

00125

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3 In re the Matter of) Docket No. UE-010395
4) Volume V
5 AVISTA CORPORATION, d/b/a) Pages 125 - 397
6 AVISTA UTILITIES,)
7)
8 Request Regarding the Recovery)
9 of Power Costs Through the)
10 Deferral Mechanism,)
11 _____)

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 PORTIONS DESIGNATED CONFIDENTIAL

 A hearing in the above matter was held on
September 5, 2001, at 9:00 a.m., at 1300 South Evergreen
Park Drive Southwest, Room 206, Olympia, Washington,
before Administrative Law Judge DENNIS MOSS and
Chairwoman MARILYN SHOWALTER and Commissioner RICHARD
HEMSTAD and Commissioner PATRICK J. OSHIE.

Joan E. Kinn, CCR,RPR
Court Reporter

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1 The parties were present as follows:
2 THE COMMISSION, by DONALD J. TROTTER
3 and JONATHAN C. THOMPSON, Assistant Attorneys General,
4 1400 South Evergreen Park Drive Southwest,
5 Olympia, Washington 98504-0128.

6
7 THE PUBLIC, by SIMON FFITCH,
8 Assistant Attorney General, 900 Fourth Avenue, Suite
9 2000, Seattle, Washington 98164.

10 INDUSTRIAL CUSTOMERS OF NORTHWEST
11 UTILITIES, by BRADLEY VAN CLEVE, Attorney at Law,
12 Davison VanCleve, P.C., 1000 Southwest Broadway, Suite
13 2460, Portland, Oregon 97205.

14
15 AVISTA, by DAVID MEYER, Attorney at Law,
16 E. 1411 Mission Avenue, Spokane, Washington 99203.

17
18 BP ENERGY COMPANY, via bridge line
19 by ELIZABETH WESTBY, Attorney at Law, Alcanter & Kahl,
20 LLP, 1300 Southwest Fifth Avenue, Suite 1750,
21 Portland, Oregon 97201.

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

2 JUDGE MOSS: Good morning, everybody. We are
3 convened this morning on Wednesday, September the 5th,
4 in Docket Number UE-010395 styled In re the matter of
5 Avista Corporation doing business as Avista Utilities,
6 Request Regarding the Recovery of Power Costs Through
7 the Deferral Mechanism.

8 We are assembled this morning for our
9 evidentiary phase. Our evidentiary hearing in this
10 phase of the proceeding concerns the company's request
11 for a surcharge to be implemented on an expedited basis.

12 We will take appearances today. To the
13 extent you have previously entered an appearance in the
14 proceeding, you can use the short form, which is to say
15 identify yourself and whom you represent. Any counsel
16 who are appearing for the first time in the proceeding
17 should give the more fulsome account of themselves.

18 I think, Ms. Westby.

19 MS. WESTBY: Yes.

20 JUDGE MOSS: I believe your appearance has
21 previously been entered, so you can employ the short
22 form as well when I call on you.

23 MS. WESTBY: All right, thank you.

24 JUDGE MOSS: All right, fine.

25 I have a couple of points I want to cover

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1 before we take appearances. One is I had contact this
2 morning with the Mr. Meyer for the company, and he had
3 continued the discussion with his client and perhaps
4 with Public Counsel with respect to the matter
5 concerning Bob Damron's employment by the Commission as
6 its accounting advisor, and the company has agreed that
7 the Commission can use Mr. Damron's services in
8 connection with this case, so that matter is taken care
9 of, and we have discussed that internally.

10 The second point is the suspension order I
11 mentioned to you that was being entered as a
12 precautionary matter in light of the timing and schedule
13 of the case has been signed and will be entered sometime
14 this morning. I have asked that copies be brought up
15 for counsel to have for their files.

16 With that, let's take appearances. We will
17 start with the company, Mr. Meyer.

18 MR. MEYER: Thank you.

19 Appearing on behalf of Avista, David Meyer.

20 JUDGE MOSS: And let's just go around the
21 table here.

22 MR. VAN CLEVE: Appearing on behalf of the
23 Industrial Customers of Northwest Utilities, Brad Van
24 Cleve.

25 MR. FFITCH: Simon ffitch, Assistant Attorney

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1 General, for Public Counsel.

2 MR. TROTTER: Donald T. Trotter and Jonathan
3 Thompson for Commission Staff, Assistant Attorneys
4 General.

5 JUDGE MOSS: And Ms. Westby.

6 MS. WESTBY: Yes, this is Elizabeth Westby
7 appearing on behalf of BP Energy Company.

8 JUDGE MOSS: Thank you. So we have all the
9 participants represented today.

10 Is there any preliminary business before we
11 call our first witness?

12 Apparently there is none, so go ahead and
13 identify your witness, if you would, Mr. Meyer.

14 MR. MEYER: Thank you, Your Honor.

15 I will call to the stand Mr. Gary Ely.

16

17 (The following exhibits were identified in
18 conjunction with the testimony of GARY G. ELY.)

19 Exhibit 50-T is Pre-filed direct testimony.
20 Exhibit 51-T is Pre-filed rebuttal testimony. Exhibit
21 52 is ICNU Cross-Exam Exhibit: Avista Response to WUTC
22 Data Request No. 136.

23

24 Whereupon,

25

GARY G. ELY,

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1 having been first duly sworn, was called as a witness
2 herein and was examined and testified as follows:

3 JUDGE MOSS: Mr. Meyer, proceed.

4 MR. MEYER: Thank you.

5

6 D I R E C T E X A M I N A T I O N

7 BY MR. MEYER:

8 Q. Good morning, Mr. Ely. You have caused to be
9 prepared both direct and rebuttal prepared testimony,
10 haven't you?

11 A. Yes, I have.

12 Q. And those have been marked for identification
13 as Exhibits 50 and 51 respectively?

14 A. That is correct.

15 Q. And if I were to ask you the questions that
16 appear in that pre-filed direct and rebuttal testimony,
17 would your answers be the same?

18 A. Yes, they would.

19 MR. MEYER: With that, I move for the
20 admission of Exhibits 50 and 51.

21 JUDGE MOSS: Any objection?

22 Hearing no objection, the exhibits will be
23 admitted as marked.

24 MR. MEYER: And with that, the witness is
25 available for cross.

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1 JUDGE MOSS: Thank you, Mr. Meyer.
2 And I believe our agreed order of
3 cross-examination would call for Staff, Mr. Trotter or
4 Mr. Thompson.

5 MR. TROTTER: Thank you, Your Honor.

6
7 C R O S S - E X A M I N A T I O N

8 BY MR. TROTTER:
9 Q. Good morning, Mr. Ely.

10 A. Good morning.

11 CHAIRWOMAN SHOWALTER: I'm just going to
12 interrupt here and ask all the witnesses and counsel to
13 make sure you're close enough to the mikes to hear that
14 you are amplified.

15 THE WITNESS: Is that better?

16 CHAIRWOMAN SHOWALTER: That's better.

17 THE WITNESS: Thank you.

18 BY MR. TROTTER:

19 Q. Mr. Ely, I would like to start by bringing us
20 up to date on some issues that have been either in the
21 press or in other reports by the company, and the first
22 item deals with the cash issue. One item that was
23 reported was that Avista was required to pay a \$2.1
24 Million fine to the commodity futures trading
25 commission. Are you familiar with that?

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1 A. I'm familiar with it.
2 Q. Was that --
3 A. It was not a fine though.
4 Q. Oh, excuse me, a payment.
5 A. It was a settlement, yes.
6 Q. And that was to settle civil charges that
7 Avista Energy illegally manipulated the electric futures
8 market for higher profits in 1998; is that correct?
9 A. That is correct.
10 Q. And Avista Utilities was not involved in
11 that, was it?
12 A. Avista Utilities was not involved, that's
13 correct.
14 Q. And was that fine paid?
15 A. Yes, that fine was.
16 Q. Excuse me, was the settlement paid?
17 A. Yes, that settlement was paid.
18 Q. And did that have the effect of reducing cash
19 that otherwise had been available to Avista to meet its
20 financing covenants?
21 A. No, it did not, because it came out of Avista
22 Energy's cash balance sheet.
23 Q. So is it correct that according to your
24 covenants, the cash, positive or negative, associated
25 with Avista Energy is not used in calculating compliance

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1 with financial covenants?

2 A. That is correct.

3 Q. But the cash position and other relevant
4 financial information from your other subsidiaries is
5 included, is it not?

6 A. I believe it is. We would have to ask
7 Mr. Eliassen that question.

8 Q. Let's assume for current purposes that it is.

9 A. I believe it is; I just would like it
10 clarified with him.

11 Q. Right.

12 A. Avista Energy has its own credit line and
13 therefore has its own restrictions under those
14 covenants, and it can not be used I'm very clear on
15 Avista Energy.

16 Q. Okay. Now with respect to the company's
17 information and technology subsidiary operations and
18 Avista Ventures and other subsidiaries, is it correct
19 that for the six months ended June 30 of this year,
20 those operations lost approximately \$30.3 million?

21 A. Could you tell me where you're referencing?

22 Q. The form 10-Q which was signed on August 13th
23 of this year.

24 A. Yes, that would be correct.

25 Q. If you turn to page six of your direct

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1 testimony, Exhibit --

2 A. 50. That was page six?

3 Q. Yes, and I believe --

4 A. Line?

5 Q. -- it also begins on the bottom of page five
6 but over to page six where you're summarizing your
7 request in this filing. Are you with me?

8 A. I'm with you, yes.

9 Q. And the company's proposal is a 36.9%
10 surcharge that will last for 27 months and will be
11 placed into effect subject to refile; is that right?

12 A. That is correct.

13 Q. On page six, lines five to seven, you refer
14 to at the conclusion of the prudence determination costs
15 that had been collected from customers that were
16 determined to be imprudent, they would get a refund on a
17 going forward basis; is that right?

18 A. That is correct.

19 Q. Now you recognize, don't you, that the
20 conditions that the Commission has imposed for Avista's
21 recovery on deferred power costs are not limited to
22 prudence?

23 A. Do I realize what?

24 Q. That the conditions for recovery of deferred
25 power cost that the Commission has imposed are not

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1 limited to prudence?

2 A. Um --

3 Q. Let me ask it another way.

4 A. Yeah, please.

5 Q. Are you aware that issues exist as to whether
6 a deferral mechanism is appropriate, a proper base from
7 which to defer, the amount of the cost of the capital
8 offset, whether Avista's resources have been optimized
9 to benefit rate payers, and so on, that those are issues
10 that bear on the recoverability of deferred power costs?

11 A. I would agree those are all issues that bear
12 on the recoverability. I think those are the issues
13 that we would determine a prudency case or a general
14 case following this particular hearing for the
15 surcharge.

16 Q. So you lump all those issues under the
17 category of prudence?

18 A. I would, yes.

19 Q. Does your commitment to provide a refund to
20 customers for deferred power costs that are found not to
21 be recoverable, does that commitment apply regardless of
22 what Avista's financial condition might be at that time?

23 A. Well, the commitment certainly applies. As
24 far as what the company's financial condition is at that
25 time would -- I mean if there are no dollars there to

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1 pay the refund, there are no dollars there to pay the
2 refund. But we would not be in business either, so
3 someone else would probably have that commitment to take
4 care of it going forward.

5 Q. Well, let's say at that time it's determined
6 that refunds are appropriate and the company needs to
7 finance in order to pay them, and are you reserving the
8 right to say that you shouldn't be required to finance
9 because the cost may be too high or any other --

10 A. No, I think if, in fact, we're able to
11 finance, then certainly we would be in a position to
12 take and finance and pay whatever refunds are necessary.

13 Q. So other than the company being out of
14 business, you can't think of any circumstance under
15 which you would oppose a refund if the Commission found
16 a certain level of deferred power costs to be
17 non-recoverable?

18 A. No, I can't imagine any at this time. I
19 think the key thing is that even if the Commission were
20 to grant the full surcharge and that surcharge would
21 take up to nine months to do it, we would collect
22 roughly only about half of what we have in at the end of
23 June as far as what we consider power costs that are
24 prudent to be done. And, in fact, if you take the
25 September 30th date, it would be less than -- less than

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1 about a third with all that would be collected at that
2 point. So the Commission would have to find it
3 imprudent on a 50% of all that we had put in there if
4 you use the June 30th and 70% almost if all -- if you
5 use the September 30th date. So I'm, you know, as far
6 as overcollecting it and refunding, we certainly will
7 refund if we're required to do so, but I think that's
8 not very realistic.

9 Q. Well, you do understand that the proper base
10 from which the company should be allowed to defer is
11 still an issue?

12 A. I believe in, yes, in Staff's mind that that
13 is correct.

14 Q. Is it in the company's mind that that's an
15 issue, or is it not an issue --

16 A. I believe that --

17 Q. -- that can be raised in Phase II of this
18 case?

19 A. I believe that we prudently incurred costs to
20 supply power to our customers that was necessary from a
21 reliability standpoint to keep them in service. Now I'm
22 sure that there will be a lot of testimony in the
23 prudence case around whether or not did we buy at the
24 right time, how much we bought, and those kinds of
25 things, and I'm sure that there will be some resolution

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1 of that at the end of the prudency case, but that's not
2 what this case is about.

3 Q. I understand that. My question was, does
4 Avista understand that the base from which it should be
5 allowed to defer is an issue that has yet to be
6 resolved?

7 A. Mr. Trotter, I don't understand what you mean
8 the base. I'm not following.

9 Q. The company deferred every dollar of deferred
10 power costs that it incurred from the level that was
11 contained in its last rate order, correct?

12 A. I believe that is correct.

13 Q. Do you understand that there is an issue as
14 to whether that is the appropriate level to defer from
15 or whether another level is appropriate to defer from?
16 Do you understand that that's an issue?

17 A. I understand that you consider it an issue,
18 and so therefore it's an issue.

19 Q. And do you understand that that issue has not
20 been resolved?

21 A. I understand that's part of the prudency
22 case, yes.

23 Q. And do you also understand that an issue that
24 has yet to be resolved is whether a deferral mechanism
25 is appropriate at all?

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1 A. I thought that that was approved by this
2 Commission on at least three times to allow us to do
3 that until we had a general case or a prudency case to
4 determine whether the costs, in fact, were appropriate.

5 Q. Isn't it true that Water or Avista.

6 A. That's all right, I'm going to do that before
7 we're done.

8 Q. Avista reported in its SEC 10-K that there
9 was an issue as to whether the deferral mechanism was
10 appropriate?

11 A. I think those -- those questions are probably
12 directed to somebody that can better discuss them, and
13 we do have Mr. Hoover who will be on the stand later
14 today to talk about how we're to account for things, and
15 I would defer those questions to him.

16 Q. But for purposes of your testimony, when you
17 refer to the word prudence, you mean any issue that
18 might legitimately be raised in Phase II or in whatever
19 docket recoverability will ultimately be determined?

20 A. Yes. As far as I'm concerned, everything is
21 open to discuss, you know, whether or not from a
22 prudency standpoint does it include any of the things
23 you have enumerated.

24 Q. Now Avista is asking in this case to use any
25 surcharge revenues that are granted to amortize deferred

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1 power costs through rates, correct?

2 A. That is correct.

3 Q. And you want the financial community to
4 consider that those surcharge dollars are reducing power
5 cost deferrals by means of that amortization, correct?

6 A. That is also correct.

7 Q. Another aspect of Avista's proposal regarding
8 its 36.9% 27 month surcharge is that all of those issues
9 on recoverability which you categorize as prudence and
10 I'm going to categorize as recoverability deferred power
11 costs be addressed in a rate case that Avista would file
12 in November of this year, correct?

13 A. That's what we had proposed, yes.

14 Q. And on what date in November is Avista
15 committing it will file that case?

16 A. We said during the month of November. I
17 think that's subject to whatever we can work out with
18 Commission Staff. If we get an order out sometime
19 between now and the end of September, by let's say the
20 15th or thereabouts, which we asked for, that only
21 allows you six weeks to prepare a full general case to
22 file.

23 Q. Well, you filed your testimony on August 2nd,
24 didn't you?

25 A. Yes.

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1 Q. Are you not preparing that general case now?

2 A. We have been fairly busy working on this, but
3 yes, we are working on that also.

4 Q. So I'm just going to ask you point blank,
5 what is the earliest date that you can commit today to
6 file that case?

7 A. Well, what I -- it depends on whether you're
8 talking about a general case or a continuation of this
9 case in a prudency hearing.

10 Q. The general rate case that you're proposing
11 to file.

12 A. We would file November 1.

13 Q. November 1. And would that commitment also
14 include your commitment to file on recoverability issues
15 as well? Because your proposal was in the general rate
16 case that you would address the recoverability issues of
17 deferred power cost balances. So my question is, would
18 that November 1 filing include that?

19 A. Yes, I would assume it would.

20 CHAIRWOMAN SHOWALTER: Mr. Trotter, can you
21 slow down just a little bit.

22 Q. Is the financial community aware that this
23 Commission to date has made no finding that any of the
24 deferred power costs were prudent, that the deferral
25 amounts had been appropriately calculated, or that

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1 recovery through a deferral mechanism is appropriate?

2 A. They're very aware that nothing has been
3 approved of this Commission or in this state.

4 Q. Staff's recommendation regarding the
5 recoverability issues or Phase II of this docket was
6 that the company either declare that the case it filed
7 in March was its direct case on that issue or to file
8 its direct case on that issue I believe by September
9 17th of this month, correct; is that your understanding?

10 A. That's my understanding.

11 Q. Assuming the Commission decides that these
12 recoverability issues ought to be addressed in Phase II
13 as opposed to in a general rate case, what is the
14 earliest date that Avista can commit to file that
15 recoverability direct case?

16 A. Well, that's something I would have to visit
17 with the Staff, but it's certainly at least by November
18 1, at the same time we would file a general case.

19 The other thing I might mention is you had
20 indicated using the May filing date and accepting that.
21 The fact of the matter is we have had substantial, in
22 fact it's almost double the amount of power cost between
23 when that was filed and where we're at now. We purchase
24 power to serve our customers.

25 MR. TROTTER: Excuse me, Your Honor, but the

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1 question was very specific about what date he could
2 file. He answered that.

3 JUDGE MOSS: Well, I think he was explaining
4 some of the difficulties associated with that. You
5 asked him in part whether his May 23rd testimony would
6 be applicable, and I think he was just explaining that.
7 But I don't think we need an answer to that, so why
8 don't you go on to your next question. It's in the
9 rebuttal.

10 MR. TROTTER: Okay.

11 BY MR. TROTTER:

12 Q. Let's go to your rebuttal testimony,
13 Exhibit --

14 A. 51.

15 Q. -- 51, page two, and on line nine, you have
16 starting to summarize Staff's recommendations, and the
17 first item that you list is that the surcharge should
18 only continue for a period of 90 days. Do you see that?

19 A. Which line was that on, Mr. Trotter?

20 Q. Line nine.

21 A. Yes, I see that.

22 Q. And you understand that Staff's
23 recommendation is that there be an initial period of 90
24 days subject to continuation based on the company filing
25 a general rate case and proving the interim rate relief

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1 standards in the proper context?

2 A. Yes, I understand that. However, it was
3 required that the case be filed by September 28, which
4 was an impossibility.

5 Q. On line 11, you state Staff's recommendation
6 or purport to state it, that any revenues collected
7 under emergency rate relief not be credited against the
8 deferral balance. Do you see that?

9 A. That's line 11, yes, I see that.

10 Q. Okay. And Staff's recommendation is that any
11 crediting against the deferral balance occur after
12 Avista has demonstrated recoverability of those balances
13 pursuant to the conditions previously imposed by the
14 Commission. Is that your understanding?

15 A. That is correct.

16 Q. Now you then go on to say, "thereby
17 frustrating the very purpose of the surcharge
18 collection". Do you see that?

19 A. Yes.

20 Q. Is the very purpose you are referring to here
21 that Avista begin to recover deferred power costs
22 immediately?

23 A. Yes, it is, and the actual very purpose is to
24 stay in business long enough to have a prudency case so
25 that we can determine.

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1 Q. On page six of your rebuttal testimony at the
2 top and I guess from the prior page continuing over, you
3 say the revenues collected from the surcharge should be
4 directly applied to offset the deferral balance which
5 would serve to help the company meet its covenant
6 requirements; do you see that?

7 A. Yes, I do.

8 Q. Would you please explain how an extra dollar
9 of cash used to reduce deferral balances is more help in
10 meeting covenants than an extra dollar of cash that is
11 not used to reduce deferral balances?

12 A. Well, I think it's in the accounting method.
13 The real issue has to do with the banks not willing to
14 continue to support the company in their cash needs if
15 they don't see some light at the end of the tunnel,
16 which means that unless they see some reasonable way to
17 collect the cash that's already been spent to serve
18 customers, unless they see some recovery of that in some
19 form, they're not willing to take and stay with us, nor
20 are we able to take and issue equity or continue to
21 operate the company in the way and in the manner in
22 which we operate.

23 Q. The question that I asked was directed
24 specifically to meeting covenants. Let me ask it this
25 way.

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1 A. Okay.

2 Q. Isn't it true that a dollar of cash does just
3 as much to benefit you meeting your financial covenants
4 regardless of whether that dollar of cash is used to
5 offset deferral balances or is simply cash on the
6 balance sheet?

7 A. In the cash -- if the cash is used to take
8 and sustain operations so it can be used. If it's set
9 aside in escrow account --

10 Q. That's not the question, sir. The question
11 can be repeated if necessary. Do you understand the
12 question?

13 MR. TROTTER: I will ask that the question be
14 reread to the witness.

15 (Record read as requested.)

16 BY MR. TROTTER:

17 Q. And my focus of the question is that if it's
18 cash on the balance sheet.

19 A. And I will direct that question to
20 Mr. Eliassen.

21 Q. Let's discuss the issue of termination of the
22 deferral and refer to page three of your testimony.

23 A. Direct or --

24 Q. Excuse me, rebuttal testimony, Exhibit 51.

25 A. 51.

00152

1 Q. Page three, lines seven to eight. You say
2 that eliminating the deferred accounting mechanism
3 effective June 30, 2001, could preclude future
4 consideration by the Commission of the possibility of
5 recovery of \$74 Million of expenses during the months of
6 July through September alone. Do you see that?

7 A. Yes, I do.

8 Q. I would like to retrace a little bit of
9 history with you, if I might. When the company
10 initially filed its petition for an accounting order in
11 July of 2000, it projected that the deferral balance as
12 of June 30, 2001, would be for Washington approximately
13 \$19.7 Million; is that correct?

14 A. I believe that's correct, yeah.

15 Q. And the company's plan at that time was to
16 amortize that over a ten year period; is that correct?

17 A. Yes.

18 Q. Am I also correct that when the company filed
19 its petition to modify the deferral accounting in
20 December of 2000, it projected the June 30, 2001,
21 balance would be around \$55 Million, and all my figures
22 will be Washington; is that correct?

23 A. I believe that's correct, yes, subject to
24 check.

25 Q. And the company had a plan that it

00153

1 communicated to the commissioners and the Staff at that
2 time that it would be able to manage its deferral
3 balance to zero without rate impact; is that correct?

4 A. That was certainly our intent.

5 Q. And you communicated that to Staff and the
6 Commission?

7 A. Absolutely, yes.

8 Q. And then in March, in your March 23rd, 2001,
9 filing, the company projected a June 30, 2001, balance
10 of \$58.3 Million. Can you accept that subject to check?

11 A. Yes.

12 Q. And the plan at that time was also to have
13 the company manage the deferral balance to zero without
14 rate impact; is that correct?

15 A. That is correct.

16 Q. And that eventually led to the settlement
17 stipulation?

18 A. That is correct.

19 Q. Now the actual deferral balance as of June
20 30, 2001, was \$109.4 Million; is that right?

21 A. That is correct.

22 Q. Also I would like you to accept subject to
23 your check that the company for July of this year had
24 projected a deferral balance just for that month in
25 incremental additional -- in addition to the deferral of

00154

1 \$30 Million, and actual was \$41 Million?

2 A. The actual I think was 40, but right around
3 that, yeah, yes, that is correct.

4 Q. On page eight of your rebuttal on line 13,
5 you referred to filings of two other companies, Puget
6 Sound Energy and Portland General Electric. And my
7 question is, is Avista contending that Avista's power
8 supply decision making should be analyzed based on what
9 those utilities have done?

10 A. No, it is not.

11 MR. TROTTER: If I could just have a moment.

12 Those are all my questions at this time,

13 Mr. Ely. Thank you.

14 JUDGE MOSS: Thank you, Mr. Trotter.

15 Mr. Van Cleve, do you have some questions for
16 this witness?

17 MR. VAN CLEVE: Yes, I do Your Honor.

18

19 C R O S S - E X A M I N A T I O N

20 MR. VAN CLEVE:

21 Q. Good morning, Mr. Ely.

22 A. Good morning, Mr. Van Cleve.

23 Q. Has the company investigated options to
24 improve its financial condition other than a rate
25 increase?

00155

1 A. Yes, we have.

2 Q. Has the company investigated the possibility
3 of selling its ownership interest in Coyote Springs II?

4 A. We have investigated several options
5 regarding Coyote Springs II.

6 Q. Could you describe what those options are?

7 A. Well, we have been trying to finance it for
8 the last several months, actually all of this year, as
9 an example.

10 Q. Well, what's the answer to the question that
11 I first asked, which is whether you have investigated
12 selling the company's ownership interest in Coyote
13 Springs II?

14 A. Yes, we have investigated that.

15 Q. And have you sought offers for the company's
16 interest?

17 A. We have not put an auction out to sell it,
18 but we have considered it. One of the reasons, we are
19 considering all options, but I look at the sell of the
20 Coyote Springs unit as I won't say a last resort, but
21 certainly we are -- we would not be in the position
22 today had we had generation available to supply our
23 customers' needs. And that as it went through the least
24 cost plan was the most cost effective plan for our
25 customers, and therefore we have made every attempt to

00156

1 ensure that it would be available to our customers as we
2 move through the future. But we certainly have explored
3 it as another option, because we may have -- we have
4 very few options left.

5 Q. Do you know what Avista's current equity
6 interest in the Coyote Springs II plant is?

7 A. As of what date?

8 Q. As of the most recent date that you have
9 information.

10 A. It's approximately \$121 Million as of June
11 30th. I believe that's correct, subject to check.

12 Q. If the company were to sell its equity
13 interest in Coyote Springs II, would that improve the
14 fixed charge ratio?

15 A. Certainly it would improve the fixed charge
16 ratio. However, using equity is not what you would do
17 to take an -- I guess provide ongoing expenses or
18 actually use that cash to take new ongoing expenses for
19 your customers.

20 Q. Do you know how much of the equity interest
21 in Coyote Springs II would have to be sold in order to
22 maintain the fixed charge ratio under your bank line of
23 credit for the rest of the year?

24 A. All of it would have to be sold, and it still
25 would not meet it.

00157

1 Q. Have you investigated the potential for a
2 sale/leaseback type transaction for Coyote Springs II?

3 A. Yes, we have. The issue there is the same of
4 trying to get financing for it. You become the creditor
5 for that, and no one is willing to take our credit right
6 now as far as being able to do a sale on leaseback.

7 Q. But in that case, the plant asset itself
8 would serve as a security, would it not?

9 A. No, it wouldn't, because you have to have the
10 offtake contract, and that offtake contract would be to
11 the company, and the company therefore does not have the
12 credit rating that they're willing to take.

13 Q. But you would agree, wouldn't you, that if
14 the company defaulted on a sale/leaseback that the party
15 that had purchased Coyote Springs II would receive the
16 asset back?

17 A. Very definitely they would receive the asset
18 back, and that's part of the problem that many of those
19 who would be in that business to do that have an issue
20 with. First off, they don't want to run a plant.
21 They're not in that business, so they don't want you
22 defaulting. And the second issue is is currently with
23 markets where they're at, even Coyote Springs with its
24 low heat rate and low cost as far as one of the newest
25 plants in the Northwest does not meet in all months an

00158

1 actual positive cash flow. During certain months, it
2 will have negative cash flow, and that's unacceptable to
3 most folks who would step in to purchase that.

4 Q. So is it your position that the company can
5 not currently do a sale/leaseback on the Coyote Springs
6 II project?

7 A. That is correct.

8 Q. Can you describe any other alternatives that
9 the company has explored to improve its financial
10 condition other than a rate increase?

11 A. Well, we certainly have in the process of
12 selling, or I shouldn't say selling, but exiting various
13 other forums. My whole focus has been to simplify, to
14 focus and execute around our energy and energy related
15 products, so we're in the process of exiting various
16 other business entities that we have as part of this
17 corporation. It has nothing to do with the utility.
18 I'm just looking at it from a corporate standpoint in
19 being able to survive.

20 Q. Do you know what the company's current
21 investment, equity investment in unregulated
22 subsidiaries is?

23 A. With or without Avista Energy?

24 Q. Well, why don't you give us both.

25 A. I don't have those numbers right off the top

00159

1 of my head, but the investment in Avista Energy is about
2 almost \$3 Billion.

3 CHAIRWOMAN SHOWALTER: Did you say \$3
4 Billion?

5 THE WITNESS: \$3 Billion with a B, yes.

6 BY MR. VAN CLEVE:

7 Q. That's the equity investment?

8 A. No, that's not the equity investment. The
9 equity investment is less than \$100 Million. That's the
10 asset.

11 Q. What about the other unregulated
12 subsidiaries, what's the equity investment in those?

13 A. The numbers are actually quite small.
14 Probably it's less than \$100 Million total.

15 Q. Could Avista Corp sell its unregulated
16 subsidiaries and improve its balance sheet?

17 A. If you could sell them, the answer would be
18 yes.

19 Q. Now it's your position in this case that the
20 Commission should raise rates and write down the
21 deferral balance even though there's been no
22 determination that the costs that have been deferred are
23 prudent; is that correct?

24 A. That is correct.

25 Q. And according to your rebuttal testimony, no

00160

1 party is prejudiced by that, because the increase, the
2 rate increase, would be subject to refund; is that
3 correct?

4 A. That is correct also.

5 Q. Now your main criticism of the Staff proposal
6 to stop the deferral is that the company would have to
7 write off about \$74 Million for power costs from July
8 through September; is that correct?

9 A. That is one of the criticisms, yes.

10 Q. And is it also your position that such a
11 writeoff would jeopardize your access to the capital
12 markets?

13 A. Yes.

14 Q. If the Commission were to permit the rate
15 increase that you're requesting and later order a
16 refund, would Avista have to write off the disallowed
17 costs?

18 A. Yes, we would.

19 Q. So would such a writeoff due to the refund
20 also jeopardize your access to capital markets?

21 A. It depends on where we were at at the time
22 that that was done.

23 Q. And have you performed any analysis of
24 Avista's financial ability to pay refunds?

25 A. You know, direct that question to

00161

1 Mr. Eliassen. But I did indicate earlier that even if a
2 surcharge was ordered in the full amount and the
3 prudency case took nine months to get there, even based
4 on the June 30th order, less than 50% or about 50% would
5 have been collected to date. And if you use the
6 September 30th, it's only about a third, which means
7 that at that time, you would have to envision that the
8 Commission would find over half and in some cases over
9 two thirds if you use the September date of the
10 surcharge to be invalid or imprudent, which I just can't
11 fathom personally, but. And the quicker the prudency
12 hearing was done or the quicker the case was done, the
13 smaller that number.

14 Q. Would the company be willing to pay refunds
15 even if it caused the company's credit rating to drop
16 below investment grade?

17 A. If we do not get the surcharge, our credit
18 rating will drop below investment rate, so if we're
19 ordered to do refunds, we're ordered to do refunds.

20 Q. If the Commission ordered refunds and that
21 caused the company's credit rating to drop below
22 investment grade, do you believe that the company would
23 have cause to ask for interim rate relief due to the
24 refunds?

