

1 BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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3 JOINT APPLICATION OF) Docket No. 05-057-T01

4 QUESTAR GAS COMPANY,)

5 THE DIVISION OF PUBLIC) TRANSCRIPT OF

6 UTILITIES, AND UTAH) PROCEEDINGS

7 CLEAN ENERGY FOR THE)

8 APPROVAL OF THE)

9 CONSERVATION ENABLING)

10 TARIFF ADJUSTMENT)

11 OPTION AND ACCOUNTING)

12 ORDERS)

13)

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17 September 5, 2006 * 9:00 a.m.

18 Location: Public Service Commission

19 160 East 300 South, Hearing Room

20 Salt Lake City, Utah

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23 Commissioner Richard M. Campbell

24 Commissioner Ted Boyer

25 Commissioner Ron Allen

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I N D E X

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E X H I B I T S

EXHIBITS	OFFERED	ADMITTED
DPU 1	14	
DPU 2, 2.1, 2.0A	14	
DPU 3	14	
DPU 4	14	

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

2 COMMISSIONER CAMPBELL: Let's go on the
3 record in Docket 05-057-T01, Joint Application of
4 Questar Gas Company, The Division of Public Utilities
5 and Utah Clean Energy Approval of the Conservation
6 Enabling Tariff Adjustment Option and Accounting
7 Orders.

8 Let's take appearances for the record,
9 please.

10 MS. BELL: Colleen Larkin Bell and Gregory
11 B. Monson for Questar Gas Company.

12 MS. SCHMID: Patricia Schmid, Assistant
13 Attorney General, representing the Division of Public
14 Utilities.

15 MR. PROCTOR: Paul Proctor on behalf of
16 the Utah Committee of Consumer Services.

17 MR. EVANS: William Evans of Parson, Behle
18 & Latimer for the Industrial Gas Users.

19 MR. DODGE: Gary Dodge for UAE.

20 MR. BALL: Roger Ball on his own behalf.

21 MS. WRIGHT: Sarah Wright, Utah Clean
22 Energy.

23 MS. WOLF: Betsy Wolf, Crossroads Urban
24 Center.

25 COMMISSIONER CAMPBELL: Thank you.

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1 Who is going to speak?

2 MS. SCHMID: I will, please.

3 COMMISSIONER CAMPBELL: Ms. Schmid.

4 MS. SCHMID: Good morning.

5 The parties have had settlement
6 discussions, and with the exception of I believe one
7 party who hasn't expressed an opinion, we believe
8 that we have an agreement in principle, subject to
9 working out specific language and confirmation with
10 the parties' principals.

11 What we would like to do this morning is
12 to offer evidence and to set a hearing date in
13 anticipation that a settlement or stipulation will be
14 reached. We request that the earliest possible
15 hearing date be set so DSM programs can begin
16 immediately.

17 The Stipulation, as drafted, ties
18 submittal of DSM programs to the Commission for
19 approval to the approval date of the Stipulation. So
20 it's important to get a hearing date as soon as
21 possible to move that forward. And also to get the
22 required information into the pass-through filing and
23 other things so that it can be dealt with.

24 COMMISSIONER CAMPBELL: All right. Does
25 anybody want to comment on that statement on the way

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1 the parties intend to proceed?

2 MR. DODGE: Mr. Chairman, I guess I need
3 to clarify a little bit. We only learned of the
4 settlement late Friday and Saturday and have not had
5 a chance to discuss it with our client group. I
6 can't represent in good faith one way or the other
7 whether we will accept it or oppose it or simply not
8 agree with it.

9 COMMISSIONER CAMPBELL: Are you agreeable
10 to delaying the hearings?

11 MR. DODGE: I am. I have set up a
12 conference call with my clients later today in an
13 effort to talk it through. So we would prefer not to
14 have -- for us to proceed with cross this morning, at
15 least. It's subject to us agreeing on an acceptable
16 date that I and my witness can make as well as the
17 parties. But if we can find an acceptable
18 alternative date, we're fine with that.

