78:6</p> <p>plan's 35:24</p> <p>plans 1:6 3:7 45:14 55:22 57:20,21 58:4</p> <p>plays 48:24</p> <p>please- approve- similar- things-in-the- future 40:15</p> <p>pleases 16:8</p> <p>pleasure 5:13</p> <p>pluses 52:24</p> <p>point 17:1 19:9 20:15 24:17 29:3 36:4 39:17 64:21 65:3 66:2,17 67:7</p> <p>pointed 28:11 49:23 64:7</p> <p>points 5:1</p>
--	---	--	--	--

policy 16:22 24:6,8,21	pot 51:3	predict 9:1,5, 6 10:2,4,7,9 18:2,6 20:25 31:18 32:8 34:18	preplan 45:9	primary 35:11 37:9
pool 35:22	potential 58:17 80:19 81:3	predictability 47:4,5 48:7, 14	prescription 11:23 76:13	principles 20:2 22:16,18 28:6 70:22 72:5
portion 26:7 68:25	Power 2:4 3:20 6:7,13, 17,20 8:1 10:1 25:1 33:9,22 39:17 74:5	predictable 20:24	present 2:18 7:10 25:1 27:5 32:23 43:20 50:24, 25 52:15 56:11 74:12, 13 80:1	prior 14:25 22:7 23:17 34:3,4 45:13, 14 48:13 75:17 80:25
posit 62:18	Power's 3:5 11:3,10	predicted 22:25 56:6	presentation 13:2 28:2 33:1	probably 7:4 29:13,15 30:11 32:3,10 61:2,7
position 16:20 18:13, 20 20:4 28:10,20 29:17,20 32:23 41:20, 24 66:10 67:2,6	Powerdale 34:8 42:13 44:10 75:13	predicting 21:5	presented 28:17	problem 57:5 65:13 71:10
positions 6:15,16,20 8:2	practice 43:10 71:6	predictions 50:4	President 3:21	procedures 13:1
positive 52:18	practiced 63:2	preexisting 34:12	presume 4:23	proceed 6:9 7:1
possibilities 48:5,20	precedent 24:3	prefer 5:25 6:12	presumption 53:20	proceeding 27:6
possibility 7:24 12:19	precedential 43:17	prejudging 59:24	pretty 29:6	proceedings 76:4
possible 10:11 13:16 53:11	precise 68:15	prejudiced 28:19	prevent 70:21	process 28:5 38:20,25
postretiremen t 11:23 76:13	precisely 10:2 25:23 69:10	preliminary 3:9 5:5	previously 11:21	Professional
		premise 10:6	Price 72:23	

1:15	provide 12:13 29:18	put 25:13 28:19,24 51:8 64:20 65:16, 18,19 68:20, 22 69:4,12,24	16,21 76:8 77:21	rate 7:19,23 9:7,11,13 10:5,12,21, 23,24 11:12, 18,24 12:2,3, 4,8,9,11,13, 20,22 13:5,6, 9,12,14 14:10,15,18, 24,25 15:3, 16,17,22 16:14,17 17:20 18:15 19:2,6,14,19, 22 20:1,13,23 21:4 22:9,16, 23 23:5,11, 17,20 25:2,5, 10,11,24,25 26:10,15,16 32:2 34:15 35:1 38:14, 15,25 39:1,4, 9,12,20,25 41:21,23 42:7,21 45:14 46:11 47:2, 16,17 48:13 49:11,16 50:14 51:2,14 52:2,8,17,19, 21,23 53:7, 11,12,17,21, 22 54:6,25 56:8,24 57:2 58:8,20,21,22 59:5,16,18, 20,25 60:1,3, 5 61:10 62:16,21,22, 24 63:2,11, 17,21 64:1,4,
prohibition 12:11 13:9,11	provided 35:21 36:20 78:24	puts 62:10 70:24	questioning 30:2,25	
Project 14:14	provides 50:19	putting 69:19	questions 3:24 4:1 5:3,5 7:5 16:8,10 21:14,16,18 27:1,3,7 28:12 29:11, 19,24 32:18, 25 33:5 41:1, 2 44:1 55:4 58:13,14 70:11,14 72:12,15 73:15,17 80:11 81:16, 21 82:1	
projected 10:11	prudent 70:1	<hr/> Q <hr/>		
projections 37:25 38:6 51:17 54:20 63:5,10	Prussell@ hjdllaw.com 2:17	qualifies 7:13 35:4 38:11 39:2		
proof 5:24 34:1 53:6	PSC 42:20	qualify 7:16, 20 14:4 34:10 35:6,7,13,14 37:7,11,13, 20,24 38:8,11 39:2 40:6	quite 44:14 63:15	
property 11:1	Pschmid@ agutah.gov 2:10		quote 12:13	
proposing 28:24 39:11	public 1:1,12 2:8 3:4 4:12 34:2 35:10 38:13,21 39:22 40:16 77:4,7,12	qualifying 40:10,11	quoted 42:14	
prospective 12:19 80:24	purposes 14:19	quality 14:20	<hr/> R <hr/>	
prospectively 25:1	pursuant 51:7	question 10:14 18:7,10 19:17 21:21 24:6,8 30:5,8 31:3,4,10 35:3 41:5 48:23 52:9 58:10 72:4,	raised 9:12 29:22 45:10	
protect 71:5	push 62:21 68:16		range 36:24 48:4 61:18	
prove 19:9			rarely 38:18	
proved 33:22				
proves 21:10				

