

# **PUBLIC SERVICE COMMISSION OF UTAH**

Docket No. 20-035-04

## **CLOSING ARGUMENTS**

December 04, 2020

### **ADVANCED REPORTING SOLUTIONS**

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Closing Arguments  
December 04, 2020

1           BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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3  
4 Application of Rocky Mountain    )  
Power for Authority to Increase    )  
5 its Retail Electric Utility        )  
Service Rates in Utah and for     )   Docket No. 20-035-04  
6 Approval of its Proposed         )  
Electric Service Schedules and     )  
7 Electric Service-Regulations      )  
\_\_\_\_\_)

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13 VIDEO CONFERENCED PUBLIC HEARING - CLOSING ARGUMENTS  
14 TAKEN THROUGH ADVANCED REPORTING SOLUTIONS VIA ZOOM

15                   Taken on December 4, 2020

16                   9:01 a.m. to 12:27 p.m.

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21 Reported by: Michelle Mallonee, RPR, CCR  
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1 P R O C E E D I N G S

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3 CHAIRMAN LEVAR: Good morning. It is  
4 December 4, 2020, and we are here for the Public Service  
5 Commission of Utah hearing in Docket 20-35-4, application  
6 of Rocky Mountain Power for authority to increase its  
7 retail electric utility service rates in Utah and for  
8 approval of its proposed electric service schedules and  
9 electric service regulations.

10 Today is the day we've designated for closing  
11 statements. And based on those who filed briefs -- and  
12 again, closing statements were optional, so I don't know  
13 if everyone who filed briefs is planning to participate  
14 in closing statements. I would propose that we go in the  
15 order of Stadion LLC; then ChargePoint, Incorporated;  
16 then The Kroger Company; Utah Clean Energy; University of  
17 Utah; Utah Association of Energy Users; Office of  
18 Consumer Services; Division of Public Utilities; and  
19 Rocky Mountain Power.

20 Does anyone object to that order of closing  
21 statements, again, recognizing that some of the ones I  
22 listed might not be presenting closing statements?

23 I'm not seeing or hearing any --

24 MR. RUSSELL: No objection from me,  
25 Mr. Chairman. I might want to flip the order of UAE and

1 the University of Utah just because the order of that  
2 presentation will likely be (inaudible) to combine those  
3 statements together, if that's okay.

4 CHAIRMAN LEVAR: I lost part of what you said,  
5 Mr. Russell. I'll just state that I had put those two  
6 together so that you could be in charge of how you wanted  
7 to handle them. If you needed to get what you just said  
8 on the record, I don't think we got it in the transcript.

9 MR. RUSSELL: No, that's exactly how I wanted to  
10 do it, so that's fine.

11 CHAIRMAN LEVAR: Okay. Thank you. I'm not  
12 seeing any objection.

13 I'm going to do one thing out of order. I have  
14 one question for Rocky Mountain Power that I'd like to  
15 put the question to you at this point so that you might  
16 be able to answer it as we get later in the day. It's  
17 just a technical question about whether a specific number  
18 remains confidential that was confidential in the  
19 testimony. So let me share that. I've written a quick  
20 summary of it. And let me just share that.

21 Are you seeing that screen, Mr. Moscon?

22 MR. MOSCON: Yes, it's -- yes, I see that. The  
23 surrebuttal, October 29 -- that question. Yes, I see  
24 that. Does that question -- does that number remain  
25 confidential, the one you've got redacted?

1           Let me find out, and I will either tell you when  
2 it becomes my turn, or do you need to know the answer to  
3 that before I would start presenting?

4           CHAIRMAN LEVAR: No. I was just hoping to get  
5 that answered sometime before we finish today.

6           MR. MOSCON: Okay. I will have an answer, and I  
7 will tell you before I go on to my closing statement.

8           CHAIRMAN LEVAR: Okay. Do I need to leave this  
9 on the screen any longer?

10          MR. MOSCON: No, thank you.

11          CHAIRMAN LEVAR: Okay. Thank you. Okay.

12          With that, I'll go first to Mr. Sanger, who  
13 indicated that you do not intend to make any closing  
14 statements.

15          Commissioner Clark, do you have any questions  
16 for Mr. Sanger?

17          COMMISSIONER CLARK: I do not. Thank you very  
18 much.

19          CHAIRMAN LEVAR: Okay. Thank you.

20          Commissioner Allen?

21          COMMISSIONER ALLEN: No questions. Thank you.

22          CHAIRMAN LEVAR: And I don't have any. So thank  
23 you, Mr. Sanger.

24          MR. SANGER: Thank you very much.

25          CHAIRMAN LEVAR: I do not see on the participant

1 list anyone from ChargePoint. So unless someone states  
2 differently, I think we are not going to have a closing  
3 statement from ChargePoint.

4 Okay. With that, Mr. Boehm, would you like to  
5 make a closing statement on behalf of The Kroger Company?

6 MR. BOEHM: Thank you, your Honor. Kroger filed  
7 briefs in this case, and we will just submit our briefs  
8 and not do a closing statement. Thank you.

9 CHAIRMAN LEVAR: Okay. Thank you, Mr. Boehm.

10 Commissioner Allen, do you have any questions  
11 for Mr. Boehm?

12 COMMISSIONER ALLEN: No questions. Thank you.

13 CHAIRMAN LEVAR: Okay.

14 Commissioner Clark, do you?

15 COMMISSIONER CLARK: I have no questions. Thank  
16 you, Mr. Boehm.

17 CHAIRMAN LEVAR: Okay. I don't have any,  
18 either.

19 So, thank you for your brief you filed,  
20 Mr. Boehm.

21 MR. BOEHM: Thank you, your Honor.

22 CHAIRMAN LEVAR: And I'll go next to Mr. Holman.

23 MR. HOLMAN: Good morning, Chair. I don't have  
24 a closing statement prepared today, so I'm happy to  
25 answer questions.



1 CHAIRMAN LEVAR: Thank you.

2 Commissioner Clark, do you have any questions  
3 for Mr. Holman?

4 COMMISSIONER CLARK: No questions. Thank you,  
5 Mr. Holman.

6 CHAIRMAN LEVAR: Okay. Thank you.  
7 Commissioner Allen?

8 COMMISSIONER ALLEN: Thank you. No questions.

9 CHAIRMAN LEVAR: And I don't have any, either.  
10 So thank you, Mr. Holman.

11 MR. HOLMAN: Thank you.

12 CHAIRMAN LEVAR: We'll go to Mr. Russell next,  
13 then.

14 MR. RUSSELL: Thank you. Is my audio coming  
15 through better than it was earlier?

16 CHAIRMAN LEVAR: I am hearing you clearly. If  
17 anyone else isn't, please let us know.

18 COMMISSIONER CLARK: It's clearer for me.

19 MR. RUSSELL: Okay. Great. Thank you. I do  
20 have some closing statements to make. I intend to make  
21 them in the order of UAE's position with respect to  
22 revenue requirement first. And then I will go to the  
23 cost of service and rate design. As the testimony in the  
24 briefs that we have submitted on behalf of UAE and the  
25 University of Utah might indicate, there is some overlap,

1 and I intend to just make the discussion about Schedule  
2 32, kind of combine it together. So that's how I intend  
3 to proceed.

4 CHAIRMAN LEVAR: Mr. Russell, with that, I think  
5 we will reserve questions from the Commission until  
6 you're completed with everything. I don't think we'll  
7 try to interrupt portions of that for questions.

8 MR. RUSSELL: However you would like to proceed.  
9 If I'm saying something that bores you and you would like  
10 to ask a question, please just interrupt me.

11 CHAIRMAN LEVAR: Okay. Well, if we have a  
12 burning need to, we'll interrupt you. Thank you.

13 MR. RUSSELL: Okay. Great. I will start where  
14 we started in UAE's post hearing brief on Rocky Mountain  
15 Power's proposal for a two-step rate increase. And this  
16 is tied to their -- the issue that they've had with  
17 delays regarding portions of the TB Flats 2 in Pryor  
18 Mountain Wind projects. What they're effectively asking  
19 this Commission to do is to have a separate test period  
20 for the delayed portions of those projects. Some portion  
21 of those projects will be in service by December 31st of  
22 this year, which is the first day of the 13-month average  
23 rate base for the test period that this Commission  
24 approved at Rocky Mountain Power's request. But some  
25 portion of those -- that plant will not be in service as

1 of the first day of that test period, which means that  
2 the full annualized costs of those projects will not be  
3 included in rate base.

4 Rocky Mountain Power asked this Commission to  
5 use a separate test period to include the full annualized  
6 cost of the late portions of those -- of that plant in  
7 rate base. As indicated in our briefs, we believe that's  
8 inconsistent with Utah law and this Commission rule.

9 The Commission rules allow Rocky Mountain Power  
10 in advance of filing its application to request a  
11 particular test period and to submit testimony to support  
12 the test period that will most reflect the rate effective  
13 period. It did that, and the Commission approved the  
14 test period of the 12 months ending December 31st, 2021,  
15 with a 13-month average rate base.

16 Given the Commission's ruling, Rocky Mountain  
17 Power could then -- and I'm going to read from  
18 R746-700-10(B)(2), which allows the -- which says that  
19 after the Commission approves a test period in advance of  
20 the application, as it did here, quote, "the Applicant  
21 may then submit an application using as the test period  
22 for the case the test period previously approved by the  
23 Commission." It did that.

24 But in the course of this case, it learned that  
25 a portion of those -- the wind plant would be delayed.

1 And so instead of shifting the test period to account for  
2 the full annualized cost of those, shifting the test  
3 period for all costs, what Rocky Mountain Power proposes  
4 to do is to use a separate test period for some portion  
5 of the costs that are at issue. This is problematic  
6 because it does not allow this Commission to look at the  
7 full load of information that it would get about that  
8 separate test period.

9           So consistent with this Commission's ruling,  
10 approving a test period with the 12 months ending at the  
11 end of 2021, the Company submitted forecasted test period  
12 data for revenue requirement information, operating  
13 capital budgets, labor costs, et cetera. It also  
14 submitted a -- a cost-of-service study based on  
15 forecasted data for the test period.

16           The request to use a separate test period for  
17 isolated investments is inconsistent with the data that  
18 it has already submitted. That separate test period is  
19 also -- relies on forecasted data that is more than 20  
20 months from the approved -- or from the application,  
21 which is inconsistent with Utah Code Section 54-4-4(3),  
22 which states that in establishing a test period, the  
23 Commission may use a future test period that is  
24 determined on the basis of projected data not exceeding  
25 20 months from the date a proposed rate increase or

1 decrease is filed.

2           The use of a separate test period also  
3 constitutes single-issue rate making. As I mentioned  
4 before, there's all sorts of information that the Company  
5 has to file so that the Commission gets a good sense of  
6 what's going on in the test period. You can't then take  
7 isolated investments and shift or use a different test  
8 period for those without engaging in single-issue rate  
9 making.

10           The Company asserts that the delays are a result  
11 of COVID-related delays and that it's not the Company's  
12 fault. All of that may be the case. There are  
13 particular tools that the Company can use to address  
14 these costs. But simply ignoring the law and ignoring  
15 Commission rules isn't one of them.

16           One of the things that the Company can do is to  
17 file a separate rate case later using a test period that  
18 would include these costs. Another thing it can do, if  
19 it qualifies, is to file for a major plant addition. The  
20 Company says, you know, Don't make us do that. It's a  
21 procedural hassle. But that's what the law requires.  
22 And the Commission should not in this case utilize a  
23 separate test period because it's not allowed to do so,  
24 and there are tools at the Company's disposal. Simply  
25 using a separate test period is not one of them.

1           The second issue I want to address is recovery  
2 of the Pryor Mountain project, as indicated in our  
3 testimony and in our brief. The recovery on that, if  
4 it's allowed, should be limited to the \$26 per megawatt  
5 hour that the avoided cost rate allowed at the time the  
6 Company invested in the project. \$26 is supposed to be  
7 the point at which customers are indifferent to whether  
8 the Company procures generation on its own or acquires it  
9 from others. The Company seeks recovery of more than  
10 that \$26 per megawatt hour; and thus, the customers are  
11 not indifferent.

12           So, if approved, the Power Mountain Wind project  
13 should be a market resource where the Company gets to  
14 recover \$26 per megawatt hour that it produces. It gets  
15 to keep its PTCs and the recs that belong -- that would  
16 then belong to the Company. And I will note that this  
17 proposal would not require the Commission or the Company  
18 to engage in the type of separate test period or other  
19 procedural rate making because it would get the \$26 per  
20 whatever megawatt hour is produced when it's produced for  
21 the first 20 years.

22           I also want to address the issue that is at  
23 issue in the depreciation case and in the rate case, and  
24 that's the period of depreciation on the retired wind  
25 assets.

1           The retired wind plant should be depreciated  
2 over the remaining life of the repowered projects. The  
3 retirement of the repowered wind plant enabled the  
4 benefits from the repowering projects that will accrue to  
5 customers over the next 30 years. The cost of the  
6 retired wind plant should be paid for over that 30-year  
7 period to align the costs of the projects with the period  
8 in which the benefits would accrue.

9           The only party to disagree with this proposal is  
10 the Division. The Division indicates that it would  
11 prefer a 10-year depreciation period to align  
12 depreciation with production tax credits. The Division  
13 acknowledges that the PTCs are not the only benefits but  
14 asserts that, well, they're the most valuable ones. I'm  
15 not sure that they've actually demonstrated that point.  
16 But in any event, aligning the depreciation period of the  
17 retired wind assets with the PTCs does not eliminate  
18 intergenerational equity, which is the point that the  
19 Division wants to make.

20           The reason it doesn't eliminate  
21 intergenerational equity -- or inequity is that the  
22 customers in years '20 through '30 will have benefit of  
23 the repowered projects. It won't have to pay to replace  
24 the wind projects.

25           So the plant that was retired would have --

1 would have been in existence in service for the next 20  
2 years. It had already been -- it had already been in use  
3 for 10 years. The expectation was that it would go  
4 another 20 and that it would be depreciated over another  
5 20.

6           By retiring those wind assets and replacing them  
7 with new assets in the repowering projects, we've  
8 extended the life of the near zero marginal cost power  
9 for customers for another 10 years, which means that  
10 customers in that year 20 to 30 of the new repowering  
11 projects get the benefit of having that near zero  
12 marginal cost that they wouldn't have absent the  
13 repowering projects.

14           But under the Division's proposal, those  
15 customers who now no longer have to pay for the capital  
16 improvements to replace that wind would not have to pay  
17 for the retirement or the depreciation of the retired  
18 wind assets. We think that results in intergenerational  
19 inequity with customers in the next 10 years paying for a  
20 benefit -- paying for customers in years 20 to 30 that  
21 they don't pay for. So we think that the appropriate  
22 depreciation period is 30 years.

23           We have also, on the issue of the retired wind  
24 assets, we make two other recommendations, neither of  
25 which I intend to touch on unless the Commission has



1 questions. One of them is for the depreciation of those  
2 retired wind assets to continue from the date of  
3 retirement, and the other relates to a 200 basis point  
4 reduction in the return on the investments to better  
5 align the balance of risks between the Company and its  
6 customers.

7           One last point on revenue requirement relates to  
8 the Company's annual incentive plan. As we indicated in  
9 testimony and in our post hearing brief, the annual  
10 incentive plan includes a portion that is tied to  
11 financial goals, and we just ask that this Commission  
12 affirm its long-standing position of declining to approve  
13 portions of annual incentive plans that include  
14 incentives that are based on financial goals. The  
15 rationale for that has always been that the primary  
16 beneficiary of such plans that are based on financial  
17 goals are the shareholders, and it is the shareholders  
18 who should pay for those types of incentive plans. And I  
19 just want to reiterate we don't have a problem with the  
20 Company including those types of incentives. Our point  
21 is that the customer shouldn't pay for them because they  
22 are not the primary beneficiary.

23           That's all I had on revenue requirement, and so  
24 I will shift to cost of service and rate spread.

25           UAE supports the Company's proposed rate spread,

1 which reflects the results of the cost-of-service study  
2 while employing gradualism to balance the impact of rate  
3 increases across rate classes. In its post hearing  
4 brief, Rocky Mountain Power cites Utah Code Section  
5 54-3-1. And I think it bears repeating. That statute  
6 states that utility rates and charges must be just and  
7 reasonable, taking into consideration "the cost of  
8 providing service to each category of customer, economic  
9 impact of charges on each category of customer and on the  
10 well-being of the state of Utah, methods of reducing wide  
11 periodic variations in demand of such services, and means  
12 of encouraging conservation of resources and energy."

13 We believe that the Company's rate spread  
14 appropriately balances all of these considerations and  
15 request that the Commission approve it.

16 Our post hearing brief includes some statements  
17 with respect to -- or some arguments with respect to  
18 adjustments that the Office had proposed to the embedded  
19 cost-of-service study. I don't intend to repeat those  
20 here. We spent a fair bit of time on them, but I'm happy  
21 to answer any questions.

22 Finally, I will address the proposed rate design  
23 for Schedule 32. UAE and the University of Utah proposed  
24 to set the Schedule 32's delivery facilities charge at  
25 the rate set for the corresponding full requirements rate

1 schedules. This is consistent with the Commission's  
2 ruling in Docket No. 14-035-T02 in which the Commission  
3 adopted UAE's proposal to set the delivery facilities  
4 charge at a rate that ensures that Schedule 32 customers  
5 do not pay different effective rates for delivery  
6 services than their full requirement rate schedule  
7 counterparts.

8           The Company's proposal is to set the delivery  
9 facilities charge to recover the full amount of fixed  
10 transmission costs identified in the cost-of-service  
11 study for the full rate requirement schedules. This  
12 results in an increase to that charge of approximately 30  
13 percent for transmission voltage customers. This is the  
14 same proposal that the Company advanced in Docket No. --  
15 in that previous docket number that I mentioned,  
16 14-035-T02, the docket in which this Commission adopted  
17 Schedule 32.

18           The Commission declined to adopt Rocky Mountain  
19 Power's proposal in that docket and should do so again  
20 now.

21           It remains true that the Company's proposal, as  
22 it did in the previous docket, would impose different  
23 effective rates for delivery service on Schedule 32  
24 customers than would be imposed on corresponding full  
25 rates requirement schedules. It is also true, as the

1 Company states in its post hearing brief, that this  
2 Commission takes many things into account in setting  
3 rates. The cost-of-service study is one of them, but it  
4 is not the only one.