19 COMMISSIONER CAMPBELL: Mr. Ball?

20 MR. BALL: Mr. Chairman, thank you.

21 I'm kind of in line, I think, with Mr.
22 Dodge. As of late yesterday afternoon, according to
23 the timer on my e-mail, parties were still exchanging
24 drafts of the Proposed Stipulation and so it does not
25 yet exist. It seems to me that until the final

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1 stages of that process have been reached that it
2 would be inappropriate to talk in any detail about a
3 specific schedule for a hearing.

4 I do agree with Ms. Schmid that a hearing
5 on the Stipulation would be appropriate. I would
6 recommend to the Commission that a Public Witness
7 Hearing should be scheduled in conjunction with that,
8 and I would strongly urge the Commission to require
9 the utility to pay for public adverts in the media to
10 draw public attention to it and to include bill
11 stuffers in their next round of bills so that their
12 customers' attention can be drawn. And I believe
13 that all of the parties should be involved in
14 drafting that so that it's just not a PR exercise on
15 behalf of one applicant.

16 I'm also going to inform the Commission,
17 as I did the other folks that were participating in
18 the settlement discussions on Saturday, that I have
19 for a number of weeks planned a trip out of the
20 country. I should be leaving on the 11th of
21 September, I will not return until the 21st of
22 September. And so I would request that the hearing
23 not be scheduled during that period, please.

24 Thank you.

25 MS. SCHMID: With regard to that, would
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1 you prefer to have the scheduling discussions off?

2 Mr. Ball has not presented any evidence.
3 He has been awarded intervenor status, but we would
4 like to move the requested hearing date forward as
5 soon as possible.

6 COMMISSIONER CAMPBELL: All right. We
7 typically don't do scheduling on the record so I
8 don't feel I need to do that right now.

9 As far as what we need to do on the record
10 today, what was your intent? You wanted to get
11 testimony admitted? Is that my understanding?

12 MS. SCHMID: Yes.

13 COMMISSIONER CAMPBELL: Why don't we go
14 ahead and proceed with that and then we can go off
15 the record and talk about the schedule.

16 MS. SCHMID: Thank you.

17 At our prior hearing on the Rate Reduction
18 Stipulation, the Division offered certain evidence
19 into the record. It was not picked up as accepted by
20 the court reporter and the magic word "accepted"
21 wasn't used in the transcript. The phrase "all
22 right" was used.

23 So to the extent that any evidence
24 previously offered by the Division was not admitted,
25 we would like to admit that here noting that those
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1 witnesses have been sworn before and that there were
2 no objections to the parties at that time.

3 The Division today would like to offer the
4 Direct Testimony of Dr. Powell and the Surrebuttal
5 Testimony of Dr. Powell. If we could have Dr. Powell
6 just do a few housekeeping matters, please.

7 COMMISSIONER CAMPBELL: All right.

8 WILLIAM A. POWELL,
9 called as a witness, being previously duly sworn, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. SCHMID:

13 Q. Dr. Powell, are you the same Dr. Powell
14 that introduced evidence and has participated in this
15 hearing?

16 A. Yes.

17 Q. Do you have any corrections that you would
18 like to make to your Prefiled Surrebuttal Testimony
19 marked on the Exhibit sheet as DPU Exhibit 1.OSR?

20 A. Yes, I do.

21 Q. And what are those?

22 A. If I could just add one other thing to
23 that. I also have just some minor corrections on my
24 Direct Testimony. I believe it's labeled DPU
25 Exhibit 1.0.

26

1 Q. Please proceed.

2 A. Okay. If you look at on my Direct
3 Testimony, the first page of testimony, there's a
4 title, "Artie Powell, Prefiled Direct Testimony,
5 Division of Public Utilities," and there on line 4 it
6 says "Docket No. 06-057-T01." That should be Docket
7 Number 05. And you'll notice that that same mistake
8 occurs in the header on each page. If you'll make
9 that correction I would appreciate it.

10 And then just a clarification on a
11 question. On line 181 it reads, "If the rate
12 decrease were enacted on an interim basis, subject to
13 refund or surcharge, then isn't" -- if you would
14 insert the word "it" so it would read -- "isn't it
15 true that the Company would have a chance of
16 earnings." If you'll take the "s" off of there it
17 will make that question a little bit clearer on what
18 I'm trying to ask -- or I guess what the attorney was
19 trying to ask.

