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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

REPORTER'S TRANSCRIPT

Docket No. 11A-135E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE
COMPANY OF COLORADO FOR APPROVAL OF A REDUCTION IN THE
STANDARD REBATE OFFER.

Pursuant to notice to all parties of
interest, the above-entitled matter came on for
hearing before CHAIRMAN RON BINZ, JAMES TARPEY
and MATT BAKER, Commissioners of the Public Utilities
Commission, commencing at 11:00 a.m. on March 4, 2011,
at 1560 Broadway, Second Floor, Denver Colorado,
80202, said proceedings having been reported in
shorthand by Harriet S. Weisenthal.

Whereupon, the following proceedings were had:

1		APPEARANCES
2	For PUBLIC SERVICE COMPANY OF COLORADO:	DAVID MCGANN, ESQ. Xcel Energy 1800 Larimer Street 10th Floor Denver, Colorado 80202
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4	For THE GOVERNOR'S ENERGY OFFICE:	JERRY W. GOAD, ESQ. Colorado Department of Law 1525 Sherman Street 5th Floor Denver, Colorado 80203
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6		
7	For STAFF OF THE COMMISSION:	ANNE BOTTERUD, ESQ. Colorado Department of Law 1525 Sherman Street 5th Floor Denver, Colorado 80203
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9		
10	For THE OFFICE OF CONSUMER COUNSEL:	STEPHEN W. SOUTHWICK, ESQ. Colorado Department of Law 1525 Sherman Street 5th Floor Denver, Colorado 80203
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12		
13	For THE SOLAR ALLIANCE:	ELIZABETH TORMOEN HICKEY, ESQ. Alpern Myers Stuart, LLC 14 North Sierra Madre Street Suite A Colorado Springs, Colorado
14		
15		
16	For CF&I STEEL, LP and CLIMAX MOLYBDENUM CO.	RICHARD L. FANYO, ESQ. MARK VALENTINE, ESQ. RICHARD CORBETTA, ESQ. Dufford & Brown 1700 Broadway Suite 2100 Denver, Colorado 80202
17		
18		
19		
20	For THE CITY OF BOULDER:	DEBRA KALISH, ESQ. Boulder City Attorney's Office 1777 Broadway Boulder, Colorado 80302
21		
22		
23	For TRINCHERA RANCH HOLLY E. STERRETT, ESQ. HOLDINGS, LLC and	MATTHEW DOUGLAS, ESQ. Arnold & Porter 370 17th Street Suite 4500 Denver, Colorado 80202
24	BLANCA RANCH HOLDINGS, LLC	
25		

1 COMMISSIONER TARPEY: Okay. Good
2 morning. We'll start with our prehearing conference
3 this morning in Docket No. 11A-135E, in the Matter of
4 the Application of Public Service Company of Colorado
5 for Approval of a Reduction in the Standard Rebate
6 Offer.

7 Before we start, just to mention a couple
8 of minor items, we also have another conference room or
9 hearing room where there are seats. You'll be able to
10 listen in there as well as you can listen in here.
11 Obviously, you won't be able to see us, but you will be
12 able to listen. If you see people who come in who
13 would prefer not to stand, they can certainly do that,
14 and the entrance to that room is right outside of that
15 door.

16 Second, I want to note, this is a
17 prehearing conference, so we'll be having presentations
18 by some of the attorneys as we go along. This is not a
19 public hearing, and I appreciate that many of you are
20 here to observe what is happening, but this will not be
21 a matter of taking comments by members of the public.

22 Terry?

23 (Off the record.)

24 COMMISSIONER TARPEY: And I guess, now,
25 the audio is in Room B as well here.

1 (Off the record.)

2 COMMISSIONER TARPEY: So, with that, let
3 me introduce myself. I am Commissioner James Tarpey.

4 COMMISSIONER BAKER: Commissioner Matt
5 Baker.

6 COMMISSIONER TARPEY: Our chairman, Ron
7 Binz, is traveling. He should be calling in shortly to
8 join us for this, and so he will join us by telephone.
9 But, at the moment, it's just the two of us on the
10 bench.

