



0157

1                   INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,  
2                   by MATTHEW W. PERKINS, Attorney at Law, Davison Van  
3                   Cleve, 333 Southwest Taylor, Suite 400, Portland,  
4                   Oregon 97204; telephone, (503) 241-7242.

5                   THE ENERGY PROJECT, by BRAD M. PURDY,  
6                   Attorney at Law, 2019 North 17th Street, Boise, Idaho  
7                   83702; telephone, (208) 384-1299.

8                   PUBLIC COUNSEL, by SHANNON E. SMITH, Senior  
9                   Assistant Attorney General, 900 Fourth Avenue, Suite  
10                  2000, Seattle, Washington 98164-1012; telephone, (206)  
11                  389-3996.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

0158

1

---

2

INDEX OF EXHIBITS

3

---

4

EXHIBIT:

MARKED:

OFFERED/ADMITTED:

5

1

161

161

6

2

161

161

7

3

161

161

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0159

1 PROCEEDINGS

2 JUDGE MOSS: Let's be on the record. Good  
3 morning, everyone. My name is Dennis Moss. I'm an  
4 administrative law judge with the Washington Utilities  
5 and Transportation Commission. We are convened this  
6 morning in the matter of the joint application of  
7 MidAmerican Energy Holdings Company and PacifiCorp,  
8 doing business as Pacific Power and Light Company, for  
9 an order authorizing proposed transaction, Docket  
10 UE-051090. To be more specific, the transaction at  
11 issue in this proceeding is the proposed acquisition of  
12 PacifiCorp from ScottishPower by MidAmerican Energy  
13 Holdings Company.

14 The parties filed a settlement agreement in  
15 this proceeding, if memory serves me, January 20th,  
16 2006, and our purpose here today is to receive the  
17 stipulation into evidence along with certain other  
18 exhibits and to give the commissioners an opportunity  
19 to inquire about the settlement, and I think we will  
20 also hear from Mr. Cedarbaum briefly at the outset, but  
21 our first order of business will be to take  
22 appearances, and I will first turn to the Company.

23 MR. VAN NOSTRAND: Appearing on behalf of  
24 joint applicants, James M. Van Nostrand, with Stoel  
25 Rives in Portland, and sitting at counsel table with me

0160

1 is Mark C. Moench, senior vice president of law for  
2 MidAmerican Energy Holdings Company.

3 JUDGE MOSS: For ICNU?

4 MR. PERKINS: Here for the Industrial  
5 Customers of Northwest Utilities, I'm Matt Perkins from  
6 the law firm Davis Van Cleve in Portland.

7 MR. PURDY: Brad Purdy appearing on behalf of  
8 The Energy Project.

9 MS. SMITH: Shannon Smith, assistant attorney  
10 general for public counsel.

11 MR. CEDARBAUM: Robert Cedarbaum, also  
12 assistant attorney general for Commission staff.

13 JUDGE MOSS: I believe that completes our  
14 appearances, but I know there are some folks on the  
15 conference bridge line. Are there any other  
16 appearances today? With that, those of you on the  
17 bridge line will be monitoring today, but I'm going to  
18 mute the caller button so that we don't get any  
19 elevator music or cell phone calls during our  
20 proceeding.

21 Before I turn to you, Mr. Cedarbaum, we have  
22 a couple of housekeeping matters. I want to mention  
23 for today's record that we previously had an agreement  
24 among the parties with respect to the record in this  
25 proceeding, and basically, the parties proposed to

0161

1 admit by stipulation much of the prefiled testimony and  
2 many of the prefiled exhibits that we had at the time  
3 the settlement was filed.

4 In Order No. 6 entered on December 27th,  
5 2005, the Commission granted the joint motion to admit  
6 these exhibits, so I will provide the exhibit list to  
7 the court reporter at the conclusion of today to be  
8 included with our transcript. In addition, there was a  
9 stipulation of facts. Was that just between the  
10 Company and the Staff, Mr. Cedarbaum?

11 MR. CEDARBAUM: Yes, Your Honor.

12 JUDGE MOSS: That also was accepted as part  
13 of the record by Order No. 6. I did not give that a  
14 separate exhibit number, and I don't think that is  
15 necessary.

16 Today we have three additional exhibits. We  
17 have the joint testimony that was filed in support of  
18 the stipulation sponsored by the witnesses who are here  
19 with us today and whom we will shortly have introduced.  
20 I'm going to mark that as Exhibit No. 1 in this  
21 proceeding. The stipulation itself I will mark as  
22 Exhibit No. 2, and the response to Bench Request Nos. 1  
23 through 4, which we received yesterday afternoon, I'll  
24 receive as a single Exhibit No. 3. These being joint  
25 exhibits, I don't really need to call for objections,

0162

1 and I'll just receive those into the record as  
2 numbered. Are there any other exhibits that any party  
3 wishes to offer?

4 MR. CEDARBAUM: Exhibit No. 1, which is the  
5 joint testimony, I assume also includes what we filed  
6 as Joint Exhibit 2, which were some qualifications, or  
7 did you want to mark that separately?

8 JUDGE MOSS: No. We'll make that part of  
9 Exhibit 1. Anything else? With that, Mr. Cedarbaum, I  
10 think it's appropriate to turn to you. Will you be  
11 introducing our panel, or will we have them introduce  
12 themselves?