20 On my Surrebuttal Testimony, just a couple
21 of housekeeping things, and I apologize for this,
22 both to the Commission and Dr. Dismukes, the
23 Committee's witness. But if you notice, for
24 instance, on line 21, I spelled Dismukes, D-E-S, and
25 it should be spelled D-I-S. Again, I apologize for

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1 that, especially to Dr. Dismukes.

2 And then if you would look at line 76.

3 Technology is wonderful unless it works against you.

4 And you'll notice on line 76 it says "Questar Gas'

5 Questar Gas'." That happened several times

6 throughout my testimony. If you would just make the

7 obvious delete there.

8 COMMISSIONER CAMPBELL: Was that line 75?

9 DR. POWELL: On my copy I have in front of

10 me it's line 76. It may be off a line from my

11 version to the file version because of the

12 corrections that I made throughout the testimony.

13 COMMISSIONER CAMPBELL: Okay.

14 DR. POWELL: And then one last correction

15 if I could. And again it may be off a line or two

16 from the version that I have in front of me, but on

17 line 478 there's a sentence that starts, "Addressing

18 only half the declining usage problem reinforces the

19 Company's incentive."

20 COMMISSIONER CAMPBELL: I show that on

21 line 475.

22 DR. POWELL: Okay. Again, the sentence is

23 the same, "Addressing only have half the declining

24 usage problem reinforces the Company's incentive to,"

25 and that should say "overstate" instead of

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1 "understate" here. I believe that's all the
2 corrections I have.

3 Q. (BY MS. SCHMID) If asked the same
4 questions as set forth in your Prefiled Testimony
5 would your answers today be the same as those filed
6 in your Prefiled Testimony?

7 A. Yes.

8 MS. SCHMID: And if the Division could
9 have Dr. Compton come up.

10 COMMISSIONER CAMPBELL: Well, let's --

11 MS. SCHMID: Do you want to finish with
12 him? Okay.

13 So what I would like to do -- and I
14 apologize because this is awkward. To the extent
15 that DPU Exhibit 1.0 of Dr. Powell, DPU Exhibit
16 Number 2.0, DPU Exhibit 3.0, the testimony of DPU
17 witness Mary Cleveland, Exhibit 4.0, the testimony of
18 DPU witness David Thompson, and the testimony of
19 Charles King, to the extent that they were not
20 admitted at the prior hearing, I would like to
21 request that they be admitted now, since we're doing
22 Artie now, along with DPU Exhibit 1.0SR.

23 COMMISSIONER CAMPBELL: So you're offering
24 the admission of DPU Exhibit 1.0, 1.0SR, DPU Exhibit
25 2.0?

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1 MS. SCHMID: Since that was presented
2 previously, yes.

3 COMMISSIONER CAMPBELL: Okay. And then
4 DPU Exhibit 3.0?

5 MS. SCHMID: Oh, sorry. Also I guess it
6 would be DPU Exhibit Number 2.1, DPU Exhibit 2.0A and
7 then 3, 4 and the testimony of Dr. King, Mr. King.

8 COMMISSIONER CAMPBELL: All right. Are
9 there any objections to the admission of this
10 testimony?

11 MR. PROCTOR: No objection.

12 MR. EVANS: Mr. Chairman?

13 COMMISSIONER CAMPBELL: Yes.

14 MR. EVANS: I don't know whether this is
15 an official objection, but I do have a comment on all
16 of the DPU's testimony and it stems from the
17 activities --

18 COMMISSIONER CAMPBELL: Mr. Evans, can you
19 pull that microphone closer?

20 MR. WILLIAMS: I do have an objection to
21 the admission of DPU's testimony based on their
22 status as a Joint Applicant in this proceeding rather
23 than an independent agency. And if Your Honor would
24 like to hear that, I would be glad to argue it this
25 morning or preserve it. In the event that the

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1 settlement is unsuccessful, I can raise it later.

2 But I don't want the testimony to be admitted without
3 the Commission realizing that there is some question
4 about how that testimony ought to be treated.