25 A. I'm not sure I follow that question, Mr. Van

00162

1 Cleve.

2 Q. The question is, if you were ordered to pay
3 refunds.

4 A. Yes.

5 Q. And it caused the company's credit rating to
6 drop below investment grade. In other words, it --

7 A. If --

8 Q. -- prevented your access to the capital
9 markets.

10 A. Yes.

11 Q. The refund.

12 A. Right.

13 Q. Would that be a basis to then seek interim
14 rate relief?

15 A. I believe if we dropped below investment
16 grade and were in that situation, we would probably
17 cease to exist as a company.

18 Q. So wouldn't you agree that if the company is
19 not financially capable of paying refunds that the
20 protection of refunds is somewhat illusory?

21 A. I would suggest to you what I said earlier,
22 and that is under most any case that I can imagine,
23 there would not be more money collected than what could
24 possibly be denied in a refund case or in a prudency
25 case.

00163

1 Q. Does the deferral balance reflect the
2 difference between normalized power costs and loads and
3 actual power costs and loads?

4 A. Between normalized?

5 Q. Yes.

6 A. I don't believe that it does.

7 Q. What does the deferral balance reflect?

8 A. I think it reflects those costs that we have
9 incurred to supply our customers under the contracts
10 that we would normally take. It's not a general case
11 where you normalize everything out and say it's normal
12 stream flow and everything else. I mean if that was the
13 case, it would not include all the power we purchased
14 for this draught that we're in. It's the worst in 70
15 some years.

16 Q. But what is being deferred is the difference
17 between your actuals and what was assumed in base rates
18 in your last rate case, correct?

19 A. I believe that is correct.

20 Q. And what was assumed in base rates is
21 normalized power costs?

22 A. That is correct, yes.

23 Q. And would you agree that a utility ordinarily
24 assumes some risk that actual power costs will vary from
25 the normalized costs assumed in a rate case?

00164

1 A. That is true. In fact, we have for years and
2 years, and most of that variability is usually somewhere
3 around at maximum a \$5 Million a month or about \$25
4 Million a year on an annual basis either on the upside
5 or the downside. But because of the high power prices,
6 it is a factor of ten. In fact, had we not done some of
7 the things we did, the number could have been as close
8 to \$600 Million, not \$265 Million.

9 Q. Would you agree that the \$25 Million in
10 normalized or in normal variance has been included in
11 the deferral account since --

12 A. I would say that we have tracked everything
13 between what was in normalized and what we actually
14 incurred, yes.

15 Q. I would like to ask you a couple of questions
16 about the company's credit ratings. Are you aware that
17 the S&P rating for senior secured debt in 1999 was an A?

18 A. For who, for us?

19 Q. Yes, for Avista Corporation.

20 A. Yes.

21 Q. And the current S&P rating for senior secured
22 debt is tripple B minus, correct?

23 A. That is correct.

24 Q. Would you agree that poor performance in the
25 unregulated trading operations has contributed to the

00165

1 downgrade?

2 A. I would agree that there are a number of
3 factors that have contributed to the downgrade, yes.

4 Q. And is poor performance in unregulated
5 trading operations one of those factors?

6 A. It certainly has been cited as one of the
7 things that they have concerns about, yes.

8 Q. Now the company's credit rating was
9 downgraded by S&P on August 2nd of this year; is that
10 right?

11 A. That is correct.

12 Q. And one of the things among many mentioned in
13 the release was continuing involvement in riskier
14 non-regulated ventures. Can you tell me what the
15 riskier non-regulated ventures the company's involved in
16 are?

17 A. I think, you know, in discussions with S&P,
18 certainly their most -- largest concern was the deferral
19 and the collection of those deferrals. In addition,
20 they reiterated their position on a number of items,
21 those being things like being in the telecom business,
22 being in some of the other areas, which by the way we
23 have hired a banker and have gone through the process of
24 exiting that business. We have shut down our ventures
25 business, and I think they're pleased with the direction

00166

1 we're taking, but we're not there yet.

2 Q. Could you refer to what's been marked as
3 Exhibit 52, and it's entitled Avista Response to WUTC
4 Data Request 136.

5 A. Yes, I have it.

6 Q. And on page one of Exhibit 52, is this a data
7 response that Avista provided in this case?

8 A. Yes, I believe it was.

9 Q. And are you identified as the witness?

10 A. I believe I am, yes.

11 Q. If you refer to page four of Exhibit 52.

12 A. Yes, I have that.

13 JUDGE MOSS: Mr. Van Cleve, sorry to
14 interrupt, I've got page numbers both at the top and the
15 bottom of my exhibit. Are you referring to the page at
16 the top?

17 MR. VAN CLEVE: Yes, I am, Your Honor.

18 JUDGE MOSS: Thank you.

19 THE WITNESS: Oh, I was looking at the
20 bottom.

21 CHAIRWOMAN SHOWALTER: So which page is it?

22 JUDGE MOSS: Page four in the upper right.

23 MR. VAN CLEVE: Four at the top and three at
24 the bottom.

25 BY MR. VAN CLEVE:

00167

1 Q. Is this the --

2 A. Which page at the bottom? My upper numbers
3 got cut off, so.

4 Q. Page three at the bottom.

5 A. Okay.

6 Q. It says interim relief guiding consideration.

7 A. Oh, yes, okay.

8 Q. Is this the standard from the Pacific
9 Northwest Bell case?

10 A. I believe it is.

11 Q. And is this the standard that the company
12 believes should apply to its petition in this case?

13 A. We cited it as a reference. If you really
14 read this, it was really an interim rate relief under a
15 general case. There really is no criteria for a
16 surcharge, but we felt that we met all six of this even
17 as an interim rate increase, so now you're getting into
18 nuances. In fact, if you read on that same page near
19 the top, it says:

20 This is the fourth occasion in the past
21 three years in which this Commission has
22 been requested to grant an emergency
23 interim rate relief as a --

24 JUDGE MOSS: Mr. Ely, you need to slow down
25 for the reporter.

00168

1 THE WITNESS: Oh, I'm sorry.

2 BY MR. VAN CLEVE:

3 Q. But in your view, is this the standard that
4 should be applied in this case?

5 A. This is what we have used as an indication
6 that we have met these particular criteria, yes. There
7 is no criteria for a surcharge.

8 MR. VAN CLEVE: Your Honor, I have no further
9 questions, and I would offer Exhibit 52.

10 JUDGE MOSS: Hearing no objection, it will be
11 admitted as marked.

12 Mr. ffitch, I believe you can probably finish
13 by 10:30?

14 MR. FFITCH: I think so.

15 JUDGE MOSS: All right, let's go on then and
16 take our break then.

17 MR. FFITCH: Your Honor.

18

19 C R O S S - E X A M I N A T I O N

20 BY MR. FFITCH:

21 Q. Good morning, Mr. Ely.

22 A. Good morning.

23 Q. A number of areas have been covered, so
24 hopefully we should be able to get done by 10:30.
25 You're in the lucky position of being able to defer to

00169

1 just about anybody since everybody comes after you, so
2 if I ask you a question that would be better directed to
3 someone else, just let me know.

4 A. I appreciate that.

5 Q. I did have some company submitted budgets
6 marked as exhibits for Mr. Eliassen in this case, the
7 2000 budgets submitted to the Commission and the 2001
8 budget, and I just wanted to confirm that I should
9 direct those, the questions regarding the budget, to
10 Mr. Eliassen?

11 A. Yes, I would like for you to do that.

12 Q. Okay. The company recently announced
13 managerial pay reductions and other operating budget
14 cuts; isn't that correct?

15 A. That is correct.

16 Q. And were those considered in the development
17 of the financial exhibits for this rate request?

18 A. No, they were not.

19 Q. Has the company prepared any sort of analysis
20 of the effect of these cuts?

21 A. We have gone through and looked at what they
22 would amount to, but they're very insignificant.

23 Q. Do you have an analysis that can be provided
24 for the record in this proceeding?

25 A. Since many of them are still under process as

00170

1 far as efficiencies in effecting the company, we can't
2 give you those. But we certainly can give you the
3 pieces that we talked about as far as capital cuts on
4 our Cap X budget as well as what the salary cuts and
5 things would amount to, or we can -- or there is an
6 estimate of the approximate impact.

7 Q. Can you today tell us what the estimate of
8 the approximate impact of those cuts is?

9 A. The approximate impact over the duration for
10 this -- the balance of this year and next year is
11 approximately \$60 Million.

12 Q. And --

13 A. Most of that is capital.

14 Q. All right. And you say that that \$60 Million
15 was not considered in the development of the financial
16 exhibits for this rate request?

17 A. No, it wasn't. It was things like, as an
18 example, yesterday we were to dewater unit number two at
19 Cabinet Gorge. It's its annual maintenance. However,
20 on the units there, there are new improved rudders or
21 impellers that would improve the efficiency of those
22 plants. We decided -- and it's about a \$4.6 Million
23 project. We decided not to do that and slip it. It has
24 to be slipped one year, because you dewater them now
25 while water is low and you can't use them, and it takes

00171

1 about six months. They're out of service for that long
2 to do it, so it has been slipped one full year. So
3 that's, for instance, \$4.6 Million of that number.

4 Q. So that represents a savings to the company
5 in the second half of this calendar year?

6 A. It is -- it actually covers basically
7 November and December, January and February. The unit
8 would normally come back in March, so it's over this six
9 month period, and so it would overlap both years. It's
10 really not a savings, because we still have to do it. I
11 believe the impeller is being manufactured, so there
12 will still be some cost when that impeller is delivered.
13 But we just will not do the rest of the work, and
14 therefore, there will be a savings I believe in this
15 case of 3 point something million, not the 4.6, but the
16 total project was 4.6.

17 One of the things it does is it does increase
18 some risk as far as we did not take this unit out for
19 maintenance, which means that we will go an additional
20 year of service on this particular unit before servicing
21 it. But next year in October, assuming we're still
22 here, we will then take that unit down, do the
23 maintenance, install impeller, and upgrade that unit.
24 So it's really not -- it's only deferring costs, and
25 most of the \$60 Million is deferred costs. It's not

00172

1 eliminating costs, it's deferring.

2 MR. FFITCH: Your Honor, I would like to make
3 a record requisition for any Avista analysis of the
4 effect of the managerial pay reductions and other
5 operating budget cuts referred to by the witness.

6 MR. MEYER: Your Honor, ordinarily --

7 MR. FFITCH: It's --

8 MR. MEYER: I'm sorry, go ahead.

9 MR. FFITCH: I'm finished.

10 MR. MEYER: Okay.

11 Ordinarily we would have no objection, but at
12 this stage in the proceeding, this is the hearing, and
13 by the time we get around to responding to such a record
14 requisition, then what are we to do with that, reconvene
15 a hearing to discuss that. So these are the sorts of
16 things that might have been done earlier prior to this
17 hearing.

18 MR. FFITCH: Well, Your Honor, I think the
19 Commission has significant experience with records
20 requisitions in its hearings, and they don't normally
21 require a reconvening of the hearing.

22 JUDGE MOSS: I think that I will overrule the
23 objection, such as it was, and we will make Records
24 Requisition Number 1 any analyses the company has
25 prepared.

00173

1 I think you did say something had been
2 prepared?
3 THE WITNESS: That is correct.
4 JUDGE MOSS: And that can be provided in
5 short order, I take it?
6 THE WITNESS: We should be able to do that.
7 JUDGE MOSS: All right, well, provide that.
8 THE WITNESS: As long as we understand that
9 it's still in its process of being worked through.
10 JUDGE MOSS: Right, my understanding was it
11 was preliminary and incomplete.
12 THE WITNESS: That is correct.
13 JUDGE MOSS: That is what you will be
14 getting, Mr. ffitch.
15 MR. FFITCH: Thank you, Your Honor. Do we
16 need to reserve an exhibit number for that?
17 JUDGE MOSS: It's Exhibit Number 30, or it
18 will be marked as Number 30.
19 MR. FFITCH: All right.
20 JUDGE MOSS: And, of course, we will
21 entertain objections to its admission at the appropriate
22 time when it's produced, if any.
23 BY MR. FFITCH:
24 Q. Moving on to another matter, Mr. Ely, Mirant
25 Corporation released a press release on July 31, 2001,

00174

1 indicating that they are buying the interest that Avista
2 Power previously held in the Mint Farm Power Plant in
3 Longview. Are you familiar with that?

4 A. Yes, I am.

5 Q. Can you indicate briefly what this
6 transaction consists of?

7 A. Basically our Avista Power group had
8 developed that site, had licensed it, and because of our
9 cash constraints, we determined that we would not be
10 able to finance a turbine on our own. I had worked with
11 Mirant to bring a turbine in, decided it was in our best
12 interest just to sell it, and basically we had closed
13 down Avista Power other than their current operating
14 assets.

15 Q. And is there any other witness that would
16 have additional details about this?

17 A. I don't believe there is.

18 Q. How much cash did you receive from this
19 transaction?

20 A. I think it's around \$2 Million, if I remember
21 correctly.

22 Q. And how much expenditure did you avoid by
23 selling your interest?

24 A. Well, that particular plant was licensed for
25 249 megawatts prior to the changes in the FSEC, which

00175

1 will probably move it up to a 280 megawatt unit. The
2 Coyote Springs unit is \$190 Million. That particular
3 unit is estimated with current costs and such about \$250
4 Million roughly, between \$245 Million and \$250 Million
5 to complete that unit of similar size. So, you know, we
6 -- if we were to do that all ourselves, that's what you
7 have avoided.

8 Q. And --

9 A. We wouldn't have done it all by ourselves
10 either, by the way.

11 Q. And that figure again would be? I wasn't
12 following along quickly enough to do the math in my
13 head.

14 A. Oh, okay.

15 Q. Just to summarize what you just said, the
16 avoided expenditure would be how much?

17 A. Well, to build that plant it's about \$250
18 Million roughly at Longview.

19 Q. Okay.

20 MR. FFITCH: Excuse me a moment.

21 BY MR. FFITCH:

22 Q. When you say you wouldn't have done it alone,
23 does that mean that you would have done that with a
24 partner?

25 A. Yeah, one of the things, we had the site, but

00176

1 up until just very recently, turbines were not -- you
2 just weren't able to come by any turbines. They were a
3 queue very long as far as getting turbines to the site.
4 There were those companies that had turbines, and so you
5 would partner up with a company like Mirant as an
6 example that had turbines on order. So that they would
7 bring the turbine to the site, you would bring the site
8 to the partnership, and together you would have a plant.
9 Then you would finance that plant, but since that's a
10 merchant plant and because of where the markets have
11 gone and because of the capital needs that we had, we
12 chose not to participate in that.

13 So if you look at that and say we were going
14 to take -- and let's go back two years and said the
15 markets were normal, because they're not right now, but
16 go back to when markets were normal, you would have
17 split it. So we would have had a responsibility for
18 \$125 Million, but you probably would have only put in
19 equity of somewhere between \$30 Million and \$50 Million
20 total between the two, so you may have had an equity
21 investment of between \$25 Million and \$30 Million as a
22 partner.

23 Q. Does the company have a partner at Coyote
24 Springs?

25 A. No, we do not. That went through the least

00177

1 cost plan, and that was what we were going to use as a
2 utility plant. It is, however, a twin unit to the unit
3 that Portland General has there that's been operating
4 for about five years, and they would be the operating or
5 the operators of that unit.

6 Q. I want to turn to a short list of measures
7 which might enable the company to mitigate its capital
8 needs for construction and ask you which of these have
9 been considered. And again, if there's another witness
10 that we ought to --

11 A. Do you have something that you're going to
12 refer to that I can look at?

13 Q. No, just my own notes, so.

14 A. Oh, okay, I will listen carefully.

15 Q. It shouldn't be too opaque here, I'm
16 thinking.

17 Cuts in the 2001 capital and operating
18 budget?

19 A. And we have already discussed that.

20 Q. Okay. And you have already discussed with
21 prior counsel the sale of Coyote Springs or a portion
22 thereof.

23 A. That is correct.

24 Q. You have already discussed the possibility of
25 doing a sale and leaseback of Coyote Springs?

00178

1 A. That's correct.

2 Q. Are there other Avista resources where a sale
3 and leaseback would be an available option for the
4 company?

5 A. Well, I don't believe that any sale and
6 leaseback at this point because of our credit situation
7 or our financial situation are viable, but certainly
8 there would be people that would be interested in, for
9 instance, purchasing our hydroelectric plants, but I
10 don't think we want to sell those.

11 Q. Next item, have you considered suspension of
12 construction activity on Coyote Springs?

13 A. Well, the -- we have looked at all things,
14 and certainly that is one thing that you look at is can
15 you slow or suspend various construction items in those
16 areas. With the EPC contract and other things in place,
17 the penalties on suspending those are almost as large as
18 continuing in the project in some case.

19 The other thing is is that plant is really
20 needed for power supply, so the last thing you want to
21 do is suspend construction on that and not have it
22 available to you when you need it in the fall of 2002.
23 Otherwise, you will be back out on the market
24 purchasing. And something we're forgetting I think a
25 little bit is that our current -- the current price caps

00179

1 are only in effect until October 1 of 2002. We don't
2 know what the prices are going to do when they go off or
3 if they go off.

4 Q. That's correct, the prices could go up,
5 couldn't they?

6 A. They could.

7 Q. And that would substantially affect the
8 financial position of the company, wouldn't it?

9 A. Yes, it would.

10 Q. Probably benefit the financial condition of
11 the company?

12 A. In fact, it would. In fact, it could cut
13 short any surcharge that was approved, because with our
14 positioning now with generation to supply our own load
15 and some excess, we would be able to sell into that
16 market and thereby reduce the amount, as our initial
17 proposal had indicated.

18 Q. Has the company considered suspending its
19 dividend?

20 A. Well, yes, we have discussed that. The issue
21 there is that if you suspend the dividend, you will
22 never issue any equity, and we have an issue around the
23 amount of debt that we have on the balance sheet right
24 now. Mr. Eliassen can address that in much more depth
25 than I can, but there is a real issue there.

00180

1 Q. Has consideration been given to conversion of
2 the dividend to a stock dividend?

3 A. I don't believe that's been discussed.

4 Q. Has there been consideration of selling of
5 transmission and/or distribution assets?

6 A. During this period in time?

7 Q. In lieu of asking rate payers for cash.

8 A. No, we have not looked at selling. The issue
9 that we have is really one of timing. There's a number
10 of items that I think could be done over a period of
11 time, but it's like selling the assets. One, you have
12 to figure out who you're going to sell them to, and then
13 how quick can you get that done. That still has to go
14 through a regulatory approval process before you can
15 sell it. So, you know, it just isn't expeditious enough
16 to address the cash needs that we have. All of those
17 things could be addressed in some future means, even the
18 sale of some of our other subsidiaries which I talked
19 about, but they all take time.

20 Q. Is there anything that's necessarily less
21 expeditious to get Commission approval of the sale of
22 assets than it is to get Commission approval of a rate
23 increase for rate payers?

24 A. I think what I'm saying is that we have
25 incurred expenses for our customer that we believe were

00181

1 prudently incurred, and therefore we're asking a
2 surcharge subject to refund that can be done --
3 determined later whether or not it was prudent or not.

4 The sale of an asset basically means exiting
5 the business, and that's a whole different strategic
6 view, and who is the partner going to be, and who would
7 want to buy it. There's a number of issues that there,
8 you know, I just -- being involved in the consolidation
9 with Sierra a few years ago, that is not an easy or a
10 short period of time to go through that task.

11 Q. The mere sale of an individual transmission
12 or distribution asset does not necessarily imply the
13 exit from any particular business, does it?

14 A. It depends on how much you plan on selling.

15 Q. Right. Has the company given consideration
16 to issuance of common stock?

17 A. Certainly we have. Right now we're told by
18 both the bankers and Wall Street that we're not in a
19 position to issue common stock.

20 Q. When you say the bankers and Wall Street, can
21 you be more specific?

22 A. In what way? We have, for instance, a
23 financial advisor, Goldman Sax, who has advised us that
24 we are not in a position to issue equity.

25 Q. Is that under the heading of banker or Wall

00182

1 Street?

2 A. That would be under the heading of banker,
3 investment banker.

4 Q. Any other banker or Wall Street entity that
5 has told you that you're not in a position to issue
6 common stock?

7 A. I believe that almost all of our banks that
8 are in our revolving credit line have indicated to us
9 they would agree that we are not in a position to issue
10 equity at this time. It's something they would want us
11 to do, but it is something that they understand we can't
12 do.

13 Q. And has the company considered the sale of
14 unregulated subsidiaries? I believe this question was
15 asked by Mr. --

16 A. Yeah, I believe it was asked and answered a
17 couple of different ways, yes. In fact, we are in the
18 process, and I had mentioned that, that we had hired an
19 investment banker to Excel Communications. We have
20 basically sold the license parts that we talked about
21 earlier with Avista Power. We are in the process of
22 exiting those businesses.

23 Q. Now in answer to Mr. Van Cleve's questions
24 earlier regarding the Standard & Poor's downgrade, there
25 was a reference to riskier non-regulated ventures, and I

00183

1 wanted to make sure I heard your complete answer. He
2 asked you to specify what riskier non-regulated ventures
3 were of concern to the investment community, to S&P
4 particularly, and the only specific reference that I
5 heard was to the telecom business.

6 A. I said that was an example.

7 Q. Could you name the other riskier
8 non-regulated ventures that they were referring to?

9 A. I think any business that is not associated
10 with the energy business as far as S&P is concerned is
11 questionable in their mind.

12 Q. And what would those be specifically in the
13 case of Avista?

14 A. Well, I think certainly because of our size,
15 they are concerned about, you know, continuing or had we
16 continued with Avista Power to build merchant plants,
17 that would have been a concern. We have not continued
18 that, so it's probably no longer a concern. Certainly
19 our marketing, power marketing business. Because of the
20 size of the business in relation to the rest of the
21 company, although it has been very profitable and very
22 positive the last two years, I believe that certainly
23 still is a concern of theirs.

24 Q. And that's Avista Energy, correct?

25 A. And that's Avista Energy.

00184

1 Q. Any other non-regulated ventures that are of
2 concern to them?

3 A. Well, I think even our Avista Advantage
4 business, which is our Internet business that does all
5 of the facility site management is just another business
6 that they consider as not part of the energy business
7 and would be concerned about. It has very low exposure,
8 but they still look at it as from a diversion of
9 management's attention.

10 Q. Were there any others in addition to those
11 you mentioned?

12 A. I have named almost all of the subsidiaries
13 other than the ones we have already closed down like
14 Pentzer and Avista Ventures and those things.

15 Q. Do you know how much cash Avista will receive
16 from the sale of any of these unregulated subsidiaries?

17 A. Actually, we will not receive any cash from a
18 current sale that we're looking at.

19 Q. How will you receive payment or compensation?

20 A. Since the deal I think is still in
21 negotiation, it would be inappropriate for me to address
22 that issue and especially since it's not part of this
23 particular hearing.

24 Q. That --

25 COMMISSIONER HEMSTAD: I'm sorry, if I can

00185

1 ask, the sale of what?

2 THE WITNESS: Avista Communications.

3 MR. FFITCH: Thank you, Commissioner, I was
4 about to ask that very same question.

5 BY MR. FFITCH:

6 Q. Is the -- moving on to another area, still
7 shooting for 10:30, we're getting close. Is the
8 proposed rate increase tied exclusively to power supply
9 costs and specifically to those which the company was
10 authorized to defer in 2000 and 2001?

11 A. Yes, as far as the surcharge.

12 Q. Is any part of this increase an attempt by
13 the company to recover higher distribution system costs
14 than those included in current rates?

15 A. No.

16 Q. Is any part of it to recover higher costs of
17 street lighting systems than those included in current
18 rates?

19 A. No.

20 Q. I think this may be just about my final
21 question. Certainly the company is here asking the
22 Commission for interim relief. It's also going to later
23 on in a subsequent proceeding be asking -- be attempting
24 to demonstrate the prudence of the deferred power costs.

25 And let's look at a scenario, a possible

00186

1 outcome where the Commission determines that there is --
2 that you have not -- that Avista has not carried its
3 burdon and established the basis for interim rate
4 relief, and I assume that the company has considered
5 that possible outcome from this proceeding. I also
6 assume that you would still then proceed with the
7 prudence case at a later time at a rate case and would
8 expect to establish recoverability of some of your
9 deferred costs; is that right?

10 A. If I understood you correctly that the
11 Commission would not approve the surcharge; is that what
12 you said?

13 Q. Right, I'm sorry, it's sort of a compound
14 question.

15 A. Right, I got --

16 Q. Let's assume that there's no interim
17 surcharge or interim rate relief granted.

18 A. Right.

19 Q. You would then be looking ahead to a general
20 rate case with also a proceeding regarding prudence,
21 would you not?

22 A. Probably not, because we probably would no
23 longer be a viable company.

24 Q. Well, what I'm asking -- you're sort of
25 anticipating my question perhaps, and you testified to

00187

1 that a number of times, that you -- sort of references
2 to not being in business. And I'm asking you to sort of
3 think about that scenario. I'm assuming the company has
4 thought about that scenario. And my question really is,
5 if the Commission doesn't or assume the Commission did
6 not grant interim rate relief here, what would the
7 company do to tide yourself over, if you will, or stay
8 in business until it had an opportunity to establish the
9 prudence of its deferred power costs and to otherwise
10 prosecute a general rate case?

11 A. One option would be to get bail-out
12 financing, because we would more than likely lose our
13 banks that currently fund our revolvers, et cetera.
14 That comes in a very expensive rate, one that actually
15 exceeds the cash generated from the net income of the
16 utility. You would do a fire sale on all businesses
17 that you had under your ability to sell. That's
18 basically the next step.

19 Q. And would you not consider some or all of the
20 options that I just ran through with you as other ways
21 of raising cash for the company during the intervening
22 period before the conclusion of rate or prudence cases?

23 A. We have.

24 Q. I guess what I'm saying is would you return
25 to consideration of those options in the event that the

00188

1 company or the Commission found no basis for interim
2 relief or a surcharge?

3 A. The answer to that is we would have no
4 choice.

5 MR. FFITCH: Those are all the questions I
6 have. Thank you, Your Honor.

7 JUDGE MOSS: Thank you, Mr. ffitich.

8 We will want to take our break now. I did
9 want to ask before we do that whether there are going to
10 be questions from the Bench before the redirect?

11 CHAIRWOMAN SHOWALTER: I have a few.

12 JUDGE MOSS: All right, well, we will come
13 back then and have some questions from the Bench, and
14 then we will have redirect and see where we go from
15 there.

16 We will be in recess for 15 minutes.

17 (Recess taken.)

18 JUDGE MOSS: I believe we have some questions
19 from the Bench.

20

21 E X A M I N A T I O N

22 BY CHAIRWOMAN SHOWALTER:

23 Q. Good morning, Mr. Ely.

24 A. Good morning, Chairman.

25 Q. I think I'm mostly interested in getting more

00189

1 educated in what I will call the Wall Street dynamics,
2 and I think I mean to include the bankers in that loose
3 term, and then following through, what the consequences
4 will be if we approve what the company requests versus
5 if we approve what Staff or Public Counsel or ICNU
6 request. And let me begin on one end of the spectrum.

7 My first question is, why is it enough for
8 the company to ask for the relief it has asked for
9 subject to refund? In other words, if the bankers and
10 Wall Street know that this is subject to refund, why
11 will they feel enough assurance that it changes their
12 view of the company?

13 A. I think that's a very good question,
14 Chairwoman Showalter. The reason that they feel it is
15 enough or we feel it is enough is because the bank
16 believes that, the banks and/or Wall Street, believe
17 that we have entered into the contracts to purchase
18 power for our customers in a prudent manner, and
19 therefore they believe that even if there were some
20 pieces that might be disallowed, it would be a very
21 small piece of the total. Therefore, it gives them some
22 assurance that there would be a plan.

23 And it's really the plan they're after,
24 because the surcharge in and of itself only brings in
25 about \$20 Million if it was approved in full on the

00190

1 15th, only about \$20 Million between now and the end of
2 the year, which really doesn't go to solving the cash
3 flow issues. But it allows the banks to step in and say
4 then, you do have a plan, we do believe that you will be
5 successful in carrying this through.

6 Right now there is somewhat of a credibility
7 issue with the company on Wall Street because of our
8 previous history over the last two or three years, and
9 they're looking to see, in fact, are we capable of
10 executing on what we say that we're going to do.

11 Q. So you're saying you are confident and they
12 are confident that at least enough of your expenditures
13 were prudent up at least to the amount of revenue you
14 would receive from the surcharge are recoverable, but
15 the subject to refund condition doesn't perturb them
16 much?

17 A. Well, I think they would certainly be much
18 happier had it just been granted and there would be no
19 risk, but they understand that's not the position that
20 we're in. And in order to get the expeditious
21 treatment, we were willing to take it subject to refund
22 and say we believe what we have done has been in the
23 best interest of our customer, knowing, as I mentioned
24 earlier, that if we go even nine months during a
25 prudency hearing, we will collect roughly half of what

00191

1 would be at risk for refund.

2 So, you know, it's one of those things where
3 by that time nine months from now, I hope we're in a lot
4 better, I more than hope, I believe we will be in a lot
5 better position than we are today to deal with some of
6 those issues, and we may have opportunity to make other
7 changes in our business that will make us more
8 financially sound.

9 Q. And going to another issue, you and
10 Mr. Eliassen have both made the point that a dividend
11 cut is really incompatible with the goal of issuing more
12 debt. Am I correct on that?

13 A. That is correct.

14 Q. Can you just explain more why? In other
15 words, supposing there was a reduction, supposing there
16 was no dividend, what set of perceptions or dynamics
17 does that start that makes the issuance of more debt
18 difficult?

19 A. More debt or more equity?

20 Q. Well, more equity. You need to connect the
21 dots for me. This is the area where I don't have a good
22 feel, so I think that you understand implicitly what you
23 mean, but I don't.

24 A. Okay, let me see if I can connect some of
25 those dots, and you probably got the blind leading those

00192

1 who are less informed.

2 If, in fact, we cut the dividend, as an
3 example, then what would entice the equity investors to
4 invest in the company or in the stock? Usually those
5 companies that do not pay dividends have very high
6 growth rates and have ability to substantially increase
7 or accrete the value in that stock. We're in a very
8 slow growth area, less than 2% load growth. Most of
9 those who would invest in a dividend or in a company in
10 our equity that didn't pay a dividend would expect
11 probably double digits, and I think history has found
12 them false, but sometimes several times double digits.

13 That being said, if you look around at the
14 other utilities, which we are classified as a utility
15 and certainly the direction I'm taking the company in
16 focusing around our energy related business we look more
17 and more like a utility in the future, not less like it,
18 most of the utilities that are paying substantially
19 higher dividends by a factor of many of them four times
20 what we are currently paying.

21 So if we eliminated the dividend, the
22 likelihood of somebody investing in the stock is very
23 unlikely, and that's what we have been counseled both by
24 our advisors and by those on Wall Street. In fact,
25 their question is, if you're looking -- going to look

00193

1 more like a utility, when are you going to start raising
2 the dividend versus the other end of that, of course, is
3 a whole different discussion. But I hope that helps.

4 In other words, you can look at it from your
5 own perspective, I guess, and say, okay, if I have
6 limited dollars to invest in companies, where will I get
7 the most return. And if there's no dividend on that
8 equity that I would invest in, there's no return unless
9 it's appreciation, in other words, unless the stock
10 increases in value. And in the circumstances we're in
11 with the low load growth we have and getting out of the
12 other "technology" things, I'm not sure that investors
13 would see, in fact they have said they do not see really
14 any growth in our stock, and that's why they have been
15 questioning are we going to increase dividends versus
16 decrease them.