11 What we'll start out by doing is taking
12 appearances. We'll start with Public Service Company
13 of Colorado.

14 MR. MCGANN: On behalf of the Public
15 Service Company of Colorado, David McGann.

16 MR. GOAD: Morning, Commissioners. Jerry
17 Goad of the Attorney General's office, on behalf of the
18 Governor's Energy Office.

19 MS. BOTTERUD: Anne Botterud, First
20 Assistant Attorney General, appearing on behalf of the
21 staff.

22 MR. SOUTHWICK: Stephen Southwick, First
23 Assistant Attorney General, representing the Office of
24 Consumer Counsel.

25 MS. HICKEY: Good morning, Mr. Chairman,

1 Commissioners. Lisa Tormoen Hickey of the firm Alpern
2 Myers Stuart, representing Solar Alliance.

3 COMMISSIONER TARPEY: Thank you.

4 MS. PERKINS: Good morning. Susan
5 Perkins, representing Colorado Solar Energy Industries
6 Association.

7 MR. FANYO: Good morning, Commissioners.
8 Richard L. Fanyo and Mark Valentine of Dufford & Brown,
9 PC, on behalf of CF&I Steel, LP, and Climax Molybdenum
10 Company. I would also like to enter the appearance of
11 Richard Corbetta of our firm.

12 COMMISSIONER TARPEY: Okay. Thank you.
13 And starting on the left hand side, on my left, are
14 there other attorneys in the room? Debra.

15 MS. KALISH: Good morning, Commissioners.
16 Assistant City Attorney, Debra Kalish, on behalf of the
17 City of Boulder.

18 COMMISSIONER TARPEY: And how about in
19 the middle of the room? And over on the right.

20 MS. STERRETT: Holly Sterrett on behalf
21 of the Trinchera Ranch Holdings, LLC, and Blanca Ranch,
22 Holdings, LLC.

23 MR. DOUGLAS: Matt Douglas with Trinchera
24 Ranch also.

25 COMMISSIONER TARPEY: And anybody in the

1 back? Okay. And Commission counsel.

2 MS. OVERTURF: Erin Overturf, Assistant
3 Attorney General, Commission counsel.

4 COMMISSIONER TARPEY: Are there any
5 attorneys on the phone that wanted to enter their
6 appearance? Hearing no one, that we will -- yes.

7 MR. MICHEL: Steven Michel with Western
8 Resource Advocates. And I filed a motion for
9 pro hac vice yesterday.

10 COMMISSIONER TARPEY: Okay. We will note
11 your appearance, and we will grant your motion, since
12 you indicated you paid the filing fee.

13 MR. MICHEL: Yes. Thank you.

14 COMMISSIONER TARPEY: And thank you. Any
15 others? Okay. What we have before us -- and I am not
16 going to go through each and every one of the pleadings
17 that's been filed, but Public Service Company filed an
18 application to make a change with regard to the
19 standard rebate offer, and a number of interventions
20 have been filed as a result of that; and many of them
21 you heard from their attorneys this morning, entering
22 their appearance.

23 And there is a few aspects we're going to
24 take up with regard to the application, some procedural
25 aspects, and, then, we have had some motions filed,

1 some responses and we may allow some presentations by
2 the attorneys to help fill those in out a little bit.

3 And, then, at that point, we might have
4 some discussion on the bench, and more likely than not,
5 we will probably take a very short recess, 10 or 15
6 minutes, to then come back and talk about where we are,
7 in effect, and what do we do with the arguments that
8 have been raised. If that makes sense, we will proceed
9 that way.

10 We took care of the pro hac vice by
11 Mr. Michel. Also, in the various interventions, all of
12 them with the exception of the one was filed timely.
13 And just taking the ones first that were filed timely,
14 does Public Service Company have any objections?