5 COMMISSIONER CAMPBELL: Why don't you go
6 ahead with your argument.

7 MR. EVANS: The Division of Public
8 Utilities is empowered by the statutes to commence
9 original proceedings, to file complaints, to appear
10 as a party, to present factual information and
11 argument to the Commission.

12 At Utah Code 54-4a-6 the responsibilities
13 of the Division are set out, and it says, "In the
14 performance of the duties, powers and
15 responsibilities committed to it by law, the Division
16 shall act in the public interest in order to provide
17 the Public Service Commission with objective and
18 comprehensive information, evidence, and
19 recommendations consistent with the objectives stated
20 therein."

21 The Division is a Joint Applicant in this
22 proceeding and, as such, it has signed onto the
23 Application which provides in part, "The parties to
24 this Application each agree to present testimony of
25 one or more witnesses to explain and support why this

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1 Joint Application is just and reasonable and in the
2 public interest."

3 The Commission -- or the Division,
4 therefore, has a responsibility as a signatory to the
5 Application to advocate for the CET and to perhaps
6 resist alternatives that might be proposed because it
7 is signed onto the Joint Application.

8 On December 19, 2005, the Commission,
9 shortly after the Joint Application was filed,
10 directed the Public Utilities through an Action
11 Request to investigate the CET tariff. There was no
12 report returned as far as we can tell.

13 If in the course of this proceeding
14 information were to come to light that would suggest
15 the conservation tariff were not in the public
16 interest, the Division would be constrained from
17 presenting it under their statement made in the Joint
18 Application.

19 The Division in the past has always
20 maintained its independence in proceedings before the
21 Commission. The Commission has been able to rely on
22 it as objective and independent. We don't have that
23 here. This is a case where the Division is not in a
24 position to assess whether the public interest is
25 better served by some alternative to the CET.

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1 We don't specifically object to the
2 admission of the testimony, but we would like the
3 Commission to, if the testimony is admitted, to
4 consider it as a departure from what the Division
5 usually submits to the Commission in that in this
6 case it's not independent and objective. So with
7 that --

8 MS. SCHMID: May I respond?

9 COMMISSIONER CAMPBELL: Yes, Ms. Schmid.

10 MS. SCHMID: Thank you.

11 The Division did not take the decision to
12 become a Joint Applicant lightly, nor did it make the
13 decision to be a Joint Applicant in a vacuum. The
14 Division, in its position as a Joint Applicant, is
15 looking out for the public interest and is working
16 for the public interest.

17 If the Division did not feel that the CET
18 was in the public interest or that another program or
19 alternative would work, and that if the Division felt
20 another program or alternative would work better, the
21 Division, of course, was free to withdraw from the
22 Joint Application and could do so at any time.

23 You'll note that the Division throughout
24 this long process and throughout much study by the
25 Division has chosen to remain a Joint Applicant
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1 believing that the CET, as proposed, is in the public
2 interest.

3 As to the comment that the Division was
4 not independent or that the Division's status as a
5 Joint Applicant somehow made it much different,
6 behave much differently than it normally would
7 behave, we'll note that the Division actually adopted
8 suggestions made by the Committee witness and other
9 things like that. The Division has continued to
10 perform consistent with its responsibilities in
11 Section 54-4a-6 and has continued to do its work in
12 the public interest.

13 Thank you.

14 MS. BELL: Chairman Campbell?

15 COMMISSIONER CAMPBELL: Yes. Would you
16 like to speak to this issue?

17 MS. BELL: Yes, I would like a chance to
18 reply briefly.

19 COMMISSIONER CAMPBELL: Go ahead.

20 MS. BELL: We reiterate the comments from
21 the Division. To support those comments further, the
22 pilot program was designed so that any party could
23 withdraw or recommend a different alternative going
24 forward.

25 Additionally, this was a process that took

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1 place with the Division's independent analysis and
2 study over a period exceeding three years, which if
3 we were going to put on that evidence today it would
4 suggest that, and also is in the testimony which will
5 be put before you. But I think those protections are
6 in place and the Division did act within its role
7 under the statute.

8 COMMISSIONER CAMPBELL: Mr. Evans?

9 MR. EVANS: Thank you.

10 The application at paragraph 40 provides
11 that the parties to the application, the parties
12 support of the application is conditioned upon the
13 Commission's approval of the entire Joint
14 Application. In the event that the Commission
15 rejects any or all of it the parties reserve the
16 right to withdraw.