13 MR. CEDARBAUM: I can introduce them.

14 JUDGE MOSS: All right. Go ahead.

15 MR. CEDARBAUM: Thank you again, Your Honor,  
16 Chairman Sidran, and Commissioners Jones and Oshie. As  
17 was noted when we went on the record, this is a  
18 full-party settlement of the joint application of  
19 MidAmerican Energy Holdings Company and PacifiCorp to  
20 acquire PacifiCorp. The stipulation, which is now  
21 Exhibit 2, includes 79 very detailed and specific  
22 commitments by PacifiCorp and MEHC, but I think it's  
23 fair to say that the overriding goal of the parties in  
24 the stipulation was to promote the public service  
25 obligations of PacifiCorp while also protecting the

0163

1 Commission's ability to regulate in the public interest  
2 in setting just and reasonable rates.

3           We believe we were successful in reaching  
4 those goals through specific commitments that promote  
5 customer service by affirming and extending customer  
6 guarantees and performance standards, by commitments  
7 that promote reliable service through investment and  
8 transmission, least-cost resources, conservation and  
9 renewables, through guarantees for Commission access to  
10 all relevant information and books and records of  
11 PacifiCorp, MEHC, Berkshire Hathaway, and all of their  
12 other affiliates and subsidiaries, through commitments  
13 involving assistance to low-income customers, through  
14 many detailed ring-fencing commitments that protect  
15 PacifiCorp from the potential financial distress of  
16 other companies within the MEHC holding company  
17 structure, and with commitments that will insure that  
18 the Company is held to its full burden of proof in  
19 future cases to prove that all of its investments and  
20 expenditures that it commits in its operations are  
21 reasonable and prudent.

22           Of course, there are other provisions that  
23 we've agreed to involving certain rate credits, and  
24 there is also a most-favored-nations process that both  
25 add value to the settlement as well. In conclusion,



0164

1 the parties recommend that the Commission adopt and  
2 approve the full settlement as being in the public  
3 interest and satisfying all the statutory standards  
4 that are applicable, and we would again ask the  
5 Commission to adopt our settlement.

6           At this time, those complete my introductory  
7 comments. I would note we do have a full panel of  
8 witnesses here. For MEHC and PacifiCorp is Brent Gale.  
9 For Commission staff is Ken Elgin. For The Energy  
10 Project is Charles Eberdt. For Public Counsel is Steve  
11 Johnson, and for ICNU is Michael Early.

12           I should also note that in the room and per  
13 the Commission's request, there are some accounting  
14 experts. For Commission staff is Thomas Schooley, and  
15 I believe for the Company is Mr. Specketer, but I'm not  
16 sure about that.

17           JUDGE MOSS: Is that correct?

18           MR. VAN NOSTRAND: Yes.

19           MR. CEDARBAUM: So those two accounting  
20 experts are not on the panel. They are available if  
21 the Commission needs to ask them questions that the  
22 panelists cannot field.

23           JUDGE MOSS: We appreciate you making those  
24 witnesses available to us today, and if they are  
25 needed, we will call on them, and I think for the sake

0165

1 of efficiency, I will swear all of the witnesses  
2 collectively, including the panelists and the  
3 accounting witnesses. Let me ask each of you to rise  
4 and raise your right hand.

5 (Witnesses sworn.)

6 JUDGE MOSS: With out preliminary statement  
7 out of the way, I believe we are ready to turn directly  
8 to questions from the Bench. Mr. Chairman?

9 CHAIRMAN SIDRAN: I want to commend the  
10 parties for having reached this stipulation. I can  
11 tell from the particulars that there was a lot of time  
12 and effort put in by all of the parties in negotiating  
13 terms that were of particular importance to the State  
14 of Washington as well as carefully reviewing the  
15 agreements reach in the other states, and I think it  
16 has been of great help to all of us in evaluating this  
17 particular transaction, so thank you for that.

18 There are just a couple of areas that I would  
19 like to inquire about that would help me have a clearer  
20 understanding of some of the provisions. First, I  
21 wanted to inquire about a Washington provision, and  
22 this is No. 8, and I'm not entirely sure to whom I'm  
23 addressing this question to so I will put it out there  
24 for you to respond as appropriate.

25 I just need some clarification because I'm

0166

1 not sure I understand what is contemplated by the term  
2 "nonconsolidation opinion," and while I think I  
3 understand the concept, I would like to know from whom  
4 is it expected that this opinion will be obtained, and  
5 what do you think it actually means? What effect do  
6 you think it will have if the opinion is obtained.

7 MR. GALE: Let me see if I can answer that  
8 question for you. First of all, with regard to the  
9 source of the opinion, it will be a legal opinion  
10 provided by one of three law firms. Those law firms  
11 are all nationally known. Leboeuf Lamb is one of  
12 those; Willkie Farr, and I forget the third. Latham  
13 Watkins is the third. Thank you, Mark. One of those  
14 three firms will be asked to provide the  
15 nonconsolidation opinion.

16 The nonconsolidation opinion is a legal  
17 opinion that is relied upon both by the entities that  
18 are grading the ring-fencing as well as the rating  
19 agencies, and frankly, it's more for the benefit of the  
20 rating agencies than it is for the parties that are  
21 creating the ring-fencing. That particular legal  
22 opinion will venture the opinion that the ring-fencing  
23 that is in place for PPW Holdings, LLC, which is the  
24 holding company above PacifiCorp and below MEHC, that  
25 that ring-fencing will provide financial protections in

0167

1 the event of financial difficulty of MEHC or any of the  
2 other affiliates of PacifiCorp such that the assets of  
3 PacifiCorp and PPW Holdings, LLC, will not be  
4 consolidated with those of any of the parents or  
5 affiliates in the event of a bankruptcy. So that's why  
6 it's referred to as a nonconsolidation opinion. The  
7 assets of PacifiCorp and PPW Holdings will be remote  
8 from bankruptcy of MEHC or the parent.

9 CHAIRMAN SIDRAN: Who will determine which  
10 law firm is used?

11 MR. GALE: MEHC will make that determination.

12 CHAIRMAN SIDRAN: Will that be done in  
13 consultation with any of parties?

14 MR. GALE: We can consult with the parties.  
15 We have actually consulted with the Oregon staff, which  
16 is the genesis of this particular requirement. They  
17 are satisfied that any of the three law firms will be  
18 adequate. They, the Oregon staff, in turn consulted  
19 with Standard and Poors to determine if those three law  
20 firms would be sufficient for purposes of S and P, and  
21 they are.

22 CHAIRMAN SIDRAN: Any of the other parties  
23 like to respond to this question in terms of their  
24 confidence in the value of this opinion? Thank you.

25 Now I would like to ask a question about

0168

1 Washington Condition No. 12, which has to do with  
2 asymmetrical pricing, and here again, I'm simply  
3 seeking some clarification to make sure I understand  
4 what this means. So again, whichever party would like  
5 to respond.

