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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint)	Docket UE-051090
Application of)	Volume II
)	Pages 49-155
MIDAMERICAN ENERGY HOLDINGS COMPANY)	
AND PACIFICORP, d/b/a PACIFIC POWER)	
& LIGHT COMPANY)	
)	
For an Order Authorizing Proposed)	
Transaction.)	

Oral argument in the above-entitled matter was held at 1:35 p.m. on Wednesday, January 11, 2006, at 1300 South Evergreen Park Drive, S.W., Olympia, Washington, before Administrative Law Judges ANN RENDAHL and DENNIS MOSS, Chairman MARK SIDRAN, Commissioner PATRICK OSHIE and Commissioner PHILIP JONES.

The parties present were as follows:

PACIFICORP/MIDAMERICAN ENERGY HOLDINGS COMPANY, by James M. Van Nostrand, Attorney at Law, Stoel Rives, LLP, 900 S.W. Fifth Avenue, Suite 2600, Portland, Oregon, 97204.

PUBLIC COUNSEL, by Simon ffitch, Assistant Attorney General, 900 Fourth Avenue, Suite 2000, Seattle, Washington 98164-1012.

COMMISSION STAFF, by Robert Cedarbaum, Assistant Attorney General, 1400 S. Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington 98504-0128.

INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, by Melinda Davison, Attorney at Law, Davison Van Cleve, 333 S.W. Taylor, Suite 400, Portland, Oregon 97204.

Barbara L. Nelson, CCR
Court Reporter

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1 THE ENERGY PROJECT, by Brad Purdy,
2 Attorney at Law, 2019 N. 17th Street, Boise, Idaho
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1 JUDGE RENDAHL: Let's be on the record.
2 Good afternoon. I'm Ann Rendahl, an Administrative
3 Law Judge with the Commission presiding this
4 afternoon with Chairman Mark Sidran, Commissioners
5 Patrick Oshie and Philip Jones and Judge Dennis Moss.

6 We're here before the Washington Utilities
7 and Transportation Commission this afternoon,
8 Wednesday, January the 11th, for oral argument in
9 several dockets, Consolidated Docket Numbers
10 UE-050684 and UE-050412 concerning PacifiCorp's
11 requests for an increase in rates and a petition
12 seeking approval of the deferral of hydro generation
13 costs, as well as Docket Number UE-051090, concerning
14 the acquisition of PacifiCorp by MidAmerican Energy
15 Holdings Company.

16 The Commission notified the parties of this
17 oral argument through a pre-hearing conference in the
18 rate case proceeding held on Monday afternoon, as
19 well as through written notice to all parties in both
20 proceedings -- or all three proceedings sent via
21 e-mail and U.S. mail on Monday afternoon, January
22 9th.

23 Before we go any farther, let's take
24 appearances from the parties in all proceedings.
25 Let's start first with the rate case proceeding. I

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1 understand there's going to be some overlap. Let's
2 start first with the rate case consolidated
3 proceedings, and then turn to the acquisition
4 proceeding, starting with the company.

5 MR. VAN NOSTRAND: Thank you, Your Honor.
6 On behalf of PacifiCorp in the general rate case
7 proceeding, James M. Van Nostrand.

8 JUDGE RENDAHL: Is there any -- and for
9 Staff? Excuse me.

10 MR. TROTTER: For Staff, Donald T. Trotter,
11 Assistant Attorney General.

12 JUDGE RENDAHL: Thank you. And for Public
13 Counsel?

14 MR. FFITCH: For Public Counsel, Simon
15 ffitch, Assistant Attorney General, Your Honor.

16 JUDGE RENDAHL: Thank you. And for ICNU?

17 MS. DAVISON: Melinda Davison.

18 JUDGE RENDAHL: Thank you. And is anyone
19 here for The Energy Project?

20 MR. PURDY: Yes, Brad Purdy.

21 JUDGE RENDAHL: Thank you. Nice to meet
22 you, Mr. Purdy.

23 MR. PURDY: Nice to meet you. Thank you.

24 JUDGE RENDAHL: I've only spoken to you over
25 the phone.

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1 MR. PURDY: Yes.

2 JUDGE RENDAHL: So it's nice to see you in
3 person. Okay. Is anyone here for the Natural
4 Resources Defense Council? Okay. Let's turn to the
5 acquisition docket for the company, and -- for the
6 company first.

7 MR. VAN NOSTRAND: Thank you, Your Honor.
8 On behalf of Joint Applicants PacifiCorp and
9 MidAmerican Energy Holdings Company, James M. Van
10 Nostrand, and also in the hearing room behind me is
11 Mark C. Moench, with MidAmerican Energy Holdings
12 Company.

13 JUDGE RENDAHL: And is that spelled
14 M-o-e-n-c-h?

15 MR. VAN NOSTRAND: That's correct, Your
16 Honor.

17 JUDGE RENDAHL: Okay. Thank you. And for
18 Staff?

19 MR. CEDARBAUM: For Staff, Robert Cedarbaum,
20 Assistant Attorney General.

21 JUDGE RENDAHL: And for Public Counsel?

22 MR. FFITCH: Simon ffitich, Assistant
23 Attorney General.

24 JUDGE RENDAHL: Thank you. And for ICNU?

25 MS. DAVISON: Melinda Davison.

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1 JUDGE RENDAHL: And for The Energy Project?

2 MR. PURDY: Again, Brad Purdy.

3 JUDGE RENDAHL: Okay. Thank you. And I
4 don't believe NRDC is a party to that proceeding; is
5 that correct? Okay.

6 Pursuant to the notice of oral argument, the
7 Commission would like to hear oral argument from the
8 parties on the following issues, as well as other
9 issues you may choose to bring before us.

10 First, would Commission approval of the
11 MidAmerican Energy Holdings Company acquisition make
12 a material change in PacifiCorp's capital structure
13 and risk profile for purposes of the general rate
14 case. Two, if not, why not. Three, if you believe
15 it would, please discuss which of the following
16 procedural options you would prefer in the general
17 rate case and why. First, the company waives the
18 statutory deadline in this proceeding, we proceed
19 with certain issues at this time, but request all
20 parties to refile cost of capital testimony after a
21 decision in the acquisition proceeding; B, the
22 company waives the statutory deadline in this
23 proceeding, defers all hearing dates and testimony
24 until after a decision is entered in the acquisition
25 proceeding, and all parties would refile cost of

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1 capital testimony; and C, the Commission dismisses
2 the entire rate case and requests the company to
3 refile its petition after a decision is reached in
4 the acquisition proceeding.

5 Now, the notice identified time allotted for
6 argument as followed: Thirty minutes for PacifiCorp
7 and MidAmerican, as well as 10 minutes of rebuttal,
8 and then 20 minutes for all other parties, 20 minutes
9 for each party. But as I noted to all of you in an
10 e-mail this morning, and I hope you received it,
11 given that no party here is really a moving party for
12 purposes of this argument, this has been initiated by
13 the Commission, it's appropriate to allow all parties
14 an opportunity to a short rebuttal to address issues
15 raised by the other parties.

16 So first we'll proceed with the company, go
17 through beginning with Staff and Public Counsel, ICNU
18 and The Energy Project, and then the company will
19 have an opportunity to respond to those comments, and
20 then the other parties will have an opportunity for
21 further response.

22 So before we begin, Judge Moss, do you have
23 something you'd like to add?

24 JUDGE MOSS: With the -- noting the
25 procedural posture in the acquisition docket, that is

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1 to say, the parties previously anticipated going to
2 hearing, but mutually waived cross-examination in
3 that proceeding and we accepted the suggested record
4 in that proceeding here of some weeks ago, I guess, a
5 couple weeks ago, perhaps, I would just note that the
6 proceedings in -- related proceedings in Utah,
7 Oregon, Idaho and California, I believe a settlement
8 has been filed in all of those jurisdictions. Is
9 that correct, Mr. Van Nostrand?

10 MR. VAN NOSTRAND: That's correct, Your
11 Honor. The only states outstanding are Washington
12 and Wyoming. Wyoming is scheduled to go to hearing
13 the last week in January.

14 JUDGE MOSS: As are we, I believe; is that
15 right? Or we're scheduled for briefing.

16 MR. VAN NOSTRAND: Briefing, yes.

17 JUDGE MOSS: Yes, briefs on January 25th, I
18 think it is.

19 MR. VAN NOSTRAND: Thirtieth.

20 JUDGE MOSS: Is it the 30th? I don't have
21 my calendar. In any event, the question is whether
22 we could have -- we would like to have a status
23 report concerning any ongoing discussions in
24 Washington State, or perhaps a report that we should
25 simply anticipate receiving briefs and resolving the

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1 case on the basis of those in the paper record.

2 MR. VAN NOSTRAND: Want me to do that now,
3 Your Honor?

4 JUDGE MOSS: Yes, sir.

5 MR. VAN NOSTRAND: I can say that we've had
6 a number of settlement discussions, probably five in
7 the docket, and we actually were scheduled to have
8 our discussions as recently as Monday morning, and
9 that's sort of been interrupted by the turn of events
10 in this holding oral argument here. I mean, I think
11 we were fairly close, I thought, to reaching
12 agreement.

13 I don't know if you're aware there's a most
14 favored nations process whereby each state can go
15 through the stipulations reached in the other states
16 and decide which of those commitments they would like
17 to include in each state, and we had done that
18 process in Washington, the parties had gone through
19 the stipulation reached in Oregon, decided which
20 commitments we wanted in Washington. We pretty much,
21 I think, put that document largely to rest.

22 And then there was a stipulation to go along
23 with that, and we're hung up on, you know, an item or
24 two, but -- and then we got this notice.

25 JUDGE MOSS: Okay.

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1 MR. VAN NOSTRAND: So at this point, I would
2 have to say, depending upon the outcome, we'll resume
3 those settlement discussions, or if not, there will
4 be briefs on January 30th, Your Honor.

5 JUDGE MOSS: Okay. Thank you very much.
6 Appreciate that.

7 JUDGE RENDAHL: Okay. So we'll begin with
8 argument, and when we're done, I assume it will be
9 sometime between 3:30 and 4:00, and after that, we
10 will recess the hearing for -- to allow the
11 Commission to reach a decision on these issues, and
12 then we'll reconvene the hearing. If you all will
13 stick around, we'll let you know and we'll reconvene,
14 and then, depending on the outcome, we will have a
15 scheduling conference following the announcement of
16 the decision.

17 So without taking up any more of your time,
18 let's start with the company. Mr. Van Nostrand, are
19 you prepared?

20 MR. VAN NOSTRAND: Yes, Your Honor, thank
21 you. Good afternoon, Chairman Sidran, Commissioner
22 Oshie, Commissioner Jones, Judge Rendahl, Judge Moss
23 and Judge Mace.

24 At the outset, I must say it's somewhat
25 unnerving that on what would have been the first day

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1 of hearings in the \$30-plus million rate case that
2 has been on file and in process for the last eight
3 months, we are now faced with the prospect of
4 essentially pulling the plug on it.

5 It is worrisome because, in our view, the
6 possibility of this extraordinary action is based on
7 a departure from sound rate-making practices in two
8 material respects.

9 First, the notion that the MEHC transaction
10 may have an impact on PacifiCorp's capital structure
11 or risk profile, the issues identified in the
12 Commission's notice, is based in large part on an
13 unconventional rate-making theory that has never
14 previously been applied by the Commission.

15 Second, the idea that we need to pull the
16 plug on the rate case today is premised on an event
17 that presumed closing of the transaction of
18 MidAmerican's purchase of PacifiCorp that we do not
19 know with certainty is actually going to happen, and
20 if it does happen, the soonest it will happen is
21 three months from now. Pulling the plug on the rate
22 case today based on an anticipated event that may
23 occur three months from now virtually abandons the
24 known and measurable requirement that has guided
25 utility rate-making not only before this Commission,

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1 but throughout the country.

2 By way of background, the issue of the
3 interplay between the transaction docket and this
4 general rate case is not a new one. The company
5 filed -- PacifiCorp filed a general rate case back in
6 May seeking an increase of \$39.2 million, or 17.9
7 percent. As indicated in the direct testimony in
8 that case, the filing was premised largely on
9 increases in power cost, the addition of new
10 generation, and also cost increases in respect to
11 certain employee costs, medical, pensions and health
12 benefits.

13 The suspension period ends April 5th, 2006,
14 so the rate year is essentially the 12 months
15 beginning April 5th, 2006. About three weeks later,
16 on May 24th, MidAmerican announced its acquisition of
17 PacifiCorp, and this announcement actually occurred
18 before the pre-hearing conference in the general rate
19 case.

20 And the issue of consolidating the two
21 dockets actually was discussed at the pre-hearing
22 conference in the general rate case. The judges had
23 issued an agenda on June 2nd, so when we convened on
24 June 6th, we actually discussed the possibility of
25 consolidating the two dockets. It's fair to say

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1 there was no support for consolidation at the
2 pre-hearing conference. Staff, for its part, noted
3 that the transaction would close in 2006, during the
4 rate year in our rate case. Staff Counsel actually
5 noted that certain expenses paid to Scottish Power at
6 issue in the rate case would likely be changed, since
7 Scottish Power would not be the owner, and Staff
8 Counsel also noted that capital may be provided by a
9 Triple A-rated company, and therefore that might have
10 an impact on the rate case.

11 Several weeks later, on July 15th,
12 MidAmerican actually filed its application, which
13 include a number of commitments that may have impact
14 on rate year costs. It also included an extensive
15 discussion of MEHC's capital structure by way of
16 commitments that might have an effect on rate year
17 cost was reduction in corporate charges and a
18 commitment that long-term debt borrowing cost would
19 be reduced by ten basis points.

20 At the pre-hearing conference in that docket
21 on July 26th, there was no discussion of
22 consolidation with the rate case. Then, on November
23 3rd, 2005, in the rate case docket, Staff and
24 Intervenors filed their opposing testimony, and even
25 though the hoped-for closing of the transaction,

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1 April 1, 2006, and the beginning of the rate year in
2 a rate case, April 5th, 2006, roughly coincide, there
3 was no discussion in the Staff-Intervenor testimony
4 of anticipated impact of MEHC ownership on PacifiCorp
5 costs during the rate year, no suggestion of a double
6 leverage adjustment based on MEHC ownership, no pro
7 forma adjustments to reflect the promised commitments
8 of reductions in corporate cross charges or the
9 reduction in debt borrowing cost.