17 Q. So you're saying if an investor doesn't see
18 growth and doesn't see a dividend, the investor will
19 take his or her money elsewhere?

20 A. Basically.

21 Q. All right. Now then kind of connect the next
22 dot for me.

23 A. Okay.

24 Q. Supposing you are not attractive to investors
25 so they do not materialize, then what does that mean for

00194

1 the company or ultimately the rate payers?

2 A. What that ultimately means for the company if
3 we can not raise capital, and we have raised almost all
4 the capital we can from the debt side, and so if we
5 can't raise capital, it means we may not be able to do
6 the construction projects and be able to provide the
7 reliability and the other things that our customers need
8 to go forward. So then you have really no option but to
9 say that you are somehow impaired, therefore find
10 somebody that would take you over and run it that has a
11 balance sheet or whatever, which has a number of
12 different impacts to both our customers and employees
13 and certainly shareholders.

14 Q. I'm interested in the ways that the regulated
15 and non-regulated parts of the company are separate and
16 the ways that they are necessarily entwined and what
17 effect that has again on Wall Street and the banks.
18 Obviously you have one CEO for both. You have one
19 stock.

20 A. Yes.

21 Q. Not separate tracking stocks or separate
22 stocks?

23 A. Well, each of the separate subsidiaries have
24 their own stocks.

25 Q. They do, all right.

00195

1 A. Not all, but most of them do, yes, but
2 they're not publicly traded.

3 Q. All right.

4 A. But we do have investors, for instance,
5 Avista Advantage, there are I think three different
6 investors besides the company in that particular
7 company.

8 Q. All right. Then how about does the dividend
9 come from the company or a part of the company?

10 A. Well, most of these questions probably would
11 be better addressed by John Eliassen than me, but the
12 dividend comes from the company. It's a corporate
13 dividend. The corporation is the only stock that is
14 publicly traded.

15 Q. So in that respect, it seems that there --
16 there is an inherent and almost inevitable relationship
17 between the non-regulated side and the regulated side
18 that we can try to account for or track separately, but
19 at some level, the health of the whole company is
20 dependent on both the non-regulated and regulated sides;
21 is that right?

22 A. That would be correct from a corporate
23 standpoint certainly. The corporation is dependent upon
24 all of its business units, and we -- in fact, one of the
25 reasons that I'm exiting some of those businesses is I

00196

1 don't believe they fit in the corporate good going
2 forward.

3 But really if you would want to look at the
4 individual businesses then and then looking at the
5 utility, which in a sense is the parent but as a
6 business unit, it is the one that has created the most
7 difficulty for us at a corporate level and on Wall
8 Street, because we have these huge cash deferrals really
9 caused by two reasons, one the extremely low stream
10 flows, and the second is the high prices that we had to
11 buy in order to take and supply our customers. And in
12 this hearing then, that's what we're asking to do is to
13 take and recover those costs that were only directed at
14 serving our residential customers in that particular
15 business unit.

16 Q. The weather and I think the West Coast market
17 prices are things that the company has no control over
18 and seems to be clearly major causes, if not the major
19 cause, of a lot of dynamics up and down the West Coast.

20 A. Yes.

21 Q. But I think it's the implication of Staff and
22 Public Counsel and ICNU's questions and their testimony
23 that part of the problem may have derived from some of
24 the non-regulated activities. And how are we to, well,
25 how are we to assess that, and what do we do about it if

00197

1 it's true? I think your point, and I understand it, is
2 that you feel that no matter what, at least as much as
3 is being generated by the surcharge was prudent. But in
4 terms of the precariousness of the company, if part of
5 it is due to non-regulated activities, how do we take
6 that into account?

7 A. Well, I think that for this particular
8 hearing as far as if we look at the costs that were
9 incurred and the reason for those costs being incurred
10 and the request to take and recover those costs has very
11 little to do with the broader issue that may be
12 addressed in a prudency case, and that is how did you
13 overall operate your company, and, in fact, are you
14 paying, for instance, higher interest rates because of
15 some of the businesses you're in or not.

16 What we're saying here is that without the
17 ability to recover the cash that we're putting into the
18 utility business, we will cease to exist as a company,
19 as a corporation, which has an impact on all those other
20 businesses and the other shareholders in those
21 businesses also.

22 In fact, in some cases, we have experienced
23 because of the down rating of the corporation
24 specifically related to the company or to the utility
25 counter parties who are unwilling to -- no longer do

00198

1 business with us even though, for instance, and Avista
2 Energy's business was mentioned, has a very strong
3 balance sheet in and of itself, has it's own credit line
4 and such. What they're saying is, you're a part of this
5 big corporation, therefore we're not going to do
6 business with you. That has impact on their ability to
7 do business. We have also had some, including Puget
8 Sound Energy, that will no longer do business with us.

9 Q. So your point is that it's not just that the
10 non-regulated activities affect the rate payers of the
11 regulated, but also the reverse?

12 A. The reverse also occurs, yes.

13 Q. I suppose part of where this concern is
14 headed is it's clear there's a symbiotic relationship
15 between rate payers and the company, but as the company
16 needs the rate payers and revenue to keep going and the
17 rate payers need a company to provide them electricity,
18 so that assigning blame only gets an analysis so far.
19 In the end, you've got to have a viable company.

20 But I suppose the ultimate hard question,
21 which may not be in this proceeding, but it would be if,
22 and I'm going to emphasize the if, if it turns out that
23 really the company and the shareholders or the
24 non-regulated activities, somebody other than the rate
25 payers should be assigned some share of the burdon, but

00199

1 they can't be because that would cause the company to go
2 under, and then therefore the rate payers would not be
3 well served, then the rate payers are in a position of
4 essentially bailing out the imprudent activities or just
5 the unrelated activities of the company, that is the
6 non-regulated activities.

7 And I don't want you to think I think that's
8 where things will end up, I don't believe that, but I
9 think on a theoretical level, I shouldn't say I don't
10 believe it, I don't know it one way or the other, at a
11 theoretical level, I think maybe that's what is
12 informing some of the Staff's case. And if that were
13 the case, in the end wouldn't we just be between a rock
14 and a hard place? That is, in order to keep the company
15 going, you must raise the rates?

16 A. Well, actually probably not.

17 Q. Okay.

18 A. We have done, I think, a very good job of
19 structuring subsidiary companies under a non-regulated
20 holding company and, in fact, have looked at, for
21 instance, if a company is not capable of doing and you
22 can not sell it, maybe you just fold that company. So
23 that has no impact back to the main corporation as far
24 as cash flow or the utility customers bailing out the
25 company.

00200

1 What it would impact is earnings for a period
2 of time, although on Wall Street may in some cases
3 support those kinds of changes just to get yourself
4 focused around the things that you're doing. I don't
5 advocate that, I'm just saying that there is linkages
6 where that company is totally separate from the other,
7 and we have not obligated the parent company nor the
8 utility in any way to support those if any of them had
9 something bad happen to them and went away. We may
10 lose, the way some of it's structured, you may end up
11 losing one or all of the other subsidiaries, because
12 some of those are cross linked, but it would not come
13 back to the parent.

14 And so the only impact that it really has is
15 the impact on things where they believe you're maybe
16 involved in activities that may add an additional risk
17 to the corporation from an earnings standpoint and
18 whatever. So I do believe there's an impact on credit
19 ratings and things like that.

20 But as far as the cash flow or whatever or
21 bailing out the other side of the business, that should
22 never happen. In fact, it is happening the other way
23 right now, because one of the requirements that we have
24 is that we will be dividending certain cash, and we're
25 going to have to change the covenants of one of our

00201

1 subsidiary's lines to actually dividend cash back to the
2 parent in support of the utility. And so in a sense,
3 customers, the customers are being subsidized by one of
4 the other entities.

5 Q. Okay. You were asked several questions about
6 other options or what steps you have taken to improve
7 your cash position.

8 A. Mm-hm.

9 Q. And there it seems to be an issue of you
10 don't want to be penny-wise but pound foolish, and
11 admitting these are very large pennies and even bigger
12 pounds, but we need to look at what you have done that
13 is reasonable to do to improve your cash position and
14 then be satisfied that what you haven't done to improve
15 your short term cash position is reasonable not to have
16 done for longer term reasons.

17 And looking at the Coyote Springs, you
18 pointed out that you went through a least cost process,
19 and that seemed to be the best thing to do at the time.
20 Do you still feel that today, given what we are able to
21 project about the future of the market, which is
22 probably pretty difficult, that Coyote Springs is still
23 the appropriate thing for the company longish or longer
24 term to be engaged in?

25 A. Yeah, I certainly believe that as we look to

00202

1 the future, we are short power. The Centralia contract
2 goes away in 2003, which is 200 megawatts. If --
3 without the Coyote Springs, you would be on the market
4 for during on average probably in excess of 200
5 megawatts a year. Under peak periods, you could be as
6 much as 400 megawatts.

7 If somebody has a crystal ball and would
8 suggest to me that prices are always going to be in the
9 \$20 range, then it may not be any different than what
10 the first half of the '90's were as far as good water
11 years will be fine, and bad water years we will lose
12 some money, but that's kind of the way we operated.

13 With price controls going away the end of
14 September of 2002, I have made a decision that we do not
15 want to be exposed to the markets to that extent.
16 Therefore, if you look around at the lowest cost
17 options, Coyote Springs is one of the lowest cost
18 options that there is out there. I think one of the
19 things that we will have to determine is is how much of
20 Coyote Springs do we want at some point, simply because
21 if you look at all of our other generation facilities,
22 the largest shaft is about 100 megawatts. Coyote
23 Springs is 280 megawatts. So now you're talking about
24 if it's N minus 1 as far as spinning reserves. In other
25 words, if you lose a plant, what have you got to back it

00203

1 up. 280 megawatts is a lot to back up.

2 One of the things we may look at is should we
3 sell part of that output to somebody else so we're not
4 so reliant on specifically one plant and maybe buy part
5 of another plant to take and fill the rest of the need,
6 and that way you don't have this one incident taking 300
7 megawatts basically out of your load and having to
8 backfill on it.

9 But to answer your question directly, I very
10 much believe that Coyote Springs II is still the best
11 new generation plant that out's out on the market at
12 this point to fill the needs that we have going forward.

13 Q. I want to make sure I understand the most
14 salient elements that need to be changed here in the
15 company's view. One is that you need by the end of
16 September to show a different cash balance in order to
17 stay out of default of tell me what account or what line
18 of credit.

19 A. Right.

20 Q. If that's not confidential.

21 A. Well, I guess what I would like to do is be
22 very candid with the Commission where we're at, and in
23 order to do so, I would like to go off record.

24 MR. MEYER: It might be appropriate. I think
25 what Mr. Ely is suggesting is that this would be an

00204

1 appropriate time to go under confidentiality, and so we
2 would make that request in order for him to I think
3 respond to the sort of question that you asked. So if
4 we could clear the room of those who have not signed
5 confidentiality agreements and proceed on that basis.

6 JUDGE MOSS: All right, give me a minute.
7 (Discussion on the Bench.)

8 JUDGE MOSS: It appears that the matter can
9 be worked around in such a way as to not require the
10 disclosure of specific confidential information.
11 However, I want to put the question to the company
12 whether the company feels it is important to get into
13 those specifics, in which case we can follow the
14 suggested process and clear the room of those who are
15 not signatories to the confidentiality agreement. So I
16 put the question to the company, and I will take the
17 response from the witness or the counsel as appropriate.

18 THE WITNESS: I think it would be
19 appropriate.

20 JUDGE MOSS: Okay, and the answer is it would
21 be appropriate, so I'm going to ask at this time that
22 anyone who is present in the hearing room who is not a
23 signatory under the protective order in this proceeding
24 that provides for the treatment of confidential
25 documents, if you would step out into the corridor, and

00205

1 we will inform you when we are out of the confidential
2 session, and you can return at that time.

3 I also am going to mute the conference bridge
4 line at this time.

5 CHAIRWOMAN SHOWALTER: I think you have to
6 turn it off all together. I think you have to
7 disconnect the listener. They're just muted. We can't
8 here them, but they can hear us, I believe.

9 (Discussion off the record.)

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00223

1 JUDGE MOSS: We are still open for questions
2 from the Bench.

3 CHAIRWOMAN SHOWALTER: None.

4 JUDGE MOSS: Okay, have we completed our
5 questions from the Bench?

6 COMMISSIONER HEMSTAD: I had some, but they
7 have been really covered.

8 JUDGE MOSS: All right, then is there further
9 redirect, Mr. Meyer?

10 MR. MEYER: There is brief redirect.

11

12 R E D I R E C T E X A M I N A T I O N

13 BY MR. MEYER:

14 Q. Turning for a moment to the subject of the
15 unregulated subsidiaries, is it true, Mr. Ely, that
16 Avista Capital is the internal holding company which
17 houses essentially all of the unregulated subsidiaries
18 below it?

19 A. That is correct.

20 Q. And is it your understanding that the company
21 will be testifying through Mr. Eliassen in this case
22 that Avista Capital will be a net contributor of cash to
23 Avista in the 2001/2002 time period?

24 A. I believe that is correct.

25 Q. And not a net cash drain on the company?

00224

1 A. That is correct.

2 Q. In addition, is it also true that earnings
3 contributions of Avista Energy have been critical to
4 support the total earnings and equity of the company?

5 A. Yes, from an earnings standpoint, they have
6 been the only one that has contributed earnings to the
7 corporation over the last two years.

8 Q. Next, would you comment in your view on the
9 use of the capital cost savings we discussed moments
10 ago, the use of those capital cost savings to pay down
11 power cost deferrals?

12 A. Well, I guess what I would say first is that
13 they really aren't a cost savings. As I tried to
14 mention earlier, they are really cost deferrals. It
15 isn't like we're not going to do the stuff. It's kind
16 of like we put it off because we can to some future
17 point in time, so we only deferred in spending that cash
18 right now. But I think from a capital standpoint, it's
19 inappropriate to use money that has been I guess set
20 aside to take and do capital improvements to support
21 reliability and to provide for customer needs to use it
22 for expenses on an ongoing day-to-day basis.

23 Q. And same question but answered let's say from
24 the view of an investor, how do you believe they would
25 view that?

00225

1 A. Well, again, I think it's the same basic
2 answer. You would not use equity investment to pay
3 current expenses. Equity is to take and invest in
4 assets that provides the investor with a return on their
5 money.

6 Q. There was some discussion earlier about in
7 the past what the spread or the difference has been
8 through the rate making process between let's say actual
9 and normalized power costs. Do you recall that? I
10 believe it was the ICNU cross-examination.

11 A. Yes, I do remember that.

12 Q. And I think there was some discussion about
13 the sort of variation or the delta or the difference
14 between those two approximating in your testimony, what,
15 \$20 Million to \$25 Million?

16 A. That is correct.

17 Q. Is it your understanding that even before the
18 deferral mechanism was in place to record, if you will,
19 power cost deferrals, that the company had already
20 absorbed approximately \$20 Million in power costs that
21 won't be recovered?

22 A. Yes, before we even filed for the surcharge,
23 or surcharge, before we filed for the deferral
24 mechanism, there was in excess of \$20 Million that the
25 company incurred as expenses prior to that filing.

00226

1 There was even some after the filing because the
2 mechanism, the original deferral mechanism wasn't a
3 perfect mechanism, therefore, there were changes in load
4 adjustments and other things that added additional
5 dollars to that. That was the concern about ending the
6 deferral, because immediately upon ending the deferral
7 on June 30th under the Staff's proposal, you would end
8 up taking all of those dollars directly to the bottom
9 line as expenses as writeoffs, and we have already
10 incurred in excess of \$20 Million.

11 Q. And then was that \$20 Million Washington
12 share?

13 A. Yeah, that was Washington share. It was
14 actually almost \$30 Million with the Idaho share, but it
15 was \$20 Million in Washington.

16 Q. So that \$20 Million of the Washington share
17 represents dollars that will never be recovered through
18 rates?

19 A. That is correct. We expensed it.

20 MR. MEYER: With that, I have no further
21 redirect.

22 JUDGE MOSS: All right, apparently nothing we
23 have done has prompted the request for recross, so with
24 that, I think we can conclude this witness. And let me
25 just suggest that given the compressed time frame that

00227

1 we release witnesses subject to recall in the event the
2 Bench in particular feels the need to have some
3 additional questions answered.

4 So with that, we thank you very much for your
5 testimony, and you can leave the witness stand.

6 It's about 10 minutes to 12:00. I know that
7 some have commitments through the noon hour. Should we
8 proceed or go ahead and take our break? I think the
9 preference of the Bench is to go ahead and take our
10 luncheon recess now. Why don't we plan to resume at
11 1:00.

12 MR. TROTTER: Your Honor, I just recommend
13 that we get the next witness on the stand and sworn in
14 and exhibits marked just before any questioning, and the
15 Bench other than yourself may not need to be present for
16 that.

17 JUDGE MOSS: Good suggestion, fine.

18 Why don't you go ahead and call your next
19 witness, and we'll get him sworn in.

20 MR. MEYER: All right. Call to the stand
21 Mr. Jon Eliassen.

22

23 (The following exhibits were identified in
24 conjunction with the testimony of JON E. ELIASSEN.)

25 Exhibit 150-T is Pre-filed direct testimony.

00228

1 Exhibit 151 is JEE-1: Avista's 2001 Electric & Gas
2 Deferral Balances. Exhibit 152-T is Pre-filed rebuttal
3 testimony. Exhibit 153 is ICNU Cross-Exam Exhibit:
4 Avista Response to ICNU 4.7. Exhibit 154-C is
5 CONFIDENTIAL ICNU Cross-Exam Exhibit: Avista Response to
6 Staff Data Request No. 122C. Exhibit 155 is Public
7 Counsel Cross-Exam Exhibit: Excerpts from 1984 Financial
8 and Operating Supplement, financial indicators from
9 1978-83. Exhibit 156 is Public Counsel Cross-Exam
10 Exhibit: Avista Response to Staff DR 124
11 (sale/leaseback). Exhibit 157 is Public Counsel
12 Cross-Exam Exhibit: WUTC Order, U-80-69. Exhibit 158 is
13 Public Counsel Cross-Exam Exhibit: Avista Rate Case
14 Exhibit 172 (UE 991606): Avista Response to WUTC DR 72.
15 Exhibit 159 is Public Counsel Cross-Exam Exhibit: 2000
16 Avista Budget (Commission filed). Exhibit 160 is Public
17 Counsel Cross-Exam Exhibit: 2001 Avista Budget
18 (Commission filed). Exhibit 161 is Public Counsel
19 Cross-Exam Exhibit: 2000 Financial Report - Appendix A.

20

21 Whereupon,

22

JON E. ELIASSEN,

23

having been first duly sworn, was called as a witness

24

herein and was examined and testified as follows:

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00229

1 JUDGE MOSS: Thank you, I think you can step
2 down, we're going to be in recess.

3 (Luncheon recess taken at 11:50 a.m.)

4

5 A F T E R N O O N S E S S I O N

6 (1:00 p.m.)

7

8 D I R E C T E X A M I N A T I O N

9 BY MR. MEYER:

10 Q. Mr. Eliassen, have you sponsored pre-filed
11 direct testimony marked as 150?

12 A. Yes, I have.

13 Q. Are you also sponsoring Exhibit 151?

14 A. That is correct.

15 Q. And also 152 consisting of pre-filed rebuttal
16 testimony?

17 A. Yes.

18 Q. If I were to ask you the questions that
19 appear in your direct and rebuttal testimonies, would
20 your answers be the same?

21 A. Yes, they would.

22 MR. MEYER: With that, I move for the
23 admission of Exhibits 150 through 152.

24 JUDGE MOSS: Hearing no objection, those
25 exhibits will be admitted as marked.

00230

1 MR. MEYER: And he's available for cross.

2 JUDGE MOSS: All right, and our order

3 involves Staff going first.

4

5 C R O S S - E X A M I N A T I O N

6 BY MR. TROTTER:

7 Q. Afternoon, Mr. Eliassen.

8 A. Afternoon.

9 Q. One question was referred to you from
10 Mr. Ely, so I will ask you that first. Isn't it correct
11 that additional net cash to the company improves its
12 ability to meet its financing covenants?

13 A. That is correct as long as there are no
14 restrictions on the use of that cash.

15 Q. And so if it receives an extra dollar of net
16 cash that's unrestricted and it uses that dollar to pay
17 down deferral balances, that has the same effect on
18 those covenants as if it got an unrestricted dollar of
19 net cash and did not use it to pay down deferral
20 balances, correct?

21 A. There is, and Mr. Peterson can perhaps get
22 into more detail with you, but there is a provision in
23 the calculation of the covenants that the reduction in
24 the deferral balance counts as a positive toward meeting
25 the covenants as well, so you may want to go into that

00231

1 in a little more detail with him. Cash by itself will
2 reduce borrowings, money we would otherwise borrow. But
3 cash that comes into the company that's used then to
4 offset the deferral and amortize the deferral gives us
5 in effect a real benefit. It's an added benefit.
6 Reduction of the deferrals is critical.

7 Q. I understand that, but isn't it true that
8 when cash comes through the door in terms of measuring
9 compliance with covenants, if it's unrestricted cash,
10 whether -- it doesn't matter what you use it for in
11 terms of compliance with your covenants?

12 A. I think it's true it doesn't matter what you
13 use it for. I think you get perhaps an added benefit if
14 the cash is coming from revenues and is used to amortize
15 the deferral to run the deferral balance at the same
16 time.

17 Q. Are you saying that the covenant would be,
18 all other things equal, your covenant compliance, your
19 covenant calculation of the coverage would result in a
20 different number?

21 A. It would result -- if we collect cash through
22 the surcharge that we applied for, that cash in
23 conjunction with amortization of the deferral will start
24 to build and allow us to meet the covenants probably by
25 the -- hopefully by the end of Q1 of '02, certainly by

00232

1 the end of Q2 of '02. It does add to the -- it adds to
2 the benefit, if you will, of reducing the cash
3 requirements for the deferral increase.

4 What we're trying to do here is the deferrals
5 themselves represent money that the company has expended
6 and can not be counted on -- for GAAP accounting, we
7 have deferred an expense, so our income statement looks
8 better than it otherwise would be. On a cash basis,
9 it's not very strong. It's the cash basis income
10 statement that the covenants are measuring. So any cash
11 that we use to reduce deferrals is also then counted as
12 cash for meeting the covenant requirements.

13 Now that may not be very clear, but
14 Mr. Peterson can perhaps help you a little bit more.

15 Q. Well, I guess I will go to him, thanks.

16 Would you turn to your rebuttal testimony,
17 Exhibit 152, page three, line seven. Now you indicate
18 that your commercial banks believe that:

19 Unless this issue is clearly resolved in
20 the surcharge order, the company will be
21 unable to access any financing.

22 Do you see that?

23 A. Yes, that is correct.

24 Q. And by surcharge order, are you referring to
25 the order that the company has requested be issued

00233

1 September 15th?

2 A. From this Commission, yes.

3 Q. And by "this issue" that needs to be "clearly
4 resolved", are you referring to the issue that deferred
5 power costs begin to be recovered through rates
6 immediately?

7 A. Yes.

8 Q. Mr. Ely referred to prudence evaluations done
9 by your lenders. To your knowledge, have the commercial
10 banks provided Avista any analysis in written form of
11 the recoverability of any of Avista's deferred power
12 costs?

13 A. The commercial banks have provided nothing of
14 that sort in writing, no.

15 Q. Are the commercial bankers concerned that any
16 recovery of the deferred power costs might be improper
17 as retroactive rate making?

18 A. I don't think that issue has ever come up in
19 any discussions.

20 Q. At the bottom of page three of Exhibit 152
21 and going over to page four, you indicate that when you
22 wrote this testimony that it was unclear if Avista would
23 be able to obtain waivers of covenants to avoid default
24 at the end of September and be able to continue to
25 borrow under the line. Do you see that?

00234

1 A. Yes.

2 Q. Now Mr. Ely gave some testimony, some under a
3 confidential arrangement so we don't need to duplicate
4 that, but are there any other covenants that the company
5 has obtained waivers from since the time you wrote your
6 testimony?

7 A. We have not obtained any waivers yet since
8 the time I wrote my testimony. Since the time I filed
9 my testimony, we have -- I have had one-on-one meetings
10 and telephonic meetings along with Mr. Ely with
11 virtually all of our banks, some of them more than once.
12 We are still in the process of obtaining those waivers
13 along the lines that Mr. Ely discussed.

14 Q. Down on page 4, line 10, well, 9 through 11,
15 you indicate that if you are granted forbearance by the
16 banks relating to the covenants, you still must recover
17 the \$265 Million of deferred power costs over some
18 reasonable time to remain solvent. Do you see that?

19 A. Yes.

20 Q. Is Avista suggesting that the Commission will
21 need to grant full recovery of deferred power costs
22 regardless of how it may decide a prudence or
23 recoverability issue?

24 A. I think that the -- what all of the
25 investors, commercial banks, investment banks, and

00235

1 others that we have talked with, including the company,
2 believes that we have to have a mechanism in place that
3 allows us to recover all legitimate costs of providing
4 service over the past 15 months. That would include all
5 the contract payments for power, all of the costs of
6 natural gas that we have incurred to run Rathdrum
7 turbines and the Northeast combustion turbines far above
8 their normal operating hours. It includes some of the
9 customer buyback of kilowatt hours that the Commission
10 approved in that program this summer.

11 We believe that those kinds of things, those
12 kinds of expenses, as testified to by Mr. Norwood, are
13 certainly legitimate costs of doing business in these
14 very, very strange times of extremely low hydro,
15 extremely high costs. Those are the kinds of costs that
16 are no different than have been incurred by any other
17 utility in the Western United States. And it's
18 imperative that we look at those as recoverable expenses
19 of doing business and providing customer service over
20 the past 15 months.

21 The concern that banks and others have
22 expressed is that they are afraid that we will not be
23 able to recover those legitimate expenses. So I have
24 nothing -- I have no concern and no real worry about
25 prudence review. The Staff has had information on all

00236

1 of these expenses since last November. You have had the
2 monthly reports. You know the amounts of the contract.
3 You know where the money has been spent. It has been
4 spent to meet retail load.

5 Q. The fact that you spend money doesn't
6 necessarily mean it was prudently incurred, does it?

7 A. We really have no choice but to keep the
8 lights on, and that's the commitment we made to
9 customers.

10 Q. Now all other utilities in the region were
11 not deficit on a normal basis, were they?

12 A. I think a number of them have been deficit
13 throughout this year to varying degrees. I think you
14 have seen the impacts on municipalities, on public
15 agencies, as well as other investor owned utilities on
16 the West Coast and the Northwest.

17 Q. Including Puget Sound Energy?

18 A. Yes, as well as others.

19 Q. You're saying Puget Sound Energy was a
20 deficit utility?

21 A. No, I'm just saying that they have incurred
22 costs for power. They obviously had to buy power at
23 higher costs, as did others in the Northwest. Now
24 whether or not you call them a deficit utility, I don't
25 know the definition of that.

00237

1 Q. Well, that it's a net purchaser under normal
2 conditions.

3 A. Well, these are not normal conditions. Our
4 hydro systems --

5 Q. My question was you asked me how to define a
6 deficit utility, and I said, I define it as a deficit or
7 a net buyer of resources under normal conditions.

8 A. Right. But what we're facing this year are
9 some of the most adverse hydro conditions we have ever
10 recorded in the Northwest, and it has impacted all of
11 us, it's impacted everyone.

12 Q. You said that you must have a mechanism in
13 place to recover your costs. Is the mechanism that you
14 are referring to regarding Avista the surcharge
15 proposal?

16 A. Yes, that is correct.

17 Q. Mr. Ely testified that had the company not
18 been deficit, in other words, had it had resources, it
19 wouldn't be in the position it's in. Do you agree or
20 disagree with that?

21 A. Well, if we had had more resources such as a
22 Coyote Springs, we would not have been impacted nearly
23 as much as we were. But recall again that a lot of the
24 money that we have spent this last year is for natural
25 gas to run turbines, which was also far above prices

00238

1 that we have incurred in prior years. So there would
2 have been incremental costs even if we had additional
3 generation available to us on a full-time basis.

4 Q. On page six of your rebuttal testimony, you
5 refer to it being critical that Avista reduce and
6 eliminate the deferral balance as quickly as you can to
7 help restore your balance sheet. Do you see that, lines
8 three to four?

9 A. Yes.

10 Q. Do you agree that the power cost deferrals
11 are now a tremendous burdon on Avista's balance sheet?

12 A. In total, we have or we anticipate by the end
13 of September having invested over \$310 Million in gas
14 and electric deferrals. That is a huge burdon for a
15 company this size. Now fortunately, we also have
16 mechanisms in place that allow us to recover the gas
17 deferrals from both states, and we're very confident
18 that we will also obtain mechanisms in both Idaho and
19 Washington that will allow us to recover the electric as
20 well. Timing is an issue, but we also -- we balance the
21 need to recover that \$300 plus Million with the need to
22 try to keep our prices somewhat competitive with
23 everyone else in the region and not to be too large a
24 burdon on the customers.

25 Q. My question was whether you agree that the

00239

1 power cost deferrals are now a tremendous burdon on
2 Avista's balance sheet?

3 A. Yes.

4 Q. Does it --

5 A. Funding those deferrals is, yes.

6 Q. And Avista has a significant need to
7 expeditiously resolve the recoverability of those
8 dollars on a permanent basis, doesn't it?

9 A. Yes, it does.

10 Q. Now Avista was denied a purchase power cost
11 adjustment clause in the last rate case, wasn't it?

12 A. Yes.

13 Q. But the Commission did state the conditions
14 under which such a clause may be favorably considered,
15 didn't it?

16 A. I believe they did, but I haven't reviewed
17 that order.

18 Q. Will you accept that subject to check?

19 A. Yes.

20 Q. Now did anything prevent Avista from filing
21 for a PCA or filing a general rate case at any time
22 after it received a rate order from this Commission last
23 fall?

24 A. It was my understanding that the agreement
25 with the Commission was that we would file this fall,

00240

1 hopefully sometime in the month of November, the general
2 case that would also address the PCA mechanism.

3 Q. No, my question was, did anything prevent
4 Avista from filing a rate case in late 2000 or up until
5 now in the year 2001?

6 A. I don't think anything prevented it, but from
7 a financial point of view and I guess from where I sit
8 in the company, filing a general case would not address
9 our needs. Our needs are immediate. And in the third
10 quarter of this year, we're going to spend over \$110
11 Million on deferred energy costs. We're going to spend
12 \$220 Million on Cap X, operating cost, and deferred
13 energy. In three months, \$220 Million goes out the door
14 for things that we're committed to, contracts that we're
15 committed to, gas for turbines, power for retail load.
16 That's a tremendous burdon that can't -- we can't get to
17 the end of a general case fast enough.

18 Q. Had Avista filed a rate case after it
19 received its rate order last fall and requested a PCA
20 pursuant to the standards annunciated by the Commission
21 and received that, would that have been a benefit to
22 Avista?

23 A. If we could have gotten it into effect fast
24 enough, yes, it could have.

25 Q. On page two of your rebuttal testimony,

00241

1 Exhibit 152, you refer to your lead commercial bank
2 informing you that the Staff testimony increased
3 Avista's regulatory risk exponentially; do you see that?

4 A. Yes.

5 Q. And do you agree with that?

6 A. Yes.

7 Q. And by the -- is what you're referring to
8 here Staff's recommendation that the deferral accounting
9 terminate effective June 30, 2001?

10 A. The combination of termination of deferrals
11 leaving the \$74 Million that Mr. Norwood testifies to in
12 third quarter unrecoverable, the potential of the
13 writeoff then of that amount that we had already
14 incurred plus additional costs plus the fact that the
15 surcharge as proposed would only be in effect for three
16 months or 90 days and would be in some way restricted so
17 the cash would not be available to the company, all
18 looked very negative to anyone looking at the company
19 and looking at our balance sheet, looking at our
20 liquidity.