15 MR. MCGANN: No objection.

16 COMMISSIONER TARPEY: And with respect to
17 Trinchera Ranch and Blanca Ranch, does Public Service
18 Company have any objection?

19 MR. MCGANN: No objection.

20 COMMISSIONER TARPEY: So, all of these
21 are granted. The list, just to make sure it's
22 complete, obviously Public Service is a party; the GEO;
23 Solar Alliance; CoSEIA; CRES; trial staff; Leslie
24 Glustrom, appearing on her own behalf; Cherry Creek
25 Schools; City of Boulder; OCC; Western Resource

1 Advocates; Blanca Ranch and Trinchera Ranch, jointly;
2 jointly, Climax and CF&I Steel. And did I leave anyone
3 out that anybody is aware of?

4 COMMISSIONER BAKER: And did you say
5 staff?

6 COMMISSIONER TARPEY: And staff. Okay.

7 MR. MCGANN: Excuse me, Commissioner
8 Tarpey. Was there another intervention from SunE,
9 SunEdison?

10 COMMISSIONER TARPEY: I do not recall
11 seeing one.

12 MS. PERKINS: (Shaking head in the
13 negative.)

14 MR. BERGMAN: I believe they're with
15 Solar Alliance.

16 MR. MCGANN: I apologize. I believe
17 Solar Alliance was the entity.

18 COMMISSIONER TARPEY: Okay. I guess one
19 of the main items we have before us today is several
20 motions that were filed by CoSEIA, Colorado Solar
21 Energy Industries Association, that we can take up.
22 One of the motions was an emergency motion to restore
23 the statutory rebate level and the capacity acquisition
24 targets. There was a companion motion for full
25 consideration of this case on its merits, in a

1 supplement to their emergency motion, and a notice of a
2 erroneous filing to just correct a minor error in one
3 of the filings.

4 The basic thrust of those motions -- and
5 I don't mean to generalize, I don't mean to be leaving
6 things out on purpose, but, basically, CoSEIA is asking
7 that we basically back up the clock to where we were
8 before the filing, have the process in place before
9 continued. And then, while that happens, then, proceed
10 with the hearings and work out a schedule to do
11 those -- and have those hearings in an in-depth,
12 comprehensive approach to the filing by Public Service
13 Company. Is that a fair statement, in a very general
14 ways, for what you asked for?

15 MS. PERKINS: Well, it generally is,
16 except for the fact we're not asking to completely roll
17 back the time. We're accepting the reduction of the
18 REC payments assumption by the company and not
19 contesting that. However, CoSEIA is contesting the
20 manner in which that REC reduction was made.

21 COMMISSIONER TARPEY: Okay. And the
22 rollback being to the rebate of \$2 plus the REC payment
23 of 1 cent?

24 MS. PERKINS: Yes. The rollback -- the
25 REC payment was reduced from 35 cents to 1 cent for the

1 small customer-owned category, and from 5 cents to
2 1/10th a cent for the other categories. That's what
3 we're accepting. So, that wasn't actually in place
4 before the filing, but it was part of the filing and
5 we're acquiescing in that REC payment reduction.

6 What we're, saying, however, is that the
7 statutory rebates must remain in effect and the program
8 should be reinstated at the acquisition targets that
9 were in effect the day before the application was made.

10 COMMISSIONER TARPEY: Okay. And do you
11 want to speak more -- I know there's been pleadings
12 back and forth by yourself and Public Service. Did you
13 want to say more about --

14 MS. PERKINS: Absolutely.

15 COMMISSIONER TARPEY: -- your arguments
16 on process?

17 MS. PERKINS: Yes, Commissioner, we do.
18 And then, in fact, I have a proposed statement to
19 address the complexity and to respond to the
20 counterarguments raised by the company --

21 COMMISSIONER TARPEY: Okay.

22 MS. PERKINS: -- Xcel Energy. Is it
23 appropriate for me to go into those now?

24 COMMISSIONER TARPEY: Why don't we do
25 that.

1 MS. PERKINS: Let me just begin. Again,
2 I am Susan Perkins. I represent the Colorado Solar
3 Energy Industries Association, also known as CoSEIA.
4 And I speak for a little over 200 member businesses,
5 many of which operate in Xcel Energy's service
6 territory. Many of CoSEIA's member companies are solar
7 product and service companies who install
8 customer-sited PV under Xcel's Solar Rewards Program.