6 I just want to make sure I understand how  
7 this term is being used and what it means, so I think I  
8 understand what it means, but can somebody give me a  
9 definition in the context of Washington Condition No.  
10 12. Is there a definition of asymmetrical pricing?

11 MR. GALE: Either I can do that or public  
12 counsel, whatever is preferred.

13 MR. JOHNSON: I'll answer. Public counsel  
14 filed testimony on asymmetrical pricing, and you can  
15 find that in James Dittmer's direct testimony 16  
16 through 23. He does probably a much more eloquent  
17 description than I'll present, but basically, the idea  
18 is that the Company should when selling something get  
19 the higher of cost or market than the principle there.  
20 The Company should be able to use its assets and  
21 resources to offset the cost to providing electricity  
22 to its customers, and the general purpose, of course,  
23 being to prevent abuse of affiliate transactions.

24 Then also the provision is that when  
25 purchasing, they should get the lower of cost or market

0169

1 reasonably preventing any kind of abusive relationship,  
2 and obviously, the lowest price is the best price in  
3 providing quality. And that's basically the two-cent  
4 version of how that is to work, and of course, there is  
5 some exemptions, as you can see in the provision, and a  
6 cap so it isn't a regulatory burden, a threshold so  
7 it's not a regulatory burden. I think the Company can  
8 add anything.

9 MR. GALE: That's a good explanation. My  
10 short-end explanation would be that simply for the  
11 purposes of affiliate transactions that are covered by  
12 asymmetric pricing, if the utility is selling, the  
13 costing is done at the higher of market or cost, and if  
14 the utility is purchasing, it's the lower market of  
15 cost.

16 CHAIRMAN SIDRAN: Thank you. Judge Moss,  
17 that's all I have.

18 JUDGE MOSS: Commission Oshie?

19 COMMISSIONER OSHIE: Let's start with what I  
20 believe is General Provision No. 21 in the settlement  
21 agreement, and this provision makes reference to the  
22 cost of capital that would be possibly advocated, and I  
23 would assume in a rate case, by any of the parties that  
24 might be here, but I suppose particularly to  
25 PacifiCorp. Mr. Gale, perhaps you can be the first

0170

1 respondent here, and the other witnesses from the other  
2 parties are certainly I think encouraged to add their  
3 opinion to this as well.

4           But it states that MEHC and PacifiCorp will  
5 not advocate for a higher cost of capital as compared  
6 to what PacifiCorp's cost of capital would have been  
7 absent MEHC's ownership, and my question really is when  
8 I first read that I thought, does this refer back to  
9 PacifiCorp as it was affiliated, if you will, with SPI,  
10 or does this refer to PacifiCorp as a stand-alone  
11 company?

12           MR. GALE: I think my interpretation of this  
13 particular provision is that it refers to a comparison  
14 between PacifiCorp as it is today as a subsidiary of  
15 ScottishPower, and PacifiCorp as it will be if the  
16 transaction is approved as a subsidiary of MEHC and  
17 Berkshire Hathaway. This is one of several  
18 hold-harmless provisions that are in the stipulation.  
19 There are several others.

20           This particular provision is a general  
21 hold-harmless provision regarding cost-of-capital  
22 increases. It would apply in future rate cases with  
23 regard to PacifiCorp, and if the Commission concluded  
24 that MEHC's ownership of PacifiCorp somehow had  
25 increased the cost of capital, and I'll give an example

0171

1 in a moment, then you could rely on this particular  
2 provision as well as your general rate-making authority  
3 to make an adjustment to the revenue requirement to  
4 reflect what you believe to be an increase in cost of  
5 capital associated with MEHC's ownership.

6           Perhaps the clearest example would be if the  
7 day after the transaction were closed, PacifiCorp were  
8 to be downgraded by one or more of the rating agencies,  
9 and those rating agencies expressly indicated that it  
10 was because of some element of MEHC's ownership as  
11 compared to ScottishPower's ownership.

12           Under those circumstances in a rate case, I  
13 would anticipate that Staff and Public Counsel and  
14 others would bring that to your attention, and you  
15 would make a determination as to whether, in fact,  
16 there should be an adjustment to cost of capital and  
17 revenue requirement because of that occurrence.

18           COMMISSIONER OSHIE: How long would that  
19 provision, Mr. Gale, be in effect? That's probably not  
20 a fair question, but I think it's still a good  
21 question.

22           MR. GALE: It's very fair. A number of the  
23 hold-harmless provisions have dates certain. If you  
24 get back to Washington Specific 4, Washington Specific  
25 5, Washington Specific 6, those have finite terms.



0172

1 This has no finite term. This particular provision  
2 would be in effect until it was modified by this  
3 commission.

4 That would be true of all of these  
5 commitments. Our intent is that they will apply unless  
6 there is a date certain established in those  
7 commitments. They will apply until we come to this  
8 commission and the other five commissions and indicate  
9 there has been a change in circumstance, and we would  
10 ask for consideration to change the commitment.

11 COMMISSIONER OSHIE: Thank you any other  
12 witnesses have any comment to make on the question that  
13 I asked or comments of Mr. Gale?

14 MR. ELGIN: Yes, sir. Ken Elgin with  
15 Commission staff. I view the commitment as an adjunct  
16 to, as Mr. Gale described, our regulatory traditional  
17 way we would look at cost of capital in a contested  
18 proceeding. I would also though say that it's a little  
19 bit stronger in that sense that under MEHC's ownership,  
20 I would look at 21 and use of the word "will not  
21 advocate."

22 I think to some extent what Staff would look  
23 for is at least some affirmative showing that as a  
24 result of the transaction, there is no increase. So it  
25 would be in a way maybe one step further to say that

0173

1 because of MEHC ownership, there is no adverse impact  
2 as a result of the acquisition, and that that would be  
3 the foundation, but it's really a clear acknowledgment  
4 of our traditional kind of way we determine cost of  
5 capital in a contested proceeding, and what are the  
6 requirements and the affirmative showing by MEHC and  
7 PacifiCorp in a contested rate case.