21 Q. Now Avista had no deferral accounting
22 whatsoever in this state for power supply costs before
23 July of 2000, correct?

24 A. That is correct. We have requested it, but
25 we have not gotten a mechanism in place.

00242

1 Q. Did the Commission's denial of a PCA in
2 Avista's last rate case increase Avista's risk
3 exponentially?

4 A. No, I think that the fact that the Commission
5 had allowed a deferral for costs subject then to the
6 filing of a general case which including PCA helped both
7 rating agencies as well as other members of the
8 investment community give them some comfort anyway that
9 we could at least address high cost power problems.

10 Q. So implementing the deferral account in the
11 manner Avista did beginning July 1st of the year 2000
12 reduced Avista's risk exponentially compared to the
13 prior period, correct?

14 A. Well, maybe not, I -- the exponentially isn't
15 my quote, so I would say it significantly reduced the
16 risk compared to up until July 1 of last year, yes. A
17 deferral mechanism was a great reduction, or it was a
18 great mechanism to reduce risk.

19 Q. In testimony filed on March 23rd, 2001, on
20 behalf of Avista in this docket, Avista has proposed a
21 cost of capital offset of exactly zero related to power
22 cost deferrals; isn't that correct?

23 A. I would have -- I will accept that, yes. It
24 matches our current returns probably.

25 MR. TROTTER: Thank you, Mr. Eliassen, that's

00243

1 all I have.

2

3

E X A M I N A T I O N

4 BY JUDGE MOSS:

5 Q. Mr. Eliassen, I have one question I wanted to
6 ask to clarify a point that you made early in your
7 response to Mr. Trotter's question. I was looking at
8 page three of your rebuttal testimony.

9 A. Yes.

10 Q. First paragraph there, lines one through
11 eight. He asked you whether the issue you were
12 referring to there in the last sentence of that
13 paragraph referred to the surcharge. And as I read the
14 paragraph, I believe the word issue there refers to the
15 \$74 Million for the months of July, August, and
16 September, and I just wanted to be clear.

17 A. Yes, the issue of recovering through the
18 surcharge that portion or the portion mentioned in the
19 paragraph, yes.

20 Q. Okay.

21 A. I'm sorry if I misspoke.

22 Q. Quite all right, I just wanted to be sure our
23 record is clear.

24 MR. TROTTER: Excuse me, Your Honor, could I
25 have a follow-up on that?

00244

1 JUDGE MOSS: Sure.

2

3 C R O S S - E X A M I N A T I O N

4 BY MR. TROTTER:

5 Q. Because I thought I had asked quite directly
6 that the issue that he was referring to was whether
7 deferred power costs are to begin to be recovered
8 through rates immediately, and he said, yes. That may
9 include the \$74 Million, or it may be broader, so I will
10 just ask the witness with his answer, my recollection of
11 his answer in mind, if he could tell us what the answer
12 is.

13 A. Well, let's put the answer to broader context
14 then. We are in a position today, as testified by
15 Mr. Ely, where we need to have a mechanism in place and
16 some assurance that we can recover prudently incurred
17 costs of delivering energy. And immediately can be the
18 month of September. I'm okay with whether it's the 15th
19 or the 25th is really not relevant at this point. But
20 we do need to have some fairly near term action and
21 clarity around issues like recovery of costs since July
22 1, recovery of all the deferral balances prior to July
23 1, and the other costs that are associated with this.

24 MR. TROTTER: Thank you.

25 JUDGE MOSS: I think we're both clear now.

00245

1 MR. TROTTER: Yes.

2 JUDGE MOSS: Okay, good.

3 Mr. Van Cleve.

4

5 C R O S S - E X A M I N A T I O N

6 BY MR. VAN CLEVE:

7 Q. Mr. Eliassen, you refer in your testimony to
8 the bank line of credit. This is a revolving credit
9 facility; is that correct?

10 A. Yes, it is.

11 Q. And can you tell us what the total amount of
12 the line of credit is?

13 A. Currently it's \$220 Million available.

14 Q. And can you kind of describe for us what it
15 is? I understand that there's a number of banks that
16 participate.

17 A. Yes, there are nine banks in the line. The
18 line is led by Toronto Dominion Bank. Other banks
19 participating are Bank of New York, Bank America, Fleet,
20 and in addition a number of West Coast banks. It's a
21 one year agreement, and it was signed at the end of May
22 this last year.

23 Q. So it expires at the end of May, 2002?

24 A. That is correct.

25 Q. And have you drawn on the line of credit

00246

1 already this year?

2 A. Yes, since the 1st of July, which would be,
3 you know, the June 30 statements or the last public
4 statements since that time would move from zero drawn
5 under the line to \$105 Million currently. The last draw
6 was around the last week of August.

7 Q. So 105 has been drawn, and there's 225 more
8 available?

9 A. No, the total line is 220, I'm sorry.

10 Q. Oh, the total line is 220. So what is the
11 total amount that can still be drawn on the line of
12 credit?

13 A. If we are successful in obtaining waivers
14 from the participant banks in the line, we can draw
15 another \$115 Million. That would, of course, exhaust
16 the line at that point.

17 Q. What is the interest rate that applies to the
18 line of credit?

19 A. Could you follow up with Mr. Peterson on
20 that. The rates have changed and will change here this
21 month, so he can be very current with you on that. We
22 have options based on LIBOR and other borrowing rates,
23 but he can be more specific.

24 Q. Could you describe in a little more detail
25 the waivers that you mentioned that needed to be

00247

1 obtained from the participating banks in the line of
2 credit?

3 A. Well, basically when -- over the last ten
4 days, we have had a number of discussions with banks
5 that have suggested that absent certain changes included
6 in the waiver, they would be unwilling to continue to
7 provide credit to the company, given the uncertainty of
8 our liquidity. The -- there will be an increase in fees
9 associated with continued borrowing under the line as a
10 condition of getting a waiver. There will be a
11 requirement that we provide a first mortgage lien for
12 all borrowings under the line, basically placing the
13 banks in the position of a first mortgage bond holder of
14 the company until it expires in May of this next year.
15 And in addition, they would like to do a review of our
16 cash flow capital expenditure plans and projections for
17 the next few months over the balance of the line.

18 Q. Have the banks indicated that if you agree to
19 these three conditions that they will grant a waiver?

20 A. We're trying to keep all nine banks together
21 on this, and that we think that we will be able to
22 successfully do that. Today we do not have agreement
23 from all nine banks that they will provide a waiver.

24 Q. And can you explain exactly what is being
25 waived?

00248

1 A. There are certain covenants that I, again,
2 Mr. Peterson can go into it in more detail, but there
3 are certain covenants that must be met on a quarterly
4 basis. And I think primarily you can describe it as a
5 cash interest coverage test, very similar to what the
6 rating agencies ask for. And basically that cash
7 interest coverage test I think was defined -- has been
8 defined in some material provided to the Staff, but in
9 any event, we will be unable to meet that test at the
10 end of September no matter what happens, and we need a
11 waiver for that. We probably will still be unable to
12 meet that test at the end of December.

13 One of the things that's going to be critical
14 to continue to meet the test long term is the issuance
15 of equity. The company needs to reduce its debt ratio
16 and reduce interest costs substantially as well as
17 improve cash flow, and the issuance of equity is going
18 to be critical for that. It's probable that we will not
19 be able to issue equity yet this fall. At least we're
20 not counting on it.

21 Q. Is it your position that the participating
22 banks will not agree to the waiver if the Commission
23 declines to allow interim rate relief?

24 A. If they -- if the surcharge is not allowed?

25 Q. Correct.

00249

1 A. The discussions we have had with the banks
2 are that we do expect positive action in both Washington
3 and Idaho related to our request. However, we can't
4 wait until the end of the month to see whether that
5 action actually occurs. So the banks have agreed then
6 given the conditions of the waiver that they would
7 provide a waiver on the covenants and allow us to have
8 some access, not to the entire line, but access to a
9 portion of the line until we do other things, including
10 the dividends from subsidiaries that Mr. Ely spoke about
11 earlier.

12 Q. Do you have access to any of the line
13 currently?

14 A. No.

15 Q. Do you believe that you will have access to
16 any of the line if the Staff proposal is adopted?

17 A. If the Staff proposal is adopted as filed, I
18 believe that we would probably have waivers in place, we
19 would be restricted on borrowing past some point,
20 obviously 220 would be the ultimate limit, we would have
21 inadequate cash to make it through Q4, and we would with
22 Staff order in my opinion be unable to access any other
23 kind of financing. We would then do some of the things
24 that Mr. Ely spoke about earlier. We would do them
25 immediately.

00250

1 One of the concerns we have, and this whole
2 thing hinges on this, we have to continue to separate
3 the capital or the cash required for capital in the
4 business versus cash that's been invested in operating
5 cost of the business, which are the deferrals. We have
6 to keep it separate. We have to have access to cash for
7 both.

8 But the most important thing we also have to
9 look at here is the long-term impact on the credit of
10 the company, and it's going to be very difficult for a
11 company to continue to add debt on top of debt to
12 finance capital and to finance operating expenses when
13 we already have a debt ratio that's very close to the
14 limit.

15 Q. If you could refer to your rebuttal
16 testimony, which is Exhibit 152, on page three at line
17 nine, the reference to additional credit support. Is
18 that the first mortgage lien that you referred to?

19 A. That is correct.

20 Q. And are there any restrictions on your
21 ability to provide the first mortgage lien?

22 A. They're not insurmountable. It's a two or
23 three week process, but we have already started working
24 on that with attorneys and others.

25 Q. And on page four of that same exhibit at line

00251

1 three when you refer to technical default, is that the
2 cash interest coverage test that you referred to?

3 A. That's the primary one. We will also be
4 very, very close to a total debt to capital or debt to
5 equity test at that point in time as well. I believe we
6 will meet it, but we will be close to that as well.

7 Q. Mr. Trotter asked you some questions about
8 the testimony at lines 9 through 11. Do you recall
9 that?

10 A. Yes.

11 Q. And when you use the word solvent there, what
12 do you mean by that?

13 A. The ability to continue to pay bills.

14 Q. If the Commission disallows a portion of the
15 deferral, would that make the company insolvent?

16 A. The answer to that is no, but I guess I would
17 want to know more about what you mean by partial.

18 Q. What portion of the \$265 Million that you
19 refer to at line ten would the company need to recover
20 in order to remain solvent?

21 A. The issue right now is that, we need to
22 separate this out, there's \$185 Million that the company
23 will have spent in Washington for electric by the end of
24 September, and that \$185 Million in my mind was spent on
25 legitimate expenses of providing service. If we are

00252

1 unable to recover that, and I guess you still have to
2 define what a portion is, if we're unable to recover
3 that, that sends a very strong signal to everyone that
4 we're going to be unable to recover operating costs in
5 the state of Washington. That's really the concern the
6 bankers have. That's really the concern they have.
7 Even if we do everything else to raise cash to continue
8 to fund other capital requirements, we still have this
9 \$185 Million that's out there that needs to be recovered
10 in some manner.

11 Q. And it's your position that if you don't
12 recover the \$185 Million that you referred to that the
13 company will not be solvent?

14 A. Well, we already have almost a 60% debt ratio
15 consolidated. We used the equity of our Avista Capital
16 companies to support the utility. If you looked at the
17 utility equity alone, there's not a lot there. If we
18 write off \$185 Million, there will be very little
19 utility equity left, and I mean very little. It is not
20 something that's tenable for the company to do to be
21 able to write off something of that magnitude and
22 survive absent doing some other things that will be
23 required.

24 Q. Do you recall when the company cut its
25 dividend last?

00253

1 A. Yes.

2 Q. When was that?

3 A. August of -- or the September payment of
4 1998.

5 Q. So the September payment was the first
6 reduced dividend payment?

7 A. Yes.

8 Q. And did the company issue equity after that
9 dividend cut?

10 A. No, we did not.

11 Q. So the company hasn't issued any equity since
12 September 1998?

13 A. Well, technically correct here, let's see, we
14 have issued equity, but it's been equity to 401-K plans
15 or dividend reinvestment. But we have not had a public
16 offering of equity since 1998.

17 Q. When was the last public offering of equity?

18 A. Probably 18 years ago, and I don't remember
19 the exact date 1982, '83.

20 Q. Are you aware that in 1999 the company had an
21 A credit rating on its secured debt on the S&P?

22 A. Yes.

23 Q. And are you aware of the investments that
24 have been made in unregulated subsidiaries since that
25 time?

00254

1 A. In general I am, yes.

2 Q. Can you tell us generally what the timing and
3 amount of those investments have been?

4 A. Well, probably -- I don't have any
5 information here in front of me, so I can't give you
6 exact amounts, no.

7 Q. Who could I ask that question of?

8 A. We can provide it. We probably have some of
9 the information here. We could provide it through a
10 later witness, Mr. Peterson.

11 Q. Could you refer to what has been marked as
12 Exhibit 153.

13 A. Okay.

14 Q. Can you identify Exhibit --

15 MR. MEYER: Just a moment, I think you're
16 still looking for it.

17 THE WITNESS: That's ICNU Request Number 7, I
18 believe.

19 MR. MEYER: 4.7.

20 THE WITNESS: 4.7.

21 JUDGE MOSS: Do you have it, Mr. Eliassen?

22 THE WITNESS: Yes.

23 JUDGE MOSS: Go ahead with your question,

24 Mr. Van Cleve.

25 BY MR. VAN CLEVE:

00255

1 Q. Can you identify this document?

2 A. This is a request to provide any
3 documentation or correspondence to support the claim
4 that the company will be unable to access capital
5 markets later this fall as referred on page 5, lines 20
6 and 21.

7 Q. This is the company's response to a data
8 request in this proceeding?

9 A. Yes.

10 MR. VAN CLEVE: That is all the questions
11 that I would have, and I would offer Exhibit 153.

12 JUDGE MOSS: Hearing no objection, 153 will
13 be admitted as marked.

14 I'm sorry, Mr. Van Cleve, did you say that
15 completed your questions?

16 MR. VAN CLEVE: Yes, Your Honor.

17 JUDGE MOSS: Thank you.

18 Mr. ffitch.

19 MR. FFITCH: Thank you, Your Honor.

20

21 C R O S S - E X A M I N A T I O N

22 BY MR. FFITCH:

23 Q. Good afternoon, Mr. Eliassen.

24 A. Good afternoon.

25 Q. Simon ffitch with the office of Public

00256

1 Counsel.

2 You have been in the financial area with this
3 company for more than 20 years; is that correct?

4 A. That's correct.

5 Q. And, in fact, you were a witness in two of
6 the company's previous applications for interim rate
7 relief, Cause U-80-13 and Cause U-83-26, were you not?

8 A. I will accept that.

9 Q. You don't have those docket numbers
10 memorized?

11 A. No.

12 Q. In your opinion, is the company's financial
13 condition better or worse today than it was at the time
14 of the interim rate relief request in 1983?

15 A. It's significantly worse today.

16 Q. I'm going to ask you to take two exhibits
17 that you should have before you, they're Exhibit 155,
18 which is a 1984 financial operating statement.

19 A. I have that.

20 Q. You have that there, and Exhibit 161, which
21 is the 2000 financial report.

22 A. Is that a 2000 financial report, Appendix A;
23 is that correct?

24 Q. Yes, yes, I'm sorry, I was speaking in
25 shorthand and left the Appendix off. And you recognize

00257

1 both of these as publications that the company has
2 produced?

3 A. Yes, I do.

4 Q. Now do both of these in general provide
5 similar data, for example, the stock market to book
6 ratio, interest coverage ratios, AFUDC levels, and so
7 forth?

8 A. I believe they do, yes.

9 Q. And just for a little more clarity, if we
10 look, for example, at the 1984 statement, which is
11 Exhibit 155, and you go to page two of that statement,
12 if we look at column 1 under 1984, we can see a heading
13 just in the bottom half of the page, interest coverages?

14 A. Yes.

15 Q. Is that correct?

16 A. Yes.

17 Q. For that year. We can see under the heading
18 common stock data the second line, book value per share,
19 and then the bottom line of that section, the market
20 value; is that correct?

21 A. Yes, that's correct. One thing just so the
22 Commission knows too, we did split the common two for
23 one subsequent to 1984, so that the book value is not
24 going to be comparable to today's book value. You need
25 to divide it by two, if that makes a difference.

00258

1 Q. Okay. And then if we go to page six of that
2 same exhibit.

3 A. Yes.

4 Q. And we look, for example, just looking again
5 at the first column for purposes of illustration, 1984,
6 we can see the heading other income deductions about a
7 third of the way down, and the AFUDC or allowance for
8 funds used during construction to spell out the acronym,
9 is shown there as the second entry under other income
10 deductions, correct?

11 A. Yes.

12 Q. And then again it's shown under interest
13 charges in the next section of entries?

14 A. I think that's right, yes.

15 Q. And then the average shares outstanding for
16 the company during this time period, which is a ten year
17 time period shown on this exhibit, right, from '74 to
18 '84?

19 A. Right.

20 Q. We can find the average shares outstanding in
21 the lower section of entries. It's the first of four
22 entries across the bottom of the page?

23 A. Yes.

24 Q. And that, in effect, shows the shares issued,
25 correct?

00259

1 A. Yeah. Again, pre-split. In today's numbers,
2 that 1984 column, for example, would be \$41 Million.

3 Q. Sure. Was there any split during this period
4 that's shown on --

5 A. No, I didn't --

6 Q. -- this chart?

7 A. Just again for clarity, between then and
8 today.

9 Q. Okay. I will accept that. But in terms of
10 what we're looking at on this document, was there a
11 split during this time period?

12 A. No.

13 Q. Then just going to the other exhibit, which
14 is 161 again, the 2000 financial report, Appendix A.

15 A. Yes.

16 Q. You can find the information I have referred
17 to in that exhibit as well, and if you look at page 29,
18 which would be the fifth page into the exhibit.

19 A. Yes.

20 Q. There's a table of numbers in the upper part
21 of that page, capitalized interest debt, capitalized
22 interest equity.

23 A. Yes, I see those.

24 Q. And that would be an AFUDC number?

25 A. Yes, that is correct.

00260

1 Q. And if we go to the next page, page 55 but
2 the next page of this exhibit, in the column for the
3 year 2000, the second section of entries is headed
4 common stock statistics. There we can find the book
5 value per share of \$15.34, correct?

6 A. Yes.

7 Q. And at the bottom of that section, the year
8 end close of common stock price of \$20.500, that's the
9 market price, correct?

10 A. Yes, that is.

11 Q. Would you agree that during what I will call
12 the nuclear construction era, the era reflected in
13 Exhibit 155, the company was under significant stress
14 with respect to generating its construction
15 requirements?

16 A. Yes, we were.

17 Q. During that period, would you agree that
18 between 1978 and 1984 the company issued more than 10
19 million shares of stock at a price below book value?

20 A. Yes, we did.

21 Q. I would like to turn to another area now. I
22 realize I'm -- the option of a sale and possible
23 leaseback of the Coyote Springs combustion turbine has
24 come up in previous testimony?

25 A. Yes.

00261

1 Q. And are you generally familiar with the
2 concept of sale and leaseback when operating a property
3 such as a combustion turbine?

4 A. Yes.

5 Q. And Avista, in fact, currently leases the
6 Rathdrum combustion turbine, does it not?

7 A. That's correct, although that was structured
8 in a lot different manner.

9 Q. Okay. Let me ask you to take what's been
10 marked for identification as Exhibit 158.

11 A. Could you -- I don't have --

12 Q. 158 has the number Exhibit 172.

13 A. Right, okay.

14 Q. For purposes of making things extra
15 confusing, it has the Exhibit 172 is a, just for the
16 record, is the exhibit number from the Avista rate case.

17 A. We have it.

18 Q. And it has been marked as 158 in this case.

19 A. Right.

20 Q. And that is a response of the company to a
21 Staff data request in the previous rate case, correct?

22 A. Yes, it is.

23 Q. And if you could turn to just the second page
24 of that exhibit at the end of the first paragraph, that
25 exhibit indicates the interest rate that is being

00262

1 charged in connection with that lease, correct?

2 A. That was the initial rate, yes. That may
3 have changed by today.

4 Q. Okay. And the initial rate was?

5 A. This says 7.11%.

6 Q. Okay. And do you know what the current rate
7 is?

8 A. I do not know. Interesting though that you
9 bring up this Rathdrum lease. You know, the Commission
10 may not know this, but originally we had a contract for
11 capacity with Portland General Electric, and that
12 capacity contract generated revenues of over 200
13 million --

14 MR. FFITCH: Your Honor, I'm sorry --

15 THE WITNESS: I think it's very pertinent.

16 JUDGE MOSS: Mr. Eliassen, I'm going to stop
17 you here and ask you that you be responsive to the
18 questions, and your counsel will have an opportunity on
19 redirect to bring out additional points.

20 THE WITNESS: Okay.

21 JUDGE MOSS: So let's just focus on the
22 questions and try and respond directly to them.

23 MR. FFITCH: Thank you, Your Honor.

24 BY MR. FFITCH:

25 Q. Just focusing on the current lease

00263

1 arrangement with Rathdrum, would you agree that the
2 current lease payment on Rathdrum, excuse me, with the
3 current lease payment on Rathdrum, the cost for the
4 company and its rate payers is lower than would be the
5 case if the unit were conventionally financed?

6 A. I would agree with that.

7 Q. And that would be the case if it were
8 conventionally financed, included in rate base, and
9 subjected to the company's rate of return?

10 A. That is true. The cost, the hidden cost
11 though of this, and this is important, is that it
12 contained a later on debt like obligations without cash
13 flow to support them, it is detrimental to your credit
14 rating. And that was why I think it's important for
15 people to understand that there was a huge cash flow on
16 the other side of this project that allowed us to
17 support the lease.

18 Q. And is the principal reason the lease
19 interest rate, including related taxes, excuse me, the
20 principal reason that this is a lower cost for rate
21 payers that the lease interest rate including taxes is
22 significantly lower than the rate of return requirement?

23 A. In this particular case, it would be, yes.

24 Q. And now Avista engaged in a sale and
25 leaseback of its corporate headquarters office building.

00264

1 I can give you a docket reference if that would be
2 helpful. That's Docket FR 86-150.
3 A. That's fine.
4 Q. If you need to, I can give you a copy of the
5 order to review.
6 A. No, I recall the transaction.
7 Q. Okay. And that leaseback agreement provided
8 the company with the right to repurchase the office
9 building for \$21 Million at the end of year 25?
10 A. Yes.
11 Q. Or to continue to lease the building?
12 A. Right.
13 Q. Correct?
14 A. Yes.
15 Q. And the leasing company financed that,
16 according to the order, with a capital structure of 83%
17 debt and 16% equity; is that correct, subject to check?
18 A. I don't -- I will accept those numbers.
19 That's referring specifically to the lease financing
20 itself on the building?
21 Q. The company that purchased financed the
22 transaction with that capital structure as reported in
23 the order.
24 A. Okay, I did not remember that.
25 Q. Would you agree that this is a more highly

00265

1 leveraged capital structure than a utility would
2 typically utilize?

3 A. Definitely. But, of course, again, the
4 support was that the office building was in rate base at
5 the time we sold it and leased it back, so we already
6 had a revenue stream that supported the lease payments.

7 Q. Finally, are you aware of other companies
8 which have used sale and leaseback arrangements for
9 electric generation facilities?

10 A. Yes, I am.

11 Q. For example, are you aware of Puget Sound
12 Power and Light Company's lease arrangements with
13 respect with White Horn combustion turbines?

14 A. I'm aware that they were leased. I do not
15 know the details.

16 Q. I can refer you to what's been marked for
17 identification as Exhibit 157. If you would like to
18 look at that for a moment, that's the Commission order
19 approving the lease arrangement with regard to White
20 Horn.

21 A. I have that.

22 Q. Okay. At this point, let's turn to the two
23 documents, the company budget documents that have been
24 marked Exhibits 159 and 160 for identification.

25 A. I have those.

00266

1 Q. Okay. Well, you're ahead of me. Let me pull
2 those out.

3 First, just to identify those, those are --
4 perhaps you can just describe what those are in your own
5 words, those two exhibits.

6 A. These are the planned budget of expenditures
7 for Avista for the year 2000 and for the year 2001 as
8 filed with this Commission.

9 Q. And those are verified by oath of the officer
10 having control of the accounting of the company; is that
11 correct?

12 A. Yes, they are.

13 Q. And the oath states that the budget was
14 prepared under that officer's direction, been carefully
15 examined, and that officer declares that it is a
16 complete and correct estimate of the revenues and
17 expenditures for the company for the relevant year?

18 A. Yes, correct.

19 Q. And for both of those on the very last page
20 of the exhibit, we can see that you are the company
21 officer who is making that oath and verification; is
22 that correct?

23 A. Yes.

24 Q. In addition to one other officer of the
25 company, the vice president/controller, correct?

00267

1 A. That's correct, yes.

2 Q. Now if I can ask you to turn to Exhibit 159,
3 which is the year 2000 budget, and if you go to page
4 two, we have a column on the right-hand side of the page
5 for the budget for 2000. Are you with me so far?

6 A. Yes.

7 Q. And at the top, near the top, we have a line
8 for cost of production, specifically for power
9 purchases.

10 A. That's correct.

11 Q. And the number shown there is \$564,627,000,
12 correct?

13 A. Yes.

14 Q. Now if we go to the next Exhibit 160 and we
15 turn to page two in that document and look at the second
16 column over from the right for that same entry, the
17 power purchases, we see an entry of \$1,030,820,000; is
18 that correct for actual power purchases?

19 A. Yes, that's correct.

20 Q. Are you aware of whether the company
21 submitted a budget amendment to reflect the higher level
22 of spending between those two budget filings?

23 A. I am not aware of the filing, no.

24 MR. FFITCH: Your Honor, we would ask for a
25 record requisition for any amendments or supplements

00268

1 that were filed subsequent to the filing of the year
2 2000 budget with the Commission.

3 JUDGE MOSS: Well, I think the witness has
4 testified he was unaware of any such filing.

5 MR. FFITCH: Well, that's --

6 JUDGE MOSS: I took his testimony to mean
7 there was no such filing. Perhaps I took his testimony
8 wrong.

9 MR. FFITCH: I guess that's why I made the
10 request, because I heard him say he was not aware of
11 any.

12 JUDGE MOSS: Mr. Meyer, do you know?

13 MR. MEYER: I'm checking.

14 JUDGE MOSS: Okay, we'll check on that. If
15 the document exists, it's a Commission record, you can
16 get it from the records center.

17 MR. FFITCH: Certainly, if the company can
18 just simply testify that there were no supplements or
19 amendments, that would be adequate.

20 JUDGE MOSS: Sure, that's all we need.

21 Why don't you go ahead while the company
22 clarifies that.

23 MR. FFITCH: Thank you, Your Honor.

24 JUDGE MOSS: Mr. ffitch, while we're paused
25 here for a moment, the exhibits you were referring to

00269

1 earlier, I think it was 157 perhaps, no, that wasn't it.

2 MR. FFITCH: 157 is the Commission order.

3 JUDGE MOSS: Yeah, well, I will get back with
4 you later on -- we've got a bad copy we need to take
5 care of, but I see Mr. Meyer has his attention focused
6 back on the Bench.

7 Do you have the answer to that, was there any
8 such filing?

9 MR. MEYER: We're not aware of any per se
10 budget amendment to that. The only other question was
11 had it been submitted in some other form in connection
12 with some other filing, and I don't know the answer to
13 that, but no explicit amendment, to the best of our
14 knowledge to that.

15 JUDGE MOSS: And you will confirm that before
16 the close of the hearing?

17 MR. MEYER: Yes, we will.

18 JUDGE MOSS: And you will provide it if any
19 such thing exists?

20 MR. MEYER: Yes, be happy to.

21 JUDGE MOSS: All right, we will leave it that
22 way and not reserve a place for it right now. It
23 appears there was no such filing, which I think is what
24 you wanted to confirm.

25 MR. FFITCH: Yes, I think perhaps if I can

00270

1 just ask Mr. Eliassen.

2 BY MR. FFITCH:

3 Q. Subject to check in the fashion described by
4 your counsel, there has been no amendment or supplement
5 filed to the 2000 budget?

6 A. Yes, subject to check.

7 (Discussion off the record.)

8 JUDGE MOSS: I believe you can go ahead.

9 BY MR. FFITCH:

10 Q. All right, I'm going to direct you to pages
11 six and following pages of the budget.

12 CHAIRWOMAN SHOWALTER: What exhibit?

13 Q. This again is Exhibit 160, the 2001 budget.
14 Some of this has been covered by Mr. Ely already. This
15 is a list of the capital projects that the company
16 proposed to the Commission that it would undertake this
17 year; is that right?

18 A. That is correct, yes.

19 Q. And in general, this list, which continues on
20 for the remainder of the budget document with either
21 single line listings or full page descriptions for
22 longer projects, those are the projects that Mr. Ely was
23 referring to that were reviewed for possible deferral;
24 is that right?

25 A. I believe that's correct.

00271

1 Q. Now are you aware of any additions that you
2 would want to make to his testimony about projects that
3 were -- that are being deferred or have been deferred?

4 A. I think that Mr. Ely covered those fairly
5 well. I'm not aware of any other changes. The only
6 other addition to this I guess is that there is also --
7 there are additional expenditures being incurred this
8 year for some small generating units, primarily Boulder
9 Park and also an installation at Kettle Falls, which may
10 not have been in the original.

11 Q. And were budget amendments submitted for
12 those items?

13 A. I do not believe so, no.

14 Q. Do you know why those were not submitted?

15 A. No, I am not aware of why they were or
16 weren't, no. I think most of these are trued up at the
17 end of the next year in terms of what happened in the
18 prior year, but I'm not aware of anything needing to be
19 done in the interim.

20 Q. Those costs would be part of the deferral; is
21 that correct?

22 A. No, the costs I'm talking about are not, no.
23 I'm talking about capital projects for new generation,
24 peaking generation.

25 Q. What about for the small generating projects?

00272

1 A. Well, these are small generating projects.
2 Boulder Park, for example, is units that are being
3 installed, still under construction, and those will be
4 gas fired peaking units that will be available and
5 probably placed at rate base in the next general rate
6 case, we would hope.

7 Q. So those costs are not being included in the
8 deferral?

9 A. Not -- none of those costs are, no, at least
10 not to my knowledge. They're a separate capital budget
11 item.

12 MR. FFITCH: Just one moment, Your Honor.

13 BY MR. FFITCH:

14 Q. In 1999, Avista bought back \$4.8 Million of
15 common shares, I'm sorry, I misspoke, 4.8 million common
16 shares; is that correct?

17 A. That is correct.

18 Q. Plus 322,500 shares of recons?

19 A. That was a special preferred stock that was
20 called and reconverted to common, yes.

21 Q. And it's correct, isn't it, that the total
22 cost of that buyback was \$82 Million?

23 A. I would accept that.

24 Q. If Avista had not engaged in that stock
25 buyback, other things being equal, Avista would have

00273

1 about \$80 Million more in cash right now, would it not?

2 A. That is correct. We would have that many
3 more shares of common equity outstanding as well, yes.

4 MR. FFITCH: Those are all the questions I
5 have, Your Honor. I would like to offer at this time
6 Exhibits 155 through 160, 161, pardon me.