9 Today, the solar industry in Colorado is
10 facing a crisis, and this crisis is brought about
11 Xcel's abrupt and unforeseen closure of the Solar
12 Rewards Program, but unlike other crises, this crisis
13 comes after a long string of successes rather than
14 missteps or failures.

15 These successes are worth noting at the
16 onset of CoSEIA's arguments and comments, and they
17 include the considerable success of the approval, in
18 2004, by the voters of Colorado, of Amendment 37, which
19 not only established the first voter-initiated
20 Renewable Energy Standard in the nation, but
21 recognized, almost seven years ago, that it is in the
22 best interests of Colorado to develop and utilize
23 renewable energy to the maximum extent possible, and
24 that, by doing so, Colorado would attract new
25 businesses and create jobs.

1 The second success was the success of the
2 Colorado General Assembly in doing a number of things,
3 which include raising the Renewable Energy Standard to
4 30%, and in House Bill 10-1001, recognizing the
5 potential of the solar industry to create new jobs and
6 businesses; and in Senate Bill 09-051, requiring that
7 factors affecting employment and the long-term economic
8 viability of communities in Colorado be considered in
9 electric resource planning and setting high targets for
10 customer-sited distributed generation.

11 Another success is the success of Xcel
12 Energy, and this Public Utility Commission, in creating
13 and approving the Solar Rewards Program. This program
14 attracted wide participation. The Commission and Xcel
15 Energy were also extremely successful in handling the
16 problems that ultimately developed under that program.
17 The Commission and Xcel Energy worked through the
18 transparency and operability problems in the program to
19 ultimately develop a Solar Rewards Program that allowed
20 the solar industry to make sales forecasts and to make
21 plans, based upon the predictable declining REC prices,
22 with known levels of capacity.

23 An additional success is Colorado's
24 educational institutions, who have been very successful
25 in creating career programs for students to become part

1 of the growing solar energy industry upon their
2 graduation. An additional success is the success of
3 the established solar industries, who looked at the
4 Colorado market and decided to come here and compete,
5 and to thus grow this growing industry.

6 Importantly, a success that I am
7 primarily here to talk about today is the success of
8 entrepreneurs in Colorado who put everything on the
9 line to start a solar business. These are the people
10 who mortgaged their homes, who personally guaranteed
11 the debt of their business and in order to play a very
12 important role in the development of the solar industry
13 in Colorado, by starting their own businesses. These
14 solar entrepreneurs joined thousands of small
15 businesses in Colorado, that account for over half of
16 the employment in this state.

17 And, lastly, the great success the solar
18 industry has had in bringing down the price of solar
19 installations as REC prices have decreased, all in
20 compliance with the current RES Compliance Plans and
21 with the Solar Rewards Program.

22 So, Xcel Energy's action on February the
23 16th, 2011, brought the success story of the solar
24 energy to an abrupt halt, and they now actually
25 threaten the continued viability of the solar industry.

1 Why is this so? It's so because the
2 market is effectively frozen. Customers are looking at
3 solar installations as if there is absolutely no
4 ability to act right now. They are frozen because they
5 see, if there is a possibility that higher incentives
6 will be reinstated, why act now. So, within 24 hours
7 of Xcel Energy's filing, Xcel announced that it had
8 closed the solar program for new applications and that
9 it would only reopen the program if certain conditions
10 were met by the Commission.

11 Within hours of Xcel Energy's
12 announcement, solar companies were holding closed door
13 meetings to make decisions on layoffs. Now, just two
14 weeks later, numerous solar companies in Colorado are
15 making plans to lay off their employees.