8 COMMISSIONER OSHIE: I assume that the  
9 parties' intention here is that this provision is also  
10 asymmetrical and that if the cost of capital could be  
11 demonstrated under MEHC's ownership to be less, that's  
12 not an issue here. We are not just to use the old  
13 PacifiCorp under SPI, that particular affiliation as  
14 governing the cost of capital for this company into the  
15 future.

16 MR. ELGIN: No, sir, and I should add in the  
17 SPI acquisition of PacifiCorp, there was a similar  
18 provision, so it's kind of an extension of that, and  
19 again, it's something that I think in terms of the  
20 length is a perpetual agreement absent any other  
21 showing or some application by MEHC to come forward and  
22 actually affirmatively change this requirement.

23 COMMISSIONER OSHIE: Any other comments?

24 MR. JOHNSON: We find this a hold-harmless  
25 commitment in its value to us, and I think the

0174

1 witnesses have said enough.

2 COMMISSIONER OSHIE: The answer was, I think,  
3 very informative, because I certainly could have  
4 interpreted it the other way. It was referred to  
5 PacifiCorp as a stand-alone entity and not as a prior  
6 affiliation, that that all goes through with SPI.

7 My next question has to do with Washington  
8 Specific Commitment 2, and that, I believe, is in  
9 Appendix A, Page 13 of Exhibit 2.

10 JUDGE MOSS: That's correct.

11 COMMISSIONER OSHIE: I guess you can all read  
12 the section, and my question is how is it going to  
13 work? How is the deferred accounting going to work?  
14 What are some of the specifics as to the offset of the  
15 late credits, and I think my question is I need more  
16 detail on how this will actually transpire.

17 MR. GALE: If you would like, I'll take a  
18 shot and try to walk through each of them.

19 Washington Specific Commitment 2 is a general  
20 description of how the rate credits will work. There  
21 are no rate credits themselves in Washington Specific  
22 2, but it does contain some helpful information in  
23 identifying that Washington Specific Commitment 3 and 7  
24 will be using deferred accounting, and maybe what I can  
25 do is walk through each of those. I'm going to take

0175

1 them a little bit out of order because I'll take the  
2 simpler ones first.

3           Probably the simplest ones to understand are  
4 the two that are actually revenue requirement reduction  
5 commitments, and that would be Washington Specific  
6 Commitment 3 and 7. Let me take 3 first. 3 is a  
7 commitment to reduce the nonfuel costs associated with  
8 the West Valley purchase contract. That particular  
9 contract is with a current affiliate of PacifiCorp,  
10 PPM, and MEHC has committed that we will negotiate with  
11 PPM and its parent, ScottishPower, to reduce the  
12 nonfuel cost of that contract by five million dollars  
13 annually.

14           That's our burden to do that. The nonfuel  
15 costs are comprised of about 17 million of fixed-lease  
16 payments and about two million of variable O and M. We  
17 will negotiate the five-million-dollar reduction in the  
18 fixed-lease payment to make it easier to prove that it  
19 has occurred. It's more difficult to prove if we try  
20 to negotiate it in the available O and M. So we will  
21 try to negotiate that with PPM and with ScottishPower.

22           If we are successful and this commission does  
23 reflect the cost of the West Valley in either the  
24 pending rate case or future rate case, then the  
25 Commission will be able to reduce the revenue

0176

1 requirement by the Washington allocation of the five  
2 million annualized number.

3           If we are not successful in negotiating that  
4 reduction, then the Commission can still make the  
5 adjustment. It simply triggers the rate credit, and  
6 perhaps I should stop here and say what my view of the  
7 rate credits are. Rate credits are nothing more than  
8 mechanisms to enforce either committed revenue  
9 requirement reductions or committed hold-harmless  
10 provisions, and we have both here.

11           As I mentioned, Washington Specific  
12 Commitment 3 and Washington Specific Commitment 7 are  
13 revenue requirement reduction commitments. Washington  
14 Specific Commitments 4, 5, and 6 are hold-harmless  
15 provisions. So that's how the Washington Specific  
16 Commitment 3 would operate.

17           With respect to the deferred accounting for  
18 that particular commitment, the issue was raised in  
19 Oregon with regard to when customers begin to benefit  
20 from these commitments to reduce revenue requirement,  
21 and because these are commitments that can be offset  
22 through a demonstration of evidence presented to the  
23 Commissions, it was not feasible to implement the rate  
24 credits through a tariff mechanism or add-on tracker  
25 mechanism because there is no vehicle then to come

0177

1 before the Commission and demonstrate the offset.

2           So as a way to resolve that issue and provide  
3 customers with the benefits of the credits, even absent  
4 a rate case, it was determined to use deferred  
5 accounting for the two revenue requirement reductions,  
6 Washington Specific Commitment 3 and Washington  
7 Specific Commitment 7. So one month after the close of  
8 the transaction, we will begin deferred accounting for  
9 those particular revenue requirement reductions, and we  
10 will book those essentially as a regulatory liability.  
11 I believe that's correct, Tom. They will be booked as  
12 a regulatory liability.

13           In the first rate case then where you address  
14 those commitments, you will have the opportunity not  
15 only to reflect the revenue requirement reduction  
16 itself but also determine over what period you will  
17 amortize the deferred amounts, and those deferred  
18 amounts will not only be a regulatory liability but  
19 they will accrue interest as well. So you will have  
20 deferred amount plus interest, and you can determine  
21 over what period you want to amortize that in the first  
22 rate case in which you address the rate credit.

23           The result is that customers will benefit  
24 from those rate credits starting with the first month  
25 after the close of the transaction. It's just that

0178

1 they may not see those credits in rates until a rate  
2 case that implements them. They don't lose those  
3 benefits though. That's what we tried to do with the  
4 deferred accounting. That's actually what its purpose  
5 is is to make sure the customers will receive the  
6 benefits in the first rate case in which you address  
7 the rate credit.