7 JUDGE MOSS: Any objection?

8 MR. MEYER: None.

9 MR. FFITCH: I will just note, Your Honor, it
10 appears on the exhibit list, it doesn't reflect Exhibit
11 161, which is the --

12 JUDGE MOSS: I have it now, 2000 financial
13 report, Appendix A.

14 MR. FFITCH: Yes, thank you.

15 JUDGE MOSS: All right, I'm going to admit
16 these exhibits as marked. I'm going to comment on
17 Exhibit Number 157, which is a copy of a Commission
18 order from a prior proceeding. We don't typically make
19 orders exhibits. I'm doing it in this case merely for
20 convenience, and I'm going to note for the record that
21 in terms of the questions and answers respecting that
22 exhibit, it was only something that was used to confirm
23 the witness's recollection of the existence, and he was
24 not able to testify to the substance of anything in that
25 order.

00274

1 MR. FFITCH: Thank you, Your Honor.
2 JUDGE MOSS: So it's admitted for a limited
3 purpose.
4 All right, then those are admitted.
5 Does that complete your questions,
6 Mr. ffitch?
7 MR. FFITCH: That completes my questions.
8 JUDGE MOSS: Do we have some questions from
9 the Bench for this witness?

10

11 E X A M I N A T I O N

12 BY CHAIRWOMAN SHOWALTER:

13 Q. Mr. Eliassen, you were asked whether you
14 could have filed a rate case last fall. If you had
15 filed a rate case last fall, wouldn't that have been
16 before the company or any of us had any real inkling
17 that this was the worst or the second worst hydro year
18 in history?

19 A. Yes, that is true. If we had filed last fall
20 or even sometime even in the first quarter of this year,
21 I don't think anyone anticipated what was going to
22 happen, one, with hydro conditions, and two, with the
23 level of deferrals that we have incurred. And in
24 addition --

25 Q. That's a good enough answer.

00275

1 Likewise, last fall neither the company nor
2 the rest of us had lived through the FERC orders, the
3 several FERC orders culminating in the June 25th, I
4 believe, order?

5 A. Right.

6 Q. Which had the effect of altering in various
7 ways the wholesale market in the west?

8 A. There was a significant impact on wholesale
9 prices in the west given the FERC order in June, yes.
10 That continues today.

11 Q. I guess my -- if you look at where the
12 company sits today, its financial situation and the
13 environment it's operating under compared to say last
14 fall, aren't the most significant dynamics that have
15 occurred ones that occurred in the year 2001?

16 A. I believe they are, yes. Because even last
17 fall when we looked forward, we didn't expect to have
18 nearly as significant reduction in hydro generation this
19 year throughout the Northwest. We didn't expect to see
20 prices of wholesale energy continue to move the way they
21 did. And even at the end of the first quarter of last
22 year, our forward estimates on deferrals were
23 substantially below where they are today.

24 Q. In terms of the financial picture that you
25 present to the bankers on Wall Street, how do you

00276

1 present the -- any money owed to you, the corporation in
2 general, by California?

3 A. Money owed to us by California is basically
4 owed to Avista Energy, and it does show up as a
5 receivable on Avista Energy's detailed statements. But
6 we have also reserved 85 cents on the dollar against
7 that receivable at the end of Q2 of this year. We have
8 set up significant reserves based on the risk we may not
9 be paid. But it is in the -- it's on the statements of
10 Avista Energy and then consolidated into Avista Capital.

11 Q. So the -- you both state it as a receivable,
12 i.e., it's owed to you.

13 A. Right.

14 Q. But also have taken some precautions in case
15 it's not paid to you?

16 A. Yes, we have set up a specific reserve for
17 basically 85% of the receivable.

18 Q. And then another issue that's surrounding
19 West Coast or Westwide sales is that of refunds before
20 FERC. Of money you have been paid already where there
21 is a claim for a refund on it, how do you portray that
22 in your current financial picture?

23 A. The primary exposure to refunds, again, if
24 there is an exposure, would be through Avista Energy.
25 And there, as we have submitted in testimony before

00277

1 FERC, the amount of refund that we calculate that could
2 be conceivable under guidelines that FERC has laid out
3 is still less than what's owed and we believe that were
4 reserved. See, it's our -- it's been our position that
5 we really shouldn't be providing refunds for something
6 we have not yet been paid. So if the bills were paid
7 and we were still then subjected to a refund, we would
8 still be net ahead at the end of the day. I guess
9 that's the way to put it.

10 Q. As you point out, that primarily has been an
11 activity or the refund issue primarily relates to Avista
12 Energy?

13 A. That's correct.

14 Q. And back to one of my questions to Mr. Ely,
15 and that is the relationship of the non-regulated
16 utilities to our role here today, what does either the
17 non-payment and/or the refund liabilities, how do those
18 affect the status of the whole company in a way that
19 affects the need of the company to be here today seeking
20 a surcharge?

21 A. I don't think that the receivables in
22 California or the potential of any refund in California
23 of Avista Energy has any impact at all on today,
24 especially since we reserved for it. I think that there
25 is upside in the sense that if we are ever paid and if

00278

1 it's ever settled, Avista Energy will have some
2 additional cash or should have some additional cash,
3 more than they have today, which might allow us to
4 provide another dividend to the parent.

5 But the company -- Avista Energy and the
6 Avista Capital companies are separated legally from the
7 utility. Each operates separately. But because, and as
8 Mr. Ely testified, because of the performance of Avista
9 Energy this past two years, we are planning, and I think
10 it was incorporated in the initial filing before this
11 Commission, we were planning to move as much as \$150
12 Million of capital or cash from Avista Energy to the
13 parent, to the utility, in Q1 or Q2 of next year. Some
14 of the dividend discussion with Mr. Ely earlier spoke
15 about a dividend that would come this fall. That would
16 be a part of that \$150 Million that we plan to move. So
17 basically the subsidiary companies, the non-regulated
18 companies, are providing a significant amount of both
19 earning support and cash support to the corporation
20 during this 18 month period.

21 Q. So is what you're saying is because of a
22 fairly conservative way you have set aside the 85%, that
23 things will not get too much worse if you don't get paid
24 by California unless you don't get paid 100%, but they
25 could get better if you do get paid, because then some

00279

1 of the cash you had reserved you could then use for
2 other purposes?

3 A. Well, I think I would have to agree with you,
4 but I would hope that we would get paid what we're owed.
5 I guess that's the bottom line.

6 CHAIRWOMAN SHOWALTER: Thanks.

7 JUDGE MOSS: Redirect?

8 MR. MEYER: Yes, a couple of points.

9

10 R E D I R E C T E X A M I N A T I O N

11 BY MR. MEYER:

12 Q. First of all, more by way of a clarification,
13 with respect to capital and O&M costs on existing or new
14 plants as they may relate to the deferral balance, is it
15 true that capital and O&M costs of the preexisting
16 generating projects of the company are not included in
17 any deferral balances?

18 A. That's correct.

19 Q. Now a cost though associated with new small
20 generation would be included in that balance?

21 A. Be specific as to which small generation.
22 There -- Boulder Park, for example, is being capitalized
23 separately and is not being capitalized -- the capital
24 costs of the project are not included in the deferral.

25 Q. Right.

00280

1 A. Okay, it's not operating yet, so there are no
2 operating costs associated with Boulder Park.

3 Q. Right, in as much as it's not yet in
4 operation?

5 A. Right.

6 Q. The sale and leaseback discussion you had, I
7 believe you were asked a series of questions about by
8 Public Counsel the reference was directed to a Puget
9 order on sale and leaseback, I believe that there was
10 another reference to the Rathdrum turbine project?

11 A. That's correct.

12 Q. Under what circumstances would a sale and
13 leaseback of an asset given where the company finds
14 itself today, and let's talk specifically about Coyote
15 Springs, to what extent would that be a viable option?

16 A. Well, it's an -- it is an option for
17 financing the plant and is one that we have discussed
18 with banks. However, underlying the lease, there has to
19 be some assumption or some source of payment to make
20 those lease payments and operate the project. And to
21 date, especially during the last three months, most
22 lenders and most initiators of these kinds of projects
23 that we have talked to have been unwilling to look at
24 these kinds of transactions because of the uncertainty
25 of the ability to raise rates or have cash or in some

00281

1 way provide support for those kinds of future lease
2 payments.

3 Q. Distinguish that, if you will, from the
4 Rathdrum sale/leaseback situation; what made that work,
5 and what wouldn't make Coyote Springs work in your
6 estimation?

7 A. Well, Rathdrum was really done through a
8 wholesale energy exchange, capacity exchange with
9 Portland General Electric. And the contract in that
10 case was for 20 years or more and generated over \$200
11 Million of cash during that period of time. The annual
12 payments were between \$16 Million and \$20 Million a
13 year. And basically we used -- we bought Rathdrum, we
14 built Rathdrum for \$67 Million to backstop our ability
15 to provide that capacity. But bottom line, the contract
16 that was already in existence with Portland General
17 provided three times the cash that it cost to buy the
18 plant in the first place, and the contract was already
19 in place. So basically what we did with Rathdrum was we
20 let Portland General buy a project for free for the
21 customers of this company, and we still operate it
22 today.

23 With any lease we're looking at today,
24 especially one of the magnitude of Coyote at \$190
25 Million, I mean we don't have a \$600 Million contract

00282

1 out there to help support the lease payments. It might
2 not have to be that much, but today we do not have any
3 assurance of cash, and neither do lenders have any
4 assurance of cash that would allow us to fund in that
5 manner.

6 Q. All right. Brief question or two on the
7 dividend cuts. Do you recall there was some brief
8 questioning about a dividend cut as an option. What is
9 your recollection of the company's stock price
10 performance when it did cut the dividend in '98?

11 A. Well, I believe the stock price since the
12 middle of 1998 has declined to where it is today.
13 Between then and the end of 2000, it declined about \$4 a
14 share, and since then it has declined another \$3 or
15 \$3.50.

16 Q. You were asked by Staff a series of questions
17 relating to I'm going to call it what if scenarios, what
18 if the company had filed a PCA or for a PCA. I want to
19 ask you about the line of questioning they also went
20 through on what if the company filed a general rate
21 case, but let me ask you this. Did the company
22 previously propose in its last general rate case a PCA
23 mechanism?

24 A. Yes, we did.

25 Q. Did the Staff oppose that mechanism?

00283

1 A. Yes.

2 Q. If the company had in effect since the date
3 of the last rate case a PCA essentially in the form as
4 then proposed by the company, do you believe that it
5 would have improved your standing with the banks and
6 credit agencies today?

7 A. It certainly would not have hurt, because I
8 think that the recovery mechanism would have been
9 defined in the beginning rather than being left to sort
10 of the unknown process we're in today.

11 MR. MEYER: That's all I have, thank you.

12 JUDGE MOSS: Anything on redirect?

13 All right.

14 MR. FFITCH: Your Honor, I do have a
15 question, if I may, one or two questions following up on
16 some interchange with the commissioners.

17

18 R E C R O S S - E X A M I N A T I O N

19 BY MR. FFITCH:

20 Q. Mr. Eliassen, has Avista sought to recover
21 any refunds in the Pacific Northwest refund proceeding
22 established by the FERC?

23 A. Avista Corporation, Utility, or Avista
24 Energy?

25 Q. Avista Corporation, Avista Energy, or Avista

00284

1 Utilities?

2 A. I would -- I'm not sure that I can -- I'm not
3 sure that we have asked to recover anything. We are
4 active participants in the proceedings.

5 Q. Okay, well, that's not my question.

6 A. Okay.

7 Q. My question is, in those proceedings
8 established to permit the presentation of refund claims
9 for Pacific Northwest utilities for excessive prices
10 paid in the wholesale electricity markets, has Avista
11 Corporation or Avista Utilities or Avista Energy sought
12 to recover any refunds on its own behalf or that of its
13 customers?

14 A. Since a lot of that activity is current and
15 ongoing, what I would like to do is refer that to
16 Mr. Norwood.

17 MR. FFITCH: Okay, thank you.

18 JUDGE MOSS: Is that all you had, Mr. ffitch?

19 MR. FFITCH: That's all I had.

20 JUDGE MOSS: All right. It would appear that
21 we are finished for the moment with Mr. Eliassen. We
22 appreciate your testimony and release you from the stand
23 subject to recall.

24 MR. MEYER: Thank you. Next witness?

25 JUDGE MOSS: Let's call the next witness and

00285

1 swear that witness, and then we will take our afternoon
2 recess.

3 MR. MEYER: Very well.

4 Mr. Ron Peterson.

5

6 (The following exhibits were identified in
7 conjunction with the testimony of RONALD R. PETERSON.)

8 Exhibit 200-T is Pre-filed direct testimony.
9 Exhibit 201 is RRP-1: Avista Corp Estimated Fixed Charge
10 Coverage Ratio. Exhibit 202 is ICNU Cross-Exam Exhibit:
11 Avista Response to WUTC Data Request No. 121. Exhibit
12 203 is ICNU Cross-Exam Exhibit: Avista Response to WUTC
13 Data Request No. 123. Exhibit 204 is ICNU Cross-Exam
14 Exhibit: Avista Response to WUTC Data Request No. 124.
15 Exhibit 205 is ICNU Cross-Exam Exhibit: Avista Response
16 to WUTC Data Request No. 104. Exhibit 206 is ICNU
17 Cross-Exam Exhibit: Avista Response to WUTC Data Request
18 No. 171. Exhibit 207 is Public Counsel Cross-Exam
19 Exhibit: Avista Response to Staff DR 123. Exhibit 208
20 is Public Counsel Cross-Exam Exhibit: Avista Response to
21 Staff DR 121 (excerpt). Exhibit 209 is Staff Cross-Exam
22 Exhibit: Avista Response to Staff Data Request No. 107.
23 Exhibit 210 is Staff Cross-Exam Exhibit: Avista Response
24 to Staff Data Request No. 121 (excerpt). Exhibit 211-C
25 is CONFIDENTIAL Public Counsel Cross-Exam Exhibit:

00286

1 Avista Response to Staff Data Request No. 180(C).

2

3 Whereupon,

4 RONALD R. PETERSON,

5 having been first duly sworn, was called as a witness

6 herein and was examined and testified as follows:

7

8 JUDGE MOSS: Thank you, and you may be seated

9 or retire from the witness stand if you wish, because I

10 think we will take our afternoon recess for 15 minutes.

11 (Recess taken.)

12 JUDGE MOSS: Mr. Meyer, the preliminaries, if

13 you please.

14

15 D I R E C T E X A M I N A T I O N

16 BY MR. MEYER:

17 Q. Mr. Peterson, have you prepared direct

18 testimony in this case?

19 A. Yes, I have.

20 Q. Has that been marked for identification as

21 Exhibit 200?

22 A. Yes.

23 Q. If I were to ask you the questions that

24 appear in that pre-filed direct, would your answers be

25 the same?

00287

1 A. Yes.

2 Q. Are you also sponsoring what has been marked
3 for identification as Exhibit 201?

4 A. Yes, I am.

5 Q. Is the information in that exhibit true and
6 correct?

7 A. Yes.

8 MR. MEYER: With that, I move the admission
9 of Exhibits 200 and 201.

10 JUDGE MOSS: Hearing no objection, they will
11 be admitted as marked.

12 MR. MEYER: And tender the witness for cross.

13 JUDGE MOSS: Mr. Trotter.

14 MR. TROTTER: Thank you.

15

16 C R O S S - E X A M I N A T I O N

17 BY MR. TROTTER:

18 Q. Good afternoon, Mr. Peterson.

19 A. Good afternoon.

20 Q. Would you refer to Exhibit 209, which is the
21 company's response to Staff Data Request 107.

22 A. I have that.

23 Q. And this shows according to Avista that
24 because power costs were deferred and not expensed as
25 they were incurred, Avista enjoyed earnings of 52 cents

00288

1 a share for the 12 months ending June 30, 2001, rather
2 than a loss of 92 cents a share?

3 A. That's correct.

4 Q. Turn to page six of your testimony, Exhibit
5 200, and on lines five through seven, you quote a letter
6 from a lender; is that correct?

7 A. Yes, that's correct.

8 Q. And it says in part:
9 Regulatory certainty regarding rate
10 increases and the full recovery of
11 electric and gas deferrals is an
12 absolute prerequisite to any financing.
13 Do you see that?

14 A. Yes, I do.

15 Q. So this lender is saying that Avista must get
16 100% recovery of all of its deferred power costs before
17 it will lend?

18 A. That's what was said in the letter, that's
19 correct.

20 Q. Do you believe that to be true?

21 A. I believe there would be some room for some
22 sort of a prudence review, and subject to that review,
23 if there were certain costs that were determined to be
24 imprudent that the banker would still be willing to
25 finance.

00289

1 Q. Regardless of the statement it makes here?

2 A. Yes.

3 Q. Have you discussed with this lender or any
4 lender what magnitude of non-recoverability they would
5 find acceptable in order to lend?

6 A. No, I have not.

7 Q. If Avista's proposal in this case is
8 accepted, the recoverability issue will not be resolved
9 until the end of the rate case Avista says it will file
10 in November of this year, correct?

11 A. Yes, assuming we don't have a second portion
12 of this proceeding.

13 Q. My question related to Avista under Avista's
14 proposal.

15 A. That's correct.

16 Q. Can Avista wait until that rate case is
17 resolved before it needs to finance?

18 A. No, it can not.

19 Q. When does Avista need to finance?

20 A. We need a continual source of financing as we
21 speak. I think as Mr. Eliassen and Mr. Ely have both
22 testified to, we have significant commitments for power
23 purchases that will occur during the third quarter, some
24 \$80 Million worth approximately.

25 Q. Under Avista's proposal --

00290

1 MR. MEYER: I'm sorry, I don't believe the
2 witness was finished.

3 A. Yeah, I was just going to say in the event
4 that we're not going to continue using the company's
5 line of credit, then some sort of financing needs to
6 occur in order to be able to pay for those deferrals.

7 Q. Under Avista's proposal, when does Avista
8 believe it will be in compliance with its financing
9 covenants on a going forward basis?

10 A. Our projections would show compliance by the
11 second quarter of 2002.

12 Q. But your testimony is that you will need to
13 finance before then?

14 A. That's correct.

15 Q. And if you can not finance because you are
16 not in compliance, excuse me, if you can not finance
17 because you are not in compliance with your covenant,
18 how do you propose to finance between now and the second
19 quarter of 2002?

20 A. As again Mr. Ely and Mr. Eliassen commented,
21 we're working very hard with our banks right now to get
22 them to work with us in waiving those particular
23 covenants, so that, in fact, we wouldn't be in default
24 under line of credit.

25 Q. So when I ask questions about when would you

00291

1 be in compliance with your covenants, you did not answer
2 with respect to how you -- those covenants as you expect
3 them to be if everything works out with your banks?

4 A. The covenants still exist regardless of
5 whether we get a waiver or not, so I guess if you --
6 technically speaking, we're going to be in violation of
7 the covenants through the second quarter or until the
8 second quarter of next year. What we're asking the
9 banks to do is to provide forbearance and work with us
10 so that we would be able to do other financing.

11 Q. I would like you to turn to Exhibit 210.

12 A. (Complies.)

13 MR. TROTTER: And for the record, Your Honor,
14 I believe this is, as noted on the exhibit itself, it is
15 excerpted, and I believe Exhibit 202, which is an ICNU
16 exhibit, is -- contains these pages and more.

17 JUDGE MOSS: Thank you, Mr. Trotter.

18 BY MR. TROTTER:

19 Q. Mr. Peterson, do you recognize Exhibit 210 as
20 an excerpt from your response to Staff Data Request 121?

21 A. Yes, I don't have that particular exhibit in
22 front of me, but I do have the response to the data
23 request here.

24 MR. MEYER: May I approach the witness?

25 JUDGE MOSS: Yes, you may.

00292

1 THE WITNESS: Thank you.

2 BY MR. TROTTER:

3 Q. Now the first two pages of Exhibit 210 is
4 your narrative response just identifying certain
5 covenants that exist in the formulas, correct?

6 A. Yes.

7 Q. On page two of the exhibit, it refers to the
8 fixed charge coverage ratio, which is the ratio of
9 consolidated cash flow to consolidated fixed charges,
10 correct?

11 A. Yes.

12 Q. And then if you could turn to the last two
13 pages of the exhibit, which are identified as six and
14 seven in the upper right-hand corner, these two pages
15 contain the definition of consolidated cash flow; is
16 that right?

17 A. Right.

18 Q. And looking at that definition, would it be
19 correct that the definition is consolidated net income
20 of Avista or the borrower and its consolidated
21 subsidiaries as applicable plus other items?

22 A. Yes.

23 Q. Who is the borrower?

24 A. Avista Corporation.

25 Q. I discussed with Mr. Ely the fact that Avista

00293

1 Energy financial results are not considered in
2 determining compliance with financial covenants. Is
3 your understanding the same as his?

4 A. Yes, that's correct.

5 Q. So where this says the borrower and its
6 consolidated subsidiaries as applicable, we should
7 interpret that to mean Avista Corporation and its
8 subsidiaries other than Avista Energy?

9 A. Yes. If you read the rest of that sentence,
10 in the parens you will note it says, excluding earnings
11 from any subsidiaries which have contractual
12 restrictions on distributions.

13 Q. Okay.

14 A. That would be Avista Energy.

15 Q. Okay. And then it says, so we use
16 consolidated net income plus, without duplication,
17 certain items which are listed as A through G; is that
18 right?

19 A. Yes.

20 Q. And what does without duplication mean?

21 A. Generally speaking, I believe they mean to
22 not count an item more than once.

23 Q. Okay. So let's apply this consolidated cash
24 flow definition to the company's proposal, which is that
25 the surcharge be used to provide the company cash plus

00294

1 amortizing deferrals immediately, okay?

2 A. Yes, I follow.

3 Q. And so they could be -- those dollars then
4 could be used in the calculation under G, cash on the
5 balance sheet?

6 A. Assuming you retained the cash on the balance
7 sheet, yes.

8 Q. And E, any decrease in electric deferrals; is
9 that correct?

10 A. Yes.

11 Q. And would it also increase amortization
12 expense under C?

13 A. No, I believe that's related to plant in
14 service, that kind of depreciation and amortization.

15 Q. So would the dollars then be qualified for
16 inclusion in consolidated cash flow under either E or G?

17 A. Yes.

18 Q. But it could only do it once, one of them?

19 A. The item G says any cash that's on the
20 balance sheet, and receiving a surcharge and receiving
21 those revenues, that cash would not remain on the
22 balance sheet. It would most likely be used to pay down
23 the short term debt that's outstanding. So you would
24 receive a benefit from paying down your short term debt
25 and then also be able to include the actual amortization

00295

1 of the deferral or the reduction in the deferral in the
2 calculation of your cash available to pay interest.

3 Q. So when item G says, all cash on the balance
4 sheet as of the last day of such period (net of all
5 outstanding loans) you're talking about cash left over
6 after paying debt?

7 A. That's right.

8 Q. Does loans mean anything other than debt
9 issuances?

10 A. I think in this context, it was intended to
11 mean loans under this facility.

12 Q. Item F is other non-cash items reducing such
13 consolidated net income. Would this include specific
14 accounting entries that are not cash transactions but
15 that do reduce net income?

16 A. Yes.

17 Q. And how do you define cash on the balance
18 sheet, what qualifies?

19 A. That would be cash in the general account
20 that's unrestricted that could be used for any corporate
21 purpose.

22 Q. Is cash on the balance sheet a defined term
23 in this agreement?

24 A. I am not aware of a definition here, but I
25 think that's a pretty common understanding.

00296

1 Q. And what do you mean by restricted?

2 A. For instance, if you had cash that were
3 somehow collected and set aside in a special account or
4 specified for use for a particular purpose, I don't
5 believe that we can include that in this calculation.

6 Q. Now the increase in revenue the company is
7 requesting in this hearing is to be used for a specific
8 purpose, is it not, to pay down the deferrals?

9 A. Right, but that's specifically included under
10 the calculation of the covenant here.

11 Q. Now the company is also pledging that any
12 revenue it gets will be subject to refund; is that
13 correct?

14 A. Yes.

15 Q. Is that a restriction?

16 A. No.

17 Q. Why not?

18 A. I think as, again, previous witnesses have
19 testified, the lending community, our bankers, have some
20 comfort in knowing that as you look at the amount of
21 dollars that we have spent for power, that the belief is
22 most of that has been prudently incurred. Therefore,
23 collections that we would receive at least in the near
24 term are not likely to be items that would have to be
25 refunded immediately. I think Mr. Ely went through that

00297

1 a number of times in explaining how much of the
2 deferrals would actually have to be disallowed before
3 this would become a concern.

4 Q. So it's not restricted because you and your
5 lenders presume that these deferrals have been prudently
6 incurred?

7 A. Yes.

8 Q. And what if I told you that there was to be
9 no presumption as to whether these deferrals were
10 prudently incurred, would that constitute a restriction
11 then if it was to be held subject to refund, not held
12 subject to refund, but received subject to refund?

13 A. In terms of some sort of an order; is that
14 what you're asking me?

15 Q. I'm just asking you to accept that that's the
16 situation.

17 A. Again, I don't think that's going to change
18 the perception that the dollars have been prudently
19 spent and that ultimately most of them will be ruled
20 upon as recoverable.

21 Q. Well, you told me a moment ago that they were
22 not restricted because there was a presumption of
23 prudence, and now you're telling me that they're
24 unrestricted whether there's a presumption of prudence
25 or not. So can you clarify what your answer is?

00298

1 A. Yeah, I think to just step back, from a
2 banker's perspective, what they're looking for is a
3 signal from this Commission that they're going to be
4 responsive to the company's need to recover these
5 excessive power costs that have been incurred over the
6 last year or so. And once they have that signal, then
7 the ultimate prudence, which will still be up in the air
8 and these will still be subject to refund, becomes a
9 separate issue.

10 Q. Mr. Peterson, I'm not looking for an
11 indication or a signal. I'm looking for what
12 constitutes cash on the balance sheet for purposes of
13 your financing.

14 A. Yeah, I think the coverage test is very
15 specific. It says to the extent you reduce the
16 deferrals that you can include that cash in calculation
17 of the coverage ratio.

18 Q. And it also says you can include all cash on
19 the balance sheet?

20 A. That's correct.

21 Q. Okay. And you indicated that that doesn't
22 mean cash that may come with a restriction?

23 A. Correct.

24 Q. Okay. That language is not used in item G on
25 page six of Exhibit 210, so I'm asking you where that

00299

1 language comes from?

2 A. Regarding the restriction?

3 Q. Yes.

4 A. That's my interpretation.

5 MR. TROTTER: That's all I have at this time,
6 thank you.

7 JUDGE MOSS: Do you want to move your
8 exhibits?

9 MR. TROTTER: Yes, I will move for admission
10 of Exhibits 209 and 210.

11 JUDGE MOSS: Hearing no objection, those two
12 will be admitted as marked.

13 MR. VAN CLEVE: Your Honor, we also intend to
14 offer Exhibit 202, which is the same response to the
15 data request, but it's the entire response instead of
16 the excerpts, and I don't know if you prefer to have
17 both exhibits in the record.

18 JUDGE MOSS: I decided to do it that way.

19 MR. VAN CLEVE: Okay.

20 JUDGE MOSS: Go ahead.

21

22 C R O S S - E X A M I N A T I O N

23 BY MR. VAN CLEVE:

24 Q. Can you explain what the interest rate is on
25 the revolving credit facility?

00300

1 A. The interest rate varies depending on the
2 company's credit rating. It's based on a floating rate.
3 Usually it's a prime rate or a LIBOR. We typically use
4 LIBOR borrowings. The spread at our current credit
5 rating is 150 basis points. On top of that, we pay a
6 commitment fee of 40 basis points based on our current
7 credit rating. So if you were to add that to the
8 current LIBOR rate, you would probably come up with a
9 rate of 5 1/2% or 6%. I don't know what it is exactly
10 today.

11 JUDGE MOSS: LIBOR is an acronym?

12 THE WITNESS: Yes, London Interbank offering
13 rate.

14 JUDGE MOSS: Thank you.

15 MR. VAN CLEVE:

16 Q. Was the, sorry, did the company have a
17 similar revolving credit facility in place prior to May?

18 A. Yes, we did. It was different in terms of
19 the covenants, but we had a similar revolving credit
20 agreement.

21 Q. Was the interest rate calculated in the same
22 manner?

23 A. Yes, it was. The spreads were different.

24 Again, our credit rating was different back then.

25 Q. Do you know what the spreads were at the time

00301

1 that the deferral started last summer?

2 A. I don't recall. I could find that
3 information for you though.

4 Q. Were they less than the spreads that --

5 A. Yes.

6 Q. -- are currently in effect?

7 A. Yes, they would be less.

8 Q. Has the company used the revolving credit
9 facility to fund the deferred power cost?

10 A. We have used the revolving credit facility to
11 fund all of our cash needs, not just the deferred power
12 costs. That's one of the things. Just like we use any
13 other source of capital to fund costs. We can't
14 identify a specific funding source for a specific cash
15 outlay.

16 Q. Could you refer to Exhibit 201, which is your
17 Exhibit RRP-1.

18 A. I have that.

19 Q. I would like you to refer to columns E and F.

20 A. On page one?

21 Q. Right, on page one. It says at the top of
22 those columns, with financings and without surcharge.

23 A. Right.

24 Q. Can you explain what with financings means?

25 A. As we were discussing, in our covenant

00302

1 calculation, we can include cash on the balance sheet in
2 that calculation. The columns E and F were done
3 assuming that we would be able to have cash available
4 from external financings, which is no longer the case.
5 So those columns really aren't meaningful at this point.
6 They were supplied as I guess a data point for people to
7 compare if we could do financings where the coverage
8 ratios would be.

9 Q. And what amount of financings were assumed in
10 columns E and F?

11 A. I need to double check on the numbers, but we
12 did have common stock sale assumed I believe for \$67
13 Million subject to check and also some financing done
14 for Coyote Springs, and I don't recall the exact dollar
15 amount we had at the time of this spreadsheet, when we
16 calculated this spreadsheet.

17 Q. Can you explain what column B represents?

18 A. Which column?

19 Q. Column B.

20 A. B, yes, that's the required coverage ratio
21 included in the financial covenant under the line of
22 credit.

23 Q. Could you refer to Exhibit 202, please.

24 A. I have that.

25 Q. And if you look at the second page of that

00303

1 exhibit.

2 A. Yes.

3 Q. It's numbered page two in the upper
4 right-hand corner. Can you explain, are the coverage
5 ratios that are in page one of Exhibit 201 the same ones
6 that are referred to on page two of Exhibit 202?

7 A. Yes, I'm not finding that page number on my
8 exhibit that I have here, so I'm not able to answer your
9 question until I can find the reference.

10 Q. It's the second page of the data response,
11 Number 121.

12 MR. MEYER: May I approach the witness again?

13 JUDGE MOSS: Yes.

14 THE WITNESS: I think I have it, it just
15 doesn't have a page number on the top of it.

16 MR. MEYER: That's right.

17 A. Yes, I have it.

18 BY MR. VAN CLEVE:

19 Q. Okay, what I'm trying to do is compare the
20 coverage ratios listed on this page with the coverage
21 ratios listed in Exhibit 201, which we were just talking
22 about.

23 A. Yes, they're the same.

24 Q. Well, I guess the question I have is, for
25 instance, on the data request for the quarter ending

00304

1 3-31-2002, it says that there's a coverage ratio of
2 1.25, but it seems to indicate for the same period in
3 the exhibit to your testimony that it's a coverage ratio
4 of 1.5.

5 A. Right, and my exhibit is correct, I believe.
6 I think the 1.25 on page two that you're referring to is
7 incorrect.

8 Q. Okay. And on your exhibit, can you explain
9 where the coverage ratios that are larger for June 2002,
10 September 2002, and December 2002, where those come
11 from?

12 A. On page one of my exhibit?

13 Q. Right.

14 A. Those were numbers that were discussed with
15 our banks as we were renewing the credit facility. The
16 facility, however, expires next May, so those numbers
17 actually are not relevant until we actually renew the
18 facility.