10 As I will discuss later, I think there's a
11 good reason that no pro forma adjustments are offered
12 in the rate case. Until the transaction actually
13 closes, there was no known and measurable event that
14 provides a basis for such pro forma adjustments.

15 Turning to the specific questions set forth
16 in the Commission's notice, would Commission's
17 approval of the MEHC acquisition make a material
18 change to PacifiCorp's capital structure and the risk
19 profile for purposes of the general rate case,
20 Applicants answer that question no.

21 The acquisition has no impact on either
22 PacifiCorp's capital structure or risk profile for
23 purposes of the general rate case.

24 PacifiCorp's capital structure, for purposes
25 of setting rates in the general rate case, is

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1 unaffected by the transaction. The Commission has
2 consistently set PacifiCorp's rates on a stand-alone
3 basis without regard to any upstream debt in a
4 holding company structure. If the Commission
5 continues to follow this practice, the acquisition
6 has virtually no impact on PacifiCorp's capital
7 structure.

8 On the other hand, if the Commission decides
9 it wants to go down a path of considering upstream
10 debt and holding company structure, which I referred
11 to as an unconventional rate-making adjustment,
12 PacifiCorp is currently part of a holding company
13 structure in which there's upstream debt. After the
14 transaction, PacifiCorp will be part of a different
15 holding company structure in which there is upstream
16 debt. If anything, however, the level of upstream
17 debt after the transaction will be less under
18 MidAmerican ownership than currently exists under
19 Scottish Power ownership.

20 To suggest that there is a change in the
21 capital structure as a result of the transaction
22 presumes that the Commission will decide in this
23 proceeding to set rates on the basis of an
24 unconventional rate-making practice that it has never
25 previously followed, i.e., the use of a double

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1 leverage adjustment.

2 However, even if the Commission does decide
3 to go down that path, there is no material change in
4 the capital structure as a result of the transaction.

5 With respect to the second prong of the
6 question, PacifiCorp's risk profile also is unchanged
7 by the transaction. MidAmerican is proposing to
8 implement extensive ring fencing provisions, which
9 ensure that PacifiCorp is protected from the impacts
10 of any risks associated with ownership by
11 MidAmerican.

12 I'd like to turn briefly to further
13 discussion of each of those two prongs of the issues
14 presented by the Commission. First, as far as the
15 impact --

16 JUDGE RENDAHL: Before you go on on that
17 point --

18 MR. VAN NOSTRAND: Yes, Judge Rendahl.

19 JUDGE RENDAHL: -- in Mr. Williams' rebuttal
20 testimony, he indicates on page 13 that presently
21 Standard and Poor's and Moody's, their debt ratings
22 are based on the Scottish Power structure, and so I
23 guess the question is how would there not be a
24 change, even with ring fencing, with a new ownership?

25 MR. VAN NOSTRAND: The debt ratings are

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1 based on the metrics of Pacific as a stand-alone
2 company. I think one of the considerations the
3 rating agencies take into account is the support
4 that's come from the parent and, in fact, Scottish
5 Power has provided equity infusions in the past and
6 is continuing to provide equity infusions. But the
7 metrics, the calculations that are done by Standard &
8 Poor's and Moody's, which, frankly, Mr. Williams
9 spends extensive time discussing in his testimony,
10 are based upon stand-alone metrics of PacifiCorp.

11 JUDGE RENDAHL: Thank you.

12 MR. VAN NOSTRAND: With respect to the issue
13 of impact on the capital structure, I think it's the
14 Staff testimony in this docket which suggests the
15 capital costs will be different under MEHC ownership
16 given the level of debt at MEHC. In particular,
17 Staff claims that because MEHC capitalizes itself
18 with debt in its capital structure, this new
19 ownership arrangement affects PacifiCorp's cost of
20 capital for rate-making purposes, and Staff proposes
21 a reopener that would allow the Commission to
22 determine the impact of the acquisition on
23 PacifiCorp's cost of capital for rate-making
24 purposes.

25 I think Public Counsel Witness Hill makes

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1 similar arguments about the impact of debt in the
2 capital structure of MEHC as though this is something
3 new for PacifiCorp, upstream debt in the ownership
4 structure. For the most part, while Mr. Hill's
5 testimony makes these observations as a preview of
6 rate case issues to come, he does not propose in his
7 testimony to take any action on this issue now.

8 What both Staff and Public Counsel
9 disregard, however, is that capital structure for
10 rate-making purposes in Washington has traditionally
11 and appropriately been determined on the basis of
12 that utility's stand-alone capital structure.

13 In the general rate case, for example,
14 PacifiCorp's capital structure is based upon the
15 forecasted capital structure for the 12 months ended
16 March 31, 2006, which includes equity infusions of
17 \$500 million over this period, four quarterly cash
18 infusions of \$125 million each. These infusions will
19 occur under the stock purchase agreement with
20 MidAmerican Energy Holdings Company irrespective of
21 who owns the company.

22 There is no change in PacifiCorp's
23 stand-alone capital structure as a result of the
24 transaction, nor is there any change in PacifiCorp's
25 cost of capital as a result of the transaction.

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1 If the Commission chooses to abandon its
2 prior practice of looking at capital structure on the
3 basis of the stand-alone entity, in our view, there
4 is still no material impact arising from the
5 transaction. I'd like to hand out a couple of
6 exhibits, Your Honor.

7 JUDGE RENDAHL: Okay. Please go ahead. Do
8 you want these marked?

9 MR. VAN NOSTRAND: No, that's not necessary.
10 They're already in the record of the transaction
11 docket.

12 JUDGE RENDAHL: So these are in the
13 transaction docket?

14 MR. VAN NOSTRAND: Exhibit Numbers 42 and 43
15 in the transaction docket.

16 JUDGE RENDAHL: So what you've handed us is
17 what -- have these been marked already?

18 JUDGE MOSS: These exhibits have been
19 admitted in Docket Number UE-051090. They are part
20 of the record.

21 JUDGE RENDAHL: All right. And we have
22 Exhibits 42 and 43. Go ahead, Mr. Van Nostrand.

23 MR. VAN NOSTRAND: Thank you, Your Honor.
24 Turning to the first page of the handout, Exhibit 42,
25 under existing ownership by Scottish Power, there is

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1 upstream debt in the holding company structure. You
2 see, in the middle of that chart, PacifiCorp Holdings
3 Inc., otherwise known as PHI, is a wholly-owned
4 subsidiary of Scottish Power. It's a non-operating
5 direct wholly-owned subsidiary of Scottish Power.
6 PHI's balance sheet has acquisition related debt of
7 \$2.375 billion. That can be found on Exhibit 316 in
8 the rate case at page 13.

9 So thus the acquisition company in the
10 Scottish Power chart, PHI, has debt at a level of
11 \$2.375 billion. At the top of the chart, the parent,
12 Scottish Power, PLC, also has 51.95 percent debt in
13 its consolidated capital structure, as of March 31,
14 2004. This is Exhibit 217 in the transaction docket.

15 Turning to the other exhibit in this
16 handout, Exhibit 43 from the transaction docket,
17 which is Mr. Goodman's exhibit, following the
18 transaction, PacifiCorp will be part of a holding
19 company structure in which there will be no debt at
20 the acquisition company level. If you look at the
21 far left-hand side of this organization chart, you
22 can see PacifiCorp, above that is PP Holdings, L.L.C.
23 That is the acquisition company for purposes of
24 effecting this transaction. There's one hundred
25 percent above that. It's one hundred percent equity.

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1 There is no debt at the PPW Holdings level.

2 I think, as Mr. Elgin discusses, there is
3 debt at MidAmerican Energy Holdings Company. It's
4 significant, in our view, that no party made any
5 double leverage proposal as part of the general rate
6 case, even though, when you look at Exhibit 42, you
7 can see that that adjustment was available under
8 existing Scottish Power ownership.

9 The same financial witness appears for
10 Public Counsel in both the rate case docket and the
11 transaction docket, Mr. Hill. While Mr. Hill raises
12 this unconventional financial theory in his
13 transaction testimony, he doesn't actually apply it
14 to PacifiCorp in his rate case testimony. Under
15 existing Scottish Power ownership, even though the
16 circumstances are there that would allow it,
17 actually, there's a good reason that no party
18 proposed such an adjustment in the rate case under
19 Scottish Power ownership.

20 The Commission has never previously made an
21 adjustment based on double leverage in a rate
22 proceeding, even though it has had the factual
23 circumstances that would allow it to do so.

24 The Commission has historically established
25 rates based on a cost of capital of local operations,

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1 not on the basis of the parent company's capital
2 structure. We've found no decision of the Commission
3 that has adopted double leverage adjustments such as
4 that proposed by Staff. And Staff, in response to
5 data requests included as exhibits in the
6 transaction, similarly fails to cite any precedent
7 for such an adjustment in Washington.

8 A couple of examples also bearing on this
9 point. In the recent Verizon Northwest general rate
10 proceeding, the Commission was presented with factual
11 circumstances that would have allowed a double
12 leverage adjustment to be performed. Exhibit 227 in
13 the transaction docket, testimony by Staff Witness
14 Rothschild, the Staff cost of capital witness in the
15 Verizon case and in the PacifiCorp case, noted at
16 page ten of his testimony that utilities are often
17 owned by companies that are saddled with an
18 additional layer of debt at the parent level.
19 Verizon Northwest is a wholly-owned subsidiary of
20 Verizon Communications, Inc., which has 49.3 percent
21 long-term debt at the parent level. No adjustment
22 for double leverage was proposed in that Docket
23 UT-040788.

24 In the recent PSE proceeding, the same
25 Public Counsel witness, Stephen Hill, made the point

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1 that PSE's holding company parent, Puget Energy, is
2 more highly leveraged than the operating utility, and
3 that PSE's ratepayers were subsidizing Puget Energy's
4 unregulated operations because of the higher leverage
5 that PSE was able to use at the holding company
6 level, Exhibit 224 in the transaction docket.

7 No adjustment was made by the Commission in
8 the PSE rate order to take account of the more
9 highly-leveraged holding company parent. Apart from
10 rate cases, this issue has not previously been raised
11 in utility acquisition proceedings, even though the
12 factual circumstances have been present that would
13 allow it to do so.

14 When Scottish Power acquired PacifiCorp in
15 1999, for example, PacifiCorp became part of a
16 holding company structure where there was upstream
17 debt. There was no issue in the PacifiCorp-Scottish
18 Power merger proceeding in 1999, no suggestion that
19 the Commission had to evaluate the double leverage
20 issue before it could proceed to approve the
21 transaction, there was no issue in PacifiCorp's
22 subsequent rate cases in 1999 or in 2003, even though
23 it was indicated on Exhibit 42 there was considerable
24 upstream debt in PacifiCorp ownership structure.

25 We would submit that if the Commission is

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1 considering going down the road of following a double
2 leverage theory for rate-making purposes, a
3 transaction docket is not the proper forum.

4 Such a precedent has implications for nearly
5 every operating utility in Washington, since all or
6 part of holding company structures or corporate
7 structures where there is debt at the operating
8 company level and an additional layer of debt at the
9 parent level. Verizon, Puget Sound Energy, Qwest and
10 Avista would all fall into this category.

11 Resolving it in this docket denies all the
12 utilities that will be affected an opportunity to
13 participate in the process and shape discussions
14 based on their own particular circumstances.

15 Public Counsel Hill, one of the few times
16 I'll agree with Stephen Hill, in his testimony in the
17 transaction docket said, with respect to double
18 leveraging, This is an issue the Commission should be
19 aware of and which will eventually be an issue in
20 future rate proceedings if the proposed purchase of
21 PacifiCorp by MEHC is allowed by proceed. He did not
22 suggest in his testimony that anything be done now.

23 Summing up on that issue, there is no change
24 in the company's capital structure as that structure
25 has traditionally been analyzed by the Commission.

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1 And even under a precedent-setting double leverage
2 approach, the transaction does not produce a material
3 change in the capital structure from PacifiCorp.

4 The second issue identified in the
5 Commission's notice, the impact on the risk profile.
6 In our view, the transaction also has no impact on
7 PacifiCorp's risk profile for purposes of the general
8 rate case. MEHC is proposing to implement ring
9 fencing provisions that fully protect PacifiCorp's
10 customers from any potential financial distress at
11 MEHC or Berkshire Hathaway in the unlikely case that
12 such should occur.

13 Looking at Mr. Elgin's testimony for Staff,
14 he acknowledges there are two different ways to
15 protect ratepayers from double leverage, the second
16 of which is to consider PacifiCorp as a stand-alone
17 entity through inclusion of adequate ring fencing
18 provisions. That's Exhibit 181, page 39.

19 According to the Staff testimony, the risk
20 to ratepayers due to the relationship between MEHC
21 and PacifiCorp and MEHC's decision to finance with
22 significant leverage must be ring-fenced to protect
23 PacifiCorp's customers from being adversely affected
24 by the parent's bankruptcy or other financial
25 distress.

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1 I'd refer you to Pat Goodman's rebuttal
2 testimony in the transaction docket, Exhibit 45,
3 where we show that ring fencing provisions proposed
4 to be implemented by MEHC can meet Staff's conditions
5 and that a ring fencing structure can be tight enough
6 to protect a subsidiary from the bankruptcy of a
7 parent.

8 Basically, in the transaction docket, MEHC
9 is proposing the same ring fencing provisions as were
10 used when MEHC acquired Northern Natural Gas Company,
11 and those ring fencing provisions have been found by
12 the rating agencies to provide adequate ring fencing
13 to allow stand-alone ratings of the applicable
14 ring-fenced subsidiaries.

15 With these ring fencing provisions, there is
16 no impact of the transaction on PacifiCorp's risk
17 profile for purposes of the general rate case.
18 PacifiCorp can still be evaluated as a stand-alone
19 entity, as it always has been in the past, and it is
20 protected from any financial distress of its parent.

21 I'd like to turn briefly to question three.
22 Although it's certainly our hope that we don't get
23 there, I thought I would like to address the
24 alternatives which the Commission indicated in its
25 notice.

1 With respect to A and B, that the company
2 waive the statutory deadline and defer hearing dates,
3 obviously, for the reasons I've stated above, we
4 don't believe there is a need to provide an
5 opportunity to refile cost of capital testimony.
6 There are no changes in the fundamental risk of
7 PacifiCorp in PacifiCorp's capital structure or that
8 would affect PacifiCorp's cost of capital due to MEHC
9 ownership.