17 That suggests that the Division would not
18 be able to propose changes in the course of the
19 proceeding should evidence come to light to suggest
20 that some other alternative would better serve the
21 public interest. So I'm not sure that that evidence
22 has been presented, but we're in a situation where
23 the Division wouldn't be looking for it. And that in
24 this situation, the Commission, if it receives the
25 testimony of the Division, ought to look at it as the
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1 testimony of a party advocate and not as an objective
2 and independent statement by the Division.

3 COMMISSIONER CAMPBELL: Ms. Schmid? Or
4 wait. Mr. Ball.

5 MR. BALL: Thank you, sir.

6 The Commission may remember that Mr.
7 Evans' argument is not dissimilar from some points
8 that I made at an earlier -- in an earlier phase of
9 this proceeding. So you won't be surprised to hear
10 that I tend to agree with him.

11 What we have, in fact, is an interesting
12 situation because my perception is, others may differ
13 from that, but my perception is that the Division and
14 the Company have moved away from their original
15 application. And I believe that they have done that
16 in order to try and find a settlement stipulation
17 with other parties.

18 But be that as it may, it's very difficult
19 under those circumstances to perceive that, frankly,
20 anything that any of the witnesses for the Division
21 have said is firm and solid and ought on its own to
22 be relied upon.

23 Now, there may be a different situation
24 that emerges if, in fact, there is a stipulated
25 agreement, if there is no objection to that

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1 stipulated agreement, if everybody raises their arm
2 to the square and says, yes, that's good with us,
3 then that in itself, with the supporting testimony
4 from those who testify in favor of that agreement,
5 may be just fine.

6 That's not the situation this morning.
7 And I would urge the Commission to give careful
8 attention to Mr. Evans' argument that in this
9 particular case the Division of Public Utilities has
10 chosen ab initio to behave quite differently than it
11 normally behaves. It did that purely and simply by
12 signing on as a Joint Applicant in this proceeding.

13 Now, I happen to believe that from the
14 perspective of the public interest, and more
15 particularly from the perspective of the consumer
16 interest, that that was mistaken and, frankly,
17 inappropriate.

18 I have argued to this Commission
19 previously in this proceeding that the Division of
20 Public Utilities stepped outside its statutory
21 mandate in order to do that. It is not its business
22 to prejudge stuff before it comes to the Commission
23 as an application. It is its business to stand back
24 and to study the issues and to make objective
25 recommendations when some other party comes forward

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1 as an applicant.

2 That is not to say that the Division can't
3 come forward in its own right in accordance with the
4 statute, as Mr. Evans outlined it. But frankly, in
5 this particular case I believe the Commission needs
6 to be very, very careful in weighing the testimony of
7 Division witnesses and making sure that it is not
8 given quite the same weight in quite the same way
9 that the Commission is traditionally accustomed to
10 doing.

11 Thank you.

12 COMMISSIONER CAMPBELL: Ms. Schmid?

13 MS. SCHMID: Thank you.

14 Having listened to the arguments of Mr.
15 Evans and Mr. Ball, I respectfully disagree.

16 Again, I reiterate that the Division could
17 withdraw from being a Joint Applicant at any time,
18 that the Division acted in the public interest and
19 consistent with its statutory responsibilities.

20 With regard specifically to Mr. Ball's
21 point of the Division being independent, I would like
22 to reiterate the point made by Ms. Bell and confirm
23 that, that the Division has been studying the issue
24 of conservation, DSM and other things for many years,
25 in particular, at least three years in conjunction

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1 with a task force and other efforts, as well as along
2 with the general studies and roles that the Division
3 plays.

4 Additionally, I would like to point out
5 that although it was different, certainly, that the
6 Division signed on as a Joint Applicant, in the end
7 it is truly no different than if an application had
8 been filed and the Division then chose to advocate
9 and sign onto the stipulation. Indeed, the study,
10 the analysis, and statutory responsibilities have and
11 continue to be taken into account by the Division in
12 the performance of its role.