19 Q. Now returning back to Exhibit 201, if you
20 look at the second page of that exhibit, which says debt
21 equity ratio in the bottom right-hand corner, would you
22 agree that this exhibit shows that without the
23 surcharge, the debt --

24 MR. MEYER: Excuse me, I'm sorry to
25 interrupt, I want to make sure you're on the right page.

00305

1 Are you on page two of your Exhibit 201?

2 THE WITNESS: I'm on page two of my exhibit,
3 which I think is what you were referring to.

4 MR. MEYER: Is that where you're at?

5 MR. VAN CLEVE: That's correct.

6 MR. MEYER: Okay, great.

7 BY MR. VAN CLEVE:

8 Q. And the question is whether this exhibit
9 shows that without the surcharge, the debt equity ratio
10 covenant would still be met?

11 A. Yes, but just barely.

12 Q. And the far right-hand column, it says \$220
13 Million?

14 A. Yes.

15 Q. This indicates that the company needs to
16 issue \$220 Million in equity to reach its goal of a 50%
17 debt equity ratio; is that correct?

18 A. No, what it does indicate is that we need to
19 grow the equity of the company by \$220 Million. That
20 can come from earnings that are reinvested in the
21 business or from issuing new common stock.

22 Q. Does the company have a goal of having a 50%
23 debt equity ratio?

24 A. Yes, that's our target.

25 Q. Could you refer to Exhibit 154.

00306

1 A. I believe that was one of Mr. Eliassen's,
2 which I don't think I have a copy of.

3 JUDGE MOSS: This was previously marked as
4 154-C, a confidential exhibit. It was not offered.

5 MR. VAN CLEVE: Your Honor, I think that this
6 exhibit was mismarked was the problem. If you will
7 note, it's a data response for which Mr. Peterson is
8 identified as the witness.

9 JUDGE MOSS: So it should be identified to
10 him?

11 MR. VAN CLEVE: Yes, it should be.

12 JUDGE MOSS: All right, we will give it a new
13 exhibit number then to keep our record straight, we will
14 mark it as Exhibit 212-C.

15 Or let me just pause there and ask if this,
16 Mr. Meyer, is this response provided by the company and
17 marked as confidential, do we need to maintain it as
18 confidential, or can we waive that for purposes of our
19 record?

20 MR. MEYER: No, we still do need to retain
21 it.

22 JUDGE MOSS: All right. Mr. Van Cleve, I
23 will ask you to be cautious in asking your questions if
24 you need to refer to the data specifically, that is to
25 say by stating a number or other data from this exhibit

00307

1 that might be confidential, you will need to alert us to
2 that. If you can simply refer to it by its location, we
3 can all look at it without having to clear the room. So
4 you have been through this drill before.

5 MR. VAN CLEVE: Actually, I'm just going to
6 have it identified for admission.

7 JUDGE MOSS: All right, even better.

8 BY MR. VAN CLEVE:

9 Q. Is Exhibit 212-C an Avista response to WUTC
10 Data Request 122?

11 A. 122-C, not 212-C?

12 JUDGE MOSS: It's 212. I have remarked it as
13 212-C.

14 Q. All right, but the data request number is
15 122?

16 A. You're asking me?

17 JUDGE MOSS: He's just wanting you to confirm
18 if it's the company response to --

19 A. Yes, it is.

20 Q. And are you identified as the witness
21 responsible?

22 A. Yes, I am.

23 Q. Thank you.

24 Could you refer to Exhibit 202, what's been
25 marked as Exhibit 202.

00308

1 A. I have that.

2 Q. Is this also the company's response to WUTC
3 Data Request Number 121 for which you were identified as
4 the witness?

5 A. Yes.

6 Q. And I just wanted to confirm something I
7 think you said earlier. On the next page of that data
8 response where it's defining consolidated net income in
9 the fixed charge coverage ratio, it excludes earnings
10 from any subsidiaries which have prohibitions on
11 distributions, and you stated that Avista Energy is the
12 only subsidiary that has such a prohibition?

13 A. Right, and that only applies to the Avista
14 Corporation calculation. You see there's two columns,
15 one for Avista Utilities and one for Avista Corporation.

16 Q. Thank you.

17 Could you refer to what's marked as Exhibit
18 203.

19 A. Yes, I have that.

20 Q. Is this the company's response to Staff Data
21 Request 123 for which you are identified as the witness?

22 A. Yes.

23 Q. Would you refer to what's marked as Exhibit
24 204.

25 JUDGE MOSS: Mr. Van Cleve, let me just stop

00309

1 you. Are you just going to walk through these and have
2 the witness identify them? Do you have questions on
3 them?
4 MR. VAN CLEVE: I don't on 204. I do on 205.
5 JUDGE MOSS: 203 and 204, Mr. Meyer, the
6 company has had a chance to review them, any objection?
7 MR. MEYER: No.
8 JUDGE MOSS: You are going to offer them,
9 aren't you, Mr. Van Cleve?
10 MR. VAN CLEVE: Yes, I am.
11 JUDGE MOSS: They will be admitted as marked.
12 202 I'm going to include.
13 MR. VAN CLEVE: And 212-C.
14 JUDGE MOSS: Any objection on 212?
15 MR. MEYER: No.
16 JUDGE MOSS: It will be admitted also.
17 BY MR. VAN CLEVE:
18 Q. Referring to Exhibit 205.
19 MR. MEYER: Just a moment, do you have that
20 in front of you?
21 A. Yes, I have that.
22 Q. Can you refer to the letter from PNP Pairboss
23 that's attached?
24 A. Yes.
25 Q. And does this letter identify options for the

00310

1 financing of the Coyote Springs II project?

2 A. It entertains the discussions for further
3 financing options. It doesn't spell out anything
4 specifically.

5 Q. And does it suggest the possible sale of an
6 equity share in that project?

7 A. Yes, it does. The condition still remains,
8 if you read the middle of the paragraph, that the
9 recovery of surcharges was a definite requirement for
10 any financing going forward.

11 Q. But it doesn't say that that's a prerequisite
12 for the sale of an equity interest, does it?

13 A. No.

14 Q. Have you calculated what the impact of the
15 sale of an equity interest in Coyote Springs II would be
16 on the fixed charge coverage ratios?

17 A. We haven't done that specifically, although I
18 think it would be very similar to the financing
19 assumption that we included in the exhibit, my exhibit
20 we were just talking about. If you recall, we had the
21 with financing columns, and that did assume that we were
22 successful in receiving some funds for Coyote Springs
23 II, which could be included in the coverage calculation.
24 That cash would be no different than cash that we might
25 receive from an equity partner.

00311

1 Q. But doesn't a sale of an equity share reduce
2 the amount of debt that you have to issue also?

3 A. Yes, it would.

4 Q. So there is -- if you sell -- let's say you
5 sold all of the equity interest in Coyote Springs II,
6 that would have the benefit of reducing the amount of
7 debt that you needed to finance, and it would provide
8 cash; is that correct?

9 A. Yes.

10 Q. Have you analyzed what the impact on any of
11 your financial covenants would be of selling all of your
12 interest in Coyote Springs II?

13 A. We could sell our entire interest in Coyote
14 Springs II and still not meet the financial covenants.

15 Q. My question was whether you had analyzed the
16 impact of the sale on the financial covenants.

17 A. The actual covenant number itself, I don't
18 have that, no.

19 Q. Well, can you tell me what kind of analysis
20 you have performed on the impacts on the financial
21 covenants of the sale of Coyote Springs II?

22 A. The analysis has been more related to the
23 overall cash needs of the company for the second half of
24 this year, comparing that to our available sources of
25 funds. If you assume that we can't issue common stock

00312

1 and we have to rely on our corporate revolving line of
2 credit, even selling all of Coyote Springs would not get
3 us to a position where we did not have to use the line
4 of credit, and we would still not be able to meet all
5 the covenants under that scenario.

6 Again, if you recall the exhibit, my exhibit
7 shows that we meet the covenants if we can complete
8 financings. The important thing to note here is that
9 the whole process of getting to where we need to be
10 begins with a surcharge to recover our deferrals.
11 Absent that surcharge, we can not complete any
12 financing, whether it be selling common stock, financing
13 a portion of Coyote, or financing any other part of the
14 business.

15 MR. VAN CLEVE: Your Honor, I would like to
16 offer Exhibits 205 and 206.

17 JUDGE MOSS: Hearing no objection, they will
18 be admitted as marked.

19 MR. VAN CLEVE: That's all the questions that
20 I have.

21 JUDGE MOSS: And before we go on, let's see,
22 I guess those are Public Counsel exhibits, aren't they,
23 all right.

24 Mr. ffitch.

25 MR. FFITCH: Thank you, Your Honor.

00313

1

2

C R O S S - E X A M I N A T I O N

3

BY MR. FFITCH:

4

Q. Good afternoon, Mr. Peterson.

5

A. Good afternoon.

6

Q. Could I ask you to please take up Exhibit 211-C that's been marked for identification as one of our cross exhibits. It should be yellow. Do you have that?

10

A. I don't, and I apologize for my confusion on the numbering of exhibits.

11

12

Q. It's a response to a data request from Staff, Number 180.

13

14

A. Okay, I do have that.

15

16

Q. Okay. And as I understand it, this contains the May 1st, 2001, estimate of the company's projected net income, interest, and fixed charge ratios, and I will remind you this is a confidential exhibit. I'm going to try to avoid asking you any specific numbers that are confidential in here.

17

18

19

20

21

A. Yes.

22

23

Q. I'm not asking to have the room closed or anything, so I'm just reminding you that it's confidential.

24

25

A. I understand. This was the projected

00314

1 covenants as of May 1.

2 Q. And then this is to be compared with a July
3 estimate, which is contained in your Exhibit RRP-1,
4 which has already been referred to, that's Exhibit 201,
5 and it's the only exhibit to your pre-filed direct.

6 A. Yes.

7 Q. And specifically page one of that exhibit,
8 Exhibit 201, contains the July estimate, correct?

9 A. Yes, it does.

10 Q. Now I want to ask you about the July estimate
11 in Exhibit 201. What assumption is built into the July
12 estimate with respect to a Commission determination in
13 this proceeding and/or the prudence review proceeding in
14 the general rate case which the company has indicated
15 will be filed?

16 A. In my exhibit or the page one of 180-C?

17 Q. Well, both if you can answer both.

18 A. Okay. The calculations from May were based
19 on the settlement that we had agreed to and received the
20 order from the Commission on. In that case, full
21 recovery of the deferrals would have occurred sometime
22 in early 2003 based on the forward market prices for
23 power and the forward estimates of our hydroelectric
24 availability. Both of those changed substantially from
25 that point in time.

00315

1 Q. And that May estimate assumed no rate
2 increase, correct?

3 A. That's correct. Again, it was based on the
4 settlement.

5 Q. Now can you continue your answer with respect
6 to the July estimate?

7 A. Yeah, the July exhibit shows three different
8 sets of calculations. First, without any financing to
9 being completed and without a surcharge. And as you can
10 see, in most of the periods, we will not meet the
11 financial covenants. In order to address that
12 situation, we put together another set of forecasts that
13 assumed, one, a surcharge was granted in the amount that
14 we requested in this case, and that because of that, we
15 were then able to complete financings, selling common
16 stock, financing a portion of Coyote, and that would
17 give you the coverages on the far right that shows that
18 we would be complying in all instances.

19 The other thing that I would like to point
20 out is there has been continued deterioration since this
21 exhibit was filed, and even now as we would project this
22 in some of the scenarios where we do receive a surcharge
23 and do get some financing done, we're still not in
24 compliance with some of the covenants.

25 Q. Now I may not have -- perhaps you answered

00316

1 this, but you have sort of projected some alternative
2 assumptions here in this exhibit, without financing,
3 without surcharge, or with financing, without surcharge.
4 Part of my question I'm not sure you have answered yet
5 is what assumption is built in with regard to prudence
6 review, what assumption is built in with regard to
7 general rate treatment?

8 A. The only assumption that was built in here is
9 that there was a full recovery of the deferrals as we
10 requested in our filing, no reduction for prudence
11 review, that rate increase being effective October 1 of
12 this year.

13 Q. Which rate increase are you referring to?

14 A. The surcharge.

15 Q. And so there is no assumption with regard to
16 any other rate increase that might result from a general
17 rate case?

18 A. No.

19 Q. I'm going to ask you to turn to Exhibit 208,
20 which is the response to Exhibit 121, Data Request
21 Number 121.

22 JUDGE MOSS: Let me just interject here, I
23 think duplicates I can deal with, but triplicates are
24 getting out of hand. This is Staff Data Request 121.
25 The full response to Staff Data Request 121 is already

00317

1 admitted as Exhibit 202 for this same witness.
2 MR. FFITCH: That's correct, Your Honor.
3 JUDGE MOSS: So let's refer to that.
4 MR. FFITCH: Okay.
5 BY MR. FFITCH:
6 Q. Do you have that --
7 A. I have that.
8 Q. -- full response?
9 A. Yes.
10 MR. FFITCH: I was going for a record here,
11 Your Honor.
12 JUDGE MOSS: You're not even close.
13 MR. FFITCH: I thought I was off the hook
14 when you told Mr. Van Cleve you were doing it on
15 purpose, but I guess not. I would just suggest this
16 indicates it's an extremely important exhibit, Your
17 Honor.
18 JUDGE MOSS: Quit wasting time, Mr. ffitch.
19 BY MR. FFITCH:
20 Q. Moving on to page 60 of the portion of that
21 exhibit which is the credit agreement with Toronto
22 Dominion Bank.
23 A. I have that.
24 Q. Actually, that's Section 6.03 specifically
25 regarding disposition of assets.

00318

1 A. Yes.

2 Q. And essentially that states that the company
3 can sell 10% of assets and remain within its covenants,
4 correct?

5 A. Yes, it does.

6 Q. Does that 10% refer to the total assets of
7 \$12.5 Billion shown as total assets on the company
8 balance sheet or to some other measure of assets?

9 A. No, it refers to the balance sheet as you
10 stated.

11 Q. So it would be 10% of \$12.5 Billion that
12 could be sold and be still in compliance with the
13 covenants?

14 A. That's correct.

15 MR. FFITCH: Those are all the questions I
16 have, Your Honor, and I would like to offer Exhibits 207
17 and 208, and pardon me, just to make sure I've got it
18 here.

19 JUDGE MOSS: 211-C?

20 MR. FFITCH: I'm sorry, 208 is the one that
21 you had asked not to be offered.

22 JUDGE MOSS: Right, you're not going to offer
23 that one.

24 MR. FFITCH: So it would 207 and 211-C.

25 JUDGE MOSS: Any objections?

00319

1 MR. MEYER: None.

2 JUDGE MOSS: Hearing no objections, those two
3 will be admitted as marked, and we will not receive 208
4 for the reason indicated.

5 The record probably should reflect that my
6 comment to Mr. ffitch a moment ago was in humor, which
7 was responded to, but I wouldn't want the record to
8 appear otherwise.

9 MR. FFITCH: No further questions.

10 JUDGE MOSS: Thank you, Mr. ffitch.

11 Any questions from the Bench for this
12 witness?

13

14 E X A M I N A T I O N

15 BY CHAIRWOMAN SHOWALTER:

16 Q. I had just one clarifying question, and that
17 is about our presumption and your presumption. I
18 understood your answer to Mr. Trotter to be that even
19 though if this Commission issued an order, it would --
20 it has been and would be with the express statement that
21 there is no presumption about recoverability, that the
22 company and its banks would make their own presumption
23 or their own judgment, and in essence in their judgment
24 believe that they, the company, would largely recover in
25 the ultimate proceeding where we determine

00320

1 recoverability. Is that correct?

2 A. Yes, I think so. And the bankers would look
3 to a number of things. They look to past Commission
4 actions, treatment in gas trackers, previous cases where
5 costs were debated, and they would use that to assess
6 the risk and then apply their judgment to what would be
7 likely to be recovered.

8 Q. So that an order from us with an express lack
9 of presumption on recoverability combined with the
10 amounts that you have requested would be sufficient for
11 the banks to forbear and then perhaps be sufficient for
12 other financing; is that correct?

13 A. I believe so.

14 Q. All right. But then on the other hand, what
15 I hear you saying is that if this Commission retreats
16 from the deferral mechanism in the eyes of the banks
17 that they will then take that as a signal that not a
18 neutrality on our part but of a negativity toward
19 recovery; is that what you're saying?

20 A. Yeah, it certainly increases the risk from
21 their perspective, because now there is no deferral in
22 place. Under that circumstance, all the expenses that
23 we incur for power would be charged to expense on an
24 ongoing basis, and the recovery possibility then becomes
25 much less likely, because it's not set aside to be

00321

1 considered in some future proceeding.

2 CHAIRWOMAN SHOWALTER: Thank you.

3 JUDGE MOSS: Redirect?

4 MR. MEYER: Yes.

5

6 R E D I R E C T E X A M I N A T I O N

7 BY MR. MEYER:

8 Q. Let's revisit briefly a question of covenants
9 and the impact of the Staff's proposed accounting as
10 compared with the company's proposed accounting. Again,
11 with regard to how any surcharge revenues would be
12 booked under the Staff proposals, would you briefly
13 summarize that; what do they propose?

14 A. The Staff has proposed that whatever we
15 collect would be set aside on the balance sheet as a
16 liability, clearly identified as subject to refund, and
17 does nothing to actually reduce the surcharge or the,
18 excuse me, the deferral balances. The company's
19 proposal as we have outlined it would actually serve to
20 reduce the deferred balances and therefore could be
21 included in the coverage calculations. The Staff's
22 proposal, I don't believe, we could include in the
23 coverage calculations.

24 Q. So are you saying then that Staff's
25 calculation, that is to say their manner of booking

00322

1 surcharge revenues, would or would not prevent the
2 company from ever meeting its covenants?

3 A. If that were the only treatment we ever
4 received, there would be no likelihood that we could
5 make the covenants, because those revenues would never
6 be used to reduce the deferrals.

7 Q. So therefore, Mr. Peterson, why is a dollar
8 of cash to offset deferral balances more helpful than a
9 dollar of cash on the balance sheet?

10 A. Both will benefit us. Clearly getting cash
11 in the door gives us some benefit in that we can pay
12 down our short-term debt, and that has some impact on
13 the coverage calculation. But without the ability to
14 actually reduce the deferrals, include that cash in our
15 net earnings that we have for this calculation, you
16 don't get the benefit in your coverage of actually
17 recovering a cost and reducing the deferrals.

18 Q. Very good. ICNU asked about the prospects
19 for, I think the way it was phrased, growing equity or
20 essentially financing via equity means with and without
21 a surcharge. Can the company "grow" its equity without
22 a surcharge as it proposes?

23 A. No, not in the near term.

24 Q. Can the company "grow" its debt through debt
25 financing without a surcharge as it proposes?

00323

1 A. We can, but there are limits. Clearly the
2 debt leverage test and the bank covenants, 60% is the
3 maximum amount of debt that we can have, and we will be
4 approaching that by the end of this year.

5 Q. Given our debt to equity ratios, can the
6 company restore itself to a 50/50 debt equity ratio
7 without the surcharge as proposed by the company?

8 A. The surcharge really is the key to being able
9 to do all of these things. Without recovery of the
10 surcharge, if we look at the option, we've got nearly
11 \$200 Million I think in the state of Washington by the
12 end of this year. The option is to not recover that,
13 and you write that off at that point in time. If we do
14 that, we blow through the test on the leverage ratio, we
15 would be well above 60%. The ability to get any
16 financing done would be impossible, because there is no
17 cash flow to support repaying the debt. If somebody is
18 going to lend you money, they want to see that you have
19 the ability to pay the interest and the principal. And
20 a key part of that is the ability to recover costs that
21 we have incurred to serve our customers needs. If we
22 can't recover those costs, there's no way to pay the
23 people that loan you money.

24 MR. MEYER: That's all I have, thank you.

25 MR. TROTTER: I have a couple of questions,

00324

1 Your Honor.

2 JUDGE MOSS: Go ahead, Mr. Trotter.

3

4 R E C R O S S - E X A M I N A T I O N

5 BY MR. TROTTER:

6 Q. Mr. Peterson, you referred to bankers looking
7 at past Commission actions including gas trackers; do
8 you recall that?

9 A. Yes, I do.

10 Q. Do you consider the Commission's accounting
11 orders permitting Avista to defer power costs to be the
12 equivalent of a gas tracker?

13 A. No.

14 Q. Do you think it would be wise for a banker to
15 consider that?

16 A. I think the context of my remark was that
17 they would look at that as an indication of Commission
18 support in how they treat deferred costs, whether it be
19 gas or ice storms or whatever those deferred costs might
20 be.

21 Q. You didn't mention past Commission actions
22 with respect to PCAs; was that intentional or
23 unintentional?

24 A. That was unintentional.

25 Q. So bankers would be wise to look at past

00325

1 Commission actions with respect to PCAs?

2 A. Sure.

3 Q. Staff's recommendation is that any revenue
4 received by Avista on a surcharge basis be subject to
5 refund; is that correct?

6 A. Yes, and the company, that was our
7 recommendation as well.

8 Q. And the difference then is that Staff is
9 recommending that the revenues not be booked against
10 deferrals until the conditions that the Commission has
11 set forth in its orders have been met?

12 A. That's correct.

13 Q. And the company is not recommending that?

14 A. We do not believe that would be a benefit to
15 meeting our coverages.

16 Q. And that --

17 A. And would not send a good signal to the
18 financial community.

19 Q. And the former about meeting your coverages
20 depends upon how cash on the balance sheet is defined;
21 is that correct?

22 A. In part, yes.

23 MR. TROTTER: That's all I have.

24 JUDGE MOSS: All right, that would appear to
25 complete our questioning of Mr. Peterson at this time,

00326

1 so you may step down subject to recall. Thank you very
2 much for your testimony.

3 Since we have previously arranged that we
4 would have Mr. Thornton at 4:15, that leaves us only 25
5 minutes, which does not strike me as adequate time for
6 Mr. Norwood. So I wonder if it would make more sense to
7 put Mr. Thornton on now. Can we do that? All right,
8 then let's call Mr. Thornton to the stand.

9

10 (The following exhibits were identified in
11 conjunction with the testimony of JOHN S. THORNTON,
12 JR..)

13 Exhibit 601-T is Pre-filed Direct Testimony.
14 Exhibit 602 is JST-2 Witness Qualification Statement.
15 Exhibit 603 is JST-3 Press Release on Avista's August
16 10, 2001 Dividend Declaration. Exhibit 604 is JST-4
17 Response to Staff Data Request No. 154.

18

19 Whereupon,

20

21 JOHN S. THORNTON, JR.,
22 having been first duly sworn, was called as a witness
23 herein and was examined and testified as follows:

23

24 JUDGE MOSS: Please be seated.

25 Let's go ahead, Mr. ffitich.

00327

1

2

D I R E C T E X A M I N A T I O N

3

BY MR. FFITCH:

4

Q. Good afternoon, Mr. Thornton.

5

A. Good afternoon.

6

Q. Do you have before you testimony and exhibits
7 that have been marked for identification as Exhibits 601
8 through 604?

9

A. I believe so. I have my testimony and my
10 exhibits. I haven't marked on here the exhibit numbers.

11

Q. Right, the pre-filed direct is 601, the
12 witness qualification JST-2 is 602, JST-3 press release
13 is 603, and the response to Staff Data Request Number
14 154 is 604.

15

A. Yes, I do have those.

16

Q. And were those testimony and exhibits
17 prepared by you or under your direction?

18

A. Yes, they were.

19

Q. And if I were to ask you the questions that
20 are set forth in your testimony, would your answers
21 today be the same as is set forth in the written
22 testimony?

23

A. Yes, they would.

24

Q. Do you have any changes or corrections to the
25 testimony at this time?

00328

1 A. No, I don't.

2 MR. FFITCH: Your Honor, I would offer
3 Exhibits 601 through 604.

4 JUDGE MOSS: There being no objection, they
5 will be admitted as marked.

6 MR. FFITCH: Mr. Thornton is available for
7 cross-examination.

8 JUDGE MOSS: Mr. Meyer.
9

10 C R O S S - E X A M I N A T I O N

11 BY MR. MEYER:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. Would you turn to your pre-filed direct,
15 Exhibit 601, and I would direct your attention to page
16 14 of that testimony.

17 A. I have it.

18 Q. Is it your testimony, Mr. Thornton, that the
19 Commission could grant as an option a level of interim
20 rate relief that would target some fixed charge ratio,
21 or I should say target the same fixed charge ratio the
22 company used to demonstrate its financial distress?

23 A. Yes, I believe so.

24 Q. Okay. And did you testify also in that
25 exhibit at page 14 that the Commission, beginning at

00329

1 line 18 I might note:
2 That the Commission might consider a
3 lesser surcharge that is expected to
4 result in meeting the minimum required
5 fixed charge coverage ratio?
6 A. That is my testimony.
7 Q. Did you also continue on in that same line,
8 that same page, to say:
9 I have not calculated what amount of
10 increased revenue requirement would
11 result in meeting the minimum fixed
12 charge coverage ratios shown on page one
13 of RRP-1.
14 A. That is --
15 Q. Is that your testimony?
16 A. That is my testimony.
17 Q. Okay. So I take it that as we speak, as we
18 sit here this afternoon, you have not done that type of
19 analysis to determine a level of revenue required to
20 meet a minimum fixed charge coverage ratio?
21 A. Well, what I have done in the interim is work
22 with Mr. Schooley's exhibits to determine if you assume
23 a 1.25 coverage ratio what the additional -- what the
24 surcharge should be, also including in a certain level
25 of new common stock issuance. These are various

00330

1 scenarios I played with. I don't have any here with me.

2 Q. Now you have not shared those for the record,
3 have you?

4 A. No, I have not.

5 Q. Now you reference Mr. Schooley. Did
6 Mr. Schooley on behalf of the Staff examine the level of
7 cash needed to bring the fixed charge ratio coverage up
8 to the required level of 1.25?

9 A. Well, I prefer that you ask him.

10 Q. Have you read his testimony?

11 A. I did scan it, and I do believe that's
12 correct, but.

13 Q. Would you agree that subject to check that
14 Mr. Schooley testified on behalf of Staff that in order
15 to drive the fixed charge ratio up to the required level
16 of 1.25 from its existing projected December level of a
17 negative 2.42 that that would require a 32.6% increase
18 over current revenues? Do you accept that that is his
19 testimony subject to check?

20 A. Yes.

21 Q. Thank you.

22 A. However, I did look at that calculation, and
23 I do have a disagreement with it.

24 Q. Did Mr. Schooley also assume in that
25 calculation additional equity financing; do you know?

00331

1 A. There's a pro forma adjustment column of
2 financings. I can't tell you right here to what exactly
3 that referred. I believe you're correct.

4 Q. Okay.

5 A. But I don't know if it's indicated on the
6 spreadsheet.

7 Q. Mr. Thornton, would it surprise you if banks
8 would as a matter of course prefer to have the company
9 issue more stock to provide more debt protection, and
10 thereby in order -- and thereby improve interest
11 coverages, cash flow, and a strengthening of the balance
12 sheet?

13 A. That wouldn't surprise me.

14 Q. Same with credit rating agencies?

15 A. Correct.

16 Q. Okay. Now can you state -- strike that.

17 Don't you, in fact, recommend among your
18 options for this Commission to consider, and I will
19 direct your attention to page 13 of your testimony, line
20 18.

21 A. I have it.

22 Q. Don't you suggest that among the actions that
23 the Commission might consider is "successfully issue new
24 equity to achieve the company's 50/50 debt equity goal"?

25 A. That's my testimony.

00332

1 Q. Now can you state with any degree of
2 assurance, Mr. Thornton, that with a dividend cut as you
3 suggest as well as an option that the company will in
4 fact be able to issue additional common equity?

5 A. Well, certainly in the history of corporate
6 finance and corporations, corporations have cut
7 dividends and successfully issued equity after that. In
8 this specific case, I don't have any information, for
9 instance, from the Goldman Sax representative that was
10 discussed earlier.

11 Q. But, Mr. Thornton, given where Avista
12 presently finds itself, given Avista's situation, can
13 you state with any degree of assurance that if there
14 were a dividend cut that the company could issue
15 additional common stock in the near term?

16 A. It potentially could if it managed its
17 liquidity situation appropriately. But again, I
18 couldn't unequivocally say that if the company got no
19 surcharge, did nothing to ameliorate the liquidity
20 crunch that it currently faces, that it could still
21 issue significant amounts of common equity in the near
22 future.

23 Q. So am I then to take from your comment that
24 you believe that without either a surcharge relief of
25 some form or an ability to otherwise arrange financing

00333

1 that the company could or could not issue new equity;
2 what is your position on that?

3 A. Well, again, it's almost speculative. I
4 don't think anybody here is -- has provided the
5 information, say the communications from Goldman Sax, to
6 say you couldn't issue it, so I really couldn't clearly
7 answer your question.

8 MR. MEYER: Let me just review my notes.
9 That's all I have, thank you.

10 JUDGE MOSS: Thank you, Mr. Meyer.

11 Mr. Trotter, do you have anything?

12 MR. TROTTER: No.

13 JUDGE MOSS: All right, then I believe this
14 is a joint witness for ICNU and Public Counsel; is that
15 correct?

16 MR. VAN CLEVE: That's correct.

17 JUDGE MOSS: So we get questions from the
18 Bench then.

19 CHAIRWOMAN SHOWALTER: All right.

20

21 E X A M I N A T I O N

22 BY CHAIRWOMAN SHOWALTER:

23 Q. Mr. Thornton, I want to turn to your first
24 answer to the first question by Mr. ffitch, and it's
25 ordinarily a very routine question, which is, if you

00334

1 were asked these same questions today, would your
2 answers be the same. And you were asked that question,
3 and you said yes to your testimony. And I would like to
4 turn to some of your testimony and ask you, let's begin
5 with page three, line six, you say you do not
6 necessarily agree with the notion that the firm is in
7 financial distress, and after what you have heard this
8 morning, is that still your position? I believe it was
9 this morning, today.

10 A. It is, and a lot of that discussion was, as I
11 understand it, done confidentially, so I will refer
12 generally to my point of view, which would be that
13 really financial distress to an accountant or a
14 financial economist means an inability to pay your
15 obligations.

16 Q. Well, let's --

17 A. The firm is not in that state currently, but
18 it's clear from the testimony this morning that
19 liquidity is an increasing problem, and the company
20 believes it's only going to get worse.

21 Q. So you are using the term financial distress
22 to mean a current inability to pay one's obligations?

23 A. Yes.

24 Q. So now let me talk not about the word
25 financial distress, but what about imminent inability to

00335

1 pay one's obligations, do you think that the company may
2 be in that situation absent relief from this Commission?

3 A. Commissioner, I really haven't done an
4 analysis to answer that one way or the other except to
5 say I found it interesting that the company recently
6 declared its normal quarterly dividend. I feel that if
7 the company felt it was in imminent financial distress,
8 it would have done several things, one of which could
9 have been to reduce its common dividend.

10 Q. When did it pay its dividend?

11 A. I believe the announcement, which is Exhibit
12 603 if I'm coordinating the numbers correctly, was made
13 on August 10th, that a quarterly dividend would be
14 declared payable September 14th.

15 Q. What is your answer to the company's response
16 to you that if you don't provide a dividend, if the
17 company doesn't provide a dividend, it will not be able
18 to issue equity?

19 A. Well, we -- again, one would have to be privy
20 to the conversation with its main investment bank
21 through whom it issued or underwrote common stock, and I
22 assume that's the Goldman Sax. What I find disturbing
23 though is putting a regulatory Commission in the
24 position where, you better let us pay our dividend, and
25 you also better increase rates, or else we won't be able

00336

1 to issue common stock.