5 The rate spread is intended to bring customers  
6 closer to the cost of service, but it doesn't do that,  
7 not perfectly. It doesn't align perfectly for any of the  
8 full rate requirement schedules. So it doesn't make  
9 sense to charge Schedule 32 customers a delivery  
10 facilities charge based on the notion that they'll pay  
11 full cost of service either. That's not how the  
12 Schedules 6, 8, and 9 are set up, and it's not how  
13 Schedule 32 should be set up.

14 The Company seeks to justify its position by  
15 claiming that Schedule 32 has daily power charges that a  
16 Schedule 32 customer could avoid; and therefore, that  
17 Schedule 32 customers could underpay delivery charges.  
18 But the Company has not demonstrated that there are  
19 sufficient opportunities for a Schedule 32 customer to  
20 avoid daily power charges that would result in an  
21 underpayment of delivery charges.

22 As we note, as we've noted throughout this case,  
23 the Company did not perform a cost-of-service study for  
24 Schedule 32. It did not because there wasn't enough  
25 information. It didn't have enough data from a single

1 Schedule 32 customer on that rate schedule to do so in  
2 the base test period.

3 In addition to the fact that there is no  
4 cost-of-service study on which the Company can rely to  
5 support its position here, the fact remains that peak  
6 hours stretch well into the nighttime. And so any  
7 proposed Schedule 32 customer that intends to rely on  
8 renewable energy that is intermittent will have a very  
9 difficult time avoiding daily power charges in the way  
10 that Rocky Mountain Power suggests.

11 The Company's claim that Schedule 32 customers'  
12 ability to avoid delivery charges is also mitigated by  
13 the fact that Schedule 32 has a 300-megawatt program cap.  
14 As I mentioned, there's only one customer, and that's the  
15 University of Utah. The rate schedule has been around  
16 since 2015. The fact that there's a single customer  
17 suggests that Schedule 32 is not some economic boon to  
18 parties. It is available to parties like the University  
19 of Utah who have zero carbon goals. But those customers  
20 are not flocking to Schedule 32 to make a buck. They're  
21 going to Schedule 32 because it's the only viable  
22 schedule for them, for large customers, to meet the types  
23 of sustainability goals that the University of Utah has.

24 The cap on this program, 300 megawatts, will  
25 mitigate any impacts that there theoretically could be

1 from some future larger adoption of this program.

2 In our brief, we also pointed to the fact that  
3 the Company treats Schedule 32 customers differently than  
4 it treats Schedule 31 customers. We note that the  
5 Commission in its order approving Schedule 32 drew some  
6 parallels between these two rate schedules. They're both  
7 partial requirements rate schedules. They both have  
8 daily demand charges.

9 But the Company does not propose for Schedule 31  
10 to set a facilities charge at the full rate requirements  
11 cost-of-service revenue requirement for fixed  
12 transmission costs. Instead, it sets the facilities  
13 costs at a rate that's a fair bit closer to the full rate  
14 requirements, Schedules 8 and 9, than even the current  
15 Schedule 32 costs. And there is no evidence that  
16 Schedule 31 customers have avoided their daily demand  
17 charges in a way that shifts costs. And there isn't  
18 any -- as I mentioned, that Schedule 32 customers would  
19 result in the same -- would result in that underpayment  
20 of delivery charges.

21 So, in short, the Company's proposal would treat  
22 Schedule 32 customers differently than the full rate  
23 requirement schedules. It would treat them differently  
24 than other partial requirements customers. And we don't  
25 think that there's any demonstration that this is a

1 necessary or a prudent proposal.

2           And we ask that the Commission approve the  
3 proposal of UAE and the University of Utah because we  
4 think it most closely adheres to the Commission's ruling  
5 in Docket 14-035-T02.

6           One last point on the University of Utah. It  
7 has some equities here that are unique to it given the  
8 fact that it is the only Schedule 32 customer. As  
9 mentioned in the testimony, it has entered into two  
10 separate Schedule 32 contracts, one with a geothermal  
11 project that began delivering power under Schedule 32 in  
12 2019, another very recently it entered into a 20 megawatt  
13 solar project that will not begin delivering power under  
14 Schedule 32 until 2022. Those are long-term commitments.  
15 These long-term commitments were made to make progress  
16 towards the University's goal of carbon neutrality by  
17 2050, but also because of the University's belief that  
18 Schedule 32 customers would be treated equitably with  
19 respect to the rates that they are to pay.

20           I mentioned that this Commission drew a parallel  
21 with Schedule 31 when it adopted Schedule 32. And in  
22 doing so, in the report and order in that prior case, it  
23 indicated that, and I'm quoting here, "Additionally, we  
24 recognize prospective customers will be using Schedule 32  
25 to make long-term resource decisions. For these reasons,

1 we find it reasonable to adopt a rate design for Schedule  
2 32 that both achieves the objectives of SB12 and  
3 maintains a measure of consistency with the way currently  
4 approved rates and schedules address demand charges."

5           The Company's proposal seeks to radically change  
6 the way that Schedule 32 addresses demand charges. The  
7 University of Utah's proposal would have the Commission  
8 set those demand charges at the same rate as the full  
9 rates requirements customers, which is, we believe, what  
10 the Commission had intended with the prior order.

11           And I'll just note the University's position  
12 here is similar to UAE's, but the University, as  
13 indicated in the testimony of Mr. Christopher Benson, did  
14 not enter into Schedule 32 to avoid demand charges.  
15 That's not his point. In fact, its economic analysis of  
16 Schedule 32 would be just about a break even, you know,  
17 in getting into Schedule 32 versus getting power from  
18 the -- from the Company. This is not designed in the way  
19 that -- their intentions here are not to avoid those  
20 delivery charges in the way that Rocky Mountain Power  
21 proposes Schedule 32 customers would.

22           And with that, I will submit on behalf of UAE  
23 and the University of Utah. And I'm happy to answer any  
24 questions.

25           CHAIRMAN LEVAR: Thank you, Mr. Russell.



1 I'll go to Commissioner Allen first.

2 Do you have any questions for Mr. Russell?

3 COMMISSIONER ALLEN: No questions. Thank you.

4 MR. RUSSELL: Thank you.

5 CHAIRMAN LEVAR: Thank you.

6 Commissioner Clark?

7 COMMISSIONER CLARK: I have no questions. Thank  
8 you, Mr. Russell.

9 CHAIRMAN LEVAR: Okay. Thank you. I have a  
10 couple.

11 You briefly spoke about UAE's position on the  
12 employee incentive plans, and you described your  
13 interpretation of prior Commission precedent. And I just  
14 want to clarify that.

15 Is it your interpretation that the previous  
16 Commission orders on this issue stated that they would  
17 disallow any portion of an employee incentive plan that  
18 was focused on financial goals, or was the Commission  
19 precedent that they would not allow an incentive plan  
20 that was predominantly based on financial goals?

21 MR. RUSSELL: My understanding is that the  
22 Commission's prior rulings on this point have, in fact,  
23 approved annual incentive plans but only those portions  
24 of the annual incentive plans that are not based on  
25 financial goals.

1           In the 2008 case -- and I think this would be  
2 found in the transcript of Mr. Higgins' live testimony on  
3 redirect -- we cited to some of the positions that the  
4 Company had proposed. And in the Commission's ruling  
5 with respect to that annual incentive plan, there was a  
6 portion of that annual incentive plan for executives. In  
7 fact, there was the annual incentive plan for executives  
8 I think that was primarily based on financial goals. And  
9 the Company was not seeking recovery of those. But for  
10 the employees, the nonexecutives, there was a portion of  
11 that that was based on financial goals.

12           And my understanding of the Commission's ruling  
13 there is that it approved only those portions that were  
14 not based on financial goals.

15           I hope that answers your question. I don't  
16 think that the Commission's prior rulings are based on  
17 this notion that it has to be primarily based on  
18 financial goals. The Commission has kind of siphoned off  
19 those portions that are based on financial goals.

20           CHAIRMAN LEVAR: Okay. Thank you. That answers  
21 my question.

22           MR. RUSSELL: Okay.

23           CHAIRMAN LEVAR: And then I have one more  
24 question for you, and it's on Pryor Mountain. And I'll  
25 recognize that UAE's testimony on this issue doesn't go

1 to my question as directly as some of the other parties.  
2 But I want to give you, the Division, the Office, and  
3 Rocky Mountain Power all the opportunity to answer the  
4 same question.

5           So in your view with our statutory standards for  
6 evaluating the prudence of Pryor Mountain, do we need to  
7 see modeling that demonstrates it was beneficial to  
8 ratepayers on a basis of comparing with or without Pryor  
9 Mountain? Or do we need to see modeling that  
10 demonstrates it was beneficial to ratepayers as compared  
11 against all other reasonable, knowable alternatives?

12           MR. RUSSELL: It's a really good question. I  
13 think the Company has in the past several years sought to  
14 justify certain projects on the basis of their economics.  
15 And we've been through this with the repowering projects  
16 and with the new wind projects from EV2020, where they've  
17 demonstrated, you know, here's our glide path. Here are  
18 these projects. Here's what revenue requirement looks  
19 like if we don't do these projects versus if we do them.

20           So the trouble that some of the customer groups  
21 like UAE and others have had is that the assumption here  
22 is that those are the only projects that are available.  
23 And so -- and that's certainly just not the case. There  
24 are other projects out there, as we've seen from the  
25 current RFP.

1 I think it -- it is incumbent on the Company to  
2 demonstrate when it's seeking to justify a project like  
3 this one, particularly when it's a single project like  
4 this one, that it is the best available project in that  
5 there's some need.

6 Now, the Company is justifying this project not  
7 because it needs the capacity or the energy, but because  
8 it represents an opportunity for customers. In those  
9 circumstances I think it is incumbent on the Company to  
10 show, Look, it's a benefit to the customers, and it's --  
11 there's not some better project out there that we could  
12 have gone out and gotten a PPA on or something else that  
13 would represent a better -- you know, better value for  
14 customers.

15 So I think the answer to your question is yes,  
16 they do need to show that, particularly in these  
17 circumstances where it's purely based on an economic  
18 opportunity rather than some need that's out there that  
19 has, you know, kind of a ticking clock to it.

20 CHAIRMAN LEVAR: Thank you. That's all the  
21 questions I had for you, Mr. Russell. So, thank you for  
22 your time this morning.

23 MR. RUSSELL: Thank you.

24 CHAIRMAN LEVAR: I'll go to the Office of  
25 Consumer Services next.

1 MR. MOORE: Hello, Commissioners. Can you hear  
2 me and see me? This is Robert Moore.

3 CHAIRMAN LEVAR: I can see and hear you clearly.

4 MR. MOORE: If it is all right with the  
5 Commission, the Office would like to divide the time  
6 between myself and Mr. Snarr. I'll be doing the cost of  
7 capital portion of the presentation and a little bit of  
8 the revenue requirement, while Mr. Snarr finishes the  
9 revenue requirement and does the cost of service.

10 CHAIRMAN LEVAR: Okay. Would you prefer that we  
11 ask any questions of you one at a time, or would you  
12 prefer that we let both of you finish everything, and  
13 then we can ask any questions we have for either of you?

14 MR. MOORE: However is easiest for the  
15 Commission.

16 CHAIRMAN LEVAR: Okay. Why don't you go  
17 forward. If we need to stop and do questions after one  
18 of you, we will; if not, we might just wait until you are  
19 all finished.

20 MR. MOORE: Good morning, Commissioners.

21 I'd like first to address Rocky Mountain Power's  
22 assertion made in their post hearing brief that recent  
23 market conditions which are more volatile because of the  
24 pandemic justify a higher ROE. This contention conflicts  
25 both with the 2020 general rate cases for electric

1 utilities and Rocky Mountain Power's own economic  
2 modeling.

3           First, the OCS agrees with Rocky Mountain Power  
4 that current marketing conditions are a critical  
5 consideration in determining ROE. However, any  
6 pandemic-related volatility has been coupled with a low  
7 interest rate environment. This low interest rate  
8 environment is forcing ROEs lower rather than volatility  
9 forcing ROEs higher. This is evidenced by the ROE  
10 regulatory focus survey of general rate cases in the  
11 first nine months of 2020, introduced by DPU Cross  
12 Exhibit No. 1, which states that the average ROEs for  
13 2020 is 9.44 percent.

14           The Office reports state: "ROEs ... are at the  
15 lowest level ever witnessed in the industry, and with the  
16 recent interest rate cuts by the U.S. Federal Reserve and  
17 current pandemic-induced recession even lower authorized  
18 returns may be on the horizon."

19           The report goes on to state that while "federal  
20 fund rates do not move in lockstep with long term  
21 treasuries and authorized ROEs do not move in lockstep  
22 with interest rates, the expectation is that as interest  
23 rates change, authorized ROEs change in a similar  
24 fashion."

25           Moreover, the Federal Reserve has announced that

1 it plans to continue with its interventionist policies  
2 and keep interest rates near zero right through 2023.  
3 Therefore, while current market conditions are critical  
4 factors to consider, the market conditions are dominated  
5 by a lower interest rate environment and argue for lower  
6 ROEs.

7           Second, the contention that recent market  
8 conditions justify higher ROEs is inconsistent with Rocky  
9 Mountain Power's own modeling. On page 3 of its post  
10 trial brief, Rocky Mountain Power asserts utility  
11 industries are underperforming. However, on page 25 and  
12 26 of Ms. Bulkley's post-pandemic rebuttal testimony, she  
13 claims the utility stocks are not underperforming but,  
14 rather, are overvalued. This contention that utility  
15 stocks are overvalued is necessary to explain her  
16 disregard of Professor Woolridge's, Mr. Coleman's, and  
17 ultimately her own DCF analysis.

18           Specifically, her DCF analysis is based on the  
19 contention that DCF models should be not given much  
20 weight because utility stocks are presently overvalued  
21 and interest rates are too high -- too high -- too low,  
22 and therefore, the results of the DCF's balances are  
23 unreliable. Therefore --

24           CHAIRMAN LEVAR: Mr. Moore, I think we may need  
25 you to repeat some of that. When you were turning pages,

1 it was causing noise. I don't know if Ms. Mallonee was  
2 able to get everything you said. Maybe if you could  
3 repeat a little bit of the last few sentences.

4 MR. MOORE: Certainly. Specifically -- is this  
5 a good place to start? Well, let me start back up again.

6 The contention that utility stocks are overrated  
7 is necessary to explain Ms. Bulkley's disregard for  
8 Professor Woolridge's, Professor Coleman's, and  
9 ultimately her own DCF analysis.

10 Specifically, her DCF analysis is based on the  
11 contention that DCF models should not be given much  
12 weight because utility stocks are presently overvalued  
13 and interest rates are too low.

14 Therefore, the contention that more volatile  
15 market conditions result in an underperforming utility  
16 industry and justifies higher ROE conflicts with Rocky  
17 Mountain Power's economic modeling. Again, as evidenced  
18 in 2020 authorized ROEs, current market conditions are  
19 dominated by lower interest rates, yields, and lower  
20 ROEs.

21 Another factor arguing for lower ROEs is Rocky  
22 Mountain Power's request for a capital structure of  
23 53.67 percent equity. The OCS has demonstrated that this  
24 level of equity is well above the proxy group's equity  
25 percentage of approximately 44 percent and the equity



1 percentage of Rocky Mountain's parent, Berkshire  
2 Hathaway, is approximately 42 percent.

3           As the Commission is well aware, capital  
4 structure is interrelated with ROEs. They are two sides  
5 of the same coin. That is because debt is riskier than  
6 equity. As equity increases and debt decreases, risk  
7 will decrease, leading to a lower ROE.

8           In addition, equity is more expensive than debt.  
9 So if the equity percentage of the capital structure is  
10 increased and the ROE remains constant, revenue  
11 requirement will necessarily increase.

12           The impact of revenue requirement caused by  
13 increased equity percentage can be dramatic. By way of  
14 example, the OCS has taken the Washington settlement  
15 capital structure of 49.1 percent equity and the  
16 Washington settlement's ROE of 59.5 percent and the OCS  
17 revenue requirement calculations and demonstrated that if  
18 the capital structures in the settlement was increased to  
19 Rocky Mountain's request of 53.67 percent equity, in  
20 order to keep the revenue requirement and change, the ROE  
21 would have to be reduced to 9 percent. This is  
22 consistent with Mr. Woolridge's recommendations.

23           These two facts, that the ROE decreases and debt  
24 goes down and the impact on the revenue requirement of  
25 increasing equity, require regulatory commissions, when

1 faced with a request for higher equity position, do one  
2 of two things: Lower the ROE or impute debt to a  
3 hypothetical capital structure.

4 This is what the OCS has recommended. This  
5 analysis is not directly contested. Rather, Rocky  
6 Mountain Power argues that its equity position is not  
7 high when compared to the equity position of the  
8 operating companies in the proxy groups of holding  
9 companies. However, this contention is an incorrect  
10 approach.

11 The proper approach is to compare Rocky Mountain  
12 Power's equity position with the actual proxy groups, the  
13 holding companies because, one, the holding companies  
14 have market information necessary to run the economic  
15 modeling. And two, the interrelationship between capital  
16 structure and ROE; that is, the risks associated with the  
17 holding companies' ROE, reflects, in part, the holding  
18 companies' lower equity percentages. If the holding  
19 companies had the higher percentage, the operating  
20 companies' risk would be reduced, and the ROEs would have  
21 to be lowered.

22 Therefore, in order to reflect the risk  
23 associated with the proxy companies used for the ROE  
24 analysis, it is necessary to use the proxy companies'  
25 capital structure in comparing the appropriate equity

1 position.

2           It is also of note that Rocky Mountain's  
3 requested 53.67 equity is higher than its current  
4 authorized capital structure of 51.43 percent equity,  
5 Rocky Mountain's current actual equity percentage of 51  
6 percent, and the equity percentage of Rocky Mountain  
7 Power's Washington settlement of 49.1 percent, and the  
8 average authorized capital structures of electric  
9 utilities in general rate cases in 2020 of 49.37 percent.  
10 Accordingly, if the Commission is supposed to grant Rocky  
11 Mountain Power their requested equity position, because  
12 of their higher-than-average capital structure, they must  
13 be given a lower-than-average ROE.