10 In fact, the parties had an opportunity to
11 make capital structure arguments under the existing
12 PacifiCorp ownership in the rate case and failed to
13 do so. The circumstances do not materially change
14 under MEHC ownership; the numbers change only
15 slightly, as indicated before, and in a manner that
16 is helpful to customers, in that the amount of debt
17 upstream from PacifiCorp under MEHC ownership is less
18 than upstream debt under current Scottish Power
19 ownership.

20 We believe it would be improper to take the
21 extraordinary step of interrupting the rate case
22 process now and suggesting that the suspension period
23 be extended on the basis of an uncertain future
24 event, a transaction closing that may or may not
25 happen.

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1 MidAmerican has indicated that it wants to
2 have state regulatory approvals in place by the end
3 of February, and this Commission has certainly
4 accommodated that request by putting us on a schedule
5 for briefs at the end of January and an order
6 hopefully by the end of February, and this schedule
7 would allow the transaction to close hopefully at the
8 end of the first quarter, around April 1.

9 Before the transaction closes, however,
10 regulatory approvals must be obtained in all states
11 and on terms that are acceptable to MidAmerican.
12 Section 6.1(d) of the stock purchase agreement,
13 Appendix Two to the application.

14 Thus far, there are no approvals in hand,
15 the discussion I had with Judge Moss. Settlements
16 have been reached in Utah, Oregon, Idaho and
17 California, but no state commission has yet acted on
18 those settlements. We've been unable to reach a
19 settlement in Washington, we've been unable to reach
20 a settlement in Wyoming, and hearings are scheduled
21 for the last week in January.

22 Until all regulatory approvals are received
23 and the transaction closes, there is no known and
24 measurable event that provides a basis for taking the
25 extraordinary step of pulling the plug on this rate

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1 case.

2 Furthermore, under Options A or B,
3 PacifiCorp is irreparably harmed. In our rebuttal
4 case, we're asking for \$32.6 million. So basically,
5 for every day of delay in the company getting the
6 rate relief that it believes it's entitled to, it's
7 \$100,000. By delaying necessary rate relief due to
8 an unanticipated event, the closing of the
9 transaction that may or may not happen, it is
10 premature on the basis of this record to take the
11 extraordinary step of halting the rate case process
12 and imposing a delay based on an event that, if it
13 does happen, will not occur until almost three months
14 from now at the earliest.

15 With respect to Option C, dismissing of the
16 rate case, we respectfully submit that's contrary to
17 law. RCW 80.04.130 permits the Commission either to
18 allow a general rate case tariff filing to become
19 effective or suspended and conduct an investigation
20 with hearings. No basis is provided for the
21 Commission simply to dismiss a tariff filing.

22 It would also be arbitrary and capricious
23 inasmuch as it's contrary to a Commission rule which
24 specifically governs the circumstances under which
25 dismissal is granted. WAC 480-07-380(1)(a) provides

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1 that the Commission will grant dismissal if the
2 pleading fails to state a claim on which the
3 Commission may grant relief.

4 The evidence clearly establishes that the
5 company is entitled to rate relief and that the need
6 for rate relief is not affected by the acquisition by
7 MEHC. Dismissal of the rate case would be contrary
8 because the costs in the rate case are there. Costs
9 are costs regardless of who happens to own the shares
10 of PacifiCorp stock.

11 Power costs, for example, one of the drivers
12 of the rate case, they're there whether Scottish
13 Power owns PacifiCorp or MidAmerican owns PacifiCorp.
14 The cost of new generation, the same, the cost -- the
15 employee costs, medical, pension costs, the same.
16 These are costs that are incurred by PacifiCorp,
17 whether or not it's owned by MidAmerican or Scottish
18 Power. And it's noted above the existing costs of
19 capital are the same whether PacifiCorp is owned by
20 PacifiCorp or Scottish Power.

21 In our view, dismissal of the rate case
22 would deny the company an opportunity to recover its
23 costs of doing business in Washington and an
24 opportunity to earn a reasonable return on the assets
25 devoted to public service in Washington.

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1 The option that we would like to bring to
2 the Commission's attention, which we think addresses
3 the issues raised in the Commission's notice and that
4 we feel would comport with the law is the
5 Commission's ability to reopen a docket under RCW
6 80.04.210.

7 The statute was recently tested in a Court
8 of Appeals case, in which Mr. Cedarbaum, Ms. Davison
9 and I were all involved, and the Court upheld the
10 Commission's ability to reopen prior dockets on the
11 basis of a public interest standard as set forth in
12 80.04.210.

13 We would propose that the Commission would
14 proceed with the current rate schedule and process
15 and issue its decision. If a transaction does indeed
16 close three months from now, at the earliest, the
17 Commission has the statutory authority to reopen the
18 rate case and consider the impact of MEHC ownership
19 on the rate case outcome.

20 For the reasons stated above, we don't
21 believe there is any impact of -- the transaction has
22 any impact on the PacifiCorp's capital structure and
23 cost of capital or risk, but reopening a proceeding
24 would allow the Commission to evaluate those issues,
25 as well as any other changes in the costs of service

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1 that may arise from the transaction.

2 In addition, the Commission could probably
3 make any rate change arising from a re-open
4 proceeding effective as of the date of filing of the
5 reopener. The impact on ratepayers would thus be
6 virtually the same as if the suspension period were
7 extended in the rate case.

8 It's respectfully suggested that this course
9 of action is the only one that comports with sound
10 rate-making practice. PacifiCorp's current rate
11 filing should not be interrupted to test an
12 unconventional rate-making theory premised on a
13 transaction that may or may not close. There's a
14 less disruptive solution and one that leaves
15 ratepayers in virtually the same place as if the rate
16 case suspension period has been extended.

17 That concludes my argument. If there's any
18 questions from the Bench, I'd welcome them.

19 JUDGE MOSS: I have one process question.
20 What would trigger the reopener you just referred to?
21 In the prior case that you touched on, there was a
22 filing by the company that actually ultimately
23 resulted in the reopener. What sort of event would
24 occur that would trigger a reopener under RCW
25 80.04.210?

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1 MR. VAN NOSTRAND: I believe the event, Your
2 Honor, would be the closing of the transaction. I
3 think that is the known and measurable event that's
4 missing now that would be present once the
5 transaction closes, and I think at that point, if the
6 Commission believed that there are impacts of the
7 transaction under PacifiCorp's cost of service in
8 their rate year, you can reopen the docket and take
9 evidence on what has changed as a result of MEHC
10 ownership, because at that point you will have the
11 certain event that allows the Commission to proceed
12 to reevaluate PacifiCorp's cost of service under MEHC
13 ownership.

14 JUDGE MOSS: Who would bear the burden of
15 proof?

16 MR. VAN NOSTRAND: I don't want to -- I've
17 had some discussions around this point. I don't want
18 to -- I think -- I think that's something -- I
19 believe the Commission would probably define it. I
20 mean, I think -- I suspect you could -- the company
21 could proceed to have the burden of proof that, you
22 know, nothing changed, there's no reason -- pretty
23 much the way we've argued here. I don't believe,
24 just because the Commission is reopening that, you
25 know, it's comparable to a show cause order where the

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1 Commission or the Staff has the burden of proof.

2 I think the Commission, in its order of
3 reopening, could say, Here are the circumstances, we
4 think costs -- we think this is worth another look,
5 if the applicants want to take the position that no
6 costs have changed under MEHC ownership, then
7 applicants have that burden, or you could file
8 simultaneous testimony, simultaneous briefs, but it
9 is an unconventional approach.

10 It's -- it would be a new -- I mean, it's
11 uncharted water, which I think gives the Commission
12 flexibility to get what it wants. I mean, the
13 Commission's obviously concerned with issues of the
14 transaction of -- the impact of the transaction on
15 PacifiCorp's ownership, and I think the reopening
16 process invites a fairly clean slate for the
17 Commission to indicate to the parties what exactly
18 they want and what exactly procedures they want us to
19 follow.

20 You know, another alternative is to just
21 reopen and convene a pre-hearing conference and we'll
22 just sort it out then. Is that responsive, Judge
23 Moss?

24 JUDGE MOSS: Yes, that's responsive. I'm
25 thinking whether I want to follow it up. I'll

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1 consider that, and maybe before the end of the day, I
2 will, but not at the moment. Thank you.

3 JUDGE RENDAHL: I have one follow-up to
4 that. You indicated that there would be no effect on
5 the ratepayer -- I guess that's assuming that -- to
6 reopen. Assuming that the triggering event, the
7 closing of the transaction would occur prior to a
8 final order in the rate case. Is that your
9 assumption?

10 MR. VAN NOSTRAND: Prior to or about the
11 same -- I guess I'm looking at the anticipated
12 closing date, the hoped-for closing date of April 1
13 and the April 5 suspension date in the rate case. It
14 seems like we're just looking at days there, so I
15 mean, I think it's virtually no impact on the
16 ratepayers. There may be -- there may be a few days
17 slippage, but I think the event that would trigger
18 the reopening would be the closing of the
19 transaction, because that's the known and measurable
20 event.

21 JUDGE RENDAHL: I'm just thinking of a
22 situation where the closing is delayed and the
23 Commission enters a decision in the rate case on
24 April 4th, and then, two weeks later, there's a
25 closing. And at that point, there may or may not be

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1 a compliance filing in place and the rates in effect,
2 and then you have a space where you then reopen.
3 Would you then freeze -- what do you propose to do in
4 that type of situation?

5 MR. VAN NOSTRAND: Well, frankly, Your
6 Honor, if the transaction hasn't closed, then there
7 are no changes. PacifiCorp is still owned by
8 Scottish Power until the transaction closes. The
9 reopened proceeding properly should begin with the
10 date of the transaction closing, because that's the
11 event that potentially causes a change in
12 PacifiCorp's cost of service.

13 So I don't -- there wouldn't be any reason
14 for it to relate back to the rate case order if there
15 is that delay. That's the event which supposedly
16 triggers the change in cost, which we don't
17 necessarily agree is there, but that's --

18 JUDGE RENDAHL: I understand. I'm just
19 following up on your statement that there should be
20 little or no impact on the ratepayer to do the
21 reopening, and I'm just testing that assumption as to
22 the timing of when that would occur.

23 MR. VAN NOSTRAND: I guess I'm basing that
24 statement on some of the chronology that I laid out
25 before, assuming, you know, an April 1 closing date,

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1 which is the hoped-for date, and this Commission
2 would give us a schedule and order that would allow
3 MidAmerican to get there assuming that hoped-for
4 closing date is achieved, I mean, the suspension
5 date.

6 There's very little impact, very little
7 impact on the customer, but if there is an impact,
8 under the reopened proceeding, that's what flows from
9 no change in cost of service until the transaction
10 closes.

11 JUDGE RENDAHL: Okay, thank you. Are there
12 any questions? Commissioner Jones.

13 COMMISSIONER JONES: I just had one factual
14 question. I'm not going to ask any others, but
15 everything that I've seen from the public records
16 indicates that the transaction is expected to close
17 in March 2006, in the 10-Qs and the 10-Ks. You seem
18 to be proposing a new date today of April. In your
19 opening remarks, you said three months. If you say
20 March, it's two months.

21 MR. VAN NOSTRAND: March 31, I think is the
22 day when we first filed this application. We asked
23 for all regulatory approvals to be in place by
24 February 28th, which would allow the transaction to
25 close the end of March, the last day of the first

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1 quarter. But I'm using March 31 and April 1
2 interchangeably. I don't mean to suggest that the
3 whole month of April is -- really, I was using March
4 31 and April 1 interchangeably. I believe when we
5 filed the application, we referred to a hoped-for
6 March 31 closing date.

7 COMMISSIONER JONES: Oh, I think if you look
8 at some of the documents, it just says March, so --

9 MR. VAN NOSTRAND: Well, with regulatory --

10 COMMISSIONER JONES: And is it not correct
11 that you have asked for an order from this Commission
12 and at least all commissions by the end of February?

13 MR. VAN NOSTRAND: That's correct, that's
14 correct, Commissioner.

15 COMMISSIONER JONES: And how long does it
16 usually take after the last state or the last
17 regulatory body has issued an order to close a
18 transaction?

19 MR. VAN NOSTRAND: My experience, it's been
20 about 30 days. I mean, MidAmerican, first you have
21 the issue of reconsideration right. Under the stock
22 purchase agreement, these have to be final orders.
23 MidAmerican has to have an opportunity, as the
24 purchaser, to sit back, look at all the conditions
25 that have been imposed in connection with granting

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1 regulatory approvals and then decide whether it wants
2 to proceed with the transaction. And my experience,
3 and I've done a few of these, it takes about 30 days.

4 COMMISSIONER JONES: Well, since you quoted
5 a couple telecommunications cases of this Commission,
6 just let me issue the most recent one that we did.
7 We were the last state to approve the Verizon-MCI
8 merger case, issued an order on December 23rd. I
9 think the parties closed that transaction and issued
10 it to Wall Street and the general public on about
11 January 5th, so that's just a point of reference.
12 That's all I have.

13 JUDGE RENDAHL: Okay. Any other questions
14 from the Bench? Okay.

15 MR. VAN NOSTRAND: If I could -- one thing I
16 need to point out, I've just been reminded, we have
17 this most favored nations process that I mentioned
18 earlier. Basically, that every state gets the
19 opportunity to get whatever commitments from the
20 other states, and we followed that in Washington by
21 sharing the Oregon stipulation. If we get a
22 settlement in Wyoming or a commission order in
23 Wyoming imposing conditions, every party in every
24 state will have a chance to look at the Wyoming
25 commitments and decide if they want to have those

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1 added, as well.

2 I mean, that's another reason that, even
3 though we might get orders from all the commissions
4 on the 28th, if those orders impose conditions, all
5 the other parties in all the other states get a
6 chance to join in those conditions, and that's
7 another reason that there's additional time beyond
8 February 28th, I don't believe probably was present
9 in the MCI-Verizon situation.

10 JUDGE RENDAHL: Okay, thank you. Now, for
11 Staff. Mr. Trotter, are you prepared, or Mr.
12 Cedarbaum, are you going first?