2 Q. Well, maybe it's disturbing, but what is your
3 response to I think it was Mr. Ely who said that
4 essentially if you're -- if you can't show that you are
5 a growth company and you can't show that you will pay a
6 dividend, you can not attract equity; do you agree with
7 that proposition in a general sense?

8 A. Well, certainly in the history of
9 corporations, corporations have cut dividends, perhaps
10 not necessarily even being growth companies, and have
11 issued equity. In terms of the specifics here, I
12 haven't been able to analyze the data or speak with
13 Goldman Sax personally.

14 Q. What about your knowledge generally of the
15 West Coast energy situation, do you agree that in
16 general investors are wary of the west?

17 A. Yes. Of course, for certain firms such as
18 Pacific Gas and Electric Company, while the utility in
19 that case has filed bankruptcy, the parent corporation,
20 which owns a certain amount of generation as I
21 understand it, is doing quite well. So it's a question
22 of who's got the power and who doesn't. Calpine would
23 be a good example of a California company in the West
24 that is doing quite well.

25 Q. If you could turn to page 13 of your

00337

1 testimony, you lay out in a concise form some of the
2 alternatives or options that you say the Commission
3 might consider. I think we have talked about number
4 one, a cut in dividend, and we have talked about number
5 two. I'm not sure I understand what three is. What is
6 option three there, and how would it be done in a short
7 period of time, or is it a longer term option?

8 A. I'm afraid the best option is a longer term,
9 which is essentially sell the unregulated operations,
10 get them away from the utility.

11 Q. If you assume for the sake of this question
12 that there's a short term and more or less imminent
13 need, then is that really an option to address an
14 imminent need?

15 A. Well, certainly the company is already
16 considering selling certain of its unregulated
17 operations, and I will speak to a public document rather
18 than refer to anything that occurred today. Looking at
19 a Value Line rating and report of August 17, 2001, it
20 says in part:

21 At least the red ink from the
22 telecommunications operation will cease
23 if Avista sells it or finds a partner to
24 absorb the losses.

25 So I conclude from that that it's common

00338

1 knowledge that, at least amongst Value Line, that
2 certain operations might be sold.

3 Q. Is that on line 21, when you said enhance the
4 financial wall, is that what you meant, to sell some of
5 the unregulated assets? I thought you meant some other
6 kind of construct, organizational construct, that would
7 be --

8 A. Well, it would be nice if there were some
9 corporate reorganization solution that could be done by
10 the company to keep these operations separate. One of
11 the aspects of the testimony that I heard today that I
12 didn't know before today that I found troubling was that
13 it, as I understand it from testimony today, Avista
14 Energy is unable to dividend money up to the parent. If
15 a corporate reorganization effected a change in that
16 covenant so finally the parent could get money from
17 Avista Energy, that would be helpful.

18 Q. On the next page, option four was sell Coyote
19 II. I guess obviously if there were -- if it was for
20 some kind of cash, that would help the immediate
21 situation. Do you think that that would also be in the
22 longer term interests of the rate payers?

23 A. Well, Commissioner, what we're dealing with
24 here, Mr. Eliassen calls it a financial crisis, and
25 probably a better way to look at it is a liquidity

00339

1 crunch. If Coyote II, Coyote Springs II, is prompting
2 this liquidity crunch, in other words if the firm can't
3 expand, then perhaps it shouldn't do so at this time.

4 Your question though is broader, and it
5 certainly involves engineering aspects to which I
6 couldn't really testify.

7 Q. Oh, well, that's beyond me as well. I guess
8 I was getting to the question of, if there is a
9 liquidity crunch, then selling an asset is one way to
10 get some cash?

11 A. Yes.

12 Q. Imposing a surcharge is another way to get
13 some cash. But if you sell the asset, it's gone. And
14 if it was -- if it is serving a need or if it's being
15 built to serve a future need, then at a future time the
16 company will have to go out and serve that need another
17 way. Do you agree with that?

18 A. I do. I don't know if the future need will
19 be more expensive or less expensive.

20 Q. So what you're really saying is that you are
21 neutral as to the question of whether building a
22 resource and owning it on a cost based regulated utility
23 is better than going to market one or two years from
24 now?

25 A. Well, I don't know what would happen in a --

00340

1 two years from now. For instance, if the energy prices
2 were extremely low such that resources were quite cheap,
3 it might even be more cost effective to buy into the
4 market at that point. It would really --

5 Q. That would always be true, wouldn't it, at
6 any point in time where the market price happens to be
7 below your embedded costs, you would wish that you were
8 on the market?

9 A. Yes.

10 Q. Do you have a general view as to whether in
11 general regulated utilities are better off being close
12 to owning enough assets or long-term contracts to serve
13 their load versus being exposed to a market that might
14 be low but might be high for some percentage, let's say
15 200 megawatts?

16 A. And to your question I would add a third
17 dimension, which is you've got owned, in other words
18 owning resources, and I would add to that contracting
19 resources, which could be done under a sale/leaseback
20 type of arrangement. And then your second option was
21 really be short and just hope that you can survive the
22 open market. As a general rule, my opinion is that you
23 should have a significant amount of your resources at an
24 estimateable price. In other words, it's difficult, I
25 don't think it's entirely prudent for a utility with

00341

1 fixed tariffs to be wide open exposed to market prices.

2 Q. So the sale/leaseback was one of the options
3 that has been discussed this morning. Do you think
4 that's a realistic option after what you have heard?

5 A. Well, according to Mr. Ely, if I understand
6 it, it really depends on the credit rating of the
7 company, that essentially no one is willing to lease it
8 back to the company unless the company can improve its
9 credit situation.

10 Q. Speaking of the credit rating of the company,
11 the credit rating is a rating for the entire company; is
12 that correct?

13 A. Well, there's a general description of a
14 corporate credit rating. There are credit ratings for
15 types of securities, and a normal type corporation like
16 this has a spectrum of securities from secured fixed
17 mortgage bonds to unsecured, debentures, et cetera, et
18 cetera, et cetera. So it actually has got a spectrum of
19 ratings.

20 Q. You are a witness on behalf of the industrial
21 customers and also the general rate payer. Do you
22 believe that those rate payers will, in fact, be better
23 off if we do not authorize a surcharge? And that's a
24 short-term and a long-term question; it's a general
25 question.

00342

1 A. Clearly the rate payers are better off with a
2 healthy vibrant utility. I'm personally very concerned
3 about the effect of the unregulated operations that have
4 potentially put the company in the situation it is now.
5 I'm concerned that the company needs more equity. And
6 I'm concerned fundamentally that other options be
7 explored, including this option of accelerating
8 depreciation, because that would give essentially money
9 to the company now, addressing the liquidity crisis, but
10 it's really money that rate payers would have had to pay
11 anyway down the road.

12 Q. Regarding the activities of the unregulated
13 part of the company that give you concern, which of them
14 occurred before Mr. Ely became CEO versus after?

15 A. I don't know.

16 CHAIRWOMAN SHOWALTER: Thank you.

17

18 E X A M I N A T I O N

19 BY COMMISSIONER HEMSTAD:

20 Q. I see from page one of your testimony, your
21 background, that you're currently the chief of
22 accounting and rates for the Arizona Corporation
23 Commission.

24 A. Yes, sir.

25 Q. I'm just curious, is that a part-time job, or

00343

1 why are you here?

2 A. It's a full-time job and full-time sunshine
3 as well.

4 Q. But you are able to moonlight while you're
5 doing that job for the Commission?

6 A. Yes, sir. Previously before taking the
7 position on April 2nd of this year, one of the criteria
8 for taking the position would be that I could continue
9 doing these sort of things. Prior to signing the
10 contract with Public Counsel, I obtained permission to
11 appear before you today.

12 Q. Chairwoman Showalter pursued much of this,
13 I'm still curious, with your concern that the company
14 needs to issue more equity, but one of your preferred
15 remedies is to cut or eliminate the dividend, and this
16 is a utility in a non-growth area, you say that
17 utilities can issue equity without having dividends.
18 Can you cite me to an example that would be something
19 approximately equivalent to the circumstances of Avista
20 where a utility has been able to go to the market and
21 raise equity?

22 A. Well, I wouldn't characterize the reduction
23 in dividend as a preferred option, simply one of many
24 options that could be implemented to address the
25 liquidity crunch that the company currently faces. In

00344

1 terms of examples in the region, I couldn't cite to you
2 -- cite one to you immediately.

3 Q. And from your testimony, it's clear your
4 concern that the company at least in part has gotten
5 itself into its current liquidity crunch, to use your
6 term, as a result of its non-regulated activities.
7 Assuming for the -- just assuming hypothetically a
8 company that conducts non-regulated activities as a
9 result of which it is in financial difficulty and then
10 has market conditions for power that go against it
11 adversely, assuming further that such a utility could be
12 in a situation where in a reasonably near future it
13 would be unable to pay its debts as they fall due, in
14 that circumstance, would the fact that the non-regulated
15 activity that adversely affected the company's finances
16 be a significant factor in whether a Commission should
17 not provide financial relief?

18 A. Well, if the Commission does provide
19 financial relief, I think at some point it should
20 consider the complete situation. Which is to say if the
21 cause of the financial relief, the cause of the problem
22 that led to the financial relief, was in part due to
23 unregulated operations, that what you could do is solve
24 the problem temporarily, but through some mechanism such
25 as depreciation, essentially apportion the blame and

00345

1 create a benefit for rate payers down the road.

2 Q. Well, I was going to pursue your discussion
3 about accelerated depreciation. You have had
4 substantial experience in electric utility accounting.
5 Can you cite to me an example where a Commission has
6 accelerated depreciation in order to deal with the
7 financial difficulty of a company?

8 A. I can't, though I have seen accelerated
9 depreciation for a number of other reasons. For
10 instance, for new technologies, or I have seen
11 accelerated amortization of credits, and that would be,
12 for instance, in a case of trying to mitigate a rate
13 shock. So it does happen, but I haven't seen it for
14 that particular reason.

15 Q. Well, accelerated depreciation for a new
16 technology of course is in the context of obsolescence,
17 not a financial crisis?

18 A. Yes.

19 Q. But the consequence of using the technique of
20 accelerated depreciation would result in a benefit to
21 current customers. Let's see, no.

22 A. Mm-hm.

23 Q. I'm sorry, adverse to current customers, but
24 a benefit to future customers; is that fair?

25 A. That's fair, Commissioner.

00346

1 Q. Why? Let me pursue it. The idea of
2 depreciation is that the assets of the company are
3 depreciated over the life of the asset, and that is
4 particularly a bulwark in the history of the electric
5 utility rate Commission, in that you don't shift burdens
6 between current rate payers and future rate payers. But
7 apparently you would abandon that premise.

8 A. In terms of the intergenerational transfer,
9 there certainly would be. It depends on the extent to
10 which the depreciation is accelerated. So really the
11 devil is in the details. If you're accelerating some
12 let's say 30 years of pole over one year, that would
13 certainly be an intergenerational transfer of quite a
14 wide margin. But if you accelerate a depreciation of
15 assets that had a life of two years and depreciated them
16 say in one year, that would be a different story.

17 Q. Well, among your alternative options that
18 you're suggesting here is one is to do nothing and
19 proceed to a rate case. And I assume if we were to
20 seriously consider your accelerated depreciation option,
21 that would also involve proceedings of some complexity,
22 maybe as part of the rate case itself. But both of
23 those are going to take substantial amounts of time, a
24 rate case, 11 months from where we are today. Again,
25 from what you have heard here in the testimony today, is

00347

1 it still your position that your preferred option would
2 be to do nothing and proceed with a full blown rate case
3 before any kind of interim measures were approved by the
4 Commission?

5 A. Well, I wouldn't say that do nothing is my
6 preferred option.

7 Q. Okay, then what is your preferred option?

8 A. Really my preferred option is the accelerated
9 depreciation option. The company is in liquidity
10 crunch. I would say give the company the cash it needs
11 now, but take that out of rate base later.

12 Q. So that route would result in rate increases
13 for current customers?

14 A. Yes, sir.

15 Q. The interim relief, if that's the right term,
16 being requested here results in rate increases for
17 current customers. Now if you're a customer, current
18 customer, what's the difference?

19 A. The difference is you would have lower rates
20 down the road than you would have had otherwise, so in
21 effect in net present value terms, it's a wash.

22 Q. All right. So your preferred alternative is
23 accelerated depreciation?

24 A. It's a difficult situation, but given the
25 options I have laid out here, that would probably be my

00348

1 preferred option. The extent to which you increase
2 rates is another question. I don't really have an
3 answer for that. It depends significantly on the
4 company's ability to issue equity. It's clear the
5 company needs more equity and less debt.

6 Q. And apparently then combined with the company
7 going to the market to issue new equity?

8 A. Yes, it needs new equity from the market.

9 COMMISSIONER HEMSTAD: That's all I have,
10 thank you.

11

12

E X A M I N A T I O N

13

BY CHAIRWOMAN SHOWALTER:

14

Q. I'm just going to ask a follow-up question to
15 this line of questioning. Your option of accelerated
16 depreciation, specifically how much money are we talking
17 about; how would it affect the bottom line?

18

A. Well, that's up to you, the how much part.

19

Q. What's the potential?

20

A. I suppose 37% increase in rates.

21

Q. Well, I guess I mean if you -- I don't know
22 what the amount of depreciation is there to be
23 accelerated.

24

A. Mm-hm.

25

Q. Do you?

00349

1 A. No, I don't.

2 CHAIRWOMAN SHOWALTER: All right, thank you.

3

4

E X A M I N A T I O N

5 BY JUDGE MOSS:

6 Q. At the risk of belaboring the point, I find I
7 still have some questions in this area myself, focusing
8 on your preferred option. You just responded to a
9 question by saying the rate increase might need to be in
10 the range of 37%.

11 A. No, I was asked to what is the extent I think
12 that could be, and the highest number I have seen in the
13 proceedings so far is a request of 37%. That was the
14 context of my answer.

15 Q. Okay. I don't know that you can answer it
16 without more analysis, but just in general, wouldn't
17 that require a very dramatic acceleration of
18 depreciation on a fairly significant amount of assets?

19 A. It would, it would really have to be combined
20 with an issuance of equity. It's fundamental to what
21 this company needs. It's got to issue equity. The
22 solution can't completely be in the surcharge.

23 Q. Looking at your last sentence in that section
24 there on page 13 of your testimony, lines 9 through 11,
25 you say you would recommend accelerated depreciation of

00350

1 distribution assets rather than generation or
2 transmission assets. A moment ago you were testifying
3 about the nature of assets and the appropriateness of
4 accelerating depreciation and the impact of that, and
5 you suggested that assets with shorter useful lives
6 might be the ones targeted. Is that why you prefer
7 distribution assets over generation or transmission
8 assets?

9 A. No, my statement there was really geared
10 towards making sure that the benefit that accrues to
11 rate payers down the road, whether that's in two years
12 or whatever, actually does accrue to rate payers.
13 That's assuming that distribution was and always will be
14 a regulated monopoly that will be priced into
15 electricity as opposed to say the generation assets that
16 might leave the company.

17 Q. So you're thinking if we follow the
18 California model and force the company to sell its
19 generation assets off, this might be an undesirable
20 choice?

21 A. That's my worry.

22 Q. If the Commission were to adopt this approach
23 to increasing rates in sort of a general sense, putting
24 aside the question of how practical that might be in the
25 next couple of weeks, if the financial community's chief

00351

1 concern is the growing balance on the deferral account,
2 do you believe that a general increase in rates that
3 would not do anything about the growing balance in that
4 account would solve any problems that we're confronted
5 with here today as we have heard them described?

6 A. No, but I don't think the financial
7 community's main concern is the growing deferral
8 balance. I think their main concern is cash, they need
9 cash. If it's increased rates to make the coverage
10 ratio and the deferral balance goes away or if rates are
11 just increased through the rate case, I think that's
12 what they're focusing on is future cash flows.

13 Q. Shifting to page 14, the fourth option here,
14 grant interim rate relief at a lower recovery level to
15 meet fixed charge ratios, just looking at that paragraph
16 of testimony there, you say later that you haven't
17 performed specific calculations regarding what would be
18 required under your suggestion, so I take it that you
19 could neither confirm or dispute whether the 11.9%
20 increase that is recommended by Mr. Schoenbeck on behalf
21 of the Industrial Customers would be adequate to achieve
22 your recommended or your recommendation in your first
23 sentence there?

24 A. That's correct, though the way the model,
25 financial model, was set up, that rate increase could

00352

1 meet the financial covenants if the company could at the
2 same time, and this is the big if which we really don't
3 have sufficient evidence on, if the company could issue
4 equity and reduce debt.

5 JUDGE MOSS: That's all I had.

6 Anything further from the Bench?

7 Redirect, Mr. ffitich?

8 MR. FFITCH: Thank you, Your Honor.

9

10 R E D I R E C T E X A M I N A T I O N

11 BY MR. FFITCH:

12 Q. Perhaps this is, the Judge's focus on this
13 section of your testimony, is a good segue. In response
14 to a question from the company's counsel, you indicated
15 you had a disagreement with Mr. Schooley with regard to
16 coverage ratios. Could you explain what that
17 disagreement was or is.

18 A. I don't remember if I referred to it as a
19 disagreement. I certainly am concerned that in his
20 spreadsheet, one of the figures I saw, and essentially
21 what you're looking at is a spreadsheet with a lot of
22 forecasts and assumptions, includes a figure for
23 financings as a pro forma adjustment, and I don't
24 understand where that number comes from. I'm sure if
25 you asked him that he could clear that up. My

00353

1 disagreement would have been the number I saw as
2 different from the \$220 Million common stock issuance
3 that I had expected. I think he has \$178 Million in
4 there.

5 Q. What would be the result if the number were
6 \$220 Million instead of \$178 Million in that
7 spreadsheet?

8 A. Well, I don't have it before me, but I
9 believe it's a 20% increase in rates.

10 Q. A total of 20% increase in rates rather than
11 the 32% that's recommended in the Staff testimony?

12 A. Yes. Again, those are complicated
13 calculations, and --

14 Q. And perhaps this has already been answered a
15 number of ways, but you were asked -- there was
16 testimony regarding the fact that the -- your testimony
17 that the company had recently declared a normal
18 dividend, and you said they could have done several
19 things at that time instead of declaring a normal
20 dividend, and I just wanted to have you elaborate on
21 that. And perhaps, you know, we can go back to page 13
22 of your testimony where you have some alternatives laid
23 out. I think your suggestion was that one of the things
24 they could have done at that time was not declare the
25 normal dividend, but they could have done several other

00354

1 things as well to generate cash, to paraphrase your
2 testimony. I just wanted to ask you what other items
3 you were suggesting by that statement?

4 A. Where is that statement specifically,
5 Mr. ffitch?

6 Q. It was in your answer to a question I believe
7 from the Bench. You said they could have done several
8 things. I took that to mean several things other than
9 -- they could have -- I took that to mean that they
10 could have not declared a dividend to generate cash,
11 they could have done several other things as well. I
12 guess maybe I should ask you, are you just referring to
13 the alternatives that are set out here on page 13 of
14 your testimony when you mention doing several other
15 things to conserve cash rather than declaring a normal
16 dividend?

17 A. I believe so, but I would have to refer to
18 the transcript.

19 Q. Okay.

20 A. There are a number of things a company can
21 do, issue a stock dividend, sell assets. I would have
22 to really refer to the transcript to know specifically
23 to what I was referring in that question and answer.

24 Q. Okay. Well, let's look at page 13. You were
25 asked about this earlier, you were asked by the

00355

1 Chairwoman about sort of long-term and short-term
2 solutions specifically with regard to I think line 21 on
3 page 13. Just to clarify, this section of your
4 testimony is the section where you suggest that if the
5 Commission grants interim relief that certain conditions
6 be attached to the interim relief; is that correct?

7 A. Yes.

8 Q. So that the interim relief would, in fact, if
9 granted in some amount, would deal with the imminent
10 liquidity problem and then the other -- potentially the
11 other solutions that you have listed would deal with
12 either a fairly quick generation of cash or a longer
13 term solution to problems you have identified?

14 A. Yes.

15 Q. Now you were asked, again by the Chairwoman,
16 about -- there was a discussion about the sale of
17 assets, discussion to the effect that, you know, if an
18 asset is sold, it's gone, and the general advisability
19 of selling assets. Well, Mr. Ely testified that the
20 company could sell part of Coyote Springs, for example.
21 In your opinion, could the company sell one half of
22 Coyote Springs now and get one half of the requested
23 increase in cash and then acquire an asset of some kind
24 in a few years to meet whatever needs they would have at
25 that time?

00356

1 A. Gosh, that's a complicated question. One
2 would really have to know the specifics of the ability
3 to sell Coyote. Assuming that they could sell Coyote
4 without any trouble and assuming they had \$120 Million
5 of equity in Coyote, and if they sold half of it, then
6 they should get 60 back. Is that the calculation you're
7 leading to?

8 Q. Yes, it is, and I'm suggesting that you would
9 -- they would -- Avista would thereby avoid having
10 ongoing construction costs.

11 A. Ongoing construction costs, yes, I see your
12 question, yes, it would. It would normally avoid half
13 of the ongoing construction costs of Coyote. It depends
14 on the sale agreement, I suppose, but one would normally
15 see if you only own half the plant, you've only got to
16 meet half of the ongoing expenses in the construction
17 budget.

18 Q. And it's true, isn't it, that over time,
19 while certainly companies seek to have a certain
20 portfolio of assets to generate power for their
21 customers, that over time companies sell assets, later
22 on acquire new assets in order to do those things. It's
23 not necessary for a company to retain a static portfolio
24 of assets throughout time; isn't that correct?

25 A. Companies certainly sell and buy assets.

00357

1 Q. You were asked about the question of the
2 dividend again. Isn't it an available alternative to
3 Avista to, rather than simply paying no dividend, to
4 instead change the dividend from cash to stock?

5 A. There is such a thing as a stock dividend,
6 and that would be really forced reinvestment into the
7 company to the tune of the cash that would have been
8 paid out as a dividend.

9 Q. But that would, in effect, continue the
10 dividend and at the same time conserving cash, correct?

11 A. Well, a stock dividend is paid out, so I
12 suppose a dividend is paid out.

13 Q. Is cash paid out?

14 A. No, I believe stock certificates are issued.
15 It's probably better if you ask Mr. Eliassen
16 specifically how that would work for Avista Corporation.

17 MR. FFITCH: Those are all the questions I
18 have. Thank you, Your Honor.

19 JUDGE MOSS: Thank you, Mr. ffitch.

20 Any recross?

21 MR. MEYER: No.

22 JUDGE MOSS: Anything further from the Bench?

23 Mr. Thornton, thank you very much for
24 appearing today, and we wish you well on your travels.

25 THE WITNESS: Thank you.

00358

1 JUDGE MOSS: Well, we are at a quarter to
2 5:00. I think we better press forward as well. We have
3 only made it through four, and we have nine remaining,
4 and we need a break.

5 (Recess taken.)

6
7 (The following exhibits were identified in
8 conjunction with the testimony of KELLEY O. NORWOOD.)

9 Exhibit 100-T is Pre-filed direct testimony.
10 Exhibit 101 is KON-1: Avista's Resource Planning and
11 Power Operations. Exhibit 102 is KON-2: 2001 Avista
12 System and Mid-Columbia Hydro Generation vs. "Critical
13 Water". Exhibit 103 is KON-3: Northwest Short-Term
14 Power Supply Costs (per Dow Jones Mid-C). Exhibit 104
15 is KON-4: Settlement Stipulation, Docket No. UE-010395.
16 Exhibit 105 is KON-5: Megawatt Daily, May 31, 2001.
17 Exhibit 106 is KON-6: Deferral Mechanism. Exhibit 107-T
18 is Pre-filed rebuttal testimony. Exhibit 108-C is
19 CONFIDENTIAL: ICNU Cross-Exam Exhibit Avista Response to
20 ICNU Data Request No. 2.11. Exhibit 109-C is
21 CONFIDENTIAL: Public Counsel Cross-Exam Exhibit: Avista
22 Response to Staff DR 111 and 111c (excerpts: Deal
23 Tickets 2008, 2021, 2047). Exhibit 110 is Public
24 Counsel Cross-Exam Exhibit: Avista Rate Case Exhibit
25 (UE-991606): Staff Adjustments for PGE Monetization.

00359

1 Exhibit 111 is Public Counsel Cross-Exam Exhibit: Avista
2 Rate Case Exhibit (UE-991606) Q & A pp. 16-18.

3

4 Whereupon,

5 KELLEY O. NORWOOD,
6 having been first duly sworn, was called as a witness
7 herein and was examined and testified as follows:

8

9 D I R E C T E X A M I N A T I O N

10 BY MR. MEYER:

11 Q. Mr. Norwood, are you sponsoring what have
12 been marked for identification as Exhibits 100,
13 consisting of your pre-filed direct testimony as well as
14 Exhibit 107, your pre-filed rebuttal?

15 A. Yes.

16 Q. If I were to ask you the questions therein,
17 would your answers be the same?

18 A. Yes.

19 Q. Are you also sponsoring what have been marked
20 for identification as Exhibits 101 through 106?

21 A. Yes.

22 Q. Is the information contained therein true and
23 correct?

24 A. Yes.

25 MR. MEYER: I move for the admission of

00360

1 Exhibits 100 through 107.

2 JUDGE MOSS: Mr. Trotter?

3 MR. TROTTER: Just a note, Your Honor. As we
4 noted at the outset, I think Mr. Norwood does in his
5 direct and rebuttal get into issues of prudence, and
6 we're not investigating those in this session, so I
7 won't be asking him lots of questions about many parts
8 of his direct testimony.

9 JUDGE MOSS: That's fine.

10 MR. TROTTER: So on that basis, we won't
11 object.

12 JUDGE MOSS: The question of prudence is not
13 being considered in this phase of the proceeding, you
14 are correct.

15 There being no objection to the admission of
16 the exhibits marked 100 through 107, they will be
17 admitted as marked except for 104, which is a duplicate
18 of Exhibit Number 1, and I would ask that parties refer
19 to it in that fashion.

20 MR. MEYER: Very well, the witness is
21 available for cross.

22 JUDGE MOSS: Mr. Trotter, I believe you were
23 first.

24 MR. TROTTER: Thank you.
25

00361

1 C R O S S - E X A M I N A T I O N

2 BY MR. TROTTER:

3 Q. Turn to page two of your rebuttal testimony.

4 A. I have it.

5 Q. Exhibit 107 at lines 7 through 18, and in
6 this area, you talk about deferred accounting treatment
7 of extraordinary costs; is that correct?

8 A. Yes.

9 Q. And the specific item you selected here
10 relates to storm damage costs that were at issue in the
11 last rate case for Avista; is that correct?

12 A. That's correct.

13 Q. You understand that one purpose of storm
14 damage deferral accounting approved for rate making
15 purposes is to establish a representative level of storm
16 damage costs on a rolling average basis?

17 A. I understand that in a general rate case, you
18 would establish what would be considered to be a
19 normalized level of costs for rate making purposes. My
20 reference here really went to the statement by Staff
21 regarding some kind of a deferred accounting treatment
22 for extraordinary costs in order for them to be later
23 recovered or addressed in a later proceeding.

24 Q. And another issue that Staff took with
25 respect to this item was that Avista's proposal in that

00362

1 docket, one of the Staff's concerns was that the level
2 that Avista was proposing was a nonrecurring level; is
3 that correct?

4 A. That could be; I would have to go back and
5 check.

6 Q. With respect to determining a representative
7 level of storm damage costs for rate making purposes,
8 the result would be that the utility's earnings are at
9 risk for years when the actual storm damage costs are
10 higher than the average; would that be correct?

11 A. I'm sorry, would you repeat the question?

12 Q. When determining a representative level of
13 storm damage costs in a rate case and that level is
14 established, the result is that the utility's earnings
15 are at risk for years when the actual storm damage cost
16 that it experiences is higher than the average that is
17 set for rate making purposes?

18 A. Yes.

19 Q. You understand that storm damage deferrals
20 are examined in a rate case for recoverability,
21 including prudence, before they are reflected in rates?

22 A. That's my understanding.

23 Q. The bottom of page two, you indicate that
24 Avista is fully aware of the fact it does not have an
25 approved PCA in Washington; do you see that?

00363

1 A. Yes.

2 Q. Now Avista is also seeking a surcharge in the
3 state of Idaho for recovery of deferral balances related
4 to purchased power; is that correct?

5 A. That's correct.

6 Q. Idaho has authorized a PCA, has it not?

7 A. Yes, a PCA has been in place since 1989.

8 Q. On page four of your testimony, beginning on
9 line six and going on over to the next page, you are
10 critiqueing the Staff's recommendations regarding filing
11 deadlines for your recoverability case and your rate
12 case. Do you see that testimony?

13 A. Yes, I do.

14 Q. And you indicate that with regard to the
15 recoverability case, you simply don't have time to put
16 that together. And I believe you describe or another
17 witness describes that you're not able to state that
18 your March filing constitutes your recoverability case;
19 is that correct?

20 A. What I stated was I believe it's important
21 for us to update information that was provided in that
22 case, because the deferrals and the conditions since the
23 time of that filing, they have changed significantly, so
24 it's important in this filing to include updated
25 information.

00364

1 Q. Okay. So what we might see would be your
2 March filing updated to a more current point in time?

3 A. I would expect we will start with that and
4 then add additional information, that's right.

5 Q. Now we have had a couple of company
6 witnesses, I believe Mr. Ely and Mr. Eliassen, there may
7 have been others, that opined that they have done a
8 review, and in their opinion everything Avista has done
9 has been prudent, and there has been reference to
10 bankers that made similar statements, so why would it
11 take an additional 75 days to put that case together?

12 A. I think obviously the view of some may be
13 different than the view of others, and I think, as we
14 have stated before, it's really up to us to put together
15 information to provide to this Commission which will
16 demonstrate or show that the costs incurred are prudent,
17 and it does take time to put that information together.

18 Q. Now I take it you would be personally
19 involved in producing a rate case?

20 A. I will be involved, yes.

21 Q. Is Avista committed to filing a clean rate
22 case, apart from the power supply area, but general
23 revenues, expenses, and rate base type issues that are
24 often in contention, are you committed to filing as
25 uncontentious a case as possible outside the power

00365

1 supply and deferral area?

2 A. You said uncontentious?

3 Q. Let me rephrase it.

4 Is Avista committed to filing a clean rate
5 case, again apart from power supply and deferral issues?

6 CHAIRWOMAN SHOWALTER: I don't know what that
7 means.

8 Q. Based on the last Commission order and not
9 trying to raise issues that have been resolved by
10 Commission orders in the past, again outside the power
11 supply area.

12 A. I guess I can't think of anything that we
13 would raise that we were ordered not to raise. I guess
14 if there's concerns about issues, we would be glad to
15 talk with you about what we're planning to include in
16 the filing before we file. I don't know that we have
17 made a final decision on all the components that would
18 be in there and all the issues that would be in there.
19 We would be glad to talk with you ahead of time about
20 what we do plan to cover.

21 Q. When did bankers begin to express concerns
22 about the size of Avista's deferral balances for power
23 supply?

24 A. I'm not sure what the answer to that is. You
25 would need to talk with Mr. Peterson or Mr. Eliassen.

00366

1 Q. Turn to page 11 of your rebuttal testimony.

2 A. I have it.

3 Q. And you state on line 11 that only the fixed
4 and variable costs of the new small generation projects
5 are included in the deferral mechanism; do you see that?

6 A. Yes, I do.

7 Q. Coyote Springs II is not a small generation
8 project, is it?

9 A. I would not consider Coyote Springs II to be
10 a small generation project, that's correct. And there
11 are no costs included in the current deferral numbers,
12 in fact, there would not be until the project came on
13 line, which would be in June of next year.