14           A third element that justifies a lower ROE is  
15 Rocky Mountain Power is less risky than the proxy group  
16 companies, as evidenced by its superior credit rating.  
17 Rocky Mountain Power S&P rating is A, two notches above  
18 the average S&P rating of BBB+ of the proxy group  
19 companies. And Rocky Mountain Power's Moody's rating is  
20 A3, one notch above the average Moody's ratings of Baal  
21 of the proxy companies.

22           Rocky Mountain Power nevertheless argues that it  
23 is riskier in the industry because of the regulatory  
24 environment in Utah, capital expenditures, generation  
25 ownership, the Tax Act of 2017, et cetera. However, all

1 these factors, even the fact that Rocky Mountain Power is  
2 a vertically integrated utility, was taken into  
3 consideration by the rating agencies when they gave Rocky  
4 Mountain Power a superior credit rating. Thus, Rocky  
5 Mountain Power's argument regarding these risk factors  
6 fails. And the fact that Rocky Mountain Power is less  
7 risky in the industry also argues for a lower ROE.

8 Finally, Rocky Mountain Power's claims that  
9 their proposed ROE of 9.8 percent is consistent with the  
10 authorized ROEs is simply incorrect. As previously  
11 stated, the ROEs in rate cases cited in the first nine  
12 months of 2020 under current market conditions are the  
13 lowest ever seen in the industry.

14 Today, for 2020, vertically integrated electric  
15 utilities have average ROEs of 9.54 percent, and for all  
16 electricity -- electric utilities, the average ROE is  
17 9.44 percent with an average equity percentage of  
18 49.37 percent. The higher average that Rocky Mountain  
19 Power proposes -- to get the higher averages that Rocky  
20 Mountain proposes, Rocky Mountain Power relies on stale  
21 ROE analysis from 2008 and 2017 when interest rates were  
22 higher and before the pandemic and before the Federal  
23 Reserve actions that have taken place in 2020.

24 Taking recent market conditions into  
25 consideration and the lower risks associated with high

1 equity position and the high credit rating, OCS's  
2 position is consistent with the 2020 authorized ROEs.

3 The starting point for vertically integrated  
4 utilities is 9.54 percent. This must be significantly  
5 reduced because of Rocky Mountain Power's high equity  
6 position, then reduce again because Rocky Mountain Power  
7 is less risky, as evidenced by its credit rating. These  
8 two reductions should bring the ROE down to a level the  
9 OCS recommended of 9 percent. In any event, these  
10 reductions must drive ROEs significantly below  
11 9.5 percent to be comparable with authorized ROEs in  
12 2020.

13 That's the end of the cost of capital portion of  
14 the OCS's presentation. Would you like to ask any  
15 questions now?

16 CHAIRMAN LEVAR: Commissioner Clark, would you  
17 like to ask Mr. Moore any questions at this point about  
18 cost of capital?

19 COMMISSIONER CLARK: No, I have no questions.  
20 Thank you, Mr. Moore.

21 CHAIRMAN LEVAR: Okay. Thank you.

22 Mr. Allen -- I mean Commissioner Allen?

23 COMMISSIONER ALLEN: I have no questions either.  
24 Thank you.

25 CHAIRMAN LEVAR: And I don't either about this

1 issue. So why don't you continue on, Mr. Moore.

2 MR. MOORE: Now I would like to touch briefly on  
3 the pension issue in the revenue requirement portion of  
4 these proceedings.

5 There are three issues to touch upon in  
6 addressing pensions. One, the treatment of settlement  
7 losses; two, the inclusion of revenue requirement and  
8 prepaid pension assets and other post retirement assets;  
9 and three, the alternative recommendation of a pension  
10 balancing account.

11 First, with regard to the pension loss, the OCS  
12 and UAE are recommending that RBM -- recommending that  
13 Rocky Mountain Power amortize settlement losses or gains  
14 over the remaining life expectancy of plan participants.  
15 Under such an approach, the settlement losses or gains  
16 will continue to be recognized in annual pension costs,  
17 the same way they would have been recognized had the  
18 recognition of the settlement loss or gain not been  
19 triggered. This is consistent with the treatment of  
20 Rocky Mountain Power's request in Docket 18-035-48. It  
21 was recognized as a valid approach by Rocky Mountain  
22 Power in the hearing and does not reasonably --  
23 unreasonably inflate the revenue requirement.

24 Second, Rocky Mountain Power's recommendation to  
25 include prepaid settlement assets into the revenue

1 requirement must be rejected. Rocky Mountain Power's  
2 prepaid asset approach is a radical departure from past  
3 practices, and Rocky Mountain Power has not provided any  
4 new facts and rationale to justify this inconsistency, as  
5 required by Utah Code 63G-4-403(4)(a)(iii).

6           While over the duration of these retirement  
7 plans, the total amount of cash contributions to the  
8 plans will ultimately equal the total amount of expenses  
9 associated with the plans, it is unfair to charge  
10 ratepayers a return now that the Company is in a net  
11 prepaid position when ratepayers did not benefit through  
12 a reduction to rate base during the many past years in  
13 which the net -- an accrued liability existed.

14           While Rocky Mountain Power claims that its  
15 shareholders have funded the net prepaid asset, it is  
16 unable to support this claim. It cannot be determined if  
17 the prepaid balance on Rocky Mountain Power's books was  
18 funded by shareholders or ratepayers because many cases  
19 were resolved in settlements. For these reasons, Rocky  
20 Mountain Power's prepaid argument must be rejected.

21           Finally, the Commission must reject Rocky  
22 Mountain Power's suggestion of establishing a pension  
23 balancing account. This suggestion of a pension  
24 balancing account was first mentioned by Rocky Mountain  
25 Power in its rebuttal testimony approximately a month

1 before the hearing, and Rocky Mountain Power has not  
2 adequately supported its new-found position.

3           Moreover, pension costs are not sufficiently  
4 variable to justify a balancing account, and the  
5 proliferation of balancing accounts is contrary to policy  
6 considerations against single-issue rate making.

7           Mr. Snarr will continue with the OCS  
8 presentation from here. Thank you very much,  
9 Commissioners.

10           MR. SNARR: Thank you. I'd like to talk about  
11 some of the other revenue requirements issues, and then  
12 I'll move into some of the cost-of-service rate design  
13 issues, if that will be all right.

14           First, I'd like to discuss the Pryor Mountain  
15 project. The OCS recommends disallowance of the Pryor  
16 Mountain costs because, first, it is not strictly needed  
17 by Rocky Mountain in its resource requirements; second,  
18 it is more expensive than other recent acquisitions, and  
19 the Company has really made no comparison to other  
20 alternatives; and thirdly, it is based on an affiliate  
21 transaction that has not been fully justified.

22           The Company's testimony states that when the  
23 Company made its decision to proceed with the Pryor  
24 Mountain project, it ran its GRID model and found that  
25 the system would be better off with the project than



1 without the project. Such analysis is incomplete. If  
2 three projects passed the GRID test, would they add all  
3 three? Or, if 15 projects passed their GRID test, would  
4 they add all 15?

5 As a regulated utility, Rocky Mountain has an  
6 obligation to consider whether another energy resource is  
7 really needed. The Company has not demonstrated a need  
8 for the project, given the availabilities of front office  
9 transactions and the pending large solicitation for  
10 renewable resources.

11 In addition, there are burdens that Rocky  
12 Mountain must assume as a regulated entity that  
13 demonstrate that its decision would meet a public  
14 interest standard. Rocky Mountain was fully aware of the  
15 need to demonstrate prudence in connection with, first,  
16 the decision it made to proceed with the Pryor Mountain  
17 project; second, the acquisition of wind turbine  
18 components from an affiliate, including regulatory  
19 scrutiny in acquiring the equipment at cost or market;  
20 and lastly, the incurrence of actual cost overruns. This  
21 awareness is demonstrated by the testimony of Joelle  
22 Steward at the hearing.

23 Notwithstanding this awareness, the Company  
24 failed to include any explanation or evidence in its rate  
25 case application that addressed questions about

1 availability of comparable energy supplies or whether the  
2 Pryor Mountain facility would be an energy source that  
3 would produce energy at the lowest reasonable cost.

4           The OCS is not suggesting a different standard  
5 for approval of Pryor Mountain because the Company chose  
6 not to seek preapproval. Rather, since no review of  
7 prudence has been made to date, a full prudence review of  
8 both planning decisions and construction costs must take  
9 place in this proceeding with the Company bearing the  
10 burden of proof before this Commission -- before this  
11 Commission can authorize a recovery in rates of Pryor  
12 Mountain related costs.

13           While the Company chose to proceed without  
14 seeking preapproval of the project, under Utah Code  
15 Section 54-17-201, it cannot avoid prudency scrutiny as  
16 it relates to the public policy that is embodied in that  
17 statute requiring utilities to consider whether its  
18 actions will most likely result in the acquisition,  
19 production, and delivery of electricity at the lowest  
20 reasonable costs to retail customers. That policy  
21 remains a legitimate concern when considering whether a  
22 utility's decision is prudent.

23           Our Utah Supreme Court has stated that the  
24 utility bears the burden of presenting the evidence  
25 necessary to support the Commission's essential findings.

1           In the 2003 case involving Committee of Consumer  
2 Services versus the Commission, the Court specifically  
3 stated, "In the regulation of public utilities by  
4 governmental authority, a fundamental principle is the  
5 burden rests heavily upon a Utility to prove it is  
6 entitled to rate relief and not upon the Commission, the  
7 Commission staff, or any interested party or protestant  
8 to prove the contrary. The Utility must, therefore, put  
9 forth substantial evidence to establish that its proposed  
10 increase is just and reasonable. The Commission, in  
11 turn, bears the responsibility for holding the Utility to  
12 its burden."

13           Similarly, in a 1980 case before the Court, Utah  
14 Department of Business Regulation versus Public  
15 Utilities -- Public Service Commission, the Court stated,  
16 "Ratemaking is not an adversary proceeding in which the  
17 Applicant needs only to present a prima fascia case to be  
18 entitled to relief. A state regulatory commission must  
19 be informed of all relevant facts."

20           The Company's application also failed to include  
21 any evidence showing the market value of the wind turbine  
22 components it was acquiring from its Berkshire Hathaway  
23 affiliate. Rocky Mountain provided no evidence of any  
24 evaluation that the price paid was the lower of cost or  
25 market for critical wind turbine components, the hubs and

1 the nacelles the Company decided to use from its  
2 affiliate. Without that evidence, it appears that the  
3 sale was an opportunity for an affiliate to offload wind  
4 turbine components that were simply sitting in storage at  
5 the time when their value was declining because PTCs were  
6 expiring.

7           Commissioner Clark questioned Rocky Mountain's  
8 witness, Mr. Van Engelenhoven, related to this market  
9 value, and no evidence was presented as to the market  
10 value in 2019 as it related to the purchases that had  
11 been made by the affiliate in 2016 at book value.

12 Mr. Engelenhoven in the hearing discussed this, and when  
13 pressed on cross, indicated that -- in response to a  
14 question whether they had zero value, he could only state  
15 that the wind turbine components had some value.

16 Mr. Hayet also addresses this in his hearing testimony.

17           Now, the Utah Commission has required utilities  
18 to specifically address questions of prudence when  
19 dealing with affiliate transactions. In a 1990 case  
20 involving Mountain Fuel Supply, the Commission said, "The  
21 Commission is of the view that transactions involving  
22 affiliates place ratepayers at a disadvantage that can  
23 never be entirely controlled or offset. For that reason,  
24 it is generally appropriate to allow transfers of  
25 property from affiliates to the utility at the lesser of

1 book or market and transfers going the other way at the  
2 greater of book or market. We find that Mountain Fuel's  
3 property transferred to an affiliate should be valued at  
4 the greater of market or book, while that transferred  
5 from an affiliate to Mountain Fuel should be valued at  
6 the lesser of market or book."

7 Another concern has emerged as this case has  
8 progressed. Cost overruns have been disclosed, and  
9 there's been no evidence presented addressing the  
10 prudence of such cost overruns. Specifically, look to  
11 Mr. Link's hearing testimony when he addressed this in  
12 questioning as well as Mr. Higgins's hearing testimony.

13 Contrary to the Company's assertion that OCS has  
14 mischaracterized the burden of proof requirements that  
15 Rocky Mountain must meet, we acknowledge that the  
16 question of prudence is one that requires us to consider  
17 evidence of prudence at the time the Company made its  
18 decision to move forward with the Pryor Mountain project.  
19 We submit, however, that the Company has failed to meet  
20 its burden of proof in that there is no evidence showing  
21 a need for the Pryor Mountain project, no evidence that  
22 that might provide -- that it might provide energy at the  
23 lowest reasonable price, and no evidence that the turbine  
24 components requiring -- that the turbine components  
25 acquired from the affiliate were acquired at the lower

1 cost or market.

2 In addition, in seeking to recover overrun costs  
3 in this proceeding, the Company has failed to provide any  
4 evidence to support a finding of prudence related to  
5 those overrun costs. For these reasons, the OCS  
6 maintains that the Company has failed to satisfy its  
7 burden of proof demonstrating that it is entitled to  
8 recover the costs in the Pryor Mountain project.

9 Some of the concerns we've expressed are similar  
10 to the concerns that have been expressed by UAE in its  
11 brief and in the hearing today. UAE, however, has  
12 focused on the legality of an extended or separate test  
13 year. That seems to bring into focus the questions about  
14 costs and when those costs will be finally determined,  
15 when they'll be known and measurable. The UAE has also  
16 focused on the competitive price that was attached to the  
17 project prior to Rocky Mountain acquiring it, which seems  
18 to also focus on whether or not there was any comparable  
19 studies made of other alternative supplies at the time  
20 and whether this project might be one that will produce  
21 energy at a lowest reasonable cost.

22 For these reasons, we submit that the Pryor  
23 Mountain costs included in this case should be excluded  
24 and based upon a failure of the Company to meet its  
25 burden of proof.

1           We've also raised issues about the Lake Side 2  
2 outage. In our brief, we've set forth our position. It  
3 is unfortunate when outages occur. When they occur twice  
4 in the same facility in similar ways and for similar  
5 reasons, these outages need to stop. These facts leave  
6 us with a mystery that must be solved by Rocky Mountain  
7 before the next outage. The evidence demonstrates the  
8 need for Rocky Mountain action. It does not meet the  
9 burden of proof required to demonstrate prudence. The  
10 DPU is aligned with the Office on this issue.

11           We have four other issues that we've addressed,  
12 which I'll identify here: The transmission power  
13 delivery, bad debt, generation overhaul expense, nonlabor  
14 O&M escalation, and the Deer Creek Mine regulatory asset.  
15 For each of these four issues, the OCS has presented  
16 clear evidence through its witness, Donna Ramas,  
17 demonstrating a basis for the suggested adjustments to  
18 the Company's revenue requirement. We provided a factual  
19 summary and legal basis for making these adjustments in  
20 our legal brief.

21           I would note that UAE's witness, Kevin Higgins,  
22 in his direct testimony at page 53 provides support for  
23 the adjustment we suggest as it relates to the Deer Creek  
24 Mine regulatory asset. Interestingly, Rocky Mountain has  
25 chosen not to address these four issues in its post trial

1 brief.

2 I'd like to now turn to the AMI meters. This is  
3 an issue that seems to have found its way into both the  
4 revenue requirement section of the case as well as the  
5 cost of service rate design. I'll address it once here.

6 The OCS recommends that the Company's Utah AMI  
7 project be excluded from the test year as the benefits of  
8 the project are largely not expected until 2023 when the  
9 project is fully implemented. The purported benefits and  
10 offsetting cost savings are not reflected in the test  
11 year, and the project will not be fully used and useful  
12 in the test year.

13 Actual amounts spent on the Utah AMI project  
14 assets completed and being placed in service during 2020  
15 are only expected to be less than about 2.5 million, as  
16 indicated in Mr. Mansfield's hearing testimony. Without  
17 the realization of significant benefits in the test year  
18 or the inclusion of any of the purported benefits and  
19 cost offsets in the test year, the recovery of the costs  
20 should not be allowed in this rate case.

21 The Company's justification for the project has  
22 been primarily focused on possible improvements to the  
23 meter reading process. AMI meters can be a grid  
24 modernization tool, but without proper analysis,  
25 planning, transparency, and accountability, customer



1 benefits will not be realized, and the project will not  
2 be cost effective.

3           The OCS recommends that Rocky Mountain develop  
4 an advanced rate design roadmap to ensure that AMI  
5 functionality provides benefits for ratepayers as soon as  
6 is reasonable. The Division supports our position. UCE  
7 supports our suggestion for further collaborative studies  
8 with stakeholders. And WRA, while not filing a post  
9 hearing brief, supports our suggestion as well.

10           I'd like to now turn to Rocky Mountain's  
11 cost-of-service study. The OCS has examined Rocky  
12 Mountain's cost-of-service study and found that the  
13 Company's modifications to traditional cost-of-service  
14 methods to incorporate subfunctionalization is fatally  
15 flawed, inappropriate, and without transparency shifting  
16 costs from energy to demand. Using the study could have  
17 additional unintended consequences.

18           One of the guiding principles recognized by  
19 regulatory authorities in designing rates for regulated  
20 utilities is cost-causation. That principle has been  
21 described in the U.S. Court of Appeals for the District  
22 of Columbia as requiring that "all approved rates reflect  
23 to some degree the costs actually caused by the customer  
24 who must pay them."

25           In elaborating further on this cost-causation

1 principle, that Court explains: "In the context of  
2 monopoly regulation, this principle helps ensure that  
3 utilities produce revenues from each class of customers  
4 which match, as closely as practicable, the costs to  
5 serve each class or individual customer. That is, we  
6 scrutinize a utility's rates to ensure a match between  
7 cost-causation and cost-responsibility." That's from the  
8 Black Oak Energy case cited in our brief.

9           Such cost-causation principles have been  
10 followed in Utah regulatory proceedings where utilities  
11 have been required to perform cost-of-service studies in  
12 support of their proposed rate designs. And we cite in  
13 our brief the PSC order of 1995 involving U.S. West.

14           In the cost-of-service study submitted by Rocky  
15 Mountain, the Company claims to have followed traditional  
16 steps of analysis where costs are first functionalized,  
17 then classified, and finally allocated to inform rate  
18 design. However, the technical mechanics of Rocky  
19 Mountain's fixed and variable subfunctionalization and  
20 changes made to facilitate unbundling are not an accepted  
21 or recognized cost-of-service approach.

22           Rocky Mountain not only failed to provide  
23 sufficient detail and support for its  
24 subfunctionalization, but its methods are also highly  
25 flawed, both technically and theoretically.