16 A prominent example is Namaste Solar,
17 which, just this week, laid off 12 of its employees,
18 constituting 16% of their staff. Now, I ask you, when
19 one of the best known and most successful companies in
20 Colorado begins to layoff its employees, it shows the
21 severe impact on the solar industry of the closure of
22 the Solar Rewards Program by Xcel Energy.

23 There are other examples of hardships to
24 solar installation companies, but they prefer to remain
25 anonymous. I am going to mention them anyway, because

1 these are true stories. Depending on today's ruling,
2 one company that has been in business, for 13 years,
3 will have to close and terminate its employees, each
4 having an average salary of \$35,000 per year. Another
5 company will cut its staff in half, from 50 to 25
6 employees, and that company has an average salary of
7 \$30,000 per year. Yet another company, with 40
8 employees, each with an average salary of \$45,000 per
9 year, will terminate six employees by this coming
10 Monday, and plans to have 20 more terminations within
11 the next few months.

12 So, on behalf of all of these solar
13 companies, and to address the threat of massive layoffs
14 and business closures, CoSEIA has filed a request for
15 emergency relief in this docket, so that the ends of
16 justice may be served. The Commission is specifically
17 mandated, by law, in Colorado Revised Statutes
18 40-6-101(1), to conduct its proceedings in a manner
19 that will -- and I am quoting -- best conduce -- or
20 result in both the proper dispatch of business and the
21 ends of justice. CoSEIA believes the facts show that
22 Xcel Energy's actions fall short on both counts, the
23 dispatch of business and serving the ends of justice.
24 And thus the intervention of the Commission is required
25 to restore the integrity of the Solar Rewards Program.

1 Specifically, CoSEIA asks this Commission
2 to provide the following emergency relief, pending the
3 Commission's final decision in this docket.

4 No. 1, order Xcel Energy to
5 immediately reinstate the Solar Rewards
6 Program and to begin to accept
7 applications.

8 No. 2, uphold the statutory \$2
9 per-watt rebate and deny Xcel Energy's
10 request to summarily reduce the rebate
11 to 25 cents per watt.

12 No. 3, refuse to delegate to Xcel
13 Energy the Commission's statutory and
14 ongoing authority to change the rebate
15 level.

16 No. 4, exercise ongoing supervision
17 in the reduction of the rebate level.

18 And No. 5, restore the capacity
19 acquisition targets established under
20 Docket No. 09A-772E, as they are in
21 effect and as shown on Xcel Energy's
22 Website on February 15th, 2011, which
23 was the day before Xcel Energy filed
24 this application.

25 So, a question arises that we discussed a

1 little earlier about REC prices and CoSEIA's position
2 on those REC prices. So, as for Xcel Energy's dramatic
3 reduction of REC prices from 35 cents per watt to 1
4 cent per watt, which focused on generation, and from 5
5 cents per kilowatt-hour generated to 1/10th of 1 cent
6 per kilowatt-hour generated for the other categories --
7 and these categories are the small third-party
8 developer and the medium tiers, 1 and 2.

9 CoSEIA does not contest the authority of
10 Xcel Energy to reduce the REC prices. CoSEIA
11 concludes, however, that the manner in which Xcel
12 Energy made these reductions violates the 2010 RES
13 Compliance Plan.

14 We believe that a presumption of prudence
15 should be afforded to the 2010 RES Compliance Plan, and
16 that unilateral action by Xcel Energy, in reducing REC
17 prices to their rock bottom lowest levels, and in so
18 doing, skipping over numerous tiers in the process, is
19 absolutely outside the Compliance Plan and amounts to
20 abuse of Xcel Energy's authority over REC prices. The
21 result is to create unfair leverage over the solar
22 industry, this Commission, and the company's own
23 customers.