14 Q. But those values are used to develop the \$87
15 Million, are they not?

16 A. They were used in the overall numbers that
17 were developed through the period ending December of
18 2003, that's correct.

19 Q. And it is \$87 Million annually that you're
20 seeking to recover?

21 A. Annually, that's correct. And as
22 Mr. Hirschhorn pointed out in his testimony, maybe it
23 was Mr. Falkner, that the overall plan was designed to
24 try to mitigate the overall impact. And if we were to
25 take the 12 months end of June 30th, the balance at that

00367

1 point in time of \$109 Million and spread it over one
2 year, you actually get a 46% increase. So what we tried
3 to do is come up with a way to mitigate the overall
4 increase while also collecting a reasonable amount of
5 money to get us back into financial shape.

6 Q. But looking at the company's proposal on the
7 27 month basis, you are including Coyote Springs, the
8 Coyote Springs project, and you're including more than a
9 fixed and variable cost?

10 A. No, in the numbers beginning in June, it
11 would be a fixed cost would include O&M as well as
12 capital, depreciation, all of those things are reflected
13 in the estimates beginning in June as well as the
14 variable cost, which include fuel and variable
15 components.

16 Q. Your testimony here, maybe it's getting late
17 in the day, but you say that:

18 Only the fixed and variable costs of the
19 new small generation projects are
20 included in the deferral mechanism.

21 A. The emphasis there, the new small generation
22 projects.

23 Q. Okay. But you are including the fixed and
24 variable costs of Coyote Springs II in the deferral
25 mechanism as well?

00368

1 A. In the estimates on a going forward basis,
2 that's correct. But I also point out later in my
3 testimony that that would -- Coyote Springs II would be
4 one of the issues that we would cover in the November
5 filing. There would be opportunity to review those
6 costs prior to them being included in any future rate
7 change.

8 Q. But that's all just going to depend on timing
9 of rate orders and everything else?

10 A. It will.

11 Q. And your current proposal in this docket is
12 for a 27 month surcharge?

13 A. Yes, the proposal is to put a level rate
14 adjustment in place that would hopefully get us to zero
15 on the deferral balance by the end of 2003, with the
16 understanding that as we progress through the general
17 case, there would be opportunity, and we know that
18 things will change between now and then, there would be
19 opportunity to make adjustments to that rate as we move
20 forward.

21 Q. At this point in time, we don't know what
22 adjustments the company may propose; is that correct?

23 A. That's correct, it will be dependent in part
24 on what happens with hydro and market prices and other
25 things as we go forward.

00369

1 Q. And those changes would also affect the
2 deferral balance?

3 A. They will.

4 MR. TROTTER: Those are all my questions,
5 thank you, Mr. Norwood.

6 THE WITNESS: Thank you.

7 JUDGE MOSS: Thank you, Mr. Trotter.
8 Mr. Van Cleve.

9

10 C R O S S - E X A M I N A T I O N

11 BY MR. VAN CLEVE:

12 Q. Mr. Norwood, I would like to ask you a couple
13 of questions about the settlement stipulation which is
14 Exhibit 1. Are you familiar with that document.

15 A. Yes, I am.

16 Q. Is it your position that sufficient grounds
17 exist for Avista to terminate the settlement
18 stipulation?

19 A. I guess it depends on what you mean by
20 terminate. I believe that given the language in the
21 stipulation, there are grounds for the company to come
22 in and seek rate relief to deal with the growing
23 deferral balances.

24 Q. Are you referring to paragraph four of the
25 settlement stipulation?

00370

1 A. That paragraph as well as the rest of the
2 document.

3 Q. And would you agree that the paragraph four
4 does not refer to changes in market prices as one of the
5 examples of unanticipated events under which the company
6 can petition to alter, amend, or terminate the
7 settlement?

8 A. Paragraph four does not. But on page two of
9 the document, it reads, and it's at the end of the first
10 paragraph there:

11 The ability to fully offset the deferred
12 costs, however, is based on a number of
13 assumptions, including but not limited
14 to stream flow conditions, thermal plant
15 performance, level of retail loads, and
16 wholesale market prices during the
17 deferral period.

18 Q. Can you explain what the company strategy was
19 for reducing the deferral balance to zero by February of
20 2003?

21 A. Yes. At the time that -- well, let me back
22 up a little bit. At the time that we modified the
23 deferral mechanism back in the December-January period,
24 we had made a commitment to make the filing in March to
25 address the prudence or recovery of the deferred cost.

00371

1 At the time we put that filing together, we took a look
2 to the future, at not only what the deferral balance
3 was, but also what the projections showed that the
4 deferral balance should be to the future.

5 What the numbers showed was that as we looked
6 out into the balance of '01 as well as into '02 and '03
7 was that given the condition of the energy situation of
8 the company as well as the market price conditions at
9 the time, the numbers showed that the deferral balance
10 if a deferral mechanism were to be continued would go to
11 zero by February of '03. Given that and based on the
12 information available at that time, in our minds it
13 didn't make sense to ask for a price increase when the
14 numbers showed that the deferrals would go to zero in
15 early 2003.

16 But it was understood at that time that that
17 was based on a number of conditions, including hydro and
18 other things that we earlier talked about, and if those
19 things changed, then we would need to use some other
20 method to deal with the deferral balance.

21 Q. And what did that analysis show that the
22 deferral balance would be for the remainder of this
23 calendar year?

24 A. The study in March?

25 Q. Correct.

00372

1 A. Yes. I don't have the exact numbers, but I
2 have a chart which shows that the deferral balance would
3 be about \$75 Million at the end of '01.

4 MR. TROTTER: Excuse me, counsel, are you
5 asking for Washington or total company?

6 THE WITNESS: I gave a Washington number.

7 MR. VAN CLEVE: That's correct.

8 A. So at that time, the estimate was deferrals
9 would go no higher than \$75 Million roughly during 2001.
10 BY MR. VAN CLEVE:

11 Q. If you could refer to your direct testimony
12 at page four. At line 18, you state that at the time
13 the settlement stipulation was developed, the hydro
14 electric generation was estimated to be 135 average
15 megawatts below normal; is that correct?

16 A. Yes, it is. And just to clarify, that was
17 the numbers that were available and included in our
18 March 23rd filing.

19 Q. And the settlement stipulation was entered
20 into on the 26th of April, 2001; is that correct?

21 A. Yes.

22 Q. Could you refer to Exhibit 108-C.

23 A. I have it.

24 Q. And if you refer to -- well, let me ask you
25 first, is this a data request that Avista responded to?

00373

1 A. Yes, the company provided this information in
2 response to an ICNU data request.

3 Q. Could you refer to page three of the
4 document.

5 A. I have it.

6 Q. And there is a reference, this document is
7 marked confidential, but there is a reference in the
8 paragraph below the chart that refers to what the
9 expected hydrogeneration is, is that number
10 confidential?

11 A. It is not, we can talk about that.

12 Q. Okay. It says that the overall
13 hydrogeneration estimates are now 172 average megawatts
14 below the normal generation level; is that correct?

15 A. That is correct.

16 Q. And this document is, it says pricing and
17 strategy, April 16, 2001; does that indicate when the
18 document was produced?

19 A. Yes, it does.

20 Q. So in other words, the company knew at the
21 time that it executed the settlement stipulation that
22 hydrogeneration was expected to be 172 average megawatts
23 below normal; is that correct?

24 A. Yes.

25 Q. And did the company anticipate at that point

00374

1 that it would still be able to reduce the deferral
2 balance to zero by February of 2003?

3 A. Yes. If you go back in that same document,
4 it's labeled page six of this exhibit where it shows a
5 chart of deferral balances. It shows that if you go out
6 to, February is not listed, but January and March are,
7 you can see that we are essentially at zero by February
8 of '03.

9 And that's really a good reason why at that
10 point in time and even continuing through mid to late
11 May that it made sense to follow through with the
12 stipulation was that the numbers continued to show that
13 even though the deferral balances were growing to a
14 higher level during 2001, they still were reduced to
15 zero by February of '03. And so the plan at that point
16 even through mid May was still intact even though hydro
17 conditions had worsened following the March study.

18 Q. Do you know what impact the settlement
19 agreement with BPA related to their residential exchange
20 will have on residential rates?

21 A. I believe the credit to residential customers
22 will be approximately 10% I believe is what we filed
23 just recently.

24 Q. So in other words, that will be an offset to
25 the rate surcharge that you're proposing?

00375

1 A. It will not be directly applied as an offset
2 to the surcharge. It will be a separate credit that
3 will be passed on to customers as a result of that
4 residential exchange agreement.

5 Q. And have you calculated what the impact of
6 the proposed surcharge would be on industrial customers
7 if the Staff proposal to use a per kilowatt hour charge
8 were used?

9 A. I have not done that, but Mr. Hirschhorn, I
10 believe, has.

11 Q. Okay, thank you.

12 Now it's your testimony that it's still
13 prudent for the company to go forward with the
14 completion of the Coyote Springs II project; is that
15 correct?

16 A. Yes, I believe that Coyote Springs II will be
17 a valuable long-term resource for our customers, and so
18 if we can keep it, then I think we should keep it if we
19 can support it financially.

20 Q. And can you give us a rough estimate of what
21 the fully allocated cost per kilowatt hour of Coyote
22 Springs will be based on your current forward price
23 curves for gas?

24 A. No, I have to -- I would just have to try to
25 get you in the ball park, which would be probably in the

00376

1 \$45 to \$50 per megawatt hour range.

2 Q. And do you know what type of gas price that
3 one consumes?

4 A. That would be roughly a \$3.50 to \$4 gas
5 price.

6 Q. Do you know what the -- let me ask that a
7 different way.

8 Does the company have five year forward price
9 curves that it prepares?

10 A. For electric or natural gas?

11 Q. For electric.

12 A. We do, yes, take a look at what the forward
13 curve is for electricity for five years.

14 Q. And do you know what the current forward
15 curve for five years is?

16 A. Probably in the neighborhood of I would say
17 \$37 to \$40 per megawatt hour. You have to keep in mind
18 though if you're going to compare that to Coyote Springs
19 II that that price is related to a flat product which
20 has no dispatchability, no flexibility. You have a lot
21 more flexibility when you have an asset that you own
22 that you can displace if there's lower cost fuel
23 available in the form of short-term purchases. So you
24 have to take a close look at that, and that's what was
25 done in the RFP evaluation was to take a look at a

00377

1 resource like Coyote Springs versus a firm contract
2 purchase.

3 Q. There were some questions earlier today about
4 the FERC Northwest refund proceedings; are you familiar
5 with that?

6 A. Yes.

7 Q. Are you directly involved in that?

8 A. I'm more indirectly now, but I am involved to
9 some degree.

10 Q. And can you explain what the company's
11 participation in that case has been?

12 A. Yes, we are a party to both the San Diego
13 case involving the refund issue in California, and we're
14 also a party to the what's been labeled the Puget case,
15 which addresses refund issues in the Northwest. We have
16 been participating in those proceedings, following those
17 proceedings. We filed testimony and other documents in
18 those proceedings, and we provide those -- we have
19 provided those in response to a data request.

20 Q. And what corporate entity has been
21 participating in those cases?

22 A. I can speak for the utility. We have been
23 participating as a utility. My understanding is that
24 Avista Energy has been participating separately.

25 Q. Has the utility taken the position that it's

00378

1 entitled to refunds because of excessive market prices?

2 A. We have basically taken the position that
3 from a philosophical standpoint it doesn't make sense to
4 go back retroactively and provide refunds. Decisions
5 were made in the past based on what the rules were at
6 the time that FERC established. We are concerned about
7 a practice where you go back and change the rules and
8 issue refunds, as in this case. We believe that you
9 need to know what the rules are and then apply those
10 rules on a going forward basis. Otherwise, you create
11 uncertainty in the industry and in the marketplace. And
12 we have already seen concerns of parties, concerns about
13 withdrawing from the industry because of the uncertainty
14 that's created by that kind action. If there are, we,
15 as I mentioned, we will continue to follow the refund
16 issue, if refunds are ordered, then we will be there to
17 participate.

18 Q. Has Avista Energy taken a similar position?

19 A. I can't speak for Avista Energy or what
20 position they have taken.

21 MR. VAN CLEVE: Your Honor, I would offer
22 Exhibit 108-C.

23 JUDGE MOSS: Hearing no objection, it will be
24 admitted as marked.

25 MR. VAN CLEVE: And that's all I have.

00379

1 JUDGE MOSS: Mr. ffitch.
2 MR. FFITCH: Thank you, Your Honor.

3
4 C R O S S - E X A M I N A T I O N

5 BY MR. FFITCH:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. Not yet good evening, I hope.

9 Just a follow up on the last questions from
10 Mr. Van Cleve. You testified that Avista Utilities is a
11 party to the FERC proceeding which you described as the
12 Puget case?

13 A. Yes.

14 Q. And that is, in fact, what's also been called
15 the Pacific Northwest refund proceeding?

16 A. Yes.

17 Q. Isn't that correct?

18 A. Yes.

19 Q. And it's the case, is it not, that parties
20 who are seeking to claim refunds for excessive wholesale
21 electric charges in the Pacific Northwest are actually
22 putting on evidence this week, including today, seeking
23 to claim those refunds? When I say today, I mean the
24 hearings for that purpose are taking place this week,
25 are they not?

00380

1 A. They are, and, in fact, Avista Utilities has
2 a witness there testifying this week.

3 Q. Avista Utilities is not presenting any
4 evidence in support of refunds during this case, is it?

5 A. I believe that's correct, although if the
6 Commission decides to order refunds, then I believe that
7 we have taken the position that we -- that it should be
8 -- all parties should be involved in that.

9 Q. And Avista Utilities -- let me back up.
10 You testified that Avista Utilities is a
11 party. Isn't it the case that it's actually Avista
12 Corporation that is the party to the FERC proceeding?

13 A. Avista Corporation, Avista Utilities is
14 Avista Corporation. Avista Energy is a separate
15 subsidiary of Avista Capital, which is also a subsidiary
16 of the parent.

17 Q. All right. But Avista Utilities as a
18 freestanding investor owned regulated utility is not
19 participating separately under that name in the FERC
20 proceeding?

21 A. We are participating as Avista Corporation,
22 that is Avista Utilities is Avista Corporation in legal
23 form is my understanding.

24 Q. It's the case, is it not, that Avista
25 Utilities is a net purchaser in the wholesale market for

00381

1 the periods under review in the FERC proceedings?

2 A. We have been a net purchaser, that's correct.

3 Q. And it's also the case that Avista Utilities
4 is a member of a group in the FERC proceedings known as
5 the Transaction Finality Group; isn't that correct?

6 A. I know that we have had discussions with that
7 group. I'm not -- I can't tell you if we're technically
8 a member of that group or not. I mean I would have to
9 verify that.

10 Q. Okay. Isn't it the case that, I understand
11 your question about membership in that group, but that
12 while you have testified that if there are refunds to be
13 had at some later time Avista would take part in that
14 process, but as of this point in time, the Transaction
15 Finality Group is actually opposing refunds for Pacific
16 Northwest Utilities; isn't that correct?

17 A. That's my understanding.

18 Q. So if Avista Utilities and Avista Corporation
19 were a member of the Transaction Finality Group, then
20 Avista would at this time in that case be opposing
21 refunds?

22 A. That's correct, and that's consistent with,
23 as I started out, philosophically, we don't think it
24 makes sense to go back and to implement refunds after
25 the fact.

00382

1 Q. And but isn't it the case therefore that for
2 power costs that were incurred in that wholesale market
3 during this period of time, the company is instead
4 looking to its rate payers to essentially provide relief
5 from those high electric charges through a surcharge?

6 A. That's correct, we are seeking relief from
7 our customers, and that really goes back to I guess
8 looking at the big picture. It's a very difficult
9 situation in the whole West. If refunds were to be
10 ordered, we would be writing checks to one another. We
11 would be writing checks to other utilities, other
12 utilities would be writing checks to us.

13 If you look at the Northwest as a whole, the
14 Northwest is an exporter of energy, and so you would
15 have a net cash flowing to essentially California if you
16 ordered refunds. So if you look at the big picture and
17 the whole situation that we have been through, it
18 philosophically just doesn't make sense to order
19 refunds.

20 Q. But if you look at the picture of Avista
21 Utility, the regulated utility which is here seeking
22 close to a 40% rate increase for its customers, that
23 utility is a net purchaser in those markets, is it not?

24 A. That's correct.

25 Q. So that if a refund process were set up,

00383

1 isn't it fair to assume that the regulated utility would
2 be able to recoup some of those excessive charges that
3 have been paid; isn't that correct?

4 A. You would think so, but that's not
5 necessarily the case. If you look at the prior rulings
6 of FERC, I don't think you can draw conclusions based on
7 looking at the data. FERC has focused especially in
8 California looking at just real time or day ahead
9 information. If you look at that, we actually might be
10 a refunder to others as opposed to receiving dollars to
11 us. So I think you have to be very careful here about
12 making assumptions about what the ultimate order would
13 be from FERC as FERC tries to sort out how to deal with
14 the continuing situation in the West.

15 Q. FERC has already indicated that it's willing
16 to take up the issue of the different characteristics of
17 the Pacific Northwest market versus the spot markets in
18 California, has it not?

19 A. That's my understanding.

20 Q. And it's already received a significant
21 amount of evidence in the current Puget proceeding
22 regarding contracts other than spot market contracts,
23 has it not?

24 A. Yes.

25 Q. Do you know what the current FERC price cap

00384

1 is or what it translates to in terms of dollars per
2 megawatt hour in the wholesale market?

3 A. And this has changed recently, my
4 understanding is it's roughly \$92 per megawatt hour.

5 MR. FFITCH: Your Honor, at this time I would
6 just like to direct the witness's attention to what's
7 been marked for identification as Exhibit 109-C, and I
8 had mentioned to you earlier off the record, Your Honor,
9 that we had a correction to this exhibit. And what we
10 would like to do to fix the exhibit, if you will, is
11 simply withdraw one of the three deal tickets that we
12 had provided earlier that was incorrectly submitted due
13 to a copying error. And specifically we had submitted
14 with the pre-distributed exhibits a deal ticket number
15 002050, the third one in the order that we provided
16 them, and we would like to simply withdraw that at this
17 time.

18 JUDGE MOSS: All right, the exhibit is
19 accordingly revised.

20 MR. TROTTER: Is that the last three pages?

21 MR. FFITCH: It's the last three pages.
22 They're numbered actually, handwritten numbering on the
23 bottom, 102, 103, and 104. Again, the printed deal
24 ticket number is 2050.

25 BY MR. FFITCH:

00385

1 Q. And with that, I would like to just proceed
2 if I may, Mr. Norwood, to direct your attention to the
3 remaining two deal tickets. You just testified that the
4 -- as to the level of the FERC price cap. And again,
5 these are confidential, so I'm not going to ask you to
6 testify in the open proceeding here about the numbers
7 that are on here, but clearly the commodity price that
8 -- well, let me just ask you, how do the commodity
9 prices shown on these deal tickets compare with the
10 price cap that you mentioned?

11 A. These prices on these deal tickets are well
12 above the \$92 that I referred to earlier. These
13 transactions were conducted well before that order came
14 out.

15 Q. And is the company taking this power
16 currently and paying these prices?

17 A. Yes, it is.

18 Q. And are you seeking any relief from these
19 contracts in any fashion?

20 A. At FERC?

21 Q. Or in any other fashion. I guess we can
22 start with FERC. We have already, I think, covered that
23 to some degree, but.

24 A. No, not directly at FERC. These dollars, the
25 dollars associated with these contracts would be

00386

1 included in the estimates included in the deferral
2 calculations in this proceeding.

3 Q. The net would be the relief that you're
4 seeking for these contracts?

5 A. The relief really would be addressed in the
6 upcoming general case where we would address the
7 circumstances at the time that these transactions were
8 entered into.

9 Q. Thank you. I would like to just in finishing
10 up follow up on Mr. Ely's testimony regarding the Coyote
11 plant. Mr. Ely testified, I believe, that the largest
12 shaft at Coyote is 100 megawatts. Overall the plant is
13 -- I stand corrected, I apologize, let me start again.

14 The company's largest shaft is 100 megawatts?

15 A. Roughly, that's correct.

16 Q. Coyote is 280 megawatts?

17 A. Yes.

18 Q. And Mr. Ely testified that under the N-1
19 problem or the N-1 issue, higher reserve requirements
20 might make a sale of Coyote desirable, if I'm
21 remembering his testimony correctly.

22 A. The having 280 megawatts on one shaft does
23 raise a concern, but you can deal with that concern
24 through arrangements with other companies that have
25 similar issues with a lot of megawatts on one shaft.

00387

1 And so what you do is you work with other companies on
2 what would be called a share the shaft arrangement or
3 agreement where you can basically share the risk
4 associated with that shaft going out. Sorry. In fact,
5 we have already had discussions with other companies
6 about opportunities to share that shaft or risk.

7 Q. Perhaps you have already answered this, but
8 can you speak in any greater detail about the reserve
9 requirements in this context? Do you have anything to
10 add about how the reserve requirements work that affect
11 Avista's ownership of Coyote?

12 A. The ownership of Coyote would carry with it a
13 7% reserves, the thermal, just like we do with Kettle
14 Falls or Colstrip. We also carry reserves in our hydro
15 resources equal to roughly 5%.

16 Q. If Avista sold one half of Coyote and then
17 two years later bought one half of a similar plant built
18 at that time, how would the reserve requirements be
19 affected?

20 A. The specific 7% reserve requirement would not
21 change, but it would change the shaft risk issue.

22 Q. And just so I understand, is the shaft issue
23 the N minus 1 issue?

24 A. That is part of it, yes.

25 Q. Okay. And how does that affect the reserve

00388

1 requirements?

2 A. Hm, I need to think about the details of
3 that. I believe there is a couple of different
4 calculations that we look at in determining the overall
5 reserves that we carry. And I apologize, I can't recall
6 the specific details. But if you would like, I could
7 provide that to you fairly quickly.

8 Q. Isn't it the case that the company must carry
9 reserves for the single largest contingency?

10 A. Yes, at least equal to that.

11 Q. Then Coyote would become the single largest
12 contingency?

13 A. Yeah, it would.

14 MR. FFITCH: Your Honor, I would like to
15 offer revised Exhibit 109-C, and we will withdraw
16 Exhibits 110 and 111.

17 JUDGE MOSS: All right.

18 MR. FFITCH: And I have no further questions
19 for the witness.

20 JUDGE MOSS: Thank you, 109-C, no objections,
21 it will be admitted as marked. The others are being
22 withdrawn.

23 Is it the Bench's preference to ask its
24 questions the evening or defer until tomorrow morning?

25 CHAIRWOMAN SHOWALTER: I just have two short

00389

1 questions, I think.

2 JUDGE MOSS: All right, let us proceed.

3

4 E X A M I N A T I O N

5 BY CHAIRWOMAN SHOWALTER:

6 Q. Mr. Norwood, could you turn to Exhibit 1,
7 page four. Exhibit 1, this is the settlement
8 stipulation.

9 A. Yes, I have it.

10 Q. I just have a follow-up question, and I am
11 looking at paragraph four, the third line, talking about
12 the balance that the balance increases or is reasonably
13 -- I'm not reading the exact language here, I should
14 rephrase my sentence so I can. It allows a proposal to
15 amend the settlement should, and I am quoting:

16 The deferral balance increase or be
17 reasonably anticipated to increase
18 substantially due to unanticipated or
19 controllable events such as.

20 And it gives two examples.

21 A. Yes, I see that.

22 Q. Are West Coast wholesale prices something
23 that is unanticipated or uncontrollable or
24 uncontrollable by the company?

25 A. Yes.

00390

1 Q. And are FERC orders something that is
2 unanticipated or uncontrollable?

3 A. Yes.

4 Q. By the company?

5 A. Yes.

6 Q. And are West Coast prices in I would say
7 let's use the last three months combined with FERC
8 orders that cover the past three months plus the next
9 several months or year a substantial cause of the
10 increase or your anticipated increase in your deferral
11 account?

12 A. No. Let me explain what really transpired
13 after March. What took place after March was that first
14 of all, hydrogeneration declined considerably following
15 March. And as Mr. Van Cleve has pointed out, it
16 declined fairly quickly. But at that point in time, it
17 showed that even though the deferral balances were
18 climbing higher even in late April and they continued to
19 climb, the numbers still showed, given the forward
20 prices, that we would still get to zero by February of
21 '03, and so the plan was still okay.

22 And as we progressed then into the May-June
23 period, not only did forward prices come down, but hydro
24 continued to worsen, so we were put in the position then
25 in the May and June period of hydro continuing to go

00391

1 down, we had short positions in the summer months, and
2 you had, you know, warnings of blackouts and all of
3 these things, and so we made purchases then to cover
4 ourselves, and those were expensive purchases.

5 What that did was it basically locked in the
6 cost of meeting our loads through the summer months,
7 July, August, September. And so it put us in a position
8 of incurring much higher deferral balances for 2001 even
9 before you get to 2002, 2003 where you had some surplus
10 power that would be available to sell onto the market.
11 And so even though the prices coming off hurt us out in
12 the '02, '03 period, what really hurt us in the 2001
13 period was the declining hydro, which forced us into the
14 market or else be exposed to the \$1,000, \$2,000, \$3,000
15 per megawatt hour prices.

16 So if you look at -- we prepared these
17 reports every week showing what happened, what changed
18 over time every week, and that was provided to show
19 everybody in the group. It shows the deferral balance
20 continuing to grow bigger and bigger as we progressed
21 through time. And now that prices have come off, we
22 don't have the ability to work those balances off.

23 Q. So you're saying that the biggest factor as
24 to why you're here seeking emergency relief is really
25 weather?

00392

1 A. Absolutely. Well, it's that's what drove us
2 to the point of having to buy, and then when we had to
3 buy, we had to buy at the high prices. So it's those
4 two things. But when you're put in a position where
5 you're short power, you have to make a decision, do I go
6 in short, risk thousands of dollars per megawatt hour,
7 or do I lock in at \$400.

8 Q. Okay. I sure don't want to retry or
9 relitigate and parallel the FERC proceeding, but you
10 were asked many questions about those proceedings. If
11 FERC orders refunds at all, isn't whether a purchase is
12 subject to a refund or gets a refund dependent on
13 several factors? And the four that I can think of are,
14 one, the seller is under the jurisdiction of FERC as
15 viewed by FERC for purposes of having to refund part of
16 the sale price; two, the purchase is a spot market
17 purchase or some other short-term purchase that again
18 FERC would determine is within the scope of what it
19 decides to refund; three, that the purchase would have
20 to occur during a time period such as the last several
21 months back to December that FERC determines is the time
22 period in which it will order refunds; and four, the
23 price has to be above a benchmark or limit that FERC has
24 determined is the price above which it will grant
25 refunds. Have I covered the basic elements there?

00393

1 A. Yes.

2 Q. So then likewise from a seller's point of
3 view, aren't those the same factors, but they could work
4 quite differently? That is, a seller must only refund
5 if, again it is subject to FERC's jurisdiction as
6 determined by FERC in the first instance anyway, and
7 it's a spot market sale as determined by FERC, et
8 cetera. So my question is the, my preliminary question
9 is first, you don't know whether or how FERC will order
10 refunds, if it does?

11 A. That's correct.

12 Q. According to those four criteria?

13 A. That's correct.

14 Q. But depending on how FERC does, if it does
15 order refunds, couldn't the effect be very different on
16 the company depending, for example, on the
17 jurisdictional question?

18 A. Right, it clearly could be different for a
19 number of these factors. And as I mentioned before, we
20 have run some numbers, and depending on how you slice
21 it, we could actually be refunding to others as opposed
22 to receiving money. And as you point out, would
23 depending upon who the seller is, if FERC can reach and
24 grab and order refunds to a non-jurisdictional entity,
25 is dependent on how effective they are at doing that.

00394

1 So there's a lot of unanswered questions.

2 And if you -- I guess if you want to do it
3 right, it's very difficult, and to -- you basically have
4 to order everybody to look at all transactions and write
5 checks to everybody else. And I read someplace where
6 there was 250,000 transaction that occurred during this
7 period. And, you know, it's just really difficult to do
8 that. And as an industry participant, we have
9 difficulty saying, yeah, we went through a very
10 difficult time, but now let's go back and change all the
11 rules and everybody write checks to one another after
12 the fact.

13 Q. Well, I think that supports why you have
14 taken the position you have taken, but regardless of the
15 position you have taken, you don't know if FERC does
16 order refunds whether you will be paying or receiving?

17 A. Well, and that's --

18 Q. Because you don't know how if it orders
19 refunds it's going to address those four elements?

20 A. Well, and that's why we are participating in
21 these proceedings, to ensure that if there is a refund,
22 it's going to be done in a way, to the best that we can
23 influence, in a way that's fair to our company as
24 opposed to us giving money back to someone when we
25 really shouldn't from an equity standpoint. So that's

00395

1 why we have someone back there right now participating
2 in these proceedings is to do as much as we can to
3 ensure that whatever it is that's done is as equitable
4 as possible for us.

5 CHAIRWOMAN SHOWALTER: Thanks.

6 JUDGE MOSS: I believe that completes the
7 Bench's questions.

8 Any redirect?

9 MR. MEYER: No redirect, thank you.

10 JUDGE MOSS: All right, thank you.

11 Mr. Norwood, we appreciate your testimony,
12 and you're released subject to recall.

13 THE WITNESS: Thank you.

14 JUDGE MOSS: I have a couple of housekeeping
15 matters with counsel, but we could take this opportunity
16 to allow the Commissioners to retire from the Bench for
17 the day, and I will only keep you for a couple of
18 minutes. 9:00 tomorrow morning we will resume on the
19 record, and we will stay on the record now.

20 The principal housekeeping matter I have is
21 that somehow through a slip of probably my slip on the
22 computer, the exhibit list that I gave you is not the
23 latest updated greatest one, and so there will be some
24 slight amendments to it, and I will make sure that I get
25 the proper version to you and correct it. That's why we

00396

1 were seeing some abnormalities today that I finally
2 figured out what the problem was. You got the next to
3 the last version instead of the last version, so we will
4 clear that up hopefully in the morning.

5 As far as our time is concerned, all I can do
6 at this juncture, we did complete 5 witnesses out of the
7 13, and I'm thinking that perhaps some of the others
8 will go more quickly, and so perhaps time is not a
9 problem, but I will ask you all to make the effort
10 through the evening as you continue your preparations to
11 hone your questions so that we can finish by a
12 reasonable hour tomorrow evening.

13 And let me ask if counsel have any final
14 business today before we go off the record?

15 Seeing heads shake --

16 MR. FFITCH: Your Honor, I have one matter.

17 JUDGE MOSS: Mr. ffitich.

18 MR. FFITCH: I just don't want to forget
19 this. We would request the opportunity to submit a late
20 filed exhibit containing public letters received by our
21 office and the Commission. In part we're asking for the
22 permission for late filing because, as the Bench is
23 aware, the hearing with the public is next Monday, so
24 there may be additional written materials submitted at
25 that time that would be included in the exhibit.

00397

1 JUDGE MOSS: All right, I won't close the
2 record until after that proceeding, and we will accept
3 your exhibit at that time, as we typically do, subject
4 to any objections that may be interposed.

5 That does remind me, I had identified during
6 the prehearing that I would mark as Bench Exhibit Number
7 2 the Standard & Poor's report, and that is indicated on
8 your exhibit list, and it will be my intention now
9 absent objection to admit that into the record.

10 There being no objection, it will be admitted
11 as marked.

12 All right, I believe that concludes our
13 business for this afternoon, and we will be in recess
14 until tomorrow morning at 9:00, see you all then.

15 (Hearing adjourned at 5:55 p.m.)

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