<p>18,20 65:10, 12,14 66:4 67:20 68:9 69:2,8,9,11, 12,13,15,17, 18,22,24 70:4,6,7,8,25 71:4 73:1,3 75:17,20 76:5 77:2,8,9,10, 20 78:9,18 79:22 80:5,8, 19</p> <p>rate-making 12:19 13:4 38:20 41:23 51:14 70:22 71:6 76:3</p> <p>ratepayers 17:17 37:19 47:1 51:22 53:3 63:8 69:7</p> <p>rates 8:7,20, 25 9:5,17,24 10:7,16,18 11:22 12:15 13:14,21 18:3 20:7,8,10,11, 15 23:2 31:16 34:17 35:18 39:15,22,23 47:13 48:1 51:6,9 52:4,5, 12 53:1,5,9 54:11 56:6,8 57:24 58:3,7 62:1,2,5,6,14,</p>	<p>15,19,25 63:4,8,13,15 64:23 65:14 68:6,7,10,14, 20,22 69:5 72:9,19 73:11,12 77:11,19 78:20,21</p> <p>rather 5:19 11:3 25:13 28:11 33:1 39:23 60:6 70:1 72:6</p> <p>reach 61:15</p> <p>read 4:24</p> <p>real 51:1 52:16</p> <p>reality 49:23</p> <p>realized 69:1</p> <p>really 5:9,12 17:19 29:16 32:4 46:4,7 52:6,9 56:19 59:22 60:5 62:15 70:19 74:11</p> <p>reason 9:13 53:7 59:16 66:3 69:19</p>	<p>70:9 74:7,11</p> <p>reasonable 10:24,25 11:4 15:13 39:25 47:13 48:1 53:2,5 54:10 57:1 65:7</p> <p>reasons 32:16 41:25 66:4 75:11</p> <p>recall 11:5 35:17 43:3,6 59:1</p> <p>recent 8:9 59:11 64:17</p> <p>recently 10:13 49:8</p> <p>recess 30:21</p> <p>recognition 34:20 47:10 51:21 79:11</p> <p>recognize 3:23 8:4,22 17:10 31:25 54:21 80:7 81:24</p> <p>recognized 18:14 27:12 47:11 57:19</p>	<p>recommend 10:17</p> <p>recommendat ion 15:20</p> <p>reconnect 30:15</p> <p>reconvene 30:20</p> <p>record 3:3 30:22</p> <p>records 40:13</p> <p>recover 10:25 34:17 53:20 54:25 55:1 60:1 69:25 80:24</p> <p>recovered 39:20 69:18</p> <p>recovery 10:16 11:9 12:8 26:8 39:21 40:4,13 46:18 47:1 53:12 60:1 80:19</p> <p>recurrence 7:24</p> <p>reference</p>	<p>79:14</p> <p>referenced 9:19 15:11</p> <p>referred 44:9 72:22</p> <p>referring 27:10 34:5</p> <p>reflect 13:20</p> <p>reflected 11:21 39:15</p> <p>Reform 15:6 19:13</p> <p>refund 15:18 17:17 19:10</p> <p>refunds 13:7, 13 14:3 19:12</p> <p>regarding 11:11 44:25</p> <p>Registered 1:15</p> <p>regrettably 43:23</p> <p>regular 57:21</p> <p>regularly 29:6</p>
--	---	---	--	---