13 MR. TROTTER: Mr. Cedarbaum will address
14 Item Number One, and I'll address the other two
15 items.

16 MR. CEDARBAUM: Thank you, Your Honor,
17 Commissioners. I guess before I get to my prepared
18 remarks, I just wanted to pick up at least my
19 thought, and Mr. Trotter would add to this later,
20 about this notion of reopener and making sure that
21 ratepayers are protected.

22 It seems to me that if the timing of this
23 closing of the transaction at the end of the rate
24 case is such that there are no tariffs under
25 suspension in the current rate case at the time of a

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1 reopener, that making any rate adjustment from that
2 reopener effective back to the date when reopener
3 began raises some retroactive rate-making issues, and
4 we'd have to address those, and the company has
5 certainly agreed to waive those concerns, but I think
6 that's an issue that you would have to consider, how
7 to resolve that, if it is an issue, but that's at
8 least picking up on that one point, which was where
9 we left off in Mr. Van Nostrand's discussion.

10 Turning now to Exhibit Number 1, the -- and
11 really, my answer to Exhibit Number 1 is embodied in
12 the Staff case.

13 JUDGE RENDAHL: When you say Exhibit Number
14 1 --

15 MR. CEDARBAUM: I'm sorry, Issue Number One.

16 JUDGE RENDAHL: Okay. Thank you.

17 MR. CEDARBAUM: Issue Number One from your
18 notice of hearing, January 9th. The Staff position
19 on that issue is addressed in quite a bit of detail
20 by Mr. Elgin in the acquisition docket, which he is
21 the Staff witness, and his testimony focuses on the
22 capital structure issue only and not the risk issue,
23 but the capital structure issue and its impact on the
24 company's overall cost of capital and recovery of the
25 \$1.2 billion acquisition premium that MEHC is paying

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1 Scottish Power to acquire PacifiCorp.

2 I should point out before I get to that --
3 that issue, that testimony, that the impact of the
4 acquisition is not limited just to cost of capital.
5 There's been reference this morning to settlements in
6 Oregon, Utah and Idaho. I think it's -- just to
7 summarize my understanding of portions of the Oregon
8 settlement is that the company has agreed to
9 commitments which will reduce certain types of
10 expenses, like A&G expenses, insurance expenses and
11 some management fee expenses and perhaps others.

12 Those are commitments that we know exist,
13 but they're not taken into account in the current
14 rate case and they would affect the company's cost of
15 service in Washington. So that's -- if you're
16 looking at the impact of the acquisition on cost of
17 service, it's not just a cost of capital question.

18 With respect to the capital structure issue,
19 though, it is the Staff position that the acquisition
20 will have an immediate and material impact on
21 rate-making due to the leverage employed by MEHC at
22 the holding company level to finance the acquisition
23 of PacifiCorp. And again, the details of the Staff
24 position are in Mr. Elgin's testimony, which is
25 Exhibit 181-T in the acquisition docket.

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1 But in essence, what it boils down to is
2 that MEHC is proposing to purchase Scottish Power's
3 equity investment at PacifiCorp for \$5.1 billion. Of
4 that \$5.1 billion, MEHC will finance \$1.7 billion
5 through debt, but it will record the proceeds of that
6 sale as equity on PacifiCorp's books. So that's a
7 fact, that of the \$5.1 billion purchase price, \$1.7
8 billion will be recorded as equity on PacifiCorp's
9 books, but it is actually financed through debt at
10 the MEHC holding company level.

11 So the issue is should we continue to
12 pretend, if the transaction closes, that PacifiCorp
13 is a stand-alone company and set rates that would
14 provide a rate of return on equity on that \$1.7
15 billion investment and associated income taxes, which
16 would allow MEHC to recover the acquisition premium
17 given the added income stream that those returns
18 would generate. That's option one.

19 The other option is do we recognize reality
20 with the acquisition, if the acquisition closes, and
21 that the actual cost of the investment, that \$1.7
22 billion is not equity, but it is actually a lower
23 cost debt investment by MEHC.

24 Staff's position of the acquisition
25 proceeding is that you do the latter. You recognize

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1 the reality of the acquisition, that the cost of that
2 equity is not a return on equity; it is the cost of
3 debt at MEHC's level. And Staff also illustrated the
4 impact of that type of approach. Mr. Elgin has
5 testimony and an exhibit which shows that if you
6 treat PacifiCorp -- having PacifiCorp as part of the
7 holding company structure of MEHC, there's a \$10
8 million reduction in revenue requirement in
9 Washington for PacifiCorp. That's his calculation,
10 and certainly, that is a material impact on cost of
11 service under any definition.

12 Now, Mr. Van Nostrand's, I think, main point
13 in his rebuttal to the Staff presentation of the
14 acquisition case is that there has been debt at the
15 Scottish Power level and always has been, and that
16 there is no debt at the PPW Holdings Company level,
17 which is the second exhibit that he handed out this
18 morning. The implication being that, with respect to
19 Scottish Power, there's always been debt there, so if
20 there was a double leverage adjustment, as suggested
21 by Mr. Elgin, it should have been done historically.
22 And the implication is, under this acquisition, since
23 there is no debt at the PPW Holding Company level,
24 there's no basis for a double leverage adjustment to
25 begin with.

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1 But both of those points really beg the
2 question -- the question is not whether or not there
3 is debt at the Scottish Power Holding Company level;
4 the question is how -- or that there is no debt at
5 the PPW Holding Company's level; the issue is how
6 does MEHC finance the equity on PacifiCorp's books?
7 That's the issue. And we know for a fact, it was
8 un rebutted in the acquisition proceeding that that
9 equity on PacifiCorp's books through the acquisition
10 is financed with debt. That's un rebutted.

11 And all Staff is simply asking in the
12 acquisition proceeding is to have that recognized for
13 rate-making purposes and recognizing that has a
14 material impact and an immediate impact. At the
15 close of this transaction, there will immediately be
16 an impact on the company's cost of service because of
17 the way the financing has been set up.

18 So we would just beg to differ strenuously
19 with the company that the answer to question number
20 one, with respect to capital structure and cost of
21 capital costs, our answer is that there is a very
22 immediate and material impact.

23 But I also think it's important to realize
24 that it's not -- it's an impact that can linger,
25 because if the Commission were to set rates as the

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1 company would have them set, that is treat PacifiCorp
2 as a stand-alone company after the acquisition and
3 provide these high returns to MEHC, returns on
4 equity, and I should just point out that, in the
5 testimony of Mr. Elgin, he demonstrated, again,
6 un rebutted by the company, that MEHC's current return
7 on equity is 17 percent, and if this acquisition goes
8 through, it will be 14 percent. That's a return on
9 equity that he presented in his testimony, and the
10 company has not denied.

11 If you set up rate-making in that way, you
12 provide an incentive for MEHC, again, if the
13 transaction goes through, to continue to pump more
14 equity into PacifiCorp, increase the equity
15 capitalization ratio and earn those high returns and
16 generate more net income. So there's not only an
17 immediate and material impact from this financial
18 transaction with respect to cost of capital, there's
19 the potential, at least, for the effects of that type
20 of transaction to continue in terms of cost of
21 capital effects, as well.

22 Those are all my comments on that Issue
23 Number One. I'd be happy to answer questions now
24 about them or after Mr. Trotter.

25 JUDGE RENDAHL: Judge Moss, do you have any

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1 questions? Commissioners, any questions at this
2 point? Okay. Please go ahead, Mr. Trotter.

3 MR. TROTTER: Thank you, Your Honor. Good
4 afternoon, Commissioners. Going straight to Item
5 Three, the Staff's preferred approach is Option B, to
6 defer the hearings until a decision is entered in the
7 acquisition and allow parties to file not just cost
8 of capital testimony, but testimony implementing the
9 impacts of that. That will mean one rate change for
10 ratepayers, a consistent record, and an efficient use
11 of your time.

12 The company has raised the specter of
13 irreparable harm to the company, based on the
14 company's filed evidence. Well, based on the Staff's
15 filed evidence, the ratepayers are irreparably harmed
16 because Staff is proposing a rate reduction. But we
17 think, under the circumstances, we're willing to take
18 the risk on that.

19 Mr. Van Nostrand started his remarks this
20 afternoon by talking about the pre-hearing conference
21 in this docket and certain issues regarding the
22 acquisition were identified at that point. I do have
23 some recollection of that. I didn't review the
24 transcript, I'll certainly take his word for it, but
25 what really happened was that the double leverage

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1 issue and the other issues that Staff found testimony
2 on in the acquisition docket were late-developing
3 issues, and we did not recognize those at the outset
4 of the case.

5 We asked -- Mr. Rothschild, the Staff's cost
6 of capital witness, states in his testimony that he
7 did not consider the impact of the MEHC application
8 at that point. That was before Staff filed testimony
9 in the acquisition docket. At that stage, the
10 schedule was set, the hearings were set, and we just
11 went forward.

12 Now, of course we didn't share those
13 discussions with you because of the ex parte wall,
14 and now you are asking us now to revisit that issue
15 on the formal record, and that's why we're here. So
16 that's how this case got here. We weren't standing
17 by waiting to -- waiting for this issue to arise. It
18 was late-developing and we're doing the best we can
19 with it under the circumstances.

20 The proper context of this issue, I believe,
21 is that in any rate case, the company has the burden
22 of proof to show that its selective test period is
23 representative of ongoing conditions. It has that
24 burden from the outset to the end of the case. In a
25 normal case, it's not an issue. We accept the test

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1 period, results of operations pro-formed and
2 restated, and it does not become a critical issue.

3 As it turns out in this case, it has become
4 a critical issue because there will be a fundamental
5 change instituted by the company, a change in
6 ownership. Mr. Cedarbaum has identified the sorts of
7 changes, cost changes, capital structure changes that
8 will occur, and none of those are addressed in the
9 rate case at the current time. It's preferable to
10 deal with those issues on a consistent record at one
11 time, if we can, and I'll talk about whether we can
12 in a few moments.

13 If the acquisition is consummated, the
14 company will not have presented an adequate rate case
15 because the test year results of operations will not
16 be representative of the year rates will go into
17 effect because new ownership will apply, new costs
18 will be in evidence, as well as the capital structure
19 issues that you've been talking about.

20 JUDGE MOSS: Would the same thing be true,
21 Mr. Trotter, if the company, after the rate case,
22 decided to buy a \$400 million generating asset?

23 MR. TROTTER: If they announced that during
24 the pendency of the rate case, we'd have to take that
25 into account. If they announced it after the rate

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1 case, well, that's -- I guess that's the way the
2 chips fall sometimes.

3 JUDGE MOSS: What would we do?

4 MR. TROTTER: Well, I think if the company,
5 in the middle of the rate case, said we're going to
6 buy a \$400 million project outside the test year,
7 there would be arguments about whether that ought to
8 be incorporated into rates. That would be on the
9 record, of course, and that discussion would take
10 place. If it occurred after the test year, then the
11 Commission would be stuck, I think, with filing a
12 complaint against existing rates or waiting for the
13 company to file a rate case or a reopening, each of
14 which have certain pluses and minuses about them.
15 Those would be the options available.

16 In Docket UE-0116 -- 011163 and 11170,
17 that's a PSE case, the Commission looked at the
18 pleadings, looked at the -- excuse me, looked at the
19 company's direct case, determined it did not meet
20 Commission standards, and that proceeding was for
21 interim rate relief, and denied -- rejected the
22 tariffs on that basis.

23 And here, I think you could be in a
24 position, before the suspension period is up, if the
25 deal is consummated and the company's rate case does

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1 not reflect the deal, that you would be in a position
2 of rejecting the company's tariffs filing because
3 they haven't borne their burden of proof on the
4 representative test year. I believe that's a risk
5 the company is taking here and the Commission would
6 have, I believe, discretion to rule that, given the
7 presence of these cost changes and capital structure
8 changes.

9 With respect to --

10 JUDGE RENDAHL: Mr. Trotter, can you repeat
11 that docket number or docket numbers?

12 MR. TROTTER: Yes, UE-011163 and 011170.

13 JUDGE RENDAHL: Thank you.

14 MR. TROTTER: The company suggests that
15 reopening is the answer and they do allude to Mr.
16 Elgin's testimony in the acquisition docket that
17 suggests reopening, and in the context of where we
18 found ourselves, that was the best we could do, but
19 reopening is not the optimal solution.

20 First, it's too late. You'd have to reopen
21 the case, in essence, to allow the utility to bear
22 its burden of proving that the test year was
23 representative. They shouldn't get a free pass on
24 that issue if the acquisition is consummated. Rates
25 will have gone into effect, so you'll now have the

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1 possibility of two rate changes instead of one, and
2 how can you control the issues on reopening? A
3 company could argue that now the test year is stale
4 and needed to update the entire test year. A party
5 could say, Oh, you can't just reopen for this issue,
6 because here's five issues over here that need to be
7 addressed. Someone may argue that doing anything but
8 a wholesale review is single issue rate-making.

9 There is nothing in 210 that says that an
10 order on reopening is retroactive to the date of
11 reopening. And I'm not aware of any Commission order
12 that is so held, but, frankly, I have not
13 specifically researched that issue, but none came to
14 mind.

15 Mr. Van Nostrand was, I think, equivocal on
16 burden of proof. I believe that the burden of proof
17 would be on the party seeking reopening. I don't
18 think that will be the company.

19 All of this argues for dealing with rate
20 case issues at one time, using a representative
21 results of operations, which will be different if the
22 acquisition is consummated. The company suggests
23 that all of this is premature, that it's speculative
24 that the merger -- excuse me, the acquisition will
25 actually occur. Well, we've heard how many states

0101

1 have -- or settlements that are pending in several
2 states, FERC has approved the deal, is my
3 understanding, the company is acting as if it will be
4 consummated, the deal will be consummated, and as I
5 mentioned, the company is taking a very significant
6 risk here that -- if it does happen, because its rate
7 case will then, in our view, be significantly flawed.

8 The range of solutions are on your list. Of
9 course, they are not exhaustive. The company has
10 said, I think, that they will not waive the
11 suspension period, and I do not believe the
12 Commission can force the company to waive the
13 suspension period.

14 So if the company won't do that, what could
15 you do? Can you dismiss? Mr. Van Nostrand says you
16 can't and cites a rule. Let me cite you another
17 rule. WAC 480-07-500 says that the Commission may
18 summarily reject a filing -- a tariff filing -- this
19 is the general rate case rule. Any filing, if it
20 doesn't conform to the requirements of the subpart B,
21 which is the 500 series, I believe, if you go over to
22 rule 510, (3)(b) requires a portrayal of adjustments
23 specifying all relevant assumptions, and I think at
24 this point is the acquisition a relevant assumption,
25 has the company adequately filed its case.