8 Washington Specific Commitment 7 operates in  
9 a similar fashion. That particular commitment was  
10 designed to enforce an offer by MEHC to reduce  
11 corporate administrative and general expenses at  
12 PacifiCorp by an amount of six million dollars  
13 annually. That generally will come from personnel  
14 reductions. That's what the corporate, administrative,  
15 and general expenses typically are.

16 That six million dollars annually will be  
17 subject to deferred accounting. It will begin to be  
18 booked as a regulatory liability the first month after  
19 the close, even though there is little likelihood that  
20 MEHC will be able to reduce corporate overheads of  
21 PacifiCorp by six million dollars the first month after  
22 close. That was a product of negotiation. We simply  
23 agreed that we would do that. So we will have to  
24 demonstrate that in the next rate case, we have reduced  
25 those corporate overheads by six million dollars.

0179

1           We do that in a way that avoids some of the  
2 problems associated with a base-year concept. I know  
3 one of the questions I believe was posed was what is  
4 the base period, and actually here, you don't need a  
5 base period. What we've done is we've established a  
6 trigger amount, and the trigger amount is 228.8 million  
7 dollars; although the number you are going to see in  
8 the commitment itself is 222.8 million dollars. The  
9 reason for the difference is the six million.

10           To the extent we can demonstrate to you that  
11 we have, in fact, reduced corporate, administrative,  
12 and general expenses by six million from the 228 down  
13 to the 222, then the customers get the benefit of that  
14 revenue requirement reduction. To the extent we aren't  
15 able to demonstrate that, you can make an adjustment up  
16 to the six million dollars of the rate credit to make  
17 sure the customers do get that benefit. As you can  
18 see, that particular base period, which is the base  
19 amount of 222, is adjusted by an inflation adjustment  
20 mechanism that was a negotiated inflation adjustment  
21 mechanism.

22           With regard to the deferrals, while we can  
23 offset the rate credits, these two rate credits  
24 prospectively, we are not able to offset the deferrals.  
25 That was a negotiated provision both here and in



0180

1 Oregon. So in that first rate case, you will have the  
2 ability to amortize those deferrals and we cannot  
3 offset those. The only thing we can do is demonstrate  
4 an offset for the future revenue requirement.

5 Taking then the three hold-harmless, let me  
6 take the easiest of those, and that's Washington  
7 Specific Commitment 5.

8 COMMISSIONER OSHIE: Before you leave that,  
9 Mr. Gale, I want to go back to the West Valley lease,  
10 because I think you made a good point of how you set  
11 the baseline for the A and G costs, so the same  
12 question really for West Valley. You are looking for a  
13 reduction in the fixed cost for that facility, and what  
14 baseline do we look at to determine whether or not  
15 you've achieved your objective?

16 MR. GALE: You will compare that against the  
17 fixed-lease payment so it's a fixed amount, and we  
18 provided that information in response to the Bench  
19 request. I believe it's Bench Request No. 1-A, and  
20 that's the fixed-lease costs, which are annually  
21 \$17,019,000. It should be fairly straightforward.  
22 Those are recorded in FERC Account 550.

23 Let's move to the hold-harmless provisions,  
24 and again, the rate credits here are simply mechanisms  
25 to enforce these hold-harmless provisions. For these

0181

1 three provisions, Washington Specific Commitment 4, 5,  
2 and 6, these costs are currently not in rates, and the  
3 concern both in Washington and elsewhere was to make  
4 sure the increases in these costs don't get included in  
5 rates.

6 Let's take the most straightforward of them,  
7 and that's Washington Specific Commitment No. 5. That  
8 one deals with insurance coverage previously provided  
9 by ScottishPower's captive insurance company, Dornoch.  
10 The amount of the annual costs both in the pending  
11 Washington rate case and in 2005 was 7.4 million for  
12 that coverage. That's a total company number. The  
13 parties were concerned that that might increase under  
14 MEHC ownership since MEHC would not have the  
15 availability of Dornoch.

16 What MEHC has committed to do is to first of  
17 all create a captive insurance company or use one of  
18 its existing captives and provide the same insurance  
19 coverage to PacifiCorp. We also have committed that we  
20 will hold that premium for that coverage at the same  
21 level that it is currently in the Washington rate case  
22 and for 2005, same number, 7.4 million. That's over  
23 the period through 2010. This is both a hold-harmless,  
24 and we believe it's a benefit for customers because the  
25 anticipation is that premium would have increased over

0182

1 that period of time, even had the insurance been  
2 provided by Dornoch, but we do not quantify this as a  
3 benefit. We simply consider it a hold-harmless.

4 To the extent that MEHC bills more than 7.4  
5 million or more than 7.4 million is included in rates,  
6 then you have the ability to make a rate credit  
7 adjustment, and that rate credit adjustment is 4.3  
8 million. So the incentive for us obviously will be to  
9 hold that premium flat through 2010 as per the  
10 commitment.

11 That one is fairly straightforward. The last  
12 two are a little more complicated. If you would like,  
13 I'll be glad to walk you through those two, but they  
14 are both hold-harmless provisions, and the idea is to  
15 hold customers harmless of any increase in corporate  
16 costs that previously had been incurred by PacifiCorp  
17 but billed to other affiliates, such as PPM.

18 The total of those is 9.4 million dollars,  
19 and those were divided between Washington Specific  
20 Commitment 4 and Washington Specific Commitment 6, but  
21 the point is to provide a rate credit mechanism to  
22 enforce MEHC's commitment and PacifiCorp's commitment  
23 that revenue requirement will not increase as a result  
24 of PacifiCorp no longer being able to build those  
25 corporate costs to PPM and other affiliates.

0183

1                   COMMISSIONER OSHIE: With regard to the  
2 deferrals, will the Company be seeking an accounting  
3 order implement its actions under Washington 3 and 7,  
4 or is that going to be advocated by Staff, in other  
5 words, to get this process finalized, if you will, or  
6 is the something we will be dealing with in a future  
7 rate case?

8                   MR. GALE: In order to book regulatory  
9 liability, there needs to be an order that approves  
10 that, but I would think that the order approving the  
11 stipulation and commitments in this docket might be  
12 sufficient. Let me check on that quickly.