1 Subfunctionalization's purpose is to better reflect  
2 cost-causation. But when it does not change the  
3 classification and allocation of costs, costs cannot be  
4 more accurately categorized into energy, demand, or  
5 customer-related, nor split between customer classes.

6 In its legal brief, Rocky Mountain claims that  
7 OCS has just misunderstood what Rocky Mountain was doing  
8 to accomplish unbundling. A brief response to this  
9 accusation may be in order.

10 In his direct testimony, Mr. Meredith states  
11 that unbundling provides stakeholders with useful  
12 information on how rates recover different aspects of the  
13 utility service. This information can be helpful in  
14 different rate making contexts, such as when designing  
15 new programs for alternative generation sources.

16 In his rebuttal testimony, Mr. Meredith  
17 introduces EBA clarity as a primary reason for  
18 unbundling. Nowhere in his prefile testimonies does  
19 Mr. Meredith mention anything about programs envisioned  
20 by H.B. 411. However, in his witness statement presented  
21 at hearing, Mr. Meredith, for the first time, mentions  
22 that unbundling will allow delivery costs in rates to be  
23 delineated from supply so that programs like those  
24 envisioned in House Bill 411 can be designed.

25 Subsequent to Mr. Meredith's witness statement,

1 Rocky Mountain is now claiming in its legal brief that  
2 unbundling is a necessary step to support programs that  
3 have been envisioned by House Bill 411.

4           So, as OCS and others have been attempting to  
5 follow the Company's ever-changing rationale for its  
6 unbundling, Rocky Mountain suggests that we are all  
7 confused. Rocky Mountain would also have us believe that  
8 this ever-changing story somehow satisfies the Company's  
9 burden of proof in proposing and justifying a new  
10 procedure to be used in establishing rates.

11           Rocky Mountain's subfunctionalization proposal  
12 is not transparent. In fact, it is an attempt to work  
13 around the long-standing 75/25 demand and energy split  
14 precedent for production and transmission classification.  
15 To achieve the workaround, Rocky Mountain creates  
16 unprecedented cost components referred to as "fixed and  
17 variable supply."

18           According to the Company, cost-causation  
19 principles would support recovery of fixed supply costs  
20 through demand rates because of the fixed supply cost --  
21 because the fixed supply cost component is greater than  
22 the costs traditionally classified as "demand related"  
23 within the embedded cost-of-service study. Rocky  
24 Mountain's approach could be used to justify inflated  
25 demand charges and lower kilowatt hour charges. Using

1 contrived cost components that do not follow cost of  
2 service best practices is clearly a deviation from  
3 traditional cost-based rate making. Simply stated, the  
4 variable supply, or EBA costs are not the same as the  
5 energy costs within the cost-of-service study that Rocky  
6 Mountain uses the EBA costs to alter rate design.

7 EBA costs do not equal energy-related costs.  
8 Even though Rocky Mountain characterized the changes as  
9 being made to its cost of service as helpful for  
10 unbundling, Rocky Mountain's proposed fixed and variable  
11 cost subfunctionalization is technically unsound, creates  
12 significant confusion through a lack of transparency, and  
13 represents an unprecedented move away from cost of  
14 service based rate making.

15 Various witnesses representing different parties  
16 acknowledged reviewing Rocky Mountain's cost-of-service  
17 study as part of their analysis presented in this case.  
18 However, most of those witnesses also acknowledge that  
19 the subfunctionalization step proposed by Rocky Mountain  
20 presented confusion and should not result in changes to  
21 the separate steps of functionalization classification,  
22 and allocation of costs.

23 Witnesses also acknowledge the lack of  
24 transparency and understanding as it relates to Rocky  
25 Mountain's claim that it was necessary to make the change

1 to incorporate unbundling, a step that was not fully  
2 explained, supported, or justified by the Company, unless  
3 you're going to use their latest rationale stemming from  
4 the witness statement at the time of the hearing and  
5 their legal brief, as they're now contending.

6           Without providing clear evidence of the need for  
7 the extra step of subfunctionalization, and without a  
8 cogent explanation as to what was being accomplished by  
9 the Company's unbundling change, the evidence presented  
10 by Rocky Mountain fails to satisfy the Company's burden  
11 of proof to support its proposed rate design. Thus, the  
12 PSC should reject Rocky Mountain's proposal for unbundled  
13 rates.

14           Now, the OCS does not oppose unbundling per se,  
15 but submits that Rocky Mountain's specific proposal for  
16 unbundling is not in the public interest, a conclusion  
17 supported by several other parties in this proceeding.  
18 Further, given the weaknesses of Rocky Mountain's  
19 cost-of-service study along with additional evidence  
20 presented by OCS, the PSC should give consideration to  
21 factors other than just the Company's cost-of-service  
22 study in deciding how to allocate costs to the various  
23 customer classes. There's record evidence available for  
24 the PSC to carefully review and consider the relative  
25 performance of customer classes in providing revenues

1 compared to the costs that have been assigned to each  
2 class. In that regard, please see Witness Nelson's  
3 rebuttal testimony at page 26.

4           There is also evidence relating to likely  
5 increases in residential revenues in light of the effects  
6 of the pandemic that customers have been recently  
7 experiencing. These facts, along with equitable  
8 considerations associated with gradualism, can easily  
9 form a framework from which the PSC can prescribe a fair  
10 and equitable approach to be taken in the design of rates  
11 as opposed to relying upon the flawed and unpersuasive  
12 cost-of-service study that was submitted by Rocky  
13 Mountain.

14           We would note that the UCE says that changes to  
15 facilitate unbundling should be accomplished through a  
16 collaboration with stakeholders. And Salt Lake City,  
17 while they did not file a post hearing brief, generally  
18 also supports this position.

19           Lastly, I'd like to just speak a little bit  
20 about residential rates. Rocky Mountain's suggested  
21 rates for residential service incorporate increases to  
22 residential customer monthly service charges combined  
23 with the elimination of the last rate tier, which  
24 together result in an inequitable imposition of increased  
25 rates for customers with lower and average levels of use.

1 The OCS examined Rocky Mountain's proposed rate design as  
2 it might affect the rates of residential customers, with  
3 particular focus of ensuring that no subset of the  
4 customer class is burdened with an unreasonably high rate  
5 shock.

6 While the OCS generally supports the Company's  
7 suggestion to split the basic monthly service charge  
8 between multi-family and single family customers, OCS  
9 witness Ron Nelson demonstrated that the increase in  
10 monthly service charges were not fully justified.  
11 Mr. Nelson demonstrated that Rocky Mountain's proposal to  
12 include demand-related transformer costs within the  
13 customer charge was not supported theoretically and that,  
14 instead, only customers' specific costs should be  
15 collected through the customer charge.

16 Based on the evidence presented, the Office  
17 specifically submits that the single-family basic monthly  
18 service charge could be increased but not to exceed \$7.

19 The OCS also examined Rocky Mountain's proposal  
20 to remove the last inclining block rate for residential  
21 service. And while some witnesses have suggested that  
22 the evidence is not compelling -- you can look at  
23 Camfield and Wright's hearing testimony -- nevertheless,  
24 the OCS decided that it would support the Company's  
25 proposal to remove the inclining block rate so long as



1 the basic monthly service customer charge for  
2 single-family customers would be limited to a fee of not  
3 greater than \$7. The OCS believes that incorporation of  
4 the Company's proposal without these limitations would  
5 result in rates that would be unjustified and  
6 inequitable, particularly when considering effects such  
7 rates would have on low- and average-use residential  
8 customers. We would note that UCE supports the  
9 establishment of a working group of stakeholders to  
10 consider any new changes to residential rate design.

11 Also, with respect to the revenue requirements  
12 and the issues we've discussed here, possible rate  
13 impacts for various adjustments to revenue requirements  
14 are clearly shown in OCS Exhibit 3.3S, one of the  
15 surrebuttal exhibits attached to Ms. Donna Ramas'  
16 testimony. And we'll submit it on that basis. Thank  
17 you.

18 CHAIRMAN LEVAR: Thank you, Mr. Snarr.

19 Commissioner Allen, do you have any questions  
20 for Mr. Moore or Mr. Snarr?

21 COMMISSIONER ALLEN: No questions. Thank you.

22 CHAIRMAN LEVAR: Thank you.

23 Commissioner Clark?

24 COMMISSIONER CLARK: No questions. Thank you,  
25 Mr. Snarr.

1           CHAIRMAN LEVAR: Okay. Thank you. I have a  
2 couple.

3           Mr. Snarr, I think you probably heard my  
4 question to Mr. Russell on modeling for Pryor Mountain.  
5 I think you covered your position on that issue in your  
6 presentation, but if you'd like to elaborate on that any  
7 more, feel free to do so. If you need me to repeat the  
8 question I asked earlier, I'd be happy to.

9           MR. SNARR: Let me -- I recall the question.  
10 Let me address it.

11           We were concerned when we saw the Company make  
12 the choice not to go with preapproval on this kind of a  
13 project, when it's often been used before.

14           As we look at the statute that relates to the  
15 preapproval process, there's a specific concern in the  
16 statute which evidences a public policy of trying to make  
17 sure that projects that are brought in for supplying  
18 energy are done so at the lowest reasonable cost. And  
19 what we determined was, while the Company has the  
20 choice -- we don't argue with that -- to not bring a  
21 project forward for preapproval, it still must  
22 demonstrate prudence. And we believe that part of the  
23 consideration of prudence would include some sort of  
24 analysis or comparison to other alternative or available  
25 energy supplies so that we don't just pursue a project

1 that might be higher than the other ones. That would be  
2 inconsistent with prudence.

3 So, while we haven't suggested a particular  
4 model or analysis, we do suggest that the consideration  
5 must include whether or not this will bring about energy  
6 that could be attributed at a lowest reasonable cost to  
7 retail customers, and that that public policy announced  
8 in the statute really can't just be totally ignored by  
9 not availing themselves of using the preapproval process.

10 The question still is a part of prudence, and  
11 the prudence issues are in this rate case, and we think  
12 that it should be addressed.

13 CHAIRMAN LEVAR: Okay. Thank you, Mr. Snarr. I  
14 appreciate that answer.

15 I'd like to ask you about one other issue, and  
16 it's the last one you were speaking about, the proposed  
17 customer charge for single- and multi-family homes. And  
18 my question is a little bit convoluted, so I'll try to  
19 walk you through what I'm asking.

20 Rocky Mountain Power has proposed a \$6 for  
21 multi-family and \$10 for single-family customer charge,  
22 and my understanding is that is intended to incorporate  
23 both of those different types of customers' contribution  
24 to fixed charges, including line transformers. Now, the  
25 Office is proposing reducing the single-family but not

1 reducing the multi-family.

2           So my question is: Would that, then, require an  
3 adjustment to Rocky Mountain Power's proposed energy  
4 charge that would apply equally to multi- and  
5 single-family? And then the second question is: Would  
6 that end up having multi-family residents paying twice  
7 for line transformers, once in the \$6 customer charge,  
8 and then also in the adjusted energy charge that would  
9 result from reducing the single-family?

10           MR. SNARR: You ask some good questions. Let me  
11 respond in this way.

12           We looked at the incorporation of the  
13 transformers and found that that tended to raise the  
14 initial monthly charges. And we also looked at the  
15 impact that might have on some of the residential  
16 customers who are using less energy. And we were  
17 concerned about that. That's why we zeroed in on that  
18 issue.

19           Our primary concern, however, was with respect  
20 to the residential single-family customers who would  
21 otherwise see an increased charge up to \$10. And so  
22 based upon our analysis, we thought that we ought to put  
23 the brakes on that at \$7 and could support that.

24           There may need to be some equitable alignment  
25 between the multi-family and the single-family charges,

1 and we acknowledge that. Our primary concern was not to  
2 see that single-family monthly charge go above \$7. And  
3 we presented arguments that would support ratcheting that  
4 back down, or limiting it to \$7.

5 I understand the nature of your question. We'd  
6 probably leave it to the Commission to decide how best to  
7 equitably deal with the rationale so that it's fair to  
8 both sets of parties. But we can't really tolerate well  
9 anything more than \$7 for the single-family customers.

10 CHAIRMAN LEVAR: Thank you. I appreciate that  
11 answer. And I don't have any other questions for you,  
12 Mr. Snarr, so thank you for your oral argument this  
13 morning.

14 I think with that, we'll take a 10-minute break  
15 and then return and move to the Division of Public  
16 Utilities. We'll be in a short recess.

17 (A break was taken from 10:19 a.m. to 10:30 a.m.)

18 CHAIRMAN LEVAR: We'll be back on the record,  
19 and at this point we'll go to the Division of Public  
20 Utilities.

21 MR. JETTER: Good morning, Chairman Levar and  
22 Commissioners Clark and Allen. Thank you for this  
23 opportunity to provide these closing thoughts on behalf  
24 of the Division of Public Utilities.

25 The Division has presented an array of witnesses

1 on the various topics in this rate case. And we've  
2 presented a fairly brief but comprehensive summary of our  
3 position on the issues in our closing brief. And I'm not  
4 going to try to repeat all of those this morning.

5 Briefly, I'd like to address a few issues, and  
6 starting in the order that's been fairly consistent with  
7 the other parties, we'll start with the rate of return.

8 Rocky Mountain Power has based a lot of their  
9 rate of return testimony on this concept that there's  
10 uncertainty and volatility in the capital markets and  
11 that uncertainty and volatility is causing equity  
12 investors to require higher returns on their equity for  
13 common stock.

14 And that concept just hasn't been borne out. In  
15 the markets, we're seeing record stock market values,  
16 which is a simple mathematical relationship there that  
17 dictates that those higher values tend to indicate that  
18 investors are, in fact, requiring lower returns. And  
19 that's also consistent with what we've seen in other  
20 Commission orders on rate of return over the past year.  
21 The averages for rate of return are right about  
22 9.5 percent, as has been included and summarized in  
23 Division witness Casey Coleman's testimony. And that  
24 trend continues on a downward path.

25 With respect to the typical three models of the

1 capital asset pricing model, the discounted cash flow  
2 model, and the risk premium method, Division Witness  
3 Coleman used the standard methods of calculating those  
4 with the common proxy companies, where appropriate, in  
5 those models and the standard risk-free rates of return.  
6 And those results remained in the ranges from 7 1/4 to  
7 about 9.2 percent. And the Division Witness Coleman made  
8 some professionally-based adjustment to that to recommend  
9 the 9.25 percent rate of return.

10           Given the capital structure of Rocky Mountain  
11 Power, that return is consistent with what returns have  
12 been approved by other commissions throughout the United  
13 States in recent months and in the recent year. And  
14 what's important to recognize here is that the  
15 calculation of those types of models by Ms. Bulkley from  
16 Rocky Mountain Power, she makes unusual or nonstandard  
17 adjustments or uses models, and all of those have been  
18 pointed out in testimony. But those models are  
19 inconsistent with the traditional models for those  
20 calculations. And the result is, of course, a higher  
21 rate of return.

22           And what I'd really like to focus just the  
23 Commission on when they're making this determination is  
24 that Division witness Casey Coleman used the standard  
25 models in the standard way and recommended a rate of

1 return that is essentially unbiased and is a  
2 representation of what a fair rate of return is in the  
3 market today. I don't need to go into a lot more detail.  
4 Mr. Coleman has explained that pretty thoroughly, both in  
5 his testimonies prefiled as well as his testimony live.

6 I'd like to also address next the question of  
7 the production tax credits. And the Division is out on  
8 an island here a little bit. We're the only party that  
9 has recommended a 10-year schedule on the depreciation of  
10 the retired or removed-from-service wind turbine  
11 equipment. And the Division continues to believe that  
12 this is the most reasonable way to affect the least  
13 amount of intergenerational transfer.

14 There will be some intergenerational inequities  
15 no matter how this is broken up. But what we have is a  
16 situation where you had wind turbines that were installed  
17 approximately 2010-ish. They've been in service for  
18 about 10 years out of approximately a 30-year useful life  
19 and then are taken out of service and decommissioned  
20 primarily for the benefit of a new round of production  
21 tax credits. And a secondary justification was that  
22 within 10 years, a number of the wind turbine equipment  
23 facilities were starting to have higher maintenance and  
24 repair costs.

25 And when we look at the value stream that comes



1 from the decision to do the replacement of those, we have  
2 a set of customers that that will run from 2020 out to  
3 around 2050. And the customers from 2020 to 2040 would  
4 have been paying for depreciation of the prior existing  
5 wind turbine equipment through that period and receiving  
6 approximately the same amount of fuel-cost free energy  
7 over that period as the same customers would with the new  
8 equipment.

9           And so for those customers, the real benefit  
10 that they receive from the replacement is the production  
11 tax credits. And it seems unreasonable to the Division  
12 to make, particularly the customers in the period from  
13 2030 to 2040 -- so it would be the final 10 years of the  
14 old equipment and the middle 10 years of the new  
15 equipment -- continue to pay the depreciation rates for  
16 equipment that was taken out of service in order to  
17 receive a new round of production tax credits. And while  
18 we recognize that there are -- this is a policy decision  
19 for the Commission to make, we think that the most  
20 reasonable policy decision to make is to depreciate the  
21 out-of-service wind turbine equipment over the 10 years  
22 that corresponds with the front-loaded benefit provided  
23 by the production tax credit.

24           And we fully recognize that those out years,  
25 years 2040 through 2050 approximately, would receive a

1 benefit that they would not pay -- potentially not pay  
2 some or all for. But it's also important to recognize  
3 that those customers in years 2040 to 2050 will continue  
4 to pay the depreciation rates for the new wind turbine  
5 equipment in those years. And so it's not as if they're  
6 getting no benefit.

7           And additionally, if you run out this sort of  
8 hypothetical where we take the old equipment out to its  
9 final year in 2040, presumably if you replaced it in 2040  
10 with new wind turbine equipment -- and I'm making a lot  
11 of assumptions here -- but assuming the costs were  
12 roughly the same, when we reach that 2040 mark, the new  
13 depreciate rates for new wind equipment that might be  
14 installed in 2040 would then be potentially in the same  
15 ballpark of what -- the depreciation those customers now  
16 will pay in 2040 through 2050. And I hope that all makes  
17 sense clearly. And if not, please ask me some questions  
18 about it.

19           The main point being that the Division believes  
20 that the primary function and purpose of replacing that  
21 wind turbine equipment was a new round of production tax  
22 credits, and that that new round of production tax  
23 credits would be best matched with the depreciation of  
24 those wind turbine equipment that were retired early.