0102

1 What is clear, from the Staff's perspective,
2 and I believe other -- Public Counsel and
3 Intervenors, they'll obviously speak for themselves,
4 is that this acquisition will have a material impact
5 on the results of operations of this company, and it
6 makes sense to determine those on a consistent record
7 at one time.

8 We don't believe dismissal or rejection of
9 the filing is the way to go. That is an extreme
10 result. We believe that the legal issue there is a
11 close call. We don't know -- we are in uncharted
12 territory regarding whether the Commission can do
13 that. I'm not aware of any precedent one way or the
14 other. But the way the issue is teed up here is what
15 is Staff's preference, and the preference would be to
16 determine these issues on a consistent record one
17 time. I think that's fair to all concerned.

18 These issues were not laid at the company's
19 feet by some other party or some other entity. These
20 issues were teed up by the company itself and so, in
21 that context, we think it's fair that the company
22 should see fit to address these issues on a more
23 consistent basis that has the least disruption to
24 their ratepayers.

25 This company has been before this Commission

0103

1 frequently for rates. We understand they're going to
2 have another rate case filing in June of this year,
3 with more to come. I think the ratepayers need as
4 few rate changes as possible, and we've offered
5 Solution B as a way to effectuate that.

6 So Staff supports Option B for the reasons
7 I've stated. I'd be happy to respond to any
8 questions that you may have.

9 JUDGE RENDAHL: Judge Moss.

10 JUDGE MOSS: I wanted to get back to a point
11 on timing, Mr. Trotter, that -- my attention may have
12 slipped, but if you could help me. Did I understand
13 you to say that Staff did not recognize in the rate
14 proceeding that double leveraging and related issues
15 might be present until after testimony was -- after
16 response testimony was filed in the acquisition
17 proceeding?

18 MR. TROTTER: No, what I meant to say was
19 when we were filing our direct testimony in the rate
20 case, the issue of double leverage was still under
21 development and we didn't know -- I believe the
22 testimony was filed later in the acquisition case

23 JUDGE MOSS: It's under development where?

24 MR. TROTTER: At the Staff level. We were
25 still considering that issue.

0104

1 JUDGE MOSS: In the rate proceeding?

2 MR. TROTTER: Well, we were aware that Mr.
3 Elgin was analyzing that double leverage issue in the
4 acquisition proceeding.

5 JUDGE MOSS: So there was some coordination
6 going on at the Staff level?

7 MR. TROTTER: There were discussions going
8 on, yes.

9 JUDGE MOSS: That's what you referred to
10 when you said we weren't made privy because of the ex
11 parte law?

12 MR. TROTTER: Yes, well, I think we -- at
13 this point, we -- at that point, when Mr. Elgin and
14 Staff had discussions about going forth with the
15 testimony that was filed in the acquisition case, we
16 had discussions internally about the implications in
17 the rate case and what to do, and because of the
18 scheduling concerns and other concerns, we decided to
19 go the way -- to not deal with it in the rate case.

20 JUDGE MOSS: So this was before the response
21 testimony in either proceeding?

22 MR. TROTTER: Well, it was during -- they
23 were fairly close, timing-wise, so it was just during
24 that time frame, we had to make a judgment about how
25 to do it and we made that decision. And as I said,

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1 that wasn't shared with you explicitly. The
2 Commission wasn't involved in those discussions, and
3 we perceive this oral argument today saying the
4 Commission wants to take a hard look at that and
5 maybe come out a different way.

6 So that's where we find ourselves. It
7 wasn't a situation -- I thought that there might have
8 been an implication, when the pre-hearing conference
9 in the rate case occurred in June or whenever it was,
10 that we knew all about this and sat on our hands, and
11 we really didn't. That's not exactly what Mr. Van
12 Nostrand said, of course, but that wasn't the case.
13 It was a late-developing issue, we had to make a
14 judgment call and we did, and that's why it arose the
15 way it arose and that's why we're here today, I
16 guess, at least one of the reasons.

17 JUDGE MOSS: That's all I have for now.
18 Thank you.

19 JUDGE RENDAHL: Any other questions from the
20 Bench? Okay. Thank you.

21 Mr. ffitch, are you ready to go?

22 MR. FFITCH: Yes, Your Honor. Thank you.

23 And Your Honor, I think that my comments will be
24 somewhat briefer, because we are in significant
25 agreement with the remarks that we've just heard from

0106

1 Messrs. Trotter and Cedarbaum.

2 Addressing first the substantive question,
3 Public Counsel agrees very strongly that approval of
4 the MidAmerican acquisition would make a material
5 change in PacifiCorp's capital structure and risk
6 profile for purposes of the general rate case. We
7 would concede that or acknowledge that, as a sort of
8 narrow technical matter, the day after the merger,
9 the stand-alone capital structure of PacifiCorp
10 itself will remain the same, but that's not the issue
11 that we're addressing here.

12 And we do feel strongly that there's no
13 question that the merger will have a material impact
14 for purposes of setting rates. And as I've
15 indicated, Counsel for Staff have really explored
16 that pretty thoroughly, and I'm going to sort of pick
17 and choose my prepared remarks here so that I cannot
18 just belabor those points.

19 I think that one issue I'd perhaps like to
20 differ a little bit with Mr. Van Nostrand on is the
21 level of debt at the MidAmerican parent level, and
22 just to talk about that a bit and illustrate the
23 problem that we see that really creates the material
24 impact.

25 MidAmerican, the future parent here, is

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1 capitalized with, our testimony shows, a much lower
2 common equity ratio than PacifiCorp and a much higher
3 debt level than Scottish Power, and as a result, has
4 a bond rating of triple B minus, which is just one
5 notch about above the junk bond level.

6 MidAmerican, in other words, has issued
7 additional debt at the parent company level that
8 increases its financial risk beyond that of Scottish
9 Power or PacifiCorp. And MidAmerican Witness Mr.
10 Goodman indicates that MidAmerican's capital
11 structure in March of this year consisted of 22
12 percent common equity, and post acquisition would be
13 about 28.5 percent common equity. And I'm referring
14 to actually Mr. Hill's discussion of Mr. Goodman's
15 testimony, which is in Exhibit 3, SGH-3, page three,
16 in Mr. Hill's merger testimony.

17 What this means is that because MidAmerican
18 has additional leverage beyond that existing at the
19 PacifiCorp corporate level, MidAmerican has far
20 greater financial risk and is effectively financing
21 part of its equity interest in PacifiCorp with less
22 expensive debt capital, as we've already heard. And
23 if this difference in leverage is not recognized in
24 rate-making, the additional leverage will allow
25 PacifiCorp's new parent, MidAmerican, to earn an

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1 equity return that is greater than that allowed by
2 this Commission.

3 I think, as we've heard again, that's
4 reflected in Mr. Elgin's testimony and also is
5 addressed in Mr. Hill's testimony.

6 In effect, I think, just to summarize this
7 point, if -- what, in effect, is happening here
8 through this additional leverage is that MidAmerican
9 is essentially gaming the regulatory system by
10 capitalizing its operations with less common equity
11 and more debt on books of the regulated subsidiary.
12 And in this way, ratepayers are required to pay the
13 higher cost of common equity in rates while the
14 owners are able to finance that common equity
15 investment at less expense using both debt and
16 equity, and thereby raise their common equity return.

17 If the regulators ignore the manner in which
18 the parent company elects to finance its equity
19 investment in the regulated sub, it will encourage
20 the parent to continue to finance its operations in a
21 manner that's financially riskier than that that's
22 appropriate for a utility operation. And in saying
23 that, I'm echoing what we just heard from Staff
24 Counsel, the sort of long-term nature of this
25 problem.

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1 This has the effect of allowing an
2 unnecessary transfer of wealth from ratepayers to
3 stockholders and will allow stockholders to earn a
4 return higher than that appropriate for a utility
5 operation. Therefore, the manner in which the parent
6 company elects to capitalize its operations makes a
7 difference in what Public Counsel believes is the
8 appropriate regulatory response in the rate case.

9 So I just would add those remarks to what
10 we've heard from Staff Counsel as to why there is a
11 material impact here.

12 JUDGE MOSS: Mr. ffitch, let me just
13 interject here and ask you, do you see that the
14 holding company's decisions with respect to how to
15 finance its investment with debt, the decision to do
16 that with debt, is that any different from a
17 multitude of shareholders out there in the
18 marketplace deciding to buy a stock on margin?
19 Aren't they doing the same kind of leveraging you're
20 talking about?

21 MR. FFITCH: I guess our position, Your
22 Honor -- I'm not an expert in the stock market and
23 why investors make certain decisions, but our
24 position is that there's a reason why this kind of
25 capital structure, this kind of leveraged capital

0110

1 structure is employed in this kind of situation.
2 It's not an accident; it's essentially smart
3 business.

4 But our concern is that the results, as I've
5 described, is the ratepayers essentially subsidizing
6 the super levels of equity return at the parent
7 level. They're much higher than would be appropriate
8 for an investment in a utility operation, sort of an
9 integrated utility operation like PacifiCorp.

10 JUDGE MOSS: And if I'm understanding,
11 you're saying you just don't know whether that would
12 be the identical situation for a shareholder buying
13 on margin?

14 MR. FFITCH: I think that's fair to say.
15 I'm not the expert witness for Public Counsel.

16 JUDGE MOSS: No, that's fine. I'm not
17 trying to press the point. I just want to make sure
18 I understood your answer. Thank you.

19 MR. FFITCH: And let me just turn, then, to
20 the procedural options, if I may. I think, first of
21 all, one of the observations that's occurred to me
22 while listening to the previous counsel, including
23 Mr. Van Nostrand, is that it's pretty important to
24 remember that the company's essentially in control of
25 the timing here. They decided when to file the rate

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1 case. I don't know this for sure, but I think it's a
2 reasonable assumption that they had some inkling that
3 there was going to be a merger proceeding when the
4 rate case was filed.

5 The sort of rate-making or problem that Mr.
6 Van Nostrand focused on, which is that you can't
7 think about the elephant in the room, you can't think
8 about the merger because it hasn't happened yet, is
9 essentially begging the question, because the options
10 that have been laid out by the Commission would solve
11 that problem. It would allow the merger to happen
12 and then it would be appropriate for rate-making
13 purposes to take that into account.

14 And the only reason why you can't do that is
15 because of the timing that's been chosen by the
16 company in making these filings. And the reason why
17 you perhaps face that conundrum with regards to
18 Option A and B is if the company chooses not to waive
19 its statutory rights under the suspension deadline to
20 sort of keep the Commission in that conundrum. So
21 the company has a lot of control over that issue, and
22 I think that's important to remember, taking a look
23 at these three different options.

24 Frankly, I guess, just to sum up, Public
25 Counsel prefers either Option B or Option C.

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1 Frankly, Option C, the dismissal of the rate case,
2 has some appeal given the merger impacts just
3 discussed, given that much of the testimony --
4 frankly, all of the testimony except from the company
5 in this case shows that there is no need for
6 additional revenue for this company, and the fact
7 that PacifiCorp has indicated that they're going to
8 be filing a rate case in the not too distant future
9 in any event, the dismissal of the proceeding seems
10 to make good sense.

11 However, I think I agree with Mr. Trotter's
12 analysis of the legal issues around this option and
13 the other three options.

14 Short of dismissal, we'd also support Option
15 B as a preferable alternative, if we're picking from
16 this menu. That's our preferable alternative, both
17 for reasons of efficiency and substance. On the
18 substance side, the cost of capital issues we think
19 need to be heard with all the other issues. They're
20 not isolated. I think one thing that hasn't been
21 mentioned is that the cost of capital, setting of
22 cost of capital is interrelated with the issues
23 around the decoupling proposals and also the power
24 cost adjustment mechanism proposals, and our
25 testimony addresses that in a couple of different

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1 places.

2 On the efficiency side, it seems desirable
3 to us to have all the witnesses and evidence on all
4 the issues heard at the same time, close to the time
5 when the briefs are filed and the Commission will be
6 deciding the case. Otherwise, the Commission is
7 deciding the case on a somewhat stale record if the
8 issues are taken up in piecemeal hearings.

9 If I may just briefly look at my notes, Your
10 Honor, see if I had anything else I wanted to raise.
11 Your Honor, those are all my comments.

12 JUDGE RENDAHL: Thank you. Any further
13 questions from the Bench? All right. Ms. Davison.

14 MS. DAVISON: Good afternoon, Chair Sidran,
15 Commissioners Oshie, Jones, and all the ALJs that are
16 in the room. My name is Melinda Davison, and I'm
17 appearing on behalf of the Industrial Customers of
18 Northwest Utilities. I will get to the bottom line
19 and then proceed with addressing I think what
20 hopefully are the issues of most interest to all of
21 you.

22 JUDGE RENDAHL: Ms. Davison, can you bring
23 the mike just a bit forward?

24 MS. DAVISON: Sure.

25 JUDGE RENDAHL: Thank you.

0114

1 MS. DAVISON: Thank you. Is that better?

2 JUDGE RENDAHL: It's better.

3 MS. DAVISON: Okay. We have this issue in
4 Oregon, as Mr. Van Nostrand will know, is that if you
5 speak too close to the microphone, you have all this
6 background, so I'm constantly trying to adjust how
7 close I am.

8 But I'll get to the answer first and then
9 provide you with our views on why we've reached this
10 conclusion, and I'll say at the outset that we very
11 much welcome this oral argument, we think that it was
12 very timely, and we appreciate the opportunity to be
13 here and present you with our views.

14 If we didn't have the oral argument, at
15 least -- and perhaps we would move forward with the
16 hearing, I'm not sure what the outcome will be, but I
17 will tell you that I have prepared hours of
18 cross-examination questions that focus very much on
19 the issues that you are hearing about this afternoon.
20 We think that it is absolutely critical for the
21 Commission to consider in the context of this general
22 rate case a whole series of cost changes that would
23 occur if the transaction is closed. And I will get
24 to some specificity on that shortly.

25 In terms of the question that has been

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1 presented, we are in unison with everyone to my left,
2 and that is, yes, we agree that there is absolutely
3 an impact on the capital structure and the risk
4 profile, and we support Option B.