regulatory 33:13,15,23 35:5,13 38:11 45:21 46:2 62:10 66:20, 23 71:5 72:5 74:7,21,24	remind 78:13, 24	23:12 34:8	30:18	9:24 34:19 48:1 61:11 77:5
reject 15:19	reoccur 32:13	requesting 33:5 36:11	resort 45:25 46:22	resulted 15:7, 9 17:11,12 35:15 43:16 78:4
relate 52:8	reoccurrence 13:16	requests 28:12 37:18 48:19	resources 63:6 73:9	results 15:18
related 1:5 3:7 13:7 22:14 29:12 39:7 52:8 69:22 72:24 75:6 76:2	replies 4:24	require 18:19 45:25 56:24	respect 23:7 25:15 30:7 45:13 57:12 68:5 80:19	retire 49:22 50:1,5 56:10 58:3 62:8 64:8 67:16 71:19
relates 48:8 53:9,24	Reporter 1:15,16	required 8:3, 22 15:2 23:10,18 36:5 45:16 79:11	respectful 30:9	retired 54:12 58:8,9
relating 33:24	reporting 34:22	requirement 11:4,7,9 62:8 74:22	respectfully 80:1	retiree 52:17
relation 76:3	representatio ns 28:16	requires 35:11 41:22 42:10 54:24 58:20,22 59:21 62:22, 23	respond 16:8 29:22,25 30:7 32:24 77:22 78:19	retirees 7:12 51:4 54:12 79:2
relevance 59:10	representativ e 46:15	requiring 27:11 34:20 56:22 57:13	responded 30:5	retirement 7:18 10:10 18:5 23:1 50:19 56:13 58:1
relies 50:3	representing 3:9	researched 57:16	responding 28:20 77:14	retirements 20:21
remained 31:16 34:23 35:19	request 3:6 8:12 12:2,9 13:11 23:8 24:10 28:18 31:15,20 35:9 36:21 38:16 39:5 40:16,19 42:18 47:15 80:1,2	reset 30:24	response 8:11 36:21 74:3	retiring 49:21 50:6 54:16
remember 17:13	requested	resolution	responses 28:18	
			result 7:12	