13                   Yes, I think the order approving the  
14 stipulation will be satisfactory for accounting  
15 purposes to let us book that regulatory liability.

16                   COMMISSIONER OSHIE: I think I've got one  
17 more question. I need to find it here.

18                   This pertains to Washington 13, which is the  
19 commitment to essentially hire a performance study and  
20 hire a consultant to assist the utility in  
21 understanding its arrearage management program for  
22 low-income customers. My question is, is the \$66,000,  
23 is that contingent on all six states participating, and  
24 if not, how would that amount be adjusted?

25                   MR. GALE: The \$66,000 was indeed contingent

0184

1 on all six states participating. If one state didn't  
2 participate, then the amount would be reduced. It's  
3 not a pro rata reduction. It would be reduced by, I  
4 believe, basically using a revenue allocator.

5           However, I believe now all six states have  
6 accepted this particular commitment. I need to go back  
7 and check California quickly, but I believe all six  
8 states have accepted it, so the amount will be \$66,000,  
9 which will be funded by the shareholders of MEHC.

10           COMMISSIONER OSHIE: Thank you. I don't have  
11 any further questions.

12           JUDGE MOSS: Commissioner Jones?

13           COMMISSIONER JONES: Good morning. I  
14 understand you and Mr. Abel have been spending lots of  
15 time in the state of Oregon. I have a couple of  
16 questions. One is a little bit more general,  
17 philosophical in terms of this question of what is  
18 long-term? We've read the reg testimony and we've  
19 looked at some of the presentations that you made about  
20 the basic value proposition of this acquisition.

21           It appears to be that MEHC is a  
22 privately-held energy utility with 20 billion in  
23 assets, 6.6 billion in revenues. Since it's privately  
24 held, it's not subject to quarterly shareholder  
25 pressure, etcetera, on dividends, things like that, and

0185

1 with PacifiCorp's increasing cap X, capital investment  
2 needs of approximately one billion per year that this  
3 utility, MEHC, is particularly well-suited to take on  
4 this acquisition. Is that on a basic level a pretty  
5 good understanding of this acquisition?

6 MR. GALE: Yes, it is, Commissioner.

7 COMMISSIONER JONES: I would like you to  
8 expound on what long-term means. Long-term different  
9 things to different people, as I think you know, and  
10 you've been in this business a long time. It means  
11 different things to Wall Street. It means different  
12 things to the operation of the utility. Some people  
13 think it means a year. Some people think it means five  
14 years. Some people think it means 15 years.

15 I don't want to pin you down to a specific  
16 number, but I would like you to expound on the record  
17 about the outlook of MEHC and how you intend to operate  
18 this company.

19 MR. GALE: We know it means at least 30  
20 years. That's how many years I've been in the  
21 business. But let me see if I can both talk about that  
22 from the standpoint of MEHC and perhaps from the  
23 standpoint of Berkshire Hathaway as well.

24 As of today, at some point, Berkshire  
25 Hathaway will convert their nonvoting shares into

0186

1 voting shares and MEHC will become a partially owned  
2 subsidiary of Berkshire Hathaway. I mention that only  
3 because the philosophies of the two are similar in  
4 terms of investments and business operations. Both  
5 Berkshire and MEHC look to acquire assets with the  
6 expectation that they will not sell those assets and  
7 that they will retain those and will operate those  
8 businesses.

9           That has been Berkshire's approach. I don't  
10 know that Berkshire has actually ever sold anything, a  
11 business that they've acquired, and it's really the  
12 same for MEHC. While we may have disposed of some  
13 assets, the business platforms we've acquired we  
14 continue to hold and we continue to operate.

15           I would say that with regard to MEHC, perhaps  
16 a bit different than some of the acquisitions that were  
17 made or perhaps many of the acquisitions that were made  
18 in the 1990's and early 2000's, MEHC knows what  
19 operating utility is all about, a domestic utility.  
20 Many of the acquisitions by foreign utilities, as you  
21 know, have not worked out in the way that the foreign  
22 utilities anticipated largely because they did not  
23 understand U.S. regulation.

24           It also worked the other way. Many of the  
25 acquisitions; in fact, almost all of the acquisitions

0187

1 by U.S. utilities of foreign utilities have now been  
2 unwound and terminated for very similar reasons. They  
3 did not understand the regulatory environments of which  
4 they were purchasing an asset. MEHC understands U.S.  
5 regulation. We understand what that means. We  
6 understand what the limitations are. We understand  
7 what it means to be regulated.

8           As a result, we come into a transaction with  
9 our eyes open and understanding that it will be a  
10 regulated return, and one of our most important  
11 functions, objectives, will be to make sure that we  
12 work with regulators over the long-term to do what's in  
13 the best interest of the Company, and in this case,  
14 PacifiCorp, and particularly its customers.

15           You hit upon an important point with regard  
16 to private ownership. MEHC being private does not have  
17 to worry about quarterly earnings. It doesn't mean we  
18 don't worry about earnings, but we don't have to worry  
19 about quarter to quarter. So that enables us then to  
20 look at long-term investments in a different way.

21           For example, we just completed a 365-megawatt  
22 wind facility in the state of Iowa, and we are looking  
23 at perhaps adding another 500-megawatt wind facility in  
24 the state of Iowa. We just announced that a couple of  
25 weeks ago. That's an investment that requires a



0188

1 long-term outlook. If you have a short-term outlook of  
2 less than five years, you wouldn't make that  
3 investment. That's a 25-year, perhaps 30-year live  
4 investment. We are making that and plan on being  
5 around at the end of that investment.

6           It's really the same thing if you look at  
7 coal plants. Those are 30-, 40-year investments. So  
8 our time horizon tends to be that we are making  
9 investments today with the idea that we will be around  
10 when those are fully appreciated, and I believe that  
11 really stems from an understanding that this is a  
12 regulated business that we will be dealing with, the  
13 regulators and legislators and all the states that we  
14 serve, and that utilities are a business to be operated  
15 for the benefit of the customers, not for the purpose  
16 of extracting cash.