25           Moving on to, I guess my next issue would be the

1 production tax credits inclusion in the energy balancing  
2 account. And this has been a little bit of a contentious  
3 issue between the various parties. But the Division  
4 firmly believes that the production tax credits are not a  
5 power cost, and for that reason that they should not be  
6 included in the energy balancing account. And that's  
7 been addressed in our post hearing brief.

8           And the key points that we'd like to sort of  
9 reemphasize again today is simply that those aren't power  
10 costs, and they don't directly flow with other power  
11 costs in the same way. And more importantly, they also  
12 don't -- they don't represent the same problem that the  
13 energy balancing account was created to resolve. You're  
14 not going to see production tax credits double between  
15 one rate case and the next. The only variation we'll see  
16 is the generation output variation between projection and  
17 actuals. Whereas, if you compare that to something like  
18 a natural gas fuel cost, natural gas fuel cost has a high  
19 amount of variability in the commodity itself, and then  
20 there's a secondary variability in the amount that you  
21 purchase during that period between rate cases. And at  
22 least I believe that that -- there's a fair amount -- let  
23 me back up.

24           The basis for the energy balancing account  
25 between rate cases is to allow the utility to stabilize

1 its revenue in respect to those changing fuel costs. And  
2 that was primarily for the commodity cost of the fuel  
3 more so than the volume used. And for that reason, we  
4 don't think that the production tax credit fits well in  
5 addition to the fact that it's not an actual power cost.

6 For those reasons, the production tax credit  
7 should be part of base rates without a true-up rather  
8 than include it in the energy balancing accounts.

9 And then I'll briefly address the AMI metering  
10 situation. This has been addressed in our brief and in  
11 the briefs of other parties. And the core issue here for  
12 the Division is we're not objecting to the installation  
13 of AMI meters and understand the benefits of those and  
14 that they have those benefits and they justify the costs  
15 of installing them. The trouble is the timing of those  
16 costs.

17 And under the traditionally used and useful  
18 test, there's a little bit more than just being placed  
19 physically in service for some part of it. There also  
20 needs to be productive delivery of value that justifies  
21 the cost of the assets put in service. And, as you've  
22 seen in the testimonies, particularly in Rocky Mountain  
23 Power Witness Mansfield's Phase I rebuttal testimony, the  
24 real value that -- the productive value of those AMI  
25 meters is not going to take place until, really, the year

1 2023. It will be towards the end of 2022. And that's  
2 simply too far out and too far beyond the test year to be  
3 recoverable in rates now. There has to be some type of a  
4 cutoff of how far we project into the future and what  
5 amount of utility investor capital becomes used and  
6 useful for customers and included in rates.

7           And under the historic prior to a future test  
8 year, it would not have been included in the past base  
9 year we've used. And similarly in this case, Rocky  
10 Mountain Power chose the future test year that it did,  
11 and the AMI metering services that provide the value that  
12 justify installing them will not be valuable during the  
13 future test year. And it becomes a bit of a slippery  
14 slope situation, where if we start allowing future  
15 capital expenses beyond the future test year chosen into  
16 rates, I'm not sure how far we go. Do we go one year  
17 out? Two years out? Five years out? And that becomes a  
18 very difficult situation for anyone to analyze whether  
19 those individual capital assets that might come online in  
20 those out years are offset by other cost savings that we  
21 haven't analyzed.

22           And for those reasons, the AMI meters simply  
23 don't meet the use and useful test because their date of  
24 service -- and by that service, it's really the  
25 productive service in delivering the values that justify

1 the costs of them. Those are simply too far out in time  
2 to be included in the test year and should not be  
3 included in the rates that are set based on that test  
4 year.

5 And those are the issues that I had intended to  
6 address directly in our closing statement that -- mostly  
7 to focus on a few parts of our closing brief and our  
8 testimony.

9 I think I can address the Pryor Mountain  
10 question asked by Chairman Levar to the other parties.  
11 And in addressing that, it is the Division's opinion that  
12 the Company has a duty of prudence in its investments.  
13 And part of that duty of prudence, making prudent  
14 investments, is the lowest cost/lowest risk choice, and a  
15 lower cost than what the utility might have otherwise  
16 done rather than purchase that project. So the with and  
17 without scenario doesn't really give us a full -- a full  
18 vision of what the utility might have otherwise done.  
19 And we can't say in that scenario that that would be a  
20 least cost/least risk approach by simply doing something  
21 that's less costly than doing nothing.

22 And for that reason, it's our opinion that a  
23 prudent showing for this type of a facility where the  
24 energy isn't necessarily needed, it's a cost saving  
25 measure, we should choose the most cost-saving measure.

1           And in addition, there's a balance of risk which  
2 we accept, so it's not necessarily the lowest cost of all  
3 options, but the least cost/least risk of the available  
4 options to the utility at the time that the decision is  
5 made.

6           And so I think that that answers the question to  
7 the best of my ability, which is that we need to consider  
8 what alternatives were available in addition to just a go  
9 or no go decision on an individual project. And we've  
10 expressed some of those concerns in our closing brief  
11 regarding how third parties, such as the Division, can  
12 really evaluate whether the least cost/least risk  
13 decision made without our preapproval processes, which  
14 recognizing they're not mandatory.

15           We don't have perfect 20-20 hindsight in this  
16 case. We can't go back and look at what else was  
17 available and make a decision. And so we believe it's  
18 incumbent on the utility to meet their burden of proof in  
19 demonstrating not only that the cost was lower than not  
20 doing the project, but also that that cost was lower than  
21 the available alternatives to the utility at the time.

22           And that concludes my closing statement. I'm  
23 happy to answer questions from the Commissioners.

24           CHAIRMAN LEVAR: Thank you, Mr. Jetter.

25           I'll go to Commissioner Clark first.

1 Do you have any questions for Mr. Jetter?

2 COMMISSIONER CLARK: I have no questions. Thank  
3 you, Mr. Jetter.

4 CHAIRMAN LEVAR: Thank you.

5 Commissioner Allen?

6 COMMISSIONER ALLEN: Thank you. No questions  
7 from me, either.

8 CHAIRMAN LEVAR: Okay. Thank you.

9 I have a few.

10 First, just from a legal basis, obviously we  
11 have to struggle with what does the word "useful" mean in  
12 the context of "used and useful," particularly on the AMI  
13 issue. And 1 and 2 of the starting point is it means  
14 something in between the word "used" because it has to  
15 mean something different from "used." And on the other  
16 extreme, it could be cost-effective. Does it have to be  
17 cost-effective to be useful, or at least within the test  
18 period issue we're talking about?

19 How would you suggest we define the word  
20 "useful"? Does it mean that something is cost-effective?  
21 And if it does, why do we have a different word than  
22 cost-effective?

23 MR. JETTER: I can't say why it's a different  
24 word from "cost-effective" necessarily. I think that I  
25 would describe it as something like "used" and "prudent."



1 And the reason I think that is, is that you can have a  
2 facility that -- maybe the AMI meter actually is a great  
3 example, where it could be partially used but used in  
4 such a way that would not justify the cost of installing  
5 it. And in that case, at least in my view, it doesn't  
6 meet the principle of "used and useful," that it's used  
7 and useful in such a way that justifies the cost included  
8 in rates.

9           Customers are going to be paying rates, and what  
10 they should be paying for is utility investment that is  
11 delivering the value to the customers that is typically  
12 equal to or greater than the value that the customers are  
13 compensating the utility for. And so in that respect, I  
14 think that that translates to the capital investment by  
15 the utility once it starts to be paid for by customers.  
16 The customers need to be receiving the benefit for which  
17 they're paying. And that would require, I guess in my  
18 view, the utility to be in at least in enough service to  
19 justify the cost that they're paying for.

20           CHAIRMAN LEVAR: Okay. Thank you.

21           MR. JETTER: That's a long answer. I don't know  
22 if that answered your question.

23           CHAIRMAN LEVAR: It gave me -- I think I can get  
24 it on that.

25           In your view, do we have enough in the record to

1 make any kind of estimate of how much of the AMI project  
2 would be at least used, putting aside the useful portion,  
3 but would be in operation and used during each month of  
4 the test year? Can we make a reasonable estimate of that  
5 from what we have in the record?

6 MR. JETTER: I don't know on a monthly basis. I  
7 believe there is testimony from Mr. Mansfield that  
8 approximately 34,000 meters will be, I guess, operational  
9 and used in the function of metering electricity.

10 CHAIRMAN LEVAR: That's for the entire test  
11 year, right?

12 MR. JETTER: Yeah. And I'm not sure that that's  
13 providing a lot of meaningful value over the meters that  
14 were there in the prior time, the AMR meters that would  
15 be replaced during the test year. However, that's -- my  
16 understanding is 34,000 is something along the lines of  
17 20 percent of the total number of AMI meters that will be  
18 installed.

19 I don't know how to estimate a used or useful  
20 sort of quantitative value for the other components of  
21 the system, so the software and the antennas and those  
22 components of the system which are a significant portion  
23 of the cost. And it's been testified that, I believe --  
24 I'm recalling from memory -- somewhere in the range of  
25 80 percent of those may be completed during the test

1 year, if my memory is correct of Mr. Mansfield's  
2 testimony.

3 I don't know how to quantify a portion of that  
4 that's useful if they're not fully functioning. I don't  
5 know how to give an answer for that portion of the costs.

6 CHAIRMAN LEVAR: Thank you. I just want to ask  
7 a couple more questions on production tax credits. The  
8 first question is maybe an intuitive question.

9 But is there any potential that production tax  
10 credits could ever exceed projections by any meaningful  
11 amount in a given year? Or are the projections pretty  
12 much the cap of where they could be, and we're only  
13 looking at whether they might be lower in a particular  
14 year?

15 MR. JETTER: They certainly could exceed the  
16 projection by some amount. I think it's unlikely that  
17 they would exceed it by a high amount. And the reason  
18 for that is that the variation is going to be primarily  
19 based on wind speeds and timing. And I think the  
20 expectation is that is wind turbines will operate at full  
21 capacity every hour that that wind is available to  
22 generate.

23 And so I think the expectation is that there  
24 will be some variation from the projections, but it won't  
25 be more than a few percentage up or down in a given year,

1 with the exception of an unplanned outage.

2 CHAIRMAN LEVAR: Thank you. And I recognize  
3 that might have been a better question to ask during the  
4 evidentiary hearing of your witness than ask you in  
5 closing arguments, so I apologize for that.

6 My next question, which is more of a -- relates  
7 more to your closing statement is in terms of whether  
8 they should go into the EBA as a net power cost. How  
9 would you describe the similarities and the distinctions  
10 between production tax credits and wheeling revenue?

11 MR. JETTER: I suppose I would say that wheeling  
12 revenue is probably more similar to production tax  
13 credits than natural gas prices as a commodity. Wheeling  
14 revenue values are typically set mostly out of time. And  
15 I suppose the closest thing I could differentiate those  
16 two is that wheeling revenue is part of a direct power  
17 cost to deliver energy to customers. And a production  
18 tax credit is a tax credit that's separate that is  
19 related to the generation output of the wind turbines,  
20 but it's not part of a power cost in a traditional power  
21 cost sense.

22 CHAIRMAN LEVAR: Okay. Thank you. That's --

23 MR. JETTER: I recognize they do have some  
24 similarities.

25 CHAIRMAN LEVAR: Okay. Well, thank you. I

1 appreciate that. I don't have any other questions for  
2 you, so thank you for your time this morning, Mr. Jetter.

3 MR. JETTER: Thank you, Mr. Chairman.

4 CHAIRMAN LEVAR: And with that, we will go to  
5 Rocky Mountain Power.

6 MR. MOSCON: Thank you, Mr. Chairman. Just  
7 since we haven't spoken, I'm assuming that you can hear  
8 and see us and that there's not a significant echo. So  
9 please let me know if there is.

10 Before I begin, the Commission asked a question  
11 about whether a specific figure was confidential. So  
12 before I get into my materials, I'd like to answer that  
13 for the Commission.

14 The dollar amount that was put on the screen  
15 from Dr. Zenger's testimony was actually an estimate of  
16 what the Company thought the cost would be in June of  
17 2019. Accordingly, because now we have the actual  
18 number, which I'll note is significantly less, the actual  
19 number is confidential, but that estimate is not  
20 confidential. So, I don't know if that fully answers  
21 your question, but that specific figure as now a historic  
22 estimate is not confidential.

23 So with that, I'm going to proceed into my  
24 closing. And I -- just because of the amount of material  
25 to cover, I thought it would be helpful, if the

1 Commission will allow me, to do a presentation that could  
2 share some of the exhibits and some quotes from testimony  
3 to answer the questions that have been brought up today,  
4 if that's okay.

5 Let's see. I want to share my entire screen.  
6 What am I doing here? I'm going to get some help  
7 already.

8 I'm going to assume unless someone goes off mute  
9 and tells me otherwise that this is now being shared on  
10 all screens as I move forward.

11 Before I get going into these materials, I'd  
12 like to do two things. First, during some of the  
13 arguments that we just heard, including from, I think  
14 counsel for the OCS, a point was made that there was a  
15 bit of disappointment that the Company hadn't briefed  
16 every single issue. And I just would like to point out  
17 for my client that just due to the limitations that the  
18 Company, having to respond to all parties but having the  
19 same page limitation, really did not have an ability to  
20 do that. But the Commission should certainly know that  
21 the Company views its case as being the testimony, not in  
22 the briefs, not even what I'm about to say. So we do not  
23 concede anything or by virtue of the fact that it -- just  
24 fitting in with page limitations or time constraints for  
25 closing, if something is not specifically highlighted

1 that that means the Company concedes a point.

2           And I'm going to begin, I think, with cost of  
3 capital.

4           But before I do, I want to echo and recall for  
5 the Commission the testimony of the Company's CEO,  
6 Mr. Hoogeveen, who noted that the Company takes pride in  
7 the fact that it has customers that are able to enjoy low  
8 energy costs and the fact that the Company has not filed  
9 a rate case in six years, and notes that even if all of  
10 the increases sought here were allowed -- and we  
11 recognize they may not be -- but even if that were to be  
12 the case, that Mr. Hoogeveen pointed out that our  
13 customers would still be both below national and local  
14 averages in comparison.

15           And I just want that to be in the back of the  
16 Commissioners' minds that the Company does not ask for  
17 increases lightly or without a lot of thought. It's not  
18 something that they just take carelessly. And I hope  
19 that will stick in the back of everyone's mind as we  
20 proceed forward.

21           First topic is cost of capital and specific  
22 return on equity. I want to call attention to cases that  
23 all parties have told the Commission are determinative in  
24 this phase of the case, Hope and Bluefield. But no one,  
25 and I have to concede not even my client in our briefs,

1 gave the Commission any context for what that means. So  
2 I'd like to give you my thought on that.

3 This quote from the Bluefield case states that,  
4 "The ascertainment of that value" -- and "that value," by  
5 the way is the ROE, "is not controlled by artificial  
6 rules. It is not a matter of formulas, but there must be  
7 a reasonable judgment having its basis in a proper  
8 consideration of all relevant facts."

9 The reason I highlight this is what I see going  
10 on as a little bit of a battle of the experts about, You  
11 didn't, you know, differentiate between the fed rate the  
12 same way, and your forward-looking DCM model is not as  
13 good as my kappa model. And I'm not trying to suggest  
14 the Commission should not view that type of evidence.  
15 Certainly it should. But I'm hopeful that the Commission  
16 will, at the end of the day, step back and make a  
17 judgment based on a totality of the circumstances,  
18 totality of the market, what's in the best interest of  
19 the customers, taking clues from what is happening across  
20 the country, rather than simply being led to believe by  
21 any parties that you must follow the dictates of a  
22 specific model and being caught in the trap of saying,  
23 Well, whose model is best?

24 The first topic I want to get into in depth is  
25 market conditions. All parties agree that market



1 conditions impact the appropriate rate of return.  
2 There's no question but that the market has  
3 changed substantially between 2014 and 2020. And the way  
4 it's changed is market conditions are far more volatile  
5 now, and are expected to stay that way into 2021.

6           The reason I'm pointing this out is this  
7 Commission in its recent Dominion order noted that it's  
8 an appropriate analysis to make in this setting to look  
9 at the utility's last rate case when the last ROE was  
10 set, look at what's being requested now and compare what  
11 was the market like then when we set that level, and  
12 what's the market like now that we're being asked to  
13 modify that level?

14           So one of the topics was volatility. And this,  
15 which is taken from Ms. Bulkley's testimony, shows --  
16 this line here where the last rate case was, showing that  
17 unquestionably volatility is at a significantly higher  
18 level now than it was at the Company's last rate case.  
19 And, importantly, this slide, which was also in  
20 testimony, indicates that going into the future that that  
21 volatility is expected to continue through 2021, meaning  
22 it's not just volatile now in the spring and summer of  
23 2020, but that the indexes that all experts rely on  
24 predict volatility to continue well into the test period.

25           The utility industry has underperformed and has

1 not recovered. And it is expected to struggle into the  
2 future. Now, this is a point that we've heard a couple  
3 of times this morning in closing arguments of the  
4 different parties where we've heard, Hey, look, the  
5 market has returned. I don't know why they're making an  
6 issue of this because the stock market has bounced back.  
7 We're now at record levels.

8 But what that ignores was this Cross Exhibit 7,  
9 and the dashed line at the top is showing the actual S&P  
10 500, which we can see here did take a dive in the spring  
11 when we had the lockdowns. And it's been coming back up.

12 But this line, which is the utilities line, has  
13 essentially remained flat through this level that it  
14 reached back in May compared to the overall S&P which has  
15 outpaced it now relatively significantly.

16 Now, what does that mean? The reason that's  
17 important is it shows that historic views of utilities as  
18 a safe haven for investors has gone away. If investors  
19 see that the stock market generally is performing better  
20 than utilities, investors are not going to want to sink  
21 their dollars into utilities. Utilities need a higher  
22 rate of return to attract those dollars because,  
23 historically, it was this, where utilities were  
24 outperforming the market, so investors wanted to put  
25 their money in utilities. That has changed, and it is

1 expected to continue changed going into the future.

2 Now, the Duff & Phelps report is a document that  
3 we discussed for quite a while at the hearing. It was  
4 part of the cross-examination of DPU witness,  
5 Mr. Coleman. It was relied upon them in coming up with  
6 their calculations. And I want to highlight what we had  
7 conceded to us during cross as to why the DPU's value  
8 should be rejected by this Commission -- by "values," I  
9 mean the ROE.