<p>retroactive 7:19 12:9,11, 12,20 13:5,9, 12 15:21 18:15 19:2,6, 19,22 22:9,16 25:10 38:14 41:22 42:7 53:15,16 58:21 60:3,5 69:22</p> <p>retroactively 12:16</p> <p>return 5:20 10:25 19:12, 14</p> <p>reveals 34:10</p> <p>revenue 11:4, 7,8 15:2 23:11 39:6</p> <p>revenues 11:2 12:17 14:17,21,25 37:16 38:17 39:11,13,14, 22 47:5 56:23 76:24 77:1,9</p> <p>review 25:3 80:4</p> <p>rises 48:9</p> <p>RMP 8:4 9:2,</p>	<p>10,13 10:6, 10,24 11:17 12:5,20,22,25 13:15 14:1,7 15:10,12 32:11 78:4,5</p> <p>RMP's 9:5 10:16,20 12:2,9 13:10</p> <p>Rocky 1:4 2:4 3:5,20 6:7,13, 17,20 8:1 10:1 11:3,10 24:25 28:16 33:9,22 39:17 47:25 74:5</p> <p>room 1:12 32:11</p> <p>ruin 51:18</p> <p>rule 9:1 12:12 34:25 38:1,2, 14 41:23 58:7 60:6 69:22 74:10,11,16, 19 79:11</p> <p>ruled 78:15</p> <p>rules 8:3 30:7 33:13 34:21 54:19 55:18 69:21</p> <p>ruling 30:24</p>	<p>Russell 2:14 4:18 6:12 28:21,22 60:10,11 70:14 71:9 72:15,22 73:4,7,17 78:19</p> <p>Russell's 79:14</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>said 4:5 9:12 18:11 19:5 22:16 31:12 32:7 39:17 43:17 44:8 45:11 50:16 58:19 65:11 67:16,21 68:22 69:14 71:10</p> <p>Salt 1:13 2:5, 9,12,16</p> <p>same 9:6,21 15:14,22 19:6,19,23 22:12,15,18 32:16 36:13 41:15 48:22 52:11,17 55:11 68:13 69:21 75:19 76:7 78:14</p>	<p>sausage 43:19</p> <p>save 51:18 54:24</p> <p>saw 20:10 57:7</p> <p>say 5:25 6:15 21:25 31:11 34:4 50:10 54:24 56:18 59:2 61:21 65:12 67:18 69:9 80:16,17</p> <p>saying 37:4 54:1 59:1 62:13 64:21 67:24</p> <p>says 36:7 46:19 51:3</p> <p>scenario 32:4 53:16</p> <p>scheduled 28:1</p> <p>Schmid 2:7 4:10,11 6:5,6 27:24,25 28:7 32:21,22 33:6,8 40:24 41:1,12,25 42:6,11,22</p>	<p>43:3,14 44:9, 17 45:5,6,11 49:23 55:7 73:24 74:25 76:15,24 82:3</p> <p>Schmid's 29:4</p> <p>scrutinize 25:3</p> <p>second 33:17 37:23 38:9 61:25 69:13</p> <p>secondary 42:16</p> <p>seek 12:21 26:8 28:11 53:8,25 58:6 65:1</p> <p>seeking 56:10 60:17 69:15</p> <p>seeks 12:4,5, 8</p> <p>seem 49:25</p> <p>seems 27:24 37:4 53:24</p> <p>seen 64:3,12,</p>
--	---	---	--	--

16	1:5 3:6 7:11 8:2 9:2,9,14, 16,25 10:3, 11,13 12:6,23 13:16,17,19 14:2,6 16:17 17:12 20:23 21:9 22:24 34:19,20 44:14 47:17, 21,23 48:2 49:8,16 50:9 51:15,24 52:2 57:2 64:17 65:20 76:18, 20 77:24 78:22	80:3	side 5:10,14	7:19 12:2 13:6 52:8 53:7,17
selected 40:4		sheet 74:9	sides 5:9,12	
selective 39:21		short 30:11	signed 16:19	single-item 38:15 41:23 58:21
semantics 21:22		short-term 52:13 72:21	significant 7:14 14:17 17:7 23:6 26:20 37:3 46:1,4,14 49:10 51:17 55:21	Sir 58:16
sense 5:10,21 76:20 81:1,9		Shorthand 1:16		sit 74:20
separate 33:14,15		should 3:10 4:7 7:20 13:24 15:15 16:25 17:20 21:20 25:13, 14 31:13 32:16 38:18 39:23 40:5,7, 17,22 42:24 44:24 47:11 49:1,2 53:19 56:5 59:10 64:15 68:15 69:11,17 70:10 74:16, 17 79:18	significantly 48:25 52:12 66:12	sitting 69:8
service 1:1, 12 3:4 8:20 10:25 18:4	settlements 34:23 35:23 36:3 43:16,17 58:1		similar 7:5 17:8,16 29:19 36:12 40:19 57:8 64:14	situation 15:4 17:23 22:22 25:15 74:13, 14
Services 2:11 4:16	several 8:9 33:10 46:24		simple 48:11	situations 19:20 23:4
set 5:10 39:6, 23 42:15 53:1,10,19 65:14 67:1	severance 25:16,19,23 75:6,10,16		simply 35:14	slice 39:3
sets 10:23 11:3	shackles 47:19	show 81:8	since 5:23 6:21 27:22 30:13,23 39:12 59:6,11 76:6 81:11	slightly 29:14 67:13
setting 57:1	shake 56:17	showing 53:4		smart 72:2
settled 11:6,8 15:8	shakes 71:24	shown 51:25	single 12:3,4 25:4 47:10 54:7	Snarr 2:11 4:14 6:9 28:8, 9 45:7,8 55:3, 20 57:17 58:13,24 59:7,13 60:14 64:6 73:25 77:15
settlement	share 10:16 12:6 16:1	shows 21:10 36:21 40:20 48:13 54:3	single-issue	