17           COMMISSIONER JONES: When you use the term  
18 "we," are you referring to the Company or Mr. Gale,  
19 because you said you worked 30 years already. Are you  
20 going to be around?

21           MR. GALE: I won't be around for 30 years,  
22 but the collective "we" I was referring to was MEHC, in  
23 particular reflecting the experience of the regulated  
24 electric and gas utility MidAmerican Energy Company,  
25 for which I work, and that particular utility has been

0189

1 around in one form or another since 1834. It started  
2 providing power off the Mississippi River on the Moline  
3 River in 1834.

4 COMMISSIONER JONES: Thank you for that.  
5 Following on Commissioner Oshie's question on General  
6 Stipulation 21 dealing with cost of capital, does your  
7 answer imply that 15 years from now, we would not need  
8 to compare PacifiCorp's cost of capital to what it  
9 would have been in the absence of MEHC in the  
10 hypothetical?

11 MR. GALE: That's a very good question, and I  
12 think the answer is that this particular hold-harmless  
13 provision becomes more difficult to apply the farther  
14 away we get from the transaction. It's a relatively  
15 straightforward to apply the first year of the  
16 transaction but becomes somewhat more difficult after  
17 that.

18 That's the reason the parties did not rely  
19 upon a single hold-harmless with regard to financial  
20 conditions. There are probably ten financial  
21 conditions or financial protections that are in the 53  
22 general commitments of 26 specific commitments, and  
23 those all relate to financial protection for PacifiCorp  
24 in addition to the ring-fencing.

25 So while this is a very important general

0190

1 hold-harmless, the parties did not rely upon that.  
2 They negotiated other financial protection, and I can  
3 only speak for MEHC in that regard, but I would assume  
4 that's how the other parties look at it as well.

5 MR. ELGIN: Yes, that's how we look at it.  
6 Although, 15 years, again, if something were to happen  
7 and the ring-fencing provisions and the circumstances  
8 and if there were adverse impacts, we would have to  
9 evaluate those facts and circumstances at the time, but  
10 we would still look at 21 as a hold-harmless from the  
11 effects of MEHC on the regulated operations as a  
12 privately-held holding company, and we would look to  
13 protect ratepayers from those consequences.

14 COMMISSIONER JONES: Anybody else on this  
15 one? Let's move to a specific commitment. This is my  
16 last question. Washington General 18 (a) (b) and (c),  
17 Washington 11 is structured somewhat differently.  
18 There is no a, b, and c, in the Washington 11,  
19 especially the definition in 18 (b) would apply to the  
20 State of Washington as well, as I understand it;  
21 correct? This gets into the calculations and  
22 definitions of quote, "total capital," unquote, and  
23 quote, "total adjusted capital," unquote; correct?

24 MR. GALE: That is correct. Although I  
25 should say, perhaps anticipating your question, those

0191

1 particular calculations are used for the purpose of  
2 enforcing this commitment. They are not, however, in  
3 any way intended to be binding for rate-making  
4 purposes. Nor does the existences of the percentages  
5 in 18(a) and the percentages in 11 have any impact on  
6 what capital structure you approve for rate-making  
7 purposes.

8           These percentages are simply designed to  
9 provide the Commission with some assurance that MEHC  
10 will not be pulling cash out of PacifiCorp in the form  
11 of dividend during the period that this covers, which  
12 is actually in perpetuity, post 2011. That's the  
13 purpose of both 18 and 11. It gives you an opportunity  
14 to get comfortable with our operation.

15           COMMISSIONER JONES: I understand that, and I  
16 think it's a useful commitment to consider here. Let's  
17 go through a specific here. As of January 1, 2006, per  
18 the balance sheet of MEHC, could you provide us with a  
19 sample calculation of how this would work, especially  
20 as it relates to short-term debt and perhaps  
21 capitalized lease obligations? How does a calculation  
22 like this work? I'm confused between total capital and  
23 total adjusted capital.

24           MR. GALE: And I may defer this one to  
25 Mr. Specketer if he doesn't mind.

0192

1           MR. SPECKETER: Now, your specific question  
2 with regards to this commitment?

3           COMMISSIONER JONES: The specific question is  
4 to give us a sample calculation as of January 1, 2006,  
5 for how this 48.25 percent would be calculated in terms  
6 of total capital. Please refer to your balance sheet  
7 and all the assets referring to the balance sheet.

8           MR. SPECKETER: The 48.25, as I think it's  
9 identified in the Commitment, would include the total  
10 capital. The total capital is defined in Part B as the  
11 common equity, any preferred stock, equity and the  
12 long-term debt. The long-term debt includes just the  
13 debt with a term of one or years, so it would exclude  
14 the current portion of long-term debt.

15           COMMISSIONER JONES: All right.

16           MR. ELGIN: If I may, add, Commissioner  
17 Jones, it's permanent capital. So if you look on a  
18 balance sheet, there are specific requirements, so  
19 anything on what we call the "current liability" side  
20 would not be included in that calculation. So for  
21 financial accounting purposes on a balance sheet, when  
22 a current maturity becomes due within a year, it moves  
23 from the permanent capital on the liability side up  
24 into the current portion but also excludes short-term,  
25 debt, so if you look at the balances and what is due

0193

1 within a year and then make the adjustments, and then  
2 that's how they would publish those financial  
3 calculations and calculate this specific ratios, so  
4 it's permanent capital.

5 COMMISSIONER JONES: Do you have the balance  
6 sheet in front of you now?

7 MR. SPECKETER: I have a calculation of how  
8 it was actually calculated.

9 COMMISSIONER JONES: How much short-term debt  
10 is on the balance sheet now as of January 1, '06?

11 MR. SPECKETER: I don't have that.

12 MR. ELGIN: Sir, permanent short-term debt  
13 would not be in permanent capital. Short-term debt  
14 moves up to the current portion of the liability on the  
15 balance sheet so it's not in that calculation.

16 For purposes of total debt, that is the floor  
17 calculation in the other commitment with the 35 percent  
18 figure. So we have that calculation as well as a  
19 protection so that the Company could not also go out  
20 and do a lot of short-term debt financing and at the  
21 same time pull capital out, so we now have a floor of  
22 35 percent on total capital.