10 The report that they base their analysis on  
11 supports an increased equity premium based on risk, and  
12 that's the thing that I've been talking about. And we  
13 just heard in argument that, Look, that really -- all  
14 this volatility and risk doesn't mean you should raise  
15 the ROE. That's not what the market is showing us. But  
16 the Duff & Phelps report that their expert witness relies  
17 upon completely says that you should specifically.

18 Furthermore, that report shows the same market  
19 volatility that the Company's witness discusses while the  
20 DPU did not adjust for market volatility.

21 Finally, the DPU did not change their  
22 recommendation despite continued uncertainty going into  
23 the future. Now, to show that what I'm saying is true,  
24 this, you may recall, was an exhibit, and it highlighted  
25 volatility and uncertainty. And Dr. Coleman had

1 conceded that what the -- or excuse me. I shouldn't say  
2 Doctor. Mr. Coleman conceded that as both uncertainty  
3 and volatility rise, the risk premium rises. And what  
4 the risk premium, I'll remind everyone is, is the amount  
5 that you would put on top of whatever your underlying  
6 data would value their ROE to be.

7           This was in the testimony where here, at the  
8 conclusion, "That's what it's showing, yes," where  
9 Dr. Coleman -- I apologize. I keep saying that --  
10 Mr. Coleman conceded that Duff & Phelps indicated that  
11 there should be a premium awarded for increased  
12 uncertainty and volatility.

13           Now, the data from Duff & Phelps interestingly  
14 showed the same volatility that Company Witness Bulkley  
15 identified. So it's not that Ms. Bulkley is coming up  
16 with these unusual things that no one else in the  
17 industry look at or relies upon, these slides taken  
18 directly from the Duff & Phelps report that the DPU used  
19 identify literally the same numbers that Ms. Bulkley  
20 identified in her testimony.

21           Same with uncertainty. The same index was used  
22 by Duff & Phelps that Ms. Bulkley was using. So again,  
23 it is incorrect to say that she is doing something that  
24 other experts in the field would not consider.

25           The conclusion on the market conditions that the

1 Commission should take is that the cost of equity has  
2 increased, it has not decreased. Investors are going to  
3 expect higher returns to account for market volatility  
4 and risk. Now, this is common sense. If there is more  
5 risk in the utility sector than there is in the overall  
6 S&P market -- and we've shown slides indicating that is  
7 the case -- they're not going to want to put their money,  
8 their investments in the utilities unless the return is a  
9 reward for that risk. And because the volatility and  
10 uncertainty has increased compared to when the Company's  
11 last rate case in 2014 was analyzed, that tells us as a  
12 starting position that the return on equity should be  
13 higher and not lower than it was in 2014.

14           So let's talk specifically about authorized ROEs  
15 for vertically integrated utilities. Now, Company  
16 Witness Bulkley and Mr. Chriss both showed an identical  
17 median authorized ROE of 9.73 from the time frame of 2017  
18 to 2020. I just heard -- I don't remember which entity  
19 said that the Company was relying on stale data. And I'd  
20 like to emphasize this is as current data as was possible  
21 by the time that the hearing was had.

22           The vast majority of decisions for integrated  
23 utilities, 47 out of 63, or 75 percent of decisions for  
24 ROEs during this time period were between 9.5 and 10.5,  
25 indicating that 25 percent is dragging down the average,

1 but the bulk of the decisions have 9.5 as the low going  
2 up to 10.5.

3           The Company's proposed ROE of 9.8 is on the  
4 lower half of that range; meaning, if you were to slice  
5 this in the middle, you'd end up right at 10.0 on the  
6 nose. And the Company's modified proposal of 9.8,  
7 therefore, is on the lower half of this 3/4 majority of  
8 decisions from the recent time frame of available data.

9           This figure highlights what I was just pointing  
10 out that came from Ms. Bulkley. This is a very telling  
11 exhibit that I hope the Commission will look at as it  
12 makes its decision. This is Ms. Bulkley's recommendation  
13 of 9.8. These dots are all of the decided vertically  
14 integrated electric company decisions from beginning of  
15 2018 through the date of the hearing. And there's a  
16 spread that accounts for different issues.

17           The OCS recommendation here is a complete  
18 outlier, and Mr. Coleman's recommendation here is an  
19 outlier, all of them being well in the bottom. There's  
20 only one decision out of all of them that is worse than  
21 the -- meaning lower than Dr. Woolridge recommends.  
22 There are only two decisions lower than the rate proposed  
23 by Mr. Coleman; whereas, Ms. Bulkley's recommendation is  
24 right in the middle of all of those decisions.

25           When we heard from Dr. Woolridge, he conceded

1 what I just said was true. When we pointed out to him  
2 that his recommendation was well below the typical  
3 authorized return, he had to concede that, in fact, that  
4 correct. And more importantly, he pointed out that in  
5 all of the cases that he's testified in -- and we're  
6 going to look at a slide here in a minute -- that he  
7 never, at least going back a number of years, proposed a  
8 single ROE at above 9.0 percent. This is what I'm  
9 talking about.

10 So this goes all the way back to 2012. This  
11 dotted line are the proposed ROEs of Dr. Woolridge. The  
12 line, and it's kind of hard to see here, but this line  
13 here is the results in the cases that Dr. Woolridge was  
14 the witness in. And this is the average authorized ROE  
15 for all cases for that month and year.

16 What this shows us is that no Commission from  
17 2012 through this time at 2020 in any type of case has  
18 ever accepted the recommendation by Dr. Woolridge, and  
19 his numbers are typically a full point and a half below  
20 the actual decided ROE by the Commission. Again, this  
21 goes to the point that I'm saying that the Commission  
22 should look at a reasonable conclusion.

23 Significantly, the Office does not rely on its  
24 own ROE calculated range. And the Office could not  
25 reconcile the market data and volatility with their

1 recommendation. So the Commission should simply conclude  
2 that that is not reasonable or reliable.

3 Similarly, Mr. Coleman did not use the range  
4 that he calculated. He had to come up with a subjective  
5 adjustment and admitted that the ROEs he used were not  
6 limited to vertically-integrated utilities and conceded  
7 that he did not exclude distribution-only utilities or  
8 litigated cases.

9 So I wanted to put this in to simply call out  
10 something that was in the briefs and a little bit here in  
11 argument, which is that the Company is treating the  
12 interest factor incorrectly. There was an argument made  
13 that the Company is justifying ROE calculations by  
14 arguing that interest rates will rise, but arguing that  
15 they stay low in pension to justify its position. This  
16 is untrue. The reason is, it's not the same interest  
17 rate. And this is an issue that's in, you know, Ms.  
18 Kobliha's area.

19 But essentially, the interest rate in the  
20 pension expense is a historic interest rate that is  
21 triggered by GAP and IRS rules at a certain time that an  
22 expense occurs, and it is looking in the reverse; whereas  
23 the interest that is being calculated for ROE purposes is  
24 a forward-looking interest rate asking, What interest do  
25 we need to attract investors? So it's a complete



1 different calculation with different drivers.

2           The next claim that we heard is that -- from the  
3 post hearing brief of the Office that the Company is  
4 ignoring the federal funds rate for purposes of ROE. And  
5 the statement was just made that RMP does not dispute  
6 this, but argues that changes in the federal funds rates  
7 do not affect long-term interest rates, and therefore, do  
8 not argue for lower ROEs. So the criticism is the  
9 Company should not be believed because we're not changing  
10 our recommendation based on this low federal reserve that  
11 we just heard referenced also by the Division.

12           However, at the hearing, the intervention  
13 witnesses agreed with what the Company is doing. This  
14 quote came from Dr. Woolridge: "The fed -- the overnight  
15 fed funds rate doesn't relate to ROEs ... [N]either  
16 Ms. Bulkley or myself look at the feds fund rates and use  
17 it in any way to estimate an ROE."

18           So the criticism that was just levied against  
19 the Company for not -- you know, Hey, the interest rates  
20 are now at zero, and they're going to be that way through  
21 2023, all parties agree, at least their experts do, that  
22 that is not something you look at in estimating an ROE.

23           We don't need to take a lot of time on this.  
24 This was simply the authorized ROEs relied on by the  
25 Division. But as the Commission will recall, it included

1 not just vertically-integrated utilities, but limited  
2 issue rider plans, distribution-only companies, et  
3 cetera. And in their brief, they spend a lot of time  
4 talking about, well, the real average is 9 1/2. But it's  
5 only 9 1/2 when you include states like Maine or Vermont  
6 that we talked about that had decisions that were based  
7 on a formula on a settlement, not on a litigated result.  
8 The true mean of litigated cases from this time frame was  
9 9.73 percent.

10           The Company's ROE analysis incorporates current  
11 market data. It applies modeling procedures approved,  
12 used by decades in commissions across the country.  
13 Contrary to the arguments that have just been made, it  
14 reflects market conditions and increased volatility. And  
15 Ms. Bulkley's ROE range falls squarely within the range  
16 of authorized returns for similar utilities across the  
17 country during the relevant time frame. In fact, the  
18 Company, by lowering its request to 9.8, is actually  
19 seeking a lower return than is justified by data.

20           This, again, before we move on to the next  
21 topic, I hope stays with the Commission. And going back  
22 to the Hope and Bluefield cases. When you see this type  
23 of spread, and you see that this is what commissions  
24 across the country are determining is necessary to  
25 attract investment for the benefit of customers in their

1 states and jurisdictions, the Commission should reject  
2 argumentation that the returns should be put in such a  
3 low bracket. That would be a completely outlier position  
4 that would not be beneficial for Utah customers.

5 I want to move very briefly to capital  
6 structure. This is an issue of the OCS. The Company's  
7 position is that the common equity percentage has  
8 consistently been above 51.49 percent for the last three  
9 years. The proposal by the Office is below actual. And  
10 we have this quote: "The Company's proposal is  
11 consistent with the average of the five quarter-ending  
12 balances spanning the test period." The Commission has  
13 previously approved this approach.

14 So the Company's approach is not only following  
15 Commission precedent, it is the actual thing. It is not  
16 just an estimated or hypothetical number that is being  
17 developed by an expert.

18 Finally, Dr. Woolridge's recommendation is based  
19 on a proxy data group of holding companies and is not  
20 based on utility operating companies themselves. And it  
21 has an improper debt ratio that applies to non-utility  
22 activities.

23 The proposed rate structure that the Office  
24 asked the Commission to adopt is not reasonable. The  
25 Company's proposal is well within the actual calculated

1 range. Dr. Woolridge did not provide a calculated range,  
2 he simply picked a mid point between the Company's  
3 proposed equity position and the average of his proxy  
4 group. That just kind of randomly picking an average  
5 between two, or median point, is not a way of saying,  
6 This is what the range should be based on data.

7 Finally, the Company has shown in testimony that  
8 it has significant capital spending requirements. It has  
9 impacts of the Tax Cuts and Jobs Act. Both of these the  
10 witness pointed out necessitate the equity percentage of  
11 53.67 percent. There was no testimony by other parties  
12 of how we can maintain our credit ratings if we go below  
13 that.

14 There's been an argument that we already have  
15 this rating, but there's been no evidence put forward  
16 about whether we would be able to maintain that rating if  
17 we went to such an artificially low capital structure.

18 Conclusion: Unopposed by any party besides the  
19 Office, the Company's rate structure of 53.6 -- and it  
20 should be 7 because there's .01 percent of, I think,  
21 preferred stock -- the Company's position is based on  
22 actual data, is necessary, fair, and reasonable.

23 I'm assuming -- I'm just going to go through the  
24 entire presentation, but if the Commission would want to  
25 stop and ask questions, I'm assuming it will do so.

1 Otherwise, I'm just going to move into revenue  
2 requirement, unless somebody interrupts me otherwise.

3 One of the main topics that we just had  
4 addressed in argument or certain questions was on  
5 inclusion of PTCs in the EBA. The Company's proposal is  
6 that net power cost forecast produced by the GRID model  
7 forecasts wind generation volumes, so it is a forecast.

8 The PTC dollar estimate is calculated directly  
9 from a model, the same model that's used for all of the  
10 other net power costs that go into the EBA.

11 It's a better fit to include PTCs with the  
12 variable net power costs in the EBA instead of in base  
13 revenues because it has the same likelihood of volatility  
14 or being higher or lower than projection, as net power  
15 costs do.

16 And it would allow full benefits to be provided  
17 annually and better match costs with benefits.

18 The DPU has opposed it, saying that it's not  
19 called out for in the statute. However, they have  
20 conceded that the statute's list is not exclusive. I  
21 think we just heard a candid confession that the PTCs, in  
22 fact, do share a common relationship with power costs and  
23 that they vary based on generation output. And the  
24 distinctions are unavailing.

25 PTCs vary in volume. This was a question that

1 the Chair just asked a short time ago: Is there any  
2 significant variation with PTCs? And the answer is they  
3 vary in volume and total value in the same way that --  
4 just because they're based on production. Production  
5 from these facilities varies. Is it going to be very  
6 windy? Not very windy? A medium amount of wind? And so  
7 these production credits are going to vary.

8           It's interesting that the Chair also had the  
9 same question about wheeling revenue. Wheeling revenue  
10 is not a cost. It is still included in the EBA. And so  
11 we know that the legislature did not intend to limit what  
12 goes into the EBA to simply hard costs. And PTCs are  
13 going to vary year to year, just like fuel variations  
14 occur. And so it just makes sense.

15           We'll finally note that other balancing accounts  
16 exist for similar items. They're a balancing account for  
17 recs and other items that are not hard costs. So it  
18 makes absolute sense. I think there's a concession that  
19 it made sense. There's only a question about is it  
20 statutorily allowed?

21           Only thing on the statute I will note -- and I  
22 apologize I don't have a slide for it. This wasn't in a  
23 brief. I'm just kind of responding on the fly to the  
24 comment that we just heard -- is that the energy  
25 balancing account statute Section 1 is where the costs

1 are discussed.

2 But if you go down to Section 4, it points out,  
3 which is kind of intuitive, that revenues also belong in  
4 the balancing account because you can't just have costs  
5 in there, you have to have revenues. It doesn't call out  
6 all of the revenues, so there is not any kind of  
7 subdetermination of the types of revenues. But to the  
8 extent that the Commission wants to think of it this way:  
9 A tax credit is tantamount to a revenue; meaning, you  
10 would otherwise need revenue to pay a tax that you were,  
11 instead, getting a credit for. And so I would argue in  
12 addition to other similarities that we've seen here, that  
13 Section 4 of that statute that allows for revenues to be  
14 included would also allow for this type of inclusion of  
15 PTCs in the EBA. Customers are going to get exact  
16 benefits and costs. It is not about shifting risks.

17 Okay. Now, let's turn to the next big item,  
18 which is Pryor Mountain. This is, I think, really the  
19 reason we wanted to undertake this exercise, which I have  
20 not seen anyone really address what the statute is and  
21 what the standard is that the Commission must apply to  
22 the Pryor Mountain decision.

23 The general rate case standard, which is not the  
24 preapproval standard, is a prudence determination, and it  
25 is important because all these words that we keep hearing

1 thrown about, "least cost," et cetera, do not appear in  
2 the statute.

3           Rather, the standard of review of prudence is  
4 that it is just and reasonable, and that it was  
5 reasonable judged at the time that the action was taken  
6 based on what the utility knew or reasonably should have  
7 known at the time the action was taken. So this, not, Is  
8 it the absolute lowest cost? Have they proven it's the  
9 lowest cost? That is not the standard. The standard is  
10 prudence, and is it just and reasonable?

11           I think it's important to be clear about the  
12 Pryor Mountain opportunity. It was identified in October  
13 2018. It was already, at that point, a late-stage  
14 development. It already had an executed Large Generation  
15 Interconnection Agreement.

16           An agreement to acquire development rights was  
17 not executed until May of 2019, and the Company was, at  
18 that point, not obligated to proceed if it wasn't  
19 economic.

20           The Company entered into an agreement to sell  
21 the recs generated by the project. That is now a  
22 contractual agreement. It's not a proposal or a  
23 forward-looking forecast. It's an actual contract.

24           The ability to acquire the generation equipment  
25 from the affiliate, Berkshire Hathaway Energy Renewables,



1 is important, and I think we need to focus on a couple of  
2 things.

3           The safe harbor equipment to qualify the project  
4 for full PTC eligibility could not have been obtained  
5 without having an affiliate transaction. And this is an  
6 IRS rule because in the IRS -- you had to start  
7 construction by 2016 to get this benefit. This  
8 opportunity is not identified until 2018. But IRS rules  
9 allow transactions between affiliates. So that if a  
10 turbine or a generation piece is qualified for PTC  
11 credit, it can be transferred between facilities -- or,  
12 excuse me, subsidiaries and still retain that PTC  
13 benefit. If you have eligible generation units of  
14 5 percent of your project, it qualifies the entire  
15 project for the PTC credits.

16           So, there's been a lot of discussion about, Gee,  
17 was this just really done for the benefit of the  
18 affiliate? But that just shows that this issue hasn't  
19 been thought through. The only way that you can get the  
20 significant PTC value is at this date and time, meaning  
21 post 2016, to have an affiliate transaction to get the  
22 safe harbor ability to transfer those credits.

23           Furthermore, these facilities -- these  
24 generation pieces were in Colorado. That meant that  
25 there was less risk in having to transport them across

1 international boundaries or all the way across the  
2 country. They were very close to where they were going  
3 to be installed, so there was a low-risk opportunity.

4 The Company did have a competitive bid for all  
5 the follow-on equipment that it got outside of the amount  
6 necessary to get the PTC eligibility and for the  
7 construction contracts.

8 The economic analysis that Mr. Link describes in  
9 his testimony to justify it is the same methodology that  
10 was both used and approved in the EV2020 docket, so we  
11 don't have a concern that the Company is just using some  
12 new analysis to its benefit here. It's the same analysis  
13 that has been used and approved.

14 Finally -- and this was a point that where  
15 Dr. Zenger agreed that, Okay, I didn't know that. That  
16 removes my concern -- is, in addition to all of this, the  
17 Company itself had to do an internal review and get its  
18 parent company to approve this purchase, showing the  
19 economic benefits and showing that there were risk  
20 mitigation strategies.