Snarr's 29:4	14	squared 51:16	42:9	subject 55:11,16
Snarr@ agutah.gov 2:13	South 1:12 2:5,8,12	stable 77:12	stating 18:20 41:24	submission 28:14
somehow 26:10	special 38:19 39:12 40:2,6 48:21 58:6	stand 60:7	statutes 16:22	submit 15:22 49:5 63:14 74:17 76:17 78:9
someone 23:25	specialized 49:2,3 50:2	standard 15:15 18:19, 22 21:19 22:1,13,21 24:13 37:4 42:4,16 58:18 59:10 60:7, 13,14,15,16, 20,23 70:2,9 78:11 80:14, 18	Steven 2:11 4:14	submitted 48:12
something 5:7 8:25 9:12 17:21 18:6 19:24 21:6 23:15 24:1,17 32:14 46:13 48:4 49:20 51:16,21 52:6 53:15 57:8, 10,14 71:1 78:12 79:22 81:10	specific 16:18 17:22 30:8 34:11 47:24 48:8 57:15 59:7 70:20 72:6,7	standards 33:16 42:17 54:8 69:21	still 6:2 48:21 51:24,25 53:5 69:2	subsequent 36:12
sometimes 23:22 25:7 45:25 46:22 47:7 49:17 76:24	specifically 11:22 49:15 55:1 70:8 76:25	stars 32:5	stipulate 61:11	substantial 14:11
sort 32:3 46:8 69:21 70:3 72:5	specified 16:15	start 5:22 6:2 16:10 60:12 74:3	stipulated 16:16	success 49:10
sorts 44:23 65:10	specify 17:3	starting 12:7 16:25	stipulation 16:20,24 17:2	such 13:1 62:5 79:17
sounds 24:4,	spelled 56:15	state 4:3	stipulations 16:23,25	sufficient 10:24
	spike 47:6	stated 60:14 75:24	stream 50:25 51:1 52:15	sufficiently 37:3
	spread 46:24	states 8:9	Street 2:5	suggest 47:18 48:3
	square 51:22 54:20		strictly 25:14	suggesting 56:5
			structure 4:21	

suggestion 49:19	surprised 50:15	50:3 70:24	telephone 2:3 3:10	testifying 28:25
suggests 8:10	surrounding 34:22	taking 36:22, 23 57:25 67:25 68:12 69:16 70:3 71:23	tells 23:23	testimony 11:6
Suite 2:15	swing 57:25	talk 6:3 50:9 56:3 61:25 76:16	ten 8:21 30:20 76:19, 22	tests 35:8 40:10,11 42:20 59:14
sum 8:16,20 9:15 10:8 22:24 56:11, 12 62:18 67:17,25 71:23	symmetrical 26:18	talked 20:6 59:14	ten-minute 30:17	Thad 2:2
summarize 4:22 7:3	symmetrically 15:14	talking 44:10, 15 56:20 61:9 70:19 74:8 75:2	tentative 39:19	than 5:19 6:1, 4,17 7:23 10:21 13:12 14:2 28:4 29:7 33:1 37:19 38:4 44:6 48:25 54:14 60:6 63:19 67:16, 18,25 68:2 70:1 71:2 72:6
summary 18:11 33:4 58:17	symmetry 17:15	talks 44:11	term 21:23 41:7	
support 10:16 36:17	system 77:6	tax 9:6,7 11:20,21,22, 25 13:8,13 14:1,3,6 15:5, 6 19:10,13 22:14 23:14 32:8,9 33:18, 19 42:24 43:1 45:18 55:24 57:6 60:17 62:20,22 63:13 76:12, 13 78:16 81:5	terms 21:5 41:9 43:17 51:24 56:17 59:9 60:25 61:6,16,23	
supported 10:14 17:14	table 8:13,14 9:18	technical 3:24 27:13,14 29:24 30:6	test 14:18 15:3 23:11,19 34:9 35:11 37:9,10,12, 13,22 42:16 46:12,13 53:23 54:3 78:7	their 6:14,21 10:9,14 12:15 20:13 30:2 37:25 43:17 53:22 56:23 63:10 65:18 66:6,14 69:6
Supreme 12:12 18:14 23:23 24:2 41:10	take 8:8 30:17 35:20 43:25 46:11,23 51:4 62:9,17 64:9 67:17 69:10, 23 70:11 71:18,19,22 75:25 79:1	takes 31:1	test's 37:23	theme 36:13 70:17
surely 68:19	taken 16:21 30:21		test-year 39:8	themselves 45:15
surprise 50:13			testify 28:5	