5 I did not hear Mr. Van Nostrand say that his
6 company would not agree to extend the suspension
7 period, and it's certainly our hope that the company
8 would agree to do that. I think that is the simplest
9 and most straightforward way to proceed.

10 Short of that, however, I think that in
11 order for you to make a determination based on the
12 record before you that the rates are fair, just and
13 reasonable on a going forward basis, I don't think
14 that the record that is before you allows you to do
15 that. And if the company does not agree to extend
16 the suspension period, I think you should dismiss
17 this case.

18 Let me get to a few substantive issues that
19 have been talked about this afternoon. I am in
20 complete agreement with Staff Counsel and Public
21 Counsel that we believe the record in this rate case
22 proceeding demonstrates that there is not any
23 irreparable harm to the company. We believe that
24 this company has had rate increases four out of the
25 last five years, and we think, as a result, that's

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1 why you see testimony that you see in this case that
2 suggests that they either don't need a rate increase
3 or there should be a rate decrease. And as has been
4 stated, the company has been very up front with its
5 desires to file a rate case sometime in 2006.

6 On the issue of double leverage, I'm not
7 aware of a double leverage adjustment that's been
8 made by the Washington Commission, but I am aware of
9 double leverage adjustments that have been made in
10 numerous other jurisdictions, so it is not an
11 adjustment that is farfetched or one that is not
12 recognized by other commissions.

13 The other issue that I want to just get to
14 right away, because, to me, it really defies reality,
15 is that Mr. Van Nostrand stated repeatedly that this
16 Commission is to make a determination of Pacificorp's
17 capital structure on a stand-alone basis. And to me,
18 that is just simply a very narrow and hypertechnical
19 interpretation of what really happens when this
20 Commission establishes the cost of capital and
21 establishes an ROE.

22 And I would say, rather than relying on what
23 I have to say, but take a look at an exhibit which is
24 a -- it's attached to Mr. Gorman's testimony in the
25 merger proceeding, or the acquisition proceeding, and

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1 it's his Exhibit 4, and this is a Standard and Poor's
2 report that talks about the acquisition. And what
3 Standard and Poor's says is that the credit watch
4 listing reflects the fact that the current A minus
5 corporate credit rating on PacifiCorp is based on
6 Scottish Power's consolidated credit profile, whose
7 solid financial performance has compensated for the
8 U.S. utility's weaker stand-alone metrics. The
9 positive credit watch listing for MEHC reflects
10 Standard and Poor's expectation that the acquisition
11 will be financed primarily with the infusion of
12 equity from MEHC's ultimate parent, Berkshire
13 Hathaway, a practice consistent with past
14 acquisitions.

15 If this transaction proceeds, Standard and
16 Poor's will assess the financing structure of the
17 acquisition, MEHC's resulting consolidated credit
18 worthiness, the benefit of any ring fencing mechanism
19 that MEHC structures around PacifiCorp, and the
20 utility's stand-alone credit metrics.

21 So you see from the rating agencies
22 themselves, that it's not just simply a matter of a
23 stand-alone nature of PacifiCorp. All of these
24 issues are critically important when you look at this
25 complicated subject matter.

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1 The other thing that is important is how the
2 acquisition will change PacifiCorp's corporate
3 structure. The ring fencing includes a common equity
4 ratio test to determine PacifiCorp's -- if PacifiCorp
5 can issue dividends. Short term borrowing does not
6 count in the equity ratio test, so PacifiCorp is
7 incented to use greater short-term borrowing. This
8 is something that was discussed by Mr. Gorman in his
9 testimony in the MidAmerican case, and we think it is
10 a very important issue to consider here.

11 It is correct that there is ring fencing
12 provisions with Scottish Power, but we don't think
13 they're particularly strong ring fencing provisions.
14 Apparently MidAmerican doesn't, either, since they
15 are proposing much stronger ring fencing provisions.
16 And there's also lots of riskiness associated with
17 PPM, an affiliate of PacifiCorp.

18 I'm not here to suggest to you a final
19 resolution of these issues, but merely to bring to
20 your attention that these are very important issues
21 and ones that should be considered in the context of
22 establishing rates on a going forward basis.

23 The PacifiCorp general rate case has two
24 test periods in it. The company filed on a historic
25 2004 test period for most of the costs. However,

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1 very importantly, for power costs, which Mr. Van
2 Nostrand said was the major driver of the rate case,
3 that is a 2007 projected future test year.

4 If you take a look at a lot of the costs
5 that PacifiCorp is seeking to recover in this general
6 rate case, one of the very glaring costs that you
7 will see is the Currant Creek Power Plant. The
8 Currant Creek Power Plant is one that will not be
9 operational until March of 2006. The costs for this
10 power plant are ones that PacifiCorp are seeking to
11 recover. Just like the MidAmerican case, we won't
12 know until March whether that power plant goes into
13 operation. Heaven forbid that anything should happen
14 to it, but we certainly know from Coyote Springs II
15 that transformers can blow up not once, but twice,
16 and that things can happen to power plants and they
17 don't actually become operational when they expect to
18 become operational.

19 I think that it is as likely for Currant
20 Creek to come online in March as it is for
21 MidAmerican to close this transaction.

22 So the known and measurable piece is not one
23 that I find particularly persuasive from the
24 perspective of what Mr. Van Nostrand is saying. It
25 is certainly one that is an important concept in

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1 rate-making, but as I just demonstrated with Currant
2 Creek, it is one that can be looked at in different
3 shades of known and measurable that we can predict
4 what is likely to happen based on the facts that are
5 in the record in the case.

6 Ultimately, the problem is that you do not
7 have the facts in the record to reflect a whole
8 variety of cost changes that we believe are
9 critically important to reflect here, and part of
10 that problem is the schedule that we have in the rate
11 case.

12 The testimony in the rate case was filed on
13 November 3rd. We did not have an opportunity to file
14 rebuttal testimony. Most of the things that I'm
15 getting ready to list for you that I think are
16 important for you to consider in the rate case are
17 cost issues that were resolved through settlements
18 that happened in Utah and Oregon that occurred after
19 we filed our testimony in the rate case.

20 So it wasn't known to us on November 3rd
21 some of the things I'm about to list you. Some of
22 them perhaps were, but, again, I would echo the
23 sentiments of our colleagues that this isn't a
24 problem of our making. I think -- and perhaps -- I'm
25 not trying to point fingers at anyone; it's just the

0121

1 reality of what we're faced with in terms of, I
2 think, the unconventionalness of having a general
3 rate case on top of an acquisition case.

4 But several of the things that I want to
5 raise -- bring to your attention are these. Mr. Van
6 Nostrand talked about the ten basis point savings of
7 debt associated with what's known as the Berkshire
8 Hath. halo. While we may not necessarily agree with
9 that, we do think it's something that needs to be
10 taken into consideration.

11 There are a very different set of risks
12 associated with eliminating certain Scottish Power
13 affiliates. There will, of course, be new affiliates
14 associated with MidAmerican. Again, I'm not going to
15 give you a resolution of this issue; I simply want to
16 spot issues for you.

17 The off balance sheet purchase power
18 agreement debt will change after the acquisition.
19 PacifiCorp's business risk will change after the
20 acquisition. PacifiCorp's current business profile
21 score may change after the acquisition.

22 ICNU's Witness Jim Selecky has proposed an
23 adjustment in this case for the tax benefits that
24 Scottish Power currently enjoys. This is associated
25 with the debt that is held at PHI, the fact that,

0122

1 year after year, there is an interest deduction on
2 Scottish Power's income taxes associated with that
3 debt that was acquired in order to acquire
4 PacifiCorp. That adjustment will still exist with
5 MidAmerican, but the adjustment amount will be very
6 different.

7 We've heard about the double leverage
8 issues, so I'm not going to talk about that any
9 further.

10 If the MidAmerican transaction is closed,
11 there are a variety of rate credits that MidAmerican
12 has promised to pay system-wide. These credits
13 should be reflected as soon as the transaction
14 closes, which is presumably before the end of the
15 suspension period of the general rate case.

16 Insurance costs will change. Since Scottish
17 Power is self-insured in some instances or providing
18 insurance through an affiliate of Scottish Power,
19 this is something that will change because that
20 arrangement would no longer be there.

21 There are a variety of affiliate cross
22 charges. This is estimated to be \$7.9 million per
23 year on a total company basis that would need to come
24 out of the cost of service if this transaction
25 closes.

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1 We also believe there's an important issue
2 that becomes -- is certainly an issue that has been
3 addressed in the general rate case, but it's an issue
4 that we think becomes even more important if the
5 MidAmerican transaction closes, and that is that we
6 believe MidAmerican and PacifiCorp should be required
7 to agree that PacifiCorp's shareholders, or
8 MidAmerican, will bear the cost responsibility of
9 differing allocation methodologies.

10 If you look at the testimony in MidAmerican,
11 you will find a variety of commitments that are made
12 in large part related to other service territories.
13 There's lots of capital investments that will occur.
14 We think that will make the allocation methodology
15 issue even larger.

16 I'd like to just briefly address the
17 question of the reopener. I quite frankly can't get
18 my arms around that. I don't understand how that
19 works precisely. I don't understand how mechanically
20 a reopener happens. Would it happen by a Commission
21 motion? I agree with Mr. Trotter's assessment of it.
22 It seems something that is very complicated, and my
23 clients, quite frankly, don't want another rate case
24 on top of this rate case. We've already been
25 promised one in the summertime, and to add a third

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1 one into the mix seems completely untenable. I
2 believe that the issues will get away from all of us
3 and none of us really understand what the reopener
4 means.

5 And then the last thing I just wanted to
6 comment on is that -- and this may be a point that my
7 colleagues, if they were closer, they might kick me
8 under the table, but the last point I just want to
9 make is that we have several complicated legal issues
10 that have been discussed this afternoon, and we are
11 certainly willing to provide briefs on this if we
12 think it is -- if the Commission believes that it is
13 something that would assist them.

14 Again, we believe that Option B is the best
15 option, but barring the willingness of the company to
16 extend the suspension period, I believe that it is
17 important to understand the legal aspects of Option
18 C. Thank you.

19 JUDGE RENDAHL: Okay. Mr. Purdy.

20 JUDGE MOSS: Excuse me.

21 JUDGE RENDAHL: I'm sorry.

22 JUDGE MOSS: I had one question, Ms.
23 Davison, and that is is the heart of your concern
24 regulatory lag? Is that really what is going on
25 here, your concern there are a lot of moving pieces,

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1 things are going to change, and if we reflect these
2 changes at the conclusion of the ongoing rate case,
3 which presumably could be wrapped up in some
4 reasonably short period of time, then you avoid any
5 regulatory lag with respect to any changes that are
6 required as a result of these changed circumstances?
7 Is that essentially it?

8 MS. DAVISON: Your Honor, that is a piece of
9 it.

10 JUDGE MOSS: Well, I'm thinking about this
11 rate case that's been promised for June. So
12 presumably, if the acquisition is completed, we have
13 a rate case filed in June, all these issues will then
14 be set in stone, so to speak, as much as such things
15 are ever set in stone in these cases, so they'll all
16 be considered. And so then it's just a question of
17 timing. It will be a question of whether these
18 things are reflected in rates that are effective in
19 April or reflected in rates that are effective in
20 next January or February. Is that -- am I right?

21 MS. DAVISON: You're partially right. I
22 think that there are two arguments or two things that
23 I'm concerned about. One is to go ahead and make a
24 decision in this general rate case on the basis of
25 the record that is before you that does not consider

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1 what I believe to be known and measurable changes
2 that are very, very significant. We're not just
3 talking about one power plant here; we are talking
4 about a variety of very fundamental cost issues.

5 The second issue that gets to your
6 regulatory lag issue is one that immediately comes to
7 mind, this is an issue that is near and dear to my
8 heart, and that is the West Valley Power Plant. This
9 is a power plant that exists in a suburb of Salt Lake
10 City. You couldn't get power from Salt Lake to here
11 if you tried. It has a cost structure that is very
12 expensive and has an additional couple million
13 dollars per year that ratepayers are paying on a
14 total company basis. MidAmerican has agreed to take
15 those costs out for essentially two and a half years.

16 So under the regulatory lag theory, if
17 revised protocol is adopted by this Commission, I
18 don't know whether that is true or not, then we would
19 miss out of a good portion of the West Valley credit
20 that has been proposed by MidAmerican.

21 I could give you lots of other examples, but
22 that's one that quickly comes to mind. And I think
23 that to establish rates with blinders on, without
24 recognition that there are all those issues that I
25 identified for you this afternoon, plus a lot more, I

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1 think does not adequately do justice to the
2 rate-making responsibility of the Commission.

3 JUDGE MOSS: So this power plant thing you
4 mentioned in Utah, that's -- what you're saying is
5 you want to capture the benefit of that now, because
6 if we wait until the next rate case, the period
7 that's provided in -- there's a stipulation that's
8 providing for these benefits?

9 MS. DAVISON: Yes.

10 JUDGE MOSS: That period will largely be
11 elapsed?

12 MS. DAVISON: Yes.

13 JUDGE MOSS: Okay. One other question, and
14 that is, in your opinion, when did the impact or
15 effect, if you will, of all this acquisition matter
16 become known and measurable?

17 MS. DAVISON: A lot of what I talked about
18 in my remarks are set out in the Oregon stipulation,
19 and the Oregon stipulation was sometime mid-December.

20 JUDGE MOSS: December 23rd.

21 MR. VAN NOSTRAND: Yeah.

22 MS. DAVISON: Yeah, and I think somewhere in
23 that time frame, right.

24 JUDGE MOSS: So that's your opinion as to
25 when these changes became known and measurable,

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1 December 23rd?

2 MS. DAVISON: I'm not sure I can give you an
3 exact date, but I could tell you that the issues were
4 all evolving and, at that point, there was a lot more
5 clarity reached by the stipulation that was agreed to
6 in Oregon.

7 JUDGE MOSS: Okay. And just -- this is not
8 a question for you, but a point of clarification
9 concerning the action under RCW 80.04.210, that
10 provides the Commission may change orders at any time
11 upon notice to the public service company affected
12 and after opportunity to be heard, as provided in the
13 case of complaints. So that, I think, clarifies, at
14 least to some extent, the triggering mechanism.
15 That's all I have.

16 MS. DAVISON: Thank you.

17 JUDGE RENDAHL: Anything else from the
18 Bench? Mr. Purdy.

19 MR. PURDY: Thank you, Your Honor, Chairman
20 Sidran, members of the Commission. Thank you for
21 allowing me to appear here before you today.