21 This is a slide from Mr. Link's testimony. And  
22 I think it's important to focus on this for a minute  
23 because there's been a lot of talk or argument about the  
24 fact that, Hey, we don't know if customers are really  
25 going to get a benefit here.

1           Again, the statute showed us that the Commission  
2 should say, At the time the opportunity was presented,  
3 did the Company make an appropriate decision? And this  
4 is what the economic analysis showed us.

5           The parentheticals are benefits to customers in  
6 millions of dollars. And the one item here is a cost.  
7 So we have a range of possibly \$82 million beneficial to  
8 customers weighing against a risk of possibly only  
9 1 million -- or excuse me, \$82 million benefit that  
10 you're weighing against possibly only 1 million of cost.  
11 And this 1 million of cost comes, again, in the low  
12 natural gas price, low to no carbon cost scenario, which  
13 the Company said is the most conservative, least likely  
14 scenario.

15           So the question the Commission needs to ask  
16 itself is: Presented with this analysis that was done in  
17 a method that's been approved previously, does it make  
18 sense to say that three of the four possible scenarios  
19 show benefits to our customers, possibly significant  
20 benefits to our customers? There is only one that shows  
21 risk, and that risk is small. The risk-benefit analysis  
22 would show it was prudent to make this decision.  
23 Furthermore, as we've heard already in testimony, there  
24 was a need that needed to be met.

25           So I want to address very quickly, because I

1 think there was a bit of a concession in closing of the  
2 idea of, Was preapproval required? And I think it's now  
3 been conceded it is not required, it is something that  
4 the Company may do. But the fact that it chose not to do  
5 something -- and again, in a time-limited circumstance --  
6 that is optional is not something that this Commission  
7 should weigh against the Company.

8 I want to address this argument that this is not  
9 the least cost/least risk decision to be made. First,  
10 again, by putting this slide up here, I don't want the  
11 Commission to think we are conceding this is the  
12 standard. That is the standard for the preapproval  
13 statute. This is not the standard for a general prudence  
14 review.

15 But even if it were, absolutely the Company put  
16 on testimony and met its burden to show that this was the  
17 least cost/least risk path that the Company could take.

18 At the hearing, not just in direct testimony,  
19 but at the hearing subject to cross-examination, Mr. Link  
20 stated, "The Pryor Mountain economic analysis shows that  
21 system costs are expected to be lower than otherwise  
22 would be the case if the Company did not build that wind  
23 facility. The analysis shows that Pryor Mountain is a  
24 lower cost than other resource alternates, which includes  
25 energy efficiency, demand response, other generating

1 assets of all different types, technologies, and the  
2 potential for FOTs," or front office transactions.

3 We today heard speculation that the Company only  
4 did an analysis of this first half, that it's better  
5 doing it than it is not doing it, but that there was no  
6 analysis comparing it to other ways of meeting the  
7 capacity need. And that is incorrect.

8 Here, Mr. Link is expressly stating that it was  
9 compared to all of these other possible ways to meet the  
10 need. And it's not in this slide, but my colleague  
11 handed me a transcript from the hearing in which there  
12 are, if the Commission is interested, at least six  
13 different pages of when Mr. Link was on the stand when  
14 this second half of this analysis was discussed, showing  
15 analysis of other energy response items, other ways of  
16 filling the capacity need, and how Pryor Mountain was,  
17 according to their analysis, the best choice.

18 Again, on the affiliate transaction equipment,  
19 Mr. Van Engelenhoven testified that the Company had an  
20 opportunity to acquire these components that were already  
21 manufactured at the affiliate's cost, which was the  
22 competitive market price at their time of purchase in  
23 2016.

24 So, the point is that they're saying, We haven't  
25 proven that we are at the -- you know, that this was at

1 cost or better, and that this is -- you know, is it  
2 market, or is it better than market?

3           Go back to the point that was made about the  
4 IRS. There is no market, per se, for safe harbor  
5 turbines because you can't transfer them other than  
6 through an affiliate. If you went out on the market and  
7 just bought these turbines from another entity, you would  
8 lose the safe harbor provision.

9           We know that when the renewables entity  
10 purchased these in 2016 that it was bought at market  
11 price. And we know from testimony of Mr. Van  
12 Engelenhoven that there was no mark-up, that these were  
13 bought at cost. So the Company did meet its burden to  
14 show that these were at market or better because, again,  
15 the only market is between affiliates. And there was no  
16 mark-up whatsoever. It was bought at the affiliate's  
17 cost.

18           Again, I don't want to take the time to read  
19 this, but there were additional places in the hearing in  
20 testimony describing how there was no ability to go  
21 elsewhere. There was a lot of market pressure. And  
22 explaining how the Company considered the location, the  
23 storage, et cetera, the reduction of risk of going  
24 forward with this affiliate transaction.

25           I want to turn to cost overruns. There's been

1 some, I guess, statement that, Well, maybe it was a good  
2 idea at the time, but because of the pandemic there are  
3 now cost overruns, so that may be a reason why the  
4 Commission shouldn't allow this. And it is true that the  
5 Company received notices from suppliers and contractors  
6 that, due to the pandemic that caused interruption to the  
7 global supply chain, that they would have overruns.

8           However, what has been established in this  
9 testimony is that the project is beneficial to customers  
10 even with or regardless of those overruns.

11 Significantly, there's no evidence from any party that  
12 any of the overruns were caused by the Company or that  
13 the pandemic should have been foreseen in spring 2019  
14 when this was acquired.

15           And, furthermore, the Company has taken  
16 mitigation efforts here to over -- excuse me -- taken  
17 actions to mitigate these cost overruns. Again, go back  
18 to -- mentally, I won't click us back there -- but to the  
19 statute that says when we're looking at prudence, we're  
20 looking at the time the decision was made.

21           So the question for the Commission is: At the  
22 time that the decision was made, was Pryor Mountain a  
23 prudent decision? Not, Should we penalize the Company  
24 after the fact because the COVID pandemic interrupted  
25 supply chains that raised some prices?

1 I want to address the QF pricing raised by UAE.  
2 This is, I'm going to note, a novel argument because  
3 Pryor Mountain is going to be like every other generation  
4 resource of the Company. It is a utility-owned  
5 generation resource. It's not different than a  
6 gas-powered plant or a coal fired power plant. It is a  
7 generation resource owned by a utility. There is no  
8 precedent anywhere, no case, no reason, no rationale for  
9 treating this one owned generation resource like a QF  
10 while treating others as typical plants in service.

11 The point that the UAE appears to be making is,  
12 hey, back when this was being looked at by a potential QF  
13 developer, you gave an indicative price, and the price  
14 that customers are going to have to pay now is higher.  
15 And so the UAE doesn't like that, and they say make the  
16 Company stick to the proposed indicative price.

17 But as Mr. Link testified, that qualifying  
18 developer did not execute a contract at that price  
19 because they, you know, knew, doing the math, that it  
20 wouldn't and couldn't pencil out by the time it actually  
21 came around or time to develop the project.

22 The Commission may recall that during the  
23 hearing this is when we had a bit of a, I think, hoped to  
24 be a smoking-gun moment where we went into confidential  
25 session, and Mr. Higgins said that he was aware of other



1 projects at that same price that had been contracted.  
2 But what was conceded on cross, or at least he, I think  
3 said he couldn't refute the point, was that those  
4 contracts had all been canceled by the developer at their  
5 discretion as they're able to do so. So that,  
6 importantly, no other project has been developed at the  
7 price that the UAE suggested control in this matter.

8           So not only is there no precedent for treating a  
9 Company-owned resource like a QF, but the price that they  
10 want to use for the QF price is not a valid QF price  
11 point anyway because no developer has been able to bring  
12 to market a generation resource at that price point. So  
13 it's unfair to say, well, customers are now going to pay  
14 more than what that predicted indicative price point was  
15 because that was a price that was too low to put a  
16 resource online in 2019, 2020, 2021.

17           I want to move to the two-step rate increase.  
18 Delayed portions of the TB Flats in Pryor Mountain, the  
19 Company is asking that the annualized revenue requirement  
20 align with the in-service dates in 2021. I want to  
21 emphasize that the Company is not for a separate test  
22 period. And the reason I say that is a test period is  
23 when a commission looks at the time frame in which costs  
24 must be incurred, and we're only going to put into base  
25 the costs that are actually incurred or believed that

1 will be incurred during that test period.

2           Significantly, all of the costs for Pryor  
3 Mountain and TB Flats that are at issue here will have  
4 been incurred during the approved test period. So we are  
5 not asking for an exception to the test period because  
6 all of the costs that the Company is seeking to put into  
7 base will have been incurred during the test period.

8           The Company's proposal aligns cost recovery with  
9 the net power cost and the PTC benefits. Absent a  
10 two-step rate increase, the combined projects would  
11 qualify as a major plant addition in 2021. A two-step  
12 rate increase is the same as a cost recovery for a major  
13 plant addition under the code.

14           I want the Commission to have some ease that  
15 statutorily the legislature has given it the ability to  
16 do just this, where it has indicated that the Commission  
17 can approve any method of rate regulation or any  
18 mechanism that it thinks is going to be just and  
19 reasonable or in customers' best interest.

20           And finally, and there's only one highlight  
21 here, the Commission has previously approved step-rate  
22 increases in the past. I've put in this slide one  
23 docket, but I will note that in the testimony of  
24 Ms. Steward -- this was her rebuttal testimony on  
25 page 11, lines 213 and down, and then at the bottom of

1 page 12 if the Commission cares to look -- she recites  
2 various examples of times when the Company has had  
3 multiple-step rate increases in the past. So this is not  
4 a novel idea. This is something that has happened in the  
5 past that the statute allows the Commission to do.

6 Lake Side outage. Very quickly on this, there  
7 is an argument in the briefs that the Company has failed  
8 to prove that the costs of the outage were prudent and  
9 that's because the root cause analysis didn't conclude  
10 what caused the outage. No one knows exactly what  
11 happened. Did something break? What happened?

12 And the Office's position is that well, in that  
13 case, that goes to the shareholder, that the customers  
14 are not going to pay for that.

15 The argument that the Office puts forward has  
16 been rejected by this Commission previously. This is the  
17 March 4, 2020, order on Blundell Unit 2. And it was the  
18 exact same scenario, where there was an inability of the  
19 root cause investigators to determine what caused the  
20 outage.

21 And so instead, the Commission looked at whether  
22 there was evidence that the Company had handled the  
23 situation improperly. Did it, you know, mishandle the  
24 installation of the facilities? Did it not maintain the  
25 equipment? Did it somehow fail in its job? And because

1 there was no evidence that it had not done so -- and, in  
2 fact, the evidence was that it had acted prudently -- the  
3 Commission indicated that it would then, because the  
4 Company acted prudently in dealing with the equipment, it  
5 was going to allow the costs for the outage. It is  
6 exactly the same scenario here today, and the Office's  
7 argument has already been rejected once.

8           Let's turn to pension costs. There's two things  
9 that we want to talk about. The settlement losses. No  
10 party is disputing that the Company is entitled to  
11 recover these losses, the question is how.

12           The Company is recommending that this  
13 expenditure be recovered like any other similar  
14 expenditure through rates. Or alternatively, the Company  
15 has said it proposes a balancing account, an account that  
16 would true-up annually the difference between the actual  
17 and expected level of net periodic benefit cost of the  
18 Company's pension and other post retirement plans,  
19 including losses and any other curtailment gains or  
20 losses.

21           And Office and UAE's proposal to amortize  
22 settlement losses and delay recovery over 20 years  
23 unnecessarily, unduly, and without good reason prejudices  
24 the Company because it simply delays recovery of costs  
25 that the Company will actually incur during the test

1 period. And again there's no dispute that the Company is  
2 going to actually incur these costs during the test  
3 period.

4 So prepaid pension expense, the problem, as Ms.  
5 Koblaha explained, this also is something that I want to  
6 harken back to a comment made during a closing argument  
7 of the Office, where there was an indication that this is  
8 this dramatic departure, and why is the Company doing  
9 this? This is not the way we've done it before. This is  
10 important for the Commission to understand.

11 Changes in ERISA, including the Pension  
12 Protection Act, changes in law are what now require the  
13 Company to have these increased contributions that cannot  
14 be immediately expensed under accounting rules. So it is  
15 incorrect for the Office to contend that we have not  
16 explained why we are doing this. Those laws took place  
17 earlier in the 2000s. The Company in its 2014 rate case  
18 put the same pension treatment in the case. The case was  
19 settled, so the Commission did not have to decide the  
20 issue.

21 But this is not a new and novel theory that the  
22 Company is coming up with in 2020. It is coming up  
23 because of a change in law, and the Company has  
24 previously in its last rate case indicated that it now  
25 has these costs that it has to account for.

1           The legal requirement of the Company results in  
2 the Company having to finance contributions, just as it  
3 finances other rate-based items but without the ability  
4 to recover the financing costs associated with the net  
5 prepaid expense. That is all the Company is seeking to  
6 recover.

7           So the solution is including its cumulative net  
8 prepaid and other post-retirement assets in rate base  
9 based on the 13-month average of its net prepaid pension  
10 and other post-retirement assets, earning a return equal  
11 to the Company's weighted average cost of capital.

12           The Company's proposal is just and reasonable,  
13 which is the standard for prudence.

14           The Company is required by law to make these  
15 contributions. The resulting contribution is the same as  
16 any other rate base items that the Company must finance  
17 for which it would be allowed recovery.

18           And the Company's contribution benefits  
19 customers because the return on plan assets reduce future  
20 pension costs, it allows for favorable tax deductions,  
21 and it avoids premium increases.

22           Going to turn to, very quickly, Cholla and see  
23 what costs -- unrecovered materials and supply costs are  
24 recoverable. This is not a Utah case, but I just, for  
25 the Commission's sake, want to call out this case which

1 has held a utility is permitted to amortize and recover  
2 amounts for unused materials and supplies necessary for  
3 the operation of a plant that is scheduled to be  
4 decommissioned. So again, there is precedent for what  
5 the Company is asking for.

6           The M&S costs at issue consist of supplies  
7 purchased to maintain and operate the plant prior to the  
8 decision being made that it was more profitable to close  
9 the plant. And therefore, because the supplies were  
10 prudently incurred in the first instance, and now because  
11 the Company is making the prudent decision to close  
12 Cholla, it should be allowed to recover those costs under  
13 this precedent for doing so.

14           CWIP. Unexpensed CWIP costs remaining at the  
15 time of the plant closure are unrecoverable. I won't  
16 read all of these, but again, there is ample precedent  
17 for this, saying that unexpensed CWIP costs when a plant  
18 closes should be recoverable.

19           And furthermore, I highlight this bottom quote  
20 here saying that if you don't allow this recovery, you're  
21 going to incent your utilities to not -- you know,  
22 they're going to be nervous about it. They're not going  
23 to keep their plants safe because they're going to keep  
24 things at the bare bones.

25           In this slide, before we turn from revenue

1 requirement to the final topic of cost of service, I want  
2 to simply note that there were many other items that were  
3 not addressed in our brief or that I haven't covered here  
4 simply because of time and page limitations. But again,  
5 it's not because the Company does not think that they're  
6 important.

7 I'm going to call out a couple of things that  
8 were discussed in other parties' closing arguments. So,  
9 for instance, the retired wind repowering assets. The  
10 Company should recover for these assets just as it would  
11 for any other regulatory asset. Just because there is a  
12 favorable outcome to some customers by forcing the  
13 Company to amortize it over a long period of time does  
14 not mean that it is the fair or equitable result that the  
15 Commission should do.

16 Property tax, the actual property tax estimate  
17 should be used, not a multi-year average. There was good  
18 cross-examination on this point that the average is  
19 incorrect because it's not capturing the new -- all the  
20 additions that have gone into the Company's asset  
21 portfolio. So if you're looking at backward year  
22 average, you're going to lose the things that are driving  
23 taxes up.

24 Transmission power delivery and bad debt expense  
25 is appropriate. Overhaul expense, the O&M escalation,



1 and mine royalties, all of these things are covered in  
2 testimony. And again, I don't want the Commission to  
3 think that by not giving them a lot of treatment here  
4 means that the Company is abandoning its position.

5           Because the incentive plan was talked about at  
6 some length, I'm going to take a minute to note that a  
7 little bit. And it's because the Commission, the Chair,  
8 asked a question about it. The Chair asked the right  
9 question, which is: Do our past decisions say that no  
10 incentive plans that are in any way tied to financial  
11 performance should go into base, or only those that are  
12 significantly based on financial reward?

13           And, contrary to what we heard, the answer to  
14 the question is, in fact -- as I assume that the Chair  
15 knows -- that it only is inappropriate to put into base  
16 if the primary objective is the financial goal. That was  
17 decided in the U.S. West Communications case that was a  
18 Cross Exhibit B that was discussed with Mr. Higgins. The  
19 cite is 1995 Westlaw 798880, and I will just read one  
20 quote because it was a question. The quote is, "The  
21 Commission reiterates its policy that an acceptable  
22 incentive compensation plan to be recoverable in rates  
23 must have as its primary objective customer service goals  
24 not financial goals."

25           So that is the standard: Is the primary

1 objective customer service? Or is the primary goal  
2 financial?

3 So that's the question for this Commission. And  
4 does the Commission have any evidence to base that on?  
5 The answer is yes. I'm going to call the Commission's  
6 attention to the cross-examination (inaudible).

7 (Court reporter interruption.)

8 MR. MOSCON: Sorry. And thank you for  
9 interrupting me.

10 The cross-examination of UAE witness,  
11 Mr. Higgins, and specifically on page 238 and a question  
12 starting at line 3, and then the answer goes through line  
13 19. And I'll only read a part of it.

14 Mr. Higgins agreed, and I quote, "I agree that  
15 the large majority" -- and he's speaking to the incentive  
16 plan -- "does not relate to financial performance." So  
17 that's a concession that Mr. Higgins already made, which  
18 based on the appropriate standard from the U.S. West  
19 case, means that the incentive plan should come in. And,  
20 again, I don't mean to overemphasize that compared to the  
21 rest of these items, it's just something that there was a  
22 question on previously.

23 So finally, I'm going to turn to cost of  
24 service. And let's talk about AMI because there were a  
25 lot of questions about AMI and used and useful.

1           And hitting that topic head on, the meters and  
2 the supporting system will be used and useful for  
3 customers.