therefore 13:4 58:22 77:9	34:22 35:25 38:7 62:7,14, 16	together 16:3	12:4,20 33:9, 14,23 34:8,11 35:7,13 36:12 37:8,12,14 38:8,12,13,17 39:18 40:6,9, 17,19 44:12, 13 48:21 49:2,3 53:19 69:15 70:6,7, 8 71:25 80:24	33:20
thing 15:23 46:3 48:11 50:11 62:24 64:19 65:3 70:16 76:23 77:11,12	through 5:3 28:18 53:16 67:14 75:5 79:15	took 16:20		try 6:1 30:17, 18 33:1 65:13 70:17
things 18:11 20:14,22 23:22 25:7 31:18 45:22, 24 49:17 52:20 55:23 72:3,9,24	throughout 57:7	tool 59:17		trying 16:13 22:2 24:12 47:20 64:2 70:20,21 71:4,7
thinking 31:15	throw 54:13 61:16	total 8:4 66:18 79:8		turn 9:18 38:20 63:7
Third 9:9	tight 36:24	totally 44:18 45:18	tried 60:20	turns 50:11
thought 3:25 18:17 25:7 31:22	time 5:4,20 6:1,3,19 9:13 19:13 23:13 30:10 35:1 48:15 54:7 56:24 64:24 65:1,8 67:2 68:23 69:16 75:20	touch 66:1	trigger 8:19 13:22 21:9 63:19	two 5:9,12 8:16 15:6 20:1,22 27:7 28:23 33:14 42:10 48:20 66:4,19 73:9
thoughts 5:16 6:5	times 27:9 60:25 69:14	towards 24:4 57:25	triggered 8:5, 21 9:23 21:7 26:2 31:19 50:8 51:20 57:13 74:10 76:19 78:5 79:11	type 8:23 71:24 72:8 80:15
three 7:4 8:18 79:19,21	timing 10:9 18:5 20:20 23:1 76:3	track 55:21	transition 75:6 77:14	types 65:7 70:23 71:11
threshold 8:6,22 9:23 27:8,10,14,15 31:3,4,19	today 3:21 16:7 51:1 68:23 81:24 82:2	trade 43:19	triggers 9:1 20:23 62:8	typically 16:5
		treat 15:20 36:5	trigging 15:17	U
		treated 17:8 79:18,23,24	Trish 45:10	
		treating 74:18	true 36:8 61:8 69:9	UAEU 6:12,16 29:10 60:16
		treatment	truly 17:6,22	

65:5 74:4	understood 64:2	43:6	71:14,15	Utah's 12:6
ultimately 70:22	unfair 71:2	union 63:18	until 12:7 33:4 45:23 68:8 80:4,8	utilities 2:8 4:12 12:14 16:15 57:11, 16,18
unanticipated 12:16	unforeseeabil ity 10:3 50:13 77:25	union's 44:20	unusual 14:7, 17 17:6 27:22 37:3 76:21 81:2,9	utility 12:4 15:15 19:11 57:21 71:2 76:1
uncertain 13:18	unforeseeabl e 9:10 18:15, 22 21:24 24:18 35:12 36:14 37:25 38:4,5 40:21 41:8,11 42:15 43:1,12,22 44:7,24 45:18 49:20 50:14 52:3,6,9 53:18 54:8 55:12 56:20 58:22 59:14, 22 60:14 61:1 62:5 80:23 81:8	uniqueness 57:18	upgrade 14:20	utility's 10:4 11:14
unclear 22:5, 19		unless 6:1	use 11:16 21:23 22:17 37:1 39:8 56:11 64:15	<hr/> V <hr/>
uncommon 8:11		unlike 9:24	used 41:9,10 51:2 59:18 61:7 78:11	valid 33:19
uncontrollabl e 33:21		unnecessary 15:24	useful 59:17	value 5:22 50:24,25 52:15 56:11, 12
under 19:14 28:24 31:8 34:9 35:7,19 37:8,12,21,23 38:8,18 39:4 56:14	unforeseen 7:14 8:3 11:13,20 14:7,25 17:6 21:23 23:6,16 24:19 33:21 34:13 37:7,15 41:8 45:19 46:8 56:4 61:1 62:4 76:12 79:7	unpack 70:16	Users 2:15 4:19	variability 38:1
underlying 63:12		unpredictabili ty 22:25	uses 37:2	variance 38:6
understand 27:9 28:23 29:2 31:6 55:10 62:3,12		unpredictable 7:14 8:24 9:10 21:10	UT 2:5,9,12, 16	variations 72:9
	Unfortunately	unrealized 12:17	Utah 1:1,13 2:14 4:11,19 10:16 12:11 18:14 37:19	various 48:2 61:17 73:9
		unrecognized 9:4		vary 37:24
		unrelated		