22 I'm going to be very brief, because The
23 Energy Project, as you know, has not weighed in on
24 the company's capital structure and related issues
25 identified by the Commission in its notice of oral

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1 argument, thus I can't really add much to what's
2 already been said by the other parties, so I guess
3 I'll just jump straight to the procedural options
4 that have been laid out.

5 The Energy Project has a unique practical
6 and paramount concern, however. That is that The
7 Energy Project is, of course, of severely limited
8 financial means and its participation in this
9 proceeding, as well as the merger proceeding,
10 constitutes a significant financial hardship for that
11 organization.

12 If the Commission's ruling in the
13 acquisition case is such that additional post rate
14 case hearing procedures are necessary, it just seems
15 intuitive that The Energy Project will incur
16 duplicative or additional costs, even if those costs
17 are simply related to the tracking of subsequent
18 proceedings in the rate case.

19 Consequently, The Energy Project is not in
20 favor of Procedural Option A.

21 Similarly, under Option C, if the company is
22 required to withdraw its application in the entirety
23 and refile, the same repetition of costs will result
24 and, as you've heard now several times, the company,
25 in any event, intends to file perhaps in June, and

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1 then you have the conundrum of perhaps overlapping
2 general rate cases. I'm not sure how you'd work
3 through that.

4 But, really, to conclude, The Energy
5 Project, as a result, supports Option B on the basis
6 that it seems least likely to increase the amount of
7 expenses that my client must incur to remain a party
8 to this proceeding and to advance -- to be able to
9 advance the very important issues pertinent to
10 PacifiCorp's low income customers. That's really all
11 I have. Thank you.

12 JUDGE RENDAHL: Okay. Thank you very much.
13 Let's be off the record for a moment.

14 (Discussion off the record.)

15 JUDGE RENDAHL: Why don't we take a
16 five-minute break and come back and proceed with the
17 rebuttal phase, so we'll be back in the room at 20
18 after. So thanks very much.

19 (Recess taken.)

20 JUDGE RENDAHL: Be back on the record. And
21 our next step is to start with rebuttal from you, Mr.
22 Van Nostrand.

23 MR. VAN NOSTRAND: Thank you, Your Honor. I
24 want to start off with a couple of pretty
25 straightforward points.

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1 First, as a matter of just correcting the
2 record, Mr. Cedarbaum made the mention that
3 MidAmerican intends to finance this acquisition with
4 \$3.4 billion in equity and \$1.7 billion in debt as a
5 matter of certainty and undisputed. The record does
6 not support that. I would cite Mr. Goodman's direct
7 testimony, Exhibit 41 in the transaction docket. It
8 has not been resolved yet how this transaction's
9 going to be financed, whether there's going to be
10 \$3.4 billion in equity and one billion in equity and
11 \$1.7 billion in debt -- they very well could finance
12 it entirely with equity.

13 So the notion that the investment in
14 PacifiCorp itself is going to be financed with
15 additional debt is not clear on the record. The
16 double leverage adjustment must stand or fall on its
17 own based on the debt that currently exists in the
18 MEHC holding company structure.

19 Second, I just had a quick point. Mr.
20 Trotter citing 480-07-500 for the prospect that this
21 case can be dismissed, having spent a lot of time in
22 that rule-making and with Judge Moss, that rule
23 refers to a summary rejection of the filing if you
24 simply fail to meet the filing requirements.

25 The notion that you would use that rule as

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1 the basis for rejecting a filing after it's been
2 processed for eight months because circumstances
3 change and some party takes the position that the
4 test period is no longer representative, it's
5 completely inapplicable. That rule is completely
6 inapplicable. My discussion stands in terms of
7 whether dismissal is available as a matter of law.
8 Our position is that it does not.

9 In terms of this notion of the
10 representative test period, frankly, that very same
11 rule tells the company how it's going to -- what test
12 period it's going to use in a particular rate case,
13 and then you make adjustments to make -- to adjust
14 that to take out pro forma normalizing events.

15 Frankly, things always change. And the
16 notion that, well, you file a case and you get eight
17 months into it, well, things are different and now
18 your test period necessarily doesn't look
19 representative, that is an overtechnical reading and
20 the whole process breaks down at that point. There
21 are things that are always going to change. You take
22 a snapshot and you take account of it as things go
23 on, but -- and frankly, our position would be the
24 majority of costs do not change.

25 As I mentioned, power costs are unaffected

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1 whether or not MidAmerican owns this company or
2 Scottish Power. The cost of new generation, I think,
3 you know, is another example. The vast majority of
4 the costs simply don't change. In our view, the
5 costs of capital don't change and the risk profile of
6 the company doesn't change, so it is a representative
7 test period going forward.

8 Next, the issue of double leverage, we had
9 references by Mr. Cedarbaum to 14, 17 percent
10 returns, then we had references by Mr. ffitch to, you
11 know, double leveraging results in unacceptably high
12 levels of return. Frankly, there's a good reason
13 this Commission hasn't gone down the path of imposing
14 a double leverage adjustment. It stands rate-making
15 on its head.

16 If you look at any cost of capital testimony
17 by a cost of capital witness, they cite the Hope and
18 Bluefield standards. That's how you determine what
19 cost of capital to allow an investor in a utility.
20 You look at the risks of that particular enterprise
21 and you determine what return do investors need to
22 compensate them for that risk, particularly by
23 reference to risks of comparable enterprises. You're
24 compensated by the risk of your investment in
25 PacifiCorp.

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1 Double leveraging requires you to look not
2 just at the risks of investing in PacifiCorp, but
3 where did you get the money to buy your share of
4 PacifiCorp stock. If I get the money to buy
5 PacifiCorp stock out of my pocket or out of my bank
6 account or my dresser drawer, do I get the same cost
7 of capital as my neighbor who takes out a line of
8 credit against his house to buy a share of PacifiCorp
9 stock.

10 If this Commission goes down the path of
11 double leveraging, I think Judge Moss had the
12 question of Mr. ffitch, are we going to look at every
13 individual shareholder and determine what is your
14 cost of capital, where did you get your money to buy
15 your share of PacifiCorp stock. That's precisely
16 what double leveraging looks at.

17 Mr. Elgin will say MidAmerican has debt at
18 the holding company level; therefore, part of its
19 equity investment in PacifiCorp is funded by debt.
20 It completely stands Hope and Bluefield on their
21 head. We're now going to look at where investors get
22 their money rather than what risk are you trying to
23 compensate the investor for for looking at the
24 enterprise. With respect to MidAmerican's
25 acquisition of PacifiCorp, there is nothing on the

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1 record to suggest that its debt will increase as a
2 result of this acquisition.

3 The double leverage adjustment will live or
4 fall based on what's currently on the MidAmerican
5 books, and the debt level is not on the record shown
6 to increase as a result of this transaction.

7 Another couple of points. Mr. Cedarbaum
8 mentioned rate credits going forward, and Ms. Davison
9 mentioned a litany of things that are going to
10 change. You know, the litany that she lists
11 surprisingly comes out of the Oregon stipulation.
12 Exhibit 11 in the rate case docket is a copy of the
13 Oregon stipulation.

14 Under the most favored nations provision,
15 which I referred to, Washington customers are
16 entitled to any one of those commitments that these
17 parties choose to adopt. With respect to the
18 reduction in A&G costs in particular, it's a \$6
19 million across the system reduction in cost that,
20 under the Oregon stipulation, Washington customers
21 will get that benefit whether or not we have a
22 reopener, whether or not the Commission proceeds with
23 this rate case.

24 Under the Oregon stipulation, if you look at
25 Exhibit 11, that credit is deferred. Beginning the

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1 month immediately after the transaction closes, we
2 will start deferring that credit. It will be held
3 for ratepayers' benefits until the next rate case.
4 If we have a reopener, I think it would provide an
5 opportunity to put that credit immediately into
6 rates. But that is a credit that is available by
7 virtue of the Oregon stipulation and, by virtue of
8 the most favored nations clause, is available to
9 Washington customers.

10 The other issues raised by Ms. Davison, all
11 these litany of things that's going to change,
12 affiliate costs, insurance costs, those too are
13 addressed in the Oregon stipulation. There are
14 specific provisions that hold customers harmless from
15 the fact that certain affiliates that are owned by
16 Scottish Power will not -- we cannot spread certain
17 corporate costs across them anymore. They are held
18 harmless by virtue of that commitment and that
19 stipulation, and that commitment is available to
20 Washington customers.

21 Same thing with insurance. Scottish Power
22 currently gets insurance from PacifiCorp for a
23 subsidiary. Well, that's not going to be available,
24 because PacifiCorp is no longer going to be owned by
25 Scottish Power, but there's a hold harmless provision

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1 that ratepayers are not going to pay more as a result
2 of that insurance being unavailable.

3 West Valley is a curious selection. West
4 Valley is not included in rates in Washington. Ms.
5 Davison would have you think that we need to get the
6 credits arising from West Valley. West Valley is not
7 in rates in Washington. Once West Valley is included
8 in rates in Washington, I agree, Washington customers
9 are entitled to those credits. And again, under the
10 Oregon stipulation, the most favored nations
11 provision, those credits would be deferred beginning
12 the month after the transaction closes to be held for
13 the benefit of ratepayers whenever those credits can
14 be included in rates.

15 Then the notion of, gosh, looking forward,
16 we don't know whether Carrant Creek is going to be
17 online, what's the difference between that and
18 whether this transaction is going to close. Carrant
19 Creek, in fact, is going to go online next month, but
20 more importantly, it is the consistent Washington
21 Commission precedent that if a plant is online before
22 rates take effect, that's what's necessary to satisfy
23 the used and useful statute.

24 The Puget Colstrip case, the Avista Coyote
25 Springs, it happens -- a plant does not have to go

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1 online during a historical test period. As long as a
2 plant goes online before the rate effective period,
3 it can be included in rates. Currant Creek is such a
4 situation, but of course, under the
5 interjurisdictional cost allocation position of ICNU,
6 Washington customers will never pay that anyway.

7 I guess, summing it up, I guess, to a large
8 extent, this whole -- it's a matter of fundamental
9 fairness, in our view. We've been processing this
10 rate case since May. it's been on file for eight
11 months, been processing, we've had three rounds of
12 testimony, endless amounts of discovery, as the
13 support staff for PacifiCorp in the room will attest,
14 and to pull the plug on it now based on an event
15 which we don't know for certain will happen and to
16 suggest that, well, because of that event, we now
17 have an unrepresentative test period, it's
18 fundamentally unfair.

19 And particularly, I think, when you take
20 account of the fact that MidAmerican announced this
21 transaction on May 24th, the application was actually
22 filed on July 15th. That application included clear
23 references to the amount of debt at the MEHC level,
24 it included clear references to commitments to
25 reductions in corporate cross charges, it included

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1 clear references to promised reductions in debt costs
2 for new long-term debt, and there was absolutely no
3 capturing of those impacts in the rebuttal testimony
4 -- in the opposing testimony filed by Staff and
5 Intervenors, which was four months later.

6 We're talking November 3rd testimony was
7 filed in this rate case docket. MidAmerican
8 application was filed July 15th. And now, the day
9 the hearings are supposed to start, now we have this
10 convergence. It's -- oh, we have these things that
11 are going on in the MidAmerican docket. There was
12 plenty of opportunity to include that and address
13 these issues in the rate case, which brings me back
14 to my final point. The reason that it wasn't done is
15 it's not a known and measurable change.

16 Mr. ffitich will talk about we can't talk
17 about the elephant in the room. Well, I would agree,
18 but the elephant has to enter the room and, in my
19 view, until this transaction closes, there is not a
20 known and measurable event that requires -- that
21 provides a basis for this rate case, to pull the plug
22 on this rate case. We'll talk about the elephant in
23 the room, but the elephant has to enter the room.

24 I think when the elephant enters the room,
25 we have put on the table a process that works. It's

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1 a process that is fair to all parties, it's a rate
2 case reopener. If the transaction does actually
3 close, which we will know in two and a half to three
4 months, and if the Commission believes that costs
5 change as a result of the transaction, it can be
6 evaluated in that proceeding.

7 We fundamentally don't believe that the
8 costs do change, for all the reasons that I've
9 stated, but the Commission's authority under that
10 statute is clear and it's certainly been reinforced
11 by the recent Court of Appeals decision. We think
12 that is a remedy that is fair and addresses the needs
13 of the parties and addresses the needs of the
14 Commission to properly take account of what it views
15 as the possible impacts of the transaction on
16 PacifiCorp's cost of service in the rate year. Thank
17 you.

18 JUDGE RENDAHL: Thank you. Any questions
19 from the Bench? Okay. Mr. Trotter.

20 MR. TROTTER: Thank you. Just one moment.
21 I'll go first, and then Mr. Cedarbaum can offer some
22 comments. Just a couple of small points. There's
23 one shareholder of PacifiCorp today, that's Scottish
24 Power, and there will be one shareholder if the
25 acquisition goes through, that's MEHC, so you don't

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1 need to worry about where the money comes from. We
2 know where it comes from. And under Hope and
3 Bluefield, you look at the cost to the utility of the
4 capital, and that's what double leverage does. It's
5 been affirmed by courts and other jurisdictions as
6 lawful.

7 I was castigated by counsel for referring to
8 Rule 500 and 530. I used that as an example that the
9 company has the burden to file an appropriate case,
10 and I believe it is always at risk if that case is
11 found to be wanting, particularly when the
12 circumstances are caused by the company itself. The
13 company chose to file the case the way it did and it
14 needs to live with the consequences of that one way
15 or the other.

16 The company is being patently inconsistent
17 in its argument regarding Currant Creek. That is a
18 plant that is not in service today, it is being dealt
19 with in the rate case, as Mr. Van Nostrand said. We
20 take those into account and if they go into service
21 during the rate case, we take it into account. That
22 rationale apparently does not apply, according to the
23 company, to acquisitions that occur during the rate
24 case. You can't take those into account. Well,
25 there's no principal reason for that. It ought to be

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1 taken into account.

2 It is fundamentally unfair when the company
3 files its case a certain way and other parties file
4 their case a certain way, the company could have
5 included this in its case and teed the issue up. It
6 chose not to. This Commission felt it important,
7 obviously very important to tee this issue up now,
8 and it is an appropriate time to do that and a
9 decision will be made.