4           Now, first I wanted to talk about what the  
5 appropriate standard is. Again, the Commission is not in  
6 a vacuum here. This has been analyzed in this state  
7 before. In the Terra Utilities case, the question was:  
8 What happens when you have a project that is only  
9 partially used? And the answer is that the project does  
10 not have to be fully complete and benefiting all  
11 customers to recover for the used and useful portions.

12           So what that means is if you have a plant or a  
13 project that is partially used and partially useful, you  
14 can get in base the actual cost for those portions that  
15 are being used and that are useful to customers.

16           So that's the question for the Commission is,  
17 okay, for AMI, of the amount that the Company is seeking,  
18 how much of that is going to be in service during the  
19 test period or those expenses will incur, and are they  
20 going to be useful for customers?

21           And the answer to a question that was also, I  
22 think, raised, and I think I heard DPU's counsel very  
23 correctly pointing this out, is that the transcript shows  
24 80 percent of the system and at least 35,000 meters will  
25 be fully operational within the test period. And

1 customers with meters will have access to 100 percent of  
2 the benefits of the AMI meters during the test period.

3 I would also point out, and this was testified  
4 by Mr. Mansfield, that the Company is not seeking to put  
5 in rates costs for any meters or other equipment that  
6 will not be installed and used during the test period.  
7 So we are not putting the full AMI costs in this case.  
8 The only AMI costs in this case are those costs that are  
9 going to be used and useful to customers during the test  
10 period. So the fact that the entire AMI system is not  
11 fully operating, that is not a reason to deny recovery,  
12 and that is the Terra Utilities case, which says to the  
13 extent that you have a part of your system in service and  
14 it is being useful, then the Commission should allow  
15 recovery for that expense.

16 And this is just what I've already said. We're  
17 limiting the costs that have been accrued and that will  
18 benefit customers.

19 I will note for the Commission if you're going  
20 to buy, for instance, a software system or a licensing  
21 fee that's going to apply for, you know,  
22 100,000 meters -- and I'm making these numbers up -- you  
23 incur that expense for the first meter but then it  
24 applies equally for other meters.

25 So the costs of some of the facilities, as

1 Mr. Mansfield explained, have had to necessarily occur in  
2 this order that are now in place, and they will -- those  
3 costs will continue to serve additional meters that come  
4 online. That's going to that 80 percent of the system.  
5 That system has not fully been built out, but we're only  
6 seeking to recover the part of the system that is going  
7 to be built out and used in the test period.

8           Moving to rate design, specifically the proposal  
9 to eliminate the third summer tier. Company's testimony  
10 shows that tiered rates cause artificially high bills and  
11 unfairly impact larger households, which is a significant  
12 thing in this state. More people in a house tend to use  
13 more electricity. Also, electric vehicle owners who  
14 charge at home -- another thing that the State of Utah is  
15 trying to encourage -- these are the types of customers  
16 that are being unfairly impacted by the current design.

17           There's no economic justification for these  
18 tiered rates because overall customer usage in a monthly  
19 period does not make it more expensive for the utility to  
20 produce the next kilowatt hour of electricity between  
21 tiers. And therefore, it's not cost justified and is  
22 overcharging the customer that moves from the second to  
23 the third tier.

24           There was a point made that the proposal does  
25 not result -- or results in inequitable bill impacts.

1 That is not correct. This table from Mr. Meredith's  
2 rebuttal shows that that is the case, that the low-usage  
3 customers actually see less of an increase than  
4 high-usage customers, and the high-usage customers will  
5 see the highest increase compared to the average  
6 customer. So the proposal is not going to have an  
7 inequitable impact on the low-use customers.

8 Let's turn to the customer service charge. The  
9 proposed single family charge of \$10 is necessary to  
10 cover costs of service. Line transformers should be  
11 included in customer charge. The cost of the transformer  
12 is unaffected by usage, and the Office's argument that  
13 transformers should be recovered through a volumetric  
14 component does not make sense.

15 The cost of transformer does not increase  
16 proportionally based on customer size.

17 Line transformers generally serve small  
18 customers and are located geographically close to the  
19 customers served.

20 Let's move to 6A, the proposed redesign of 6A.  
21 The proposal is declining kilowatt per hour for Schedule  
22 6A customers. The first 50 kilowatts for each kilowatt  
23 of demand will be charged a higher rate, and all  
24 additional will be charged at a lower rate.

25 No party opposes the creation of this redesign

1 rate, but several parties argue that the current 6A  
2 should be retained as well. That would create a revenue  
3 deficiency for the Company that could be as high as  
4 \$2 million. Keeping the old 6A at the same time that you  
5 do the new 6A simply creates a revenue deficiency.

6 MR. MOORE: Excuse me, I'm going to apologize  
7 here, but I'm going to object to the continuation of the  
8 closing statement. Rocky Mountain Power is over their 60  
9 minutes allotted time, from the OCS calculations. Thank  
10 you.

11 MR. MOSCON: I'll respond if you want,  
12 Mr. Chairman. It's probably true, and the reason is, is  
13 because I've been answering the questions kind of that  
14 came up now. I guess I could have, and perhaps should  
15 have just done the presentation and then answered the  
16 questions that, of course, weren't tracked against  
17 anyone's time.

18 I will note that we only have a few slides  
19 remaining, but it is certainly the Commission's  
20 discretion, and I will do as indicated by the Chair. But  
21 that's, I think, the reason for the time discretion.

22 CHAIRMAN LEVAR: I do understand both the  
23 objection and the explanation you just gave.

24 Is wrapping up in maybe one or two minutes  
25 possible, Mr. Moscon?

1 MR. MOSCON: I am trying to look to tell you  
2 exactly how many slides I have left. But I think it's --  
3 well, I think we only have two topics left, so yes.  
4 Let's just move quickly.

5 Schedule 32, the delivery facilities charge  
6 would recover from customers the fixed costs. It ensures  
7 that these customers pay their fair share of distribution  
8 and transmission costs.

9 There's one clarification note that I wanted to  
10 make, and that is that the Schedule 31 and 32 customers  
11 are different because the service they receive is  
12 different, and generation from an on-site resource is  
13 fundamentally different than generation from an off-site  
14 resource. These are different concepts that shouldn't be  
15 conflated.

16 Just because of time, I may skip some of this,  
17 although I don't want, again, the Commission to feel like  
18 we don't have responses to these things.

19 The facilities charge will not discriminate  
20 against Schedule 32 customers. We are ensuring that  
21 Schedule 32 customers are not able to avoid costs of the  
22 distribution and transmission system that they should  
23 pay, and it's a modest increase.

24 So again, I pointed out treating 32 like 31  
25 doesn't make sense because they are different, and it is



1 an unfair benefit to 32 customers.

2 I'll quickly refer the Commission to Table 6,  
3 showing that there is no discrimination for Schedule 32  
4 customers. That was already in the record.

5 Unbundling is the last thing that I'll spend  
6 time on, then. Unbundling would break prices into  
7 functional components so the prices listed would show the  
8 categories. It allows costs to be delineated from supply  
9 to increase the accuracy of the EBA. It's necessary to  
10 support the programs envisioned by H.B. 411. It supports  
11 transparency. And to accomplish unbundling, it is  
12 necessary to subfunctionalize production of transmission  
13 functions, meaning production and transmission would be  
14 broken into additional subfunctions in the cost of  
15 service study.

16 The Company rejects the Office's argument  
17 because it conflates the demand and energy classification  
18 with fixed supply and variable cost components.

19 And I'll just end with this summary: Contrary  
20 to their belief, it "is not a secret plan to conflate  
21 that which is considered energy related with variable  
22 supply. Besides the subscriber solar delivery charge,  
23 unbundling does not influence the Company's overall total  
24 rate design calculations. It does not make demand  
25 charges higher or energy charges lower. It merely slices

1 these categories up for convenience. It doesn't change  
2 the total price."

3 Thank you. I know I rushed through those final  
4 slides because I understand the objection as well, and  
5 the Company was not trying to take advantage. But thank  
6 you. If the Commission has questions, I'm going to try  
7 and remove this and go back to regular screen now.

8 CHAIRMAN LEVAR: Thank you, Mr. Moscon. Why  
9 don't we take a 10-minute break, and then we'll move to  
10 questions from the Commission for Mr. Moscon.

11 MR. MOSCON: Thank you.

12 (A break was taken from 12:04 p.m. to 12:15 p.m.)

13 CHAIRMAN LEVAR: Commission Allen, do you have  
14 any questions for Mr. Moscon?

15 COMMISSIONER ALLEN: Thank you. I do not have  
16 any questions.

17 CHAIRMAN LEVAR: Commissioner Clark?

18 COMMISSIONER CLARK: Yes, thank you. I have a  
19 question or two.

20 First, with regard to the Pryor Mountain  
21 project. I believe the evidence is that a total of 78  
22 wind turbine generators were purchased from BHER, which  
23 constitutes, I think, a substantial majority of the  
24 generators that are part of the Pryor Mountain project.

25 And is it Rocky Mountain Power's position that

1 all of those 70-plus needed to be purchased in order to  
2 acquire the safe harbor protection for the project?

3 MR. MOSCON: Thank you, Commissioner Clark. I  
4 think that there is in Mr. Van Engelenhoven's testimony  
5 an answer that I'll try and parrot. But if I get it  
6 wrong, it should be there.

7 "No" is the answer to the question. I think  
8 there was 50-plus that needed to be acquired. I think  
9 that he talked about the analysis of all of them being  
10 right there nearby, low-risk because you didn't have to  
11 transport them, the cost, et cetera. But the position  
12 was not that you had to acquire every single one of them  
13 to get the safe harbor provision.

14 COMMISSIONER CLARK: I appreciate the reference.  
15 I was frantically looking for that during the break, and  
16 I couldn't find it. But I'll -- if I know it's there  
17 somewhere, I am looking for that piece of information.  
18 So, thank you.

19 Entirely separate subject now.

20 MR. MOSCON: By the way if it helps, I'll tell  
21 you that it's in the November 3rd transcript. Sorry. Go  
22 ahead.

23 COMMISSIONER CLARK: Oh, thank you. Okay.

24 Regarding AMI, I think from a statement of one  
25 of the prior counsel -- I think actually Mr. Jetter -- at

1 least if I understood him correctly, indicated that the  
2 34,500 AMI meters that would be installed sometime during  
3 2021 and reaching that number by the end of the year  
4 would be replacing AMR meters.

5 Is that your understanding as well?

6 MR. MOSCON: So meaning -- okay. So some are,  
7 not all are. So some meters are coming -- well, I think  
8 the point is in addition to those, there are the new  
9 meters coming on. So I don't know if this is answering  
10 your question.

11 I think, yes, that number reflects the  
12 replacement. But in addition to those, there is some new  
13 construction, new metering that is going to come online  
14 as well. That is my understanding. Again, I hope I'm  
15 not stating it incorrectly. But this, I think, was  
16 testified to by Mr. Mansfield, but that is my  
17 understanding, that that is the number that are replacing  
18 the AMRs, I think.

19 COMMISSIONER CLARK: Okay. And will those new  
20 AMI meters that replace existing AMR meters be performing  
21 any task in the test year that the AMR meters did not  
22 perform?

23 MR. MOSCON: Yes. And I don't pretend to know  
24 the detail as well as Mr. Mansfield. But yes, they do.

25 There is an ability of customers to be able to

1 ascertain or understand -- I'll just give you an example.  
2 I'm not saying this is the highest and best use.

3 But if a customer called up and said, My power  
4 bill skyrocketed, and I'm trying to figure out why. With  
5 the new technology, they'd be able to get a level of  
6 detail that otherwise is not.

7 The power company could look and say, Well, it  
8 looks like every Wednesday evening your power is spiking  
9 up.

10 And someone could say, Well, that's -- oh, my  
11 son comes home and uses the hot tub that day. I mean,  
12 I'm just making up a facetious example. But it would  
13 allow them to understand the drivers behind their bill in  
14 a way that is not -- you're not able to do with the old  
15 technology. Where before, you could say, Yeah, so far  
16 this month you've used X power, but you can't  
17 differentiate it in that way.

18 Now, that's just an example. I'm not saying  
19 that's the whole reason behind the AMI. But I'm saying,  
20 yes, there are benefits in addition to those that are  
21 already in existence with the AMR meters.

22 COMMISSIONER CLARK: And so the IT portion of  
23 the project will be functional to that extent, that it  
24 will allow these additional capabilities even though it  
25 won't be completed by the end of the year?

1 MR. MOSCON: So, again, I don't want -- I want  
2 to be careful and not overstate.

3 My understanding is that, yes, that even though  
4 that the -- I'm calling it the system, not the meters --  
5 is going to be 80 percent complete, but the software  
6 function is either going to be entirely complete or  
7 sufficiently complete that that type of information is  
8 going to be ascertainable.

9 I think that there are other software benefits  
10 that involve meshing when communities get built out and  
11 these meters can talk to each other and do different  
12 things that may not have come online yet or will be  
13 coming online as this system grows. And the different  
14 benefits for having this mesh network and meters talking  
15 directly to each other you may not see until the system  
16 is further built out.

17 But that ability of interface between the  
18 Company and its customer, my understanding is yes, that  
19 is going to be used and useful.

20 COMMISSIONER CLARK: That concludes my  
21 questions. Thank you, Mr. Moscon.

22 MR. MOSCON: Thanks.

23 CHAIRMAN LEVAR: Thank you. I just have maybe  
24 one or two follow-ups.

25 Is there a way that we could estimate based on

1 what's in the record, of these 35 AMIs that are estimated  
2 to be in by the end of the test year, should we just  
3 assume it's an approximate 1/12 of them going in each  
4 month of the test year, or do we have anything else on  
5 the record --

6 MR. MOSCON: No. No.

7 CHAIRMAN LEVAR: -- more specific than that?

8 MR. MOSCON: It goes against everything that I  
9 was educated to do in law school. I think I have to say  
10 I don't know the answer to your question, and I just  
11 don't want to give you wrong information. It's something  
12 that I can find out if the Commission wants to take a  
13 one-minute break, but I just truly don't know if that's  
14 in the record or not.

15 CHAIRMAN LEVAR: Moving more to a legal  
16 question.

17 As we look at test-year issues for both AMI and  
18 Pryor Mountain, it is the case, isn't it, don't you  
19 agree, that we have to look at amortization over the  
20 portion of the test year that that facility is in, not  
21 just that if it's in by the end of test year it's  
22 considered having been in for the entire test year,  
23 right?

24 MR. MOSCON: No dispute. I'm looking at the  
25 result of that. So the Company is not in any way trying

1 to capture an entire year of costs for a portion of a  
2 year of use. And I'll talk to the -- for instance,  
3 that's the rationale for this two-step approach for Pryor  
4 Mountain, for instance, which is that we're not going to  
5 put that into rates until that is online and useful and  
6 providing benefits to customers. The cost has all  
7 occurred during the test year.

8           And I don't know if this is a helpful analogy to  
9 answer the question that you have, and I'm probably going  
10 to highlight my own limitations here. But if you'd  
11 had -- and just because it divides out, I'll use a  
12 \$60 million project because that's \$5 million per month  
13 for a year.

14           If you had a \$60 million expense and you had it  
15 all year long, and you had a \$5 million per month in  
16 service charge compared to waiting until something  
17 becomes available on July 1st and you have \$10 million  
18 per month charge, the total net for the year is the same,  
19 meaning the cost is the same but customers are only  
20 paying for the benefits as and when they are used. And  
21 that, I think, is just a soft analogy. And it's so  
22 simple that, of course, you can come up with all kinds of  
23 problems with it, but I'm trying to demonstrate that the  
24 Company is not seeking to avoid that average or to  
25 recover costs when there is not a use of the product.



1           CHAIRMAN LEVAR: Thank you. I think for the  
2 most part, any other questions I had left were covered in  
3 your presentation.

4           Although, you did -- you answered the question I  
5 posed at the beginning about whether that number from  
6 Dr. Zenger's testimony remains confidential. And you  
7 alluded to a file number that is still confidential. We  
8 have not been able to identify that that's in the record,  
9 that final number that you stated still remains  
10 confidential.

11           If you're aware of it being in the record, could  
12 you direct us to anything? But our quick-and-dirty  
13 search kind of indicates that it may not be in the  
14 record.

15           MR. MOSCON: Just because of when all this  
16 stuff -- you know, how this -- looking back to when the  
17 decision was made and was based on that estimated number,  
18 I think I'm going to guess that the Chair is correct. I  
19 don't know, as I'm sitting here, that that number is in  
20 the record. And again, I hope I'm not misspeaking. But  
21 I'm saying that I think there is an actual known number,  
22 but that may not have been there when the testimony was  
23 filed. So the Chair may be correct. And if that's  
24 something that it wants supplemented, I just don't want  
25 to, again, tell you, Oh, sure, Mr. Link talked about it.

1 Because I'm not sure that it is there. I think the Chair  
2 is correct.

3 CHAIRMAN LEVAR: Okay. No, I just wanted to  
4 give you the chance if you were aware of it being in the  
5 record somewhere to tell us. But I appreciate that  
6 answer. And that's all the questions I have.

7 And so with that, unless anyone else has  
8 anything else for us, I think we're completed for the  
9 day. I'll give a moment, if anyone has something else,  
10 to unmute yourself and state it.

11 MR. MOSCON: Do you mind if I correct one thing?  
12 I was told I misstated something, and I just don't want  
13 the record to be unclear.

14 I, in the cost of service, referred to  
15 Mr. Meredith's Table 2, talking about the impacts on  
16 customers. And I believe my characterization may have  
17 indicated that Table 2 is analyzing customers by high and  
18 low use. And I am told that that is not correct, that it  
19 is based on the decile by percentage of category of  
20 customers. And if I knew enough about cost of service to  
21 distinguish between the two, I would elucidate. But I  
22 don't, and I'm not. I'm just telling you the Company is  
23 not trying to mislead the Commission through counsel's  
24 ignorance on the subject.

25 CHAIRMAN LEVAR: Okay. Thank you, Mr. Moscon.

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Anything further from anyone else?

I'm not seeing or hearing anything, so we are  
adjourned. Thank you.

(The matter concluded at 12:27 p.m.)

CERTIFICATE

1  
2  
3 State of Utah                    )  
  ss.  
4 County of Salt Lake        )

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

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

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

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

14                    WITNESS MY HAND at Salt Lake City, Utah,  
this 16th day of December, 2020.

15  
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17 \_\_\_\_\_  
18 Michelle Mallonee, RPR, CCR  
19 Utah CCR #267114-7801  
20 Expires May 31, 2022  
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