23 COMMISSIONER JONES: So, Mr. Elgin, that's  
24 the basis of 18(c) and the floor of 35 percent on total  
25 adjusted capital.

0194

1 MR. ELGIN: Correct, sir.

2 COMMISSIONER JONES: Preferred stock, the  
3 methodology for calculating that and allocating between  
4 debt and equity, just to make sure I understand that,  
5 for the preferred stock on the balance sheet prior to  
6 the acquisition, common equity will be increased by 50  
7 percent; correct?

8 MR. SPECKETER: Correct.

9 COMMISSIONER JONES: For new preferred stock  
10 to be issued, unless there is an agreement between  
11 parties about how to treat that preferred stock, 100  
12 percent will be allocated to debt; correct?

13 MR. SPECKETER: Correct.

14 COMMISSIONER JONES: There is some talk in  
15 the financial market about hybrid securities and  
16 different sorts of equity and debt. If PacifiCorp ever  
17 chooses to issue hybrid securities in the future, would  
18 there have to be an agreement among the parties as  
19 there is with deferred stock to allocate a certain  
20 portion to debt, a certain portion to equity?

21 MR. SPECKETER: Yes, I think that would be  
22 the case.

23 COMMISSIONER JONES: Is that your  
24 understanding, Mr. Elgin?

25 MR. ELGIN: Yes, sir.

0195

1                   COMMISSIONER JONES: That's all I have.

2                   JUDGE MOSS: Does that complete our questions  
3 then? Anything further from the party,  
4 Mr. Van Nostrand?

5                   MR. VAN NOSTRAND: First of all, I would like  
6 to express our appreciation to the Commission for  
7 scheduling this hearing so quickly, less than two weeks  
8 after we filed the testimony in support of the  
9 stipulation, knowing the Commission has a very full  
10 calendar. I'm also wondering, would the Commission be  
11 interested in an update, like from Mr. Gale, on where  
12 we are in the approval processes in the other states, a  
13 quick update of where we are?

14                   JUDGE MOSS: Let's hear that.

15                   MR. GALE: Thank you very much. In  
16 California in mid January, we received an approval from  
17 the ALJ. The comments on the ALJ's order were  
18 submitted on February 6th. We expect a decision from  
19 California about the 16th, I believe, of February  
20 approving the transaction with probably some cleanup in  
21 the ALJ's order, but pretty much the ALJ's order, I  
22 think, will stand with a slight modification.

23                   On the 26th of January, we received a Bench  
24 order from Wyoming approving the transaction. The  
25 Bench order is a verbal order. They will follow-up



0196

1 with a written order, which would expect in mid  
2 February.

3           On the 27th of January, we received a written  
4 approval from Utah. We are in the process of working  
5 with them on what we call the most-favored-states  
6 process, which allows you to pick and choose  
7 commitments and conditions from the other states.

8           Here in Washington, because Washington was  
9 one of the last settlements negotiated, we were  
10 actually able to give consideration to all of the other  
11 settlements that had been filed with the exception of  
12 Wyoming, so our process of picking and choosing should  
13 be fairly simple here for Washington. We will do that  
14 after the last order is issued by the last Commission.

15           In Idaho, we expect an order next week  
16 approving the transaction. In Oregon, the case was  
17 finally completely submitted as of the 6th of February  
18 with parties doing essentially what we have done here  
19 today, which is identifying how their concerns were  
20 addressed, and so we expect a decision from Oregon  
21 before the end of February. There is a statutory  
22 deadline of February 28th for their decision, so we  
23 would expect that decision to be issued before that  
24 date, and as I say, they are ready for decision right  
25 now. That leaves us here in Washington, and we

0197

1 appreciate the opportunity to be here.

2 I would say one thing that may be somewhat  
3 helpful. On Page 7 of the testimony that was prefiled,  
4 which was Exhibit 1, there is a paragraph at the end  
5 that talks about the fact that there might be some  
6 additional tradeoffs negotiated where the Commission  
7 would have to make some choices. That has not  
8 developed. We had settlements now in all six states.  
9 There are delegational tradeoffs that will be necessary  
10 beyond what has been done already by the parties here.

11 We do appreciate the parties and their  
12 willingness to negotiate what we think is a good  
13 resolution of this. As I say, we do have settlements  
14 in all states. The only contested settlement was  
15 California.

16 JUDGE MOSS: Anything further?

17 MR. CEDARBAUM: If I could just add to that,  
18 just for the Bench's information, we do have scheduled  
19 on March 8th amongst the parties in this case a meeting  
20 to talk about the most-favored-nations process once we  
21 have orders from all the state Commissions, so you  
22 should just be aware that we are trying to get all the  
23 ducks in a row on completing the process and hope to  
24 have that completed as soon as possible in March.

25 JUDGE MOSS: Thank you for that.

0198

1                   COMMISSIONER JONES: I have a suggestion on  
2 terminology. I used to be involved in international  
3 trade issues, and we used the term "most favored  
4 nation," MFN. I suggest we develop MFS, "most favored  
5 state," instead of using most favored nation. It's  
6 confusing because the states, I don't think, are  
7 nations.

8                   MR. GALE: You are correct, and actually, we  
9 have started using that term.

10                  CHAIRMAN SIDRAN: As long as you are going to  
11 import terminology, I don't think in light of this  
12 acquisition, it seems to me that the parties will be  
13 getting their small lizards in a row.

14                  JUDGE MOSS: I believe with that, our record  
15 is complete, and I would like to say that I appreciate  
16 very much the parties being here today and all the  
17 witnesses, some of whom traveled to be here. We do  
18 appreciate that, and I think we've had the  
19 clarification that the Commission needs.

20                  The Commission will after this not require  
21 any posthearing process, I think. We will simply move  
22 on to the deliberation phase and subsequently to an  
23 order, which I understand the parties continue to  
24 request by February 28th, with the idea of perhaps a  
25 March closing. So with that, our record is closed and

0199

1 we are off the record.

2 (Settlement conference adjourned at 10:35 a.m.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25