13 COMMISSIONER CAMPBELL: We are not going
14 to decide this motion today. And, in fact, as I sat
15 up here I don't think we need to do the evidence
16 today. We can do that when we have the Stipulation.
17 I think when we come here to hear the Stipulation, if
18 that ends up happening, we can take all the evidence
19 on the record at that point.

20 But let's go ahead and continue to discuss
21 this point while we -- we might as well put all
22 points on the record as far as the Division and their
23 duties as it relates to the Application.

24 Ms. Bell?

25 MS. BELL: I have one quick response to
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1 make in response to some of the comments.

2 The Division's role is to audit and look
3 at all of the reports various utilities file before
4 the Commission, and in doing that they routinely make
5 recommendations to the Commission. If they make a
6 recommendation for a permanent application, that is,
7 in substance, no different than joining an
8 application. And so I don't think that this by any
9 means is outside their normal role or duty as the
10 Division of Public Utilities.

11 COMMISSIONER CAMPBELL: Mr. Evans, let me
12 ask you a question. As you've raised this point, I
13 don't recall the Division ever being a party to an
14 application before, but as I read 4a-1(i) it says,
15 "Engage in settlement negotiations and make
16 stipulations or agreements regarding matters within
17 the jurisdiction of the Public Service Commission."
18 It doesn't say before. So it seems that a CET is
19 within our jurisdiction.

20 Do you see anything in this language that
21 would preclude them from entering into a settlement
22 in advance of the application being made and thereby
23 being part of the application?

24 I mean, I understand the language in (g)
25 where they review applications. It doesn't say they

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1 make applications, but in little (i) it seems to me
2 that they can make stipulations in advance of
3 filings.

4 MR. EVANS: Well, it doesn't specifically
5 say whether those stipulations can be made in advance
6 of filings. But in this case, part of the duties are
7 to investigate applications, and the Commission
8 specifically requested an investigation in this case
9 which was never done. And part of the reason is that
10 they had already determined what their position was
11 going to be before the application was filed.

12 So even though they're able later to enter
13 into a stipulation, I think that by joining in the
14 application they were somewhat, and I'm not impugning
15 the motives of the Division in any sense, but I think
16 they were impaired from investigating the application
17 itself.

18 Certainly as an applicant they were
19 predisposed to assert an outcome and I don't think
20 it's possible, to answer your question directly, to
21 arrive at a stipulation on an application before the
22 application is filed, no. I think the application
23 has to be put in controversy by filing with the
24 Commission before it can be resolved through a
25 stipulated settlement.

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1 COMMISSIONER CAMPBELL: Ms. Schmid?

2 MS. SCHMID: Again, I disagree. I would
3 also ask the Commission to look at 54-7-1 which deals
4 with settlement. I would like to note that in other
5 forums such as FERC, for example, rate cases are
6 sometimes presettled before they are filed with the
7 Commission.

8 And again, the Division's ongoing study
9 and review of the evidence and the positions set
10 forth by the parties and discovered through its own
11 continuing analysis and continued assessment of its
12 position during this entire process satisfies the
13 requirement for an independent analysis and
14 evaluation under the statute.

15 COMMISSIONER CAMPBELL: Well, as I stated
16 before, we're going to reserve ruling on this until
17 later in this proceeding. Let's go off the record a
18 minute.

19 (Off the record discussion.)

20 COMMISSIONER CAMPBELL: We will adjourn
21 and allow the parties to finalize the schedule with
22 Ms. Orchard.

23 (The taking of the deposition was
24 concluded at 9:52 a.m.)

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C E R T I F I C A T E

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STATE OF UTAH)

: ss.

COUNTY OF SALT LAKE)

I, LANETTE SHINDURLING, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the State of Utah, residing at Salt Lake City, Utah hereby certify;

That the foregoing proceeding was taken before me at the time and place herein set forth, and was taken down by me in stenotype and thereafter transcribed into typewriting;

That pages 1 through 27, contain a full, true and correct transcription of my stenotype notes so taken.

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

WITNESS MY HAND and official seal at Salt Lake City, Utah, this 21st day of September, 2006.

LANETTE SHINDURLING, RPR, CRR
Utah License No. 103865-7801