70:25 72:9,10	wanted 31:5 52:4 67:7	West 2:15 75:13,19	will 13:19 14:4 16:4 24:24,25 25:2 31:19 32:9 38:3 39:19 51:5 53:25 61:17 62:18 63:16 68:3,7 73:12 77:14 78:24 80:7	words 6:21 37:2 55:17 64:16
vast 68:22 69:2	warrant 7:15 34:15	whatever 5:14 47:19 49:14 50:7 56:4,7 67:23 69:3		work 29:5,16 33:1 72:20
verse 21:23	warranted 33:10 40:18	wheeling 14:21	withhold 70:21	works 72:1
versus 41:8 50:16	Washington 16:2	whether 13:19 15:15, 17 17:6,24 20:10 22:8,20 35:4 43:21 46:5 47:24 48:8 51:15,19 52:5,11 55:13 60:19 61:3,4, 9,25 63:10 65:6,7 75:24 80:16		world 33:15 35:5 55:25
via 2:3	Washington's 16:1		within 12:10 46:13 49:6 51:8 52:21 54:9 56:25 57:2 59:18	worlds 33:15
Vice 3:21	way 4:21,23 5:4 7:2,3 10:4 16:24 20:25 22:19 25:9,13 26:3,4,18 29:19 38:1 43:9 45:19 48:17,18,24 50:12 51:11 52:14 55:6 58:4,19 61:6, 23 64:25 65:15 66:6 67:7 75:23	while 11:6 30:17 48:12 61:21	without 10:13 35:8 43:11 48:20	worried 48:10
view 29:3	wait 33:4 54:24		WITNESS 43:6	worry 6:1
<hr/> W <hr/>	walking 67:14	White 2:2 21:15,17 23:21 26:25 41:4,5,16 55:4,5 57:4 58:10 60:24 70:14,15 72:11 81:19, 21	witnesses 28:2,19	worrying 52:4
want 6:3 7:8 8:8 16:23 19:12 25:3 27:22,23 29:17,21 30:9 43:18 45:11 47:14,16 53:9,13 55:5 60:12 65:3 66:1,17 67:10 70:16 71:11, 23 73:21,22 79:13 80:6 81:17	ways 59:19		wonder 5:9 27:17	worth 46:20 67:14 75:1
	weigh 27:23	whole 49:13	wondering 5:15	wrap 73:25
	went 25:8 48:17 51:11 53:16 63:21 75:4 77:15		word 30:23 37:1 41:11	write-off 14:13
				<hr/> Y <hr/>
				Y2k 14:14

year 8:5

10:17 27:12
34:21 46:12,
13,20 47:4
49:1 51:21
53:23 54:14,
21 56:7 60:2
63:11 64:17
66:7,8,11,22,
24 67:21
68:3,4 69:4
71:21 80:8

years 8:21

9:5 11:19
26:1 46:24
54:15 57:22,
24 66:20 67:8
68:8 73:12
74:21 76:5,
11,19,22
77:11 78:17
79:10,19,21

Yvonne 2:4

3:20

**Yvonne.
hogle@
pacificorp.
com 2:6**

Z

zero 45:11