10 Some of the adjustments that Ms. Davison
11 identified may be subject to a deferral and credit
12 and so on, others are not, and we just simply have a
13 fundamental disagreement between the parties as to
14 the -- at least the non-company parties versus the
15 company regarding the theory of double leverage and
16 its impacts, but the fundamental point for Staff is
17 that if these impacts are not taken into account,
18 MEHC benefits, and there's no symmetrical benefit for
19 the ratepayer.

20 Ultimately, the goal should be to regulate
21 in the public interest, and that's a balancing of
22 ratepayer and investor interests. Given the rate
23 profile for this -- rate case filing profile for this
24 company in the last five years and for the
25 foreseeable future, it just makes sense to decide

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1 these issues on one record at one time. This isn't a
2 question of deferring these issues into the next rate
3 case and figuring out how they shake out by May of
4 '07 or April of '07; it's what is representative
5 about this test year now, and that is why Staff is
6 pursuing -- or preferring Option B.

7 MR. CEDARBAUM: No more.

8 JUDGE RENDAHL: Thank you. Mr. ffitch.

9 MR. FFITCH: Nothing further, Your Honor.

10 JUDGE RENDAHL: Ms. Davison.

11 MS. DAVISON: Thank you, Your Honor. Just a
12 couple of quick points. On the issue of the deferral
13 of the credits and various commitments that are set
14 out in the Oregon stipulation, I would note that the
15 commitment to set up the deferred account is in the
16 context of a stipulation.

17 While we will all work very hard to reach a
18 stipulation in Washington, the fact remains is that
19 we have not done so. And so without a stipulation, I
20 have no idea whether the company will voluntarily
21 come into Washington and set up a deferred account or
22 not. That is simply not a commitment that has been
23 made separate and apart from the settlements that
24 have occurred in the other states.

25 Option B is not pulling the plug on this

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1 rate case. I think Option B is one that all the
2 non-company parties have settled on as being the
3 fairest and most reasonable outcome, because it is
4 one that does take into consideration all the hard
5 work that has been done thus far. It simply, as I
6 understand it, extends a suspension period to allow
7 us to account for these very important changes that
8 are likely to occur, and then we wrap it all up, as
9 Mr. Trotter said, with one record, and it's not
10 pulling the plug on the rate case by any stretch of
11 the imagination.

12 I think the time period that would be needed
13 for the additional suspension is very limited, it's
14 relatively known, and I think the part that needs to
15 be done to get the record in the kind of shape it
16 needs to be in is relatively straightforward,
17 particularly if we have a settlement in the
18 acquisition case.

19 As it relates to West Valley, I don't think
20 the company would deny that they are certainly
21 attempting to include the West Valley costs in the
22 general rate case, so that is merely my point. Not
23 that they are currently in the case, is that they're
24 attempting to get them into their cost of service.

25 Finally, on the issue of fundamental

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1 fairness, I found it interesting that that was the
2 basis upon which Mr. Van Nostrand ended his remarks,
3 because during the break I was thinking further about
4 Mr. -- or Judge Moss's question to me about what's
5 really our issue here, what are we really concerned
6 about, and I think it comes down to exactly what Mr.
7 Van Nostrand said for exactly the opposite reasons.

8 For us, it's a matter of fundamental
9 fairness. It is not fair to ratepayers to set rates
10 on a basis that ignore so many key aspects that an
11 acquisition is so fundamental and there's so many
12 aspects that are impacted by that, it is not fair to
13 ratepayers, nor do I believe we're establishing fair,
14 just and reasonable rates without taking that into
15 consideration.

16 The last point that I would make on this
17 notion of fairness is that Mr. Van Nostrand said that
18 we can't take MidAmerican into consideration until
19 the elephant is in the room. Well, obviously the
20 elephant is in the room. It's pending before you.
21 We are virtually done with that case. We're at a
22 point of briefing. So I don't think you can suggest
23 that the elephant's not in the room. The elephant is
24 before you, as well as this other elephant in the
25 form of the general rate case. And I think to

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1 disregard the existence of the two and the impacts
2 that are present here, if the outcome that we think
3 is likely to occur does occur, yes, there may be
4 conditions attached to it and I can't predict what
5 MidAmerican will do or say in response to that, but I
6 think, given the posture of where the cases are, I
7 think it's unfair to ratepayers and unreasonable to
8 ignore the existence of the acquisition case.

9 And finally, just to reiterate, absolutely
10 my client does not want a third rate case, and that's
11 how we see the reopener. We see the reopener as a
12 worst of all worlds, a mini condensed rate case where
13 we have to go through the drudgery and the difficulty
14 of a general rate case in a limited time period. And
15 we simply do not think that that is an outcome that
16 would benefit customers in any way, shape or form.
17 Thank you.

18 JUDGE RENDAHL: Mr. Purdy.

19 MR. PURDY: I have nothing further. Thank
20 you.

21 JUDGE RENDAHL: Okay. Thank you all very
22 much for your argument this afternoon. We'll be in
23 recess and -- can't give you a time deadline, but it
24 will be within the hour.

25 CHAIRMAN SIDRAN: Yes.

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1 JUDGE RENDAHL: And so we'll be off the
2 record. We will notify you if you stay around the
3 area and when we're ready to come back on. Thank
4 you. Off the record.

5 (Recess taken.)

6 CHAIRMAN SIDRAN: Are we back on the record?

7 Well, thank you for your indulgence. We needed some
8 time, as you can imagine, to fully consider this.

9 Let me begin first by thanking the parties
10 for their arguments. It was an important issue to
11 the Commission, as you know, and we found the
12 arguments helpful in our deliberations.

13 I think, as all of you recognized in your
14 arguments, this is a very difficult issue in a
15 somewhat unique circumstance, and we appreciate the
16 challenges that the uniqueness of the circumstance in
17 relationship to the timing of these two proceedings
18 has presented for the parties. And we heard in the
19 course of your arguments comments about the
20 importance of fairness and when issues should have
21 been fairly raised and who should have raised them,
22 and we understand those arguments and there is merit
23 to those concerns on the parts of the parties who
24 have raised them about who should have raised this
25 issue and when and in what context.

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1 But we look at this issue in the context of
2 what we believe to be a transcendent duty that the
3 Commission has, which is to be sure that we have a
4 full and complete record that enables us to reach a
5 fair and just result on the issues that we must
6 decide. And while we are mindful of the challenges
7 that, again, this unique and difficult circumstance
8 presents to the parties, that really, in the end,
9 must be our focus.

10 Now, in preparation for the hearing that's
11 scheduled to commence tomorrow, we've had the
12 opportunity to review the pre-filed testimony and
13 exhibits, and particularly with regard to the issue
14 of the cost of capital.

15 We are concerned, which is why we are having
16 the hearing this afternoon, about the adequacy of the
17 current record to allow us to fully and fairly
18 determine a number of issues, and in particular the
19 cost of capital issue.

20 And we note several instances in the
21 pre-filed testimony and exhibits in which the
22 parties, including the company, have put into issue
23 the ownership of PacifiCorp and the pending
24 acquisition. This is reflected, for example, to cite
25 just two, in the references to the \$500 million of

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1 additional capital, which is to be provided by
2 Scottish Power, and that is referenced as part of the
3 acquisition terms, and we also note the reference by
4 the parties, including the company, to the credit
5 rating implications of the ownership of PacifiCorp by
6 Scottish Power.

7 We find that this issue of ownership and the
8 pending acquisition is material and it is relevant to
9 determining what would be a fair and just
10 determination of the cost of capital element of this
11 case, but we find the current record, at least as it
12 stands with respect to the pre-filed testimony and
13 exhibits, which will become the record, to be
14 insufficient for us to determine these issues, albeit
15 we understand and take due consideration of the point
16 raised by the company that the acquisition may not
17 proceed.

18 Nonetheless, it seems to us that in order to
19 fairly determine these issues and in particular, the
20 cost of capital issue, we require that the record, in
21 effect, be supplemented with respect to what
22 admittedly at this state is a hypothetical
23 consideration of the issues that will be impacted
24 with respect, again, in particular to the cost of
25 capital, but not exclusively that, what the impact

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1 would be of the hypothetical acquisition of
2 PacifiCorp by MEHC.

3 Now, we do not want to delay this proceeding
4 or to increase the costs to the party or to make this
5 any more burdensome, either on the parties or, for
6 that matter, on the Commission itself than is
7 necessary and we want to do this in a way that is
8 fair to the parties, so we propose to proceed as
9 follows.

10 We will commence the hearing tomorrow
11 morning. I have an obligation to appear and testify
12 at a legislative hearing at 10:00, and we will
13 commence with Judge Rendahl presiding at 9:30,
14 without the Commissioners, for the purposes of
15 addressing issues of scheduling witnesses. We
16 propose to proceed with all the other aspects of this
17 case, except for the cost of capital witnesses,
18 beginning with I believe Mr. MacRitchie, and we will
19 commence testimony at 10:30, legislature being
20 willing, and we will commence at 10:30.

21 And we then want to hear, and I believe we
22 can take this up at 9:30 without the Commissioners.
23 We want to hear from the parties tomorrow morning
24 about how you suggest we proceed to supplement the
25 record which we believe is necessary for the reasons

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1 I've indicated. It may be that our desire to
2 understand more the implications of this hypothetical
3 acquisition on the cost of capital and other issues
4 could be addressed adequately through
5 cross-examination or it may be that some believe that
6 it would be necessary to provide additional pre-filed
7 testimony, or perhaps it can be addressed through
8 additional direct testimony from those live witnesses
9 who will be appearing and testifying. We would
10 appreciate your thoughts and preferences in that
11 regard.

12 We are determined to render a decision in
13 this case within the statutory deadline, and we will
14 do our absolute best to meet that obligation, but we
15 want the parties and, in particular, the company to
16 understand that, as the record now stands, we
17 believe, when it becomes the record, I should say,
18 that if all we have before us is the pre-filed
19 testimony and the exhibits, there will be a serious
20 question in our minds with respect to whether it
21 adequately addresses the issues that I've mentioned
22 in my prior comments.

23 We also think, frankly, that if we speak to
24 these issues now, we will be able to save ourselves
25 and the parties some time and effort during the

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1 course of the hearing, because, as has been suggested
2 by some of the parties, there would be a great deal
3 of cross-examination directed at these issues in any
4 event, even if we were not to, as you might say, take
5 this elephant by the tusks and deal with it in a more
6 forthright way.

7 So I don't know. I assume we will issue --
8 do we need to issue a written order conforming to our
9 decision, or do we now have a record that you believe
10 is sufficient?

11 JUDGE RENDAHL: I believe we have a record
12 that is sufficient, and then tomorrow morning we can
13 reconvene at 9:30 and discuss the parties'
14 preferences in terms of how to supplement the record
15 in some way. If you wish to stay immediately after
16 and discuss what happens after Mr. MacRitchie
17 tomorrow, I'm happy to do that tonight, but beyond
18 that, we should reserve discussions for tomorrow, for
19 tomorrow morning.

20 Does anyone have any questions or
21 suggestions at this point?

22 CHAIRMAN SIDRAN: They can withhold their
23 comments, I think, on that.

24 JUDGE RENDAHL: They could.

25 CHAIRMAN SIDRAN: If there are questions, I

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1 think we'd be happy to hear them.

2 JUDGE RENDAHL: Mr. Trotter.

3 MR. TROTTER: I have no questions. I do
4 think we need some time to ponder this and see how it
5 can be made workable.

6 JUDGE RENDAHL: Okay. And is tomorrow
7 morning enough time?

8 MR. TROTTER: We'll do our best.

9 JUDGE RENDAHL: Or would you like the
10 morning to meet amongst yourselves and then have
11 scheduling discussions after Mr. MacRitchie?

12 MR. TROTTER: Frankly, one of our challenges
13 is that rendering a decision within the statutory
14 deadline is an issue for Staff, because we were
15 talking to a consultant that would not be available
16 until, you know, later that would make that goal
17 unattainable, so we're going to have to go back to
18 the drawing board and rethink our approach to that
19 issue.

20 JUDGE RENDAHL: Okay. Well, any other
21 questions at this point? Ms. Davison, and then Mr.
22 ffitch.

23 MS. DAVISON: The only question that I have
24 in my mind about deciding scheduling issues tomorrow
25 is I have Mr. Selecky on a plane on Thursday

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1 afternoon, and he's scheduled to be here for
2 cross-examination on Friday, and I do believe that he
3 has an issue that would be implicated by the
4 hypothetical close of the transaction, so --

5 JUDGE RENDAHL: Well, I'm happy to stay and
6 talk scheduling with all of you for a few minutes.
7 If you'd like to do that, I have no problem doing
8 that. So why don't we -- if there's nothing further
9 about the Commission's decision at this point -- Mr.
10 Ffitch, did you have anything on that point?

11 MR. FFITCH: No.

12 JUDGE RENDAHL: Okay. If there's nothing
13 further, then I'd like to go off the record at this
14 point so we can have some scheduling discussions. So
15 we'll be off the record. Thank you very much.

16 CHAIRMAN SIDRAN: I just want to add one
17 further comment, because I will not be a party to
18 your discussions about scheduling.

19 Because we view it as important to meet the
20 statutory deadline and because we think it's
21 important to be fair to both the company and the
22 parties, it is the company and the parties that have
23 created the context in which this complication
24 arises, that is, the decisions by whomever not to
25 address this hypothetical issue in one way or another

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1 in their cases, at least as we now have it in the
2 context of the pre-filed testimony, creates, if you
3 will, the conundrum that we have.

4 So we will do our level best to meet that
5 statutory deadline, and you all will have to figure
6 out how to do that in order to give us a record which
7 is sufficient for us to meet our obligations.

8 So we realize there may be some burdens here
9 on various witnesses and parties, which we regret,
10 but we are where we are and so we'll just have to
11 work together to try to make this as least burdensome
12 as possible.

13 COMMISSIONER OSHIE: I just wanted to also
14 thank the parties for your time this afternoon on
15 very short notice. This is, as the Chairman said, a
16 very important issue to the Commission, and we
17 appreciate your time thinking about these important
18 matters and look forward to hearing from you
19 tomorrow.

20 JUDGE RENDAHL: Okay. We will be off the
21 record and have some scheduling discussions. Thanks
22 very much.

23 (Discussion off the record.)

24 (Proceedings adjourned at 6:05 p.m.)

25