24 Xcel Energy has made arguments that this
25 Commission lacks the authority to order the

1 reinstatement of the Solar Rewards Program. These
2 arguments, however, are based on a premise that is
3 contradicted by Xcel Energy's own testimony. Here's
4 the contradiction. The contradiction is that Xcel
5 Energy reassured this Commission, on the one hand, that
6 the motivation for filing its application is to keep
7 the Solar Rewards Program alive, and to support the
8 development of a solar industry that can stand on its
9 own two feet without incentives. And I am referring to
10 the PSCo response to CoSEIA's motions, page 6,
11 paragraph 1.

12 However, if Xcel is intending to improve
13 the Solar Rewards Program, it cannot insulate itself
14 from the authority of the Commission, to ensure that
15 the proper dispatch of business and the ends of justice
16 are met within the handling and administration of its
17 own Compliance Plan and its Solar Rewards Program. In
18 other words, Xcel Energy cannot make its responsibility
19 to comply with the 2010 RES Compliance Plan or to
20 prudently manage the Solar Rewards Program simply
21 disappear by relying upon the limitations that are
22 contained in the 2% retail rate cap or the spending
23 forward provisions.

24 To be clear, Xcel Energy cannot say that
25 it is exempted from Commission oversight of its conduct

1 within the Solar Rewards Program simply by asserting
2 that the Commission has no authority to require Xcel
3 Energy to continue to participate in the Solar Rewards
4 Program. To do so would be to relinquish the
5 Commission's legitimate oversight authority.

6 We believe that it's a red herring for
7 Xcel Energy to argue the limitations of the 2% rate cap
8 and the spending forward provisions, when Xcel is
9 already actively managing both of these concerns within
10 the context of the 2010 RES Compliance Plan and the
11 Solar Rewards Program. Certainly, CoSEIA respects the
12 legitimate issues that Xcel Energy brings up regarding
13 the 2% rate cap and the spending forward provisions,
14 but CoSEIA asserts that these issues can be addressed
15 in this docket, or in the upcoming 2012 RES Compliance
16 Plan docket, without taking the dramatic and
17 unnecessary action of closing the Solar Rewards Program
18 and sending the Colorado solar energy industry into a
19 death spiral.

20 The Solar Rewards Program has been a
21 successful model for the nation and has been successful
22 in Colorado. It would be a severe blow to all
23 stakeholders if Xcel Energy were to abandon its Solar
24 Rewards Program and rely solely on meeting the 2%
25 retail rate cap for compliance purposes.

1 CoSEIA argues that the Commission should
2 take Xcel Energy at its word when it says that its
3 intention is to strengthen the Solar Rewards Program.
4 At the same time, Xcel Energy's administration of the
5 Solar Rewards Program must meet minimum standards of
6 due process and fair play. CoSEIA asserts that, in
7 this case, these minimum standards have not been met,
8 when all of the actions by the company surrounding this
9 application are considered.

10 Therefore, it is the in the best
11 interests of the public, and necessary for the proper
12 dispatch of business and the ends of justice, for the
13 Commission to grant the emergency relief sought by
14 CoSEIA. Commission action is necessary to restore the
15 integrity of the Solar Rewards Program.

16 It is important to state that CoSEIA
17 supports and encourages a collaborative approach to
18 stabilizing the solar market and getting the incentives
19 right under the Solar Rewards Program. CoSEIA has
20 released a six-point market stabilization plan for
21 driving down costs and generating jobs that calls for
22 decreasing incentives through new schedules that are
23 predictable, transparent and incremental, with the
24 eventual goal being the elimination of incentives and
25 attaining grid parity.

1 CoSEIA believes that Xcel Energy's
2 request for the Commission to reduce the \$2 statutory
3 rebate to 25 cents amounts to nothing less than an
4 unlawful delegation of Commission responsibility, under
5 Colorado Revised Statutes 40-2-124, which requires the
6 Commission to supervise any change in the statutory
7 rebates requested by Xcel Energy. The Commission is
8 required to make a determination that change in the
9 solar market supports the requested change before
10 lowering the rebate.

11 If this Commission agrees to a one-time
12 dramatic reduction of the statutory rebate, the value
13 represented by that rebate is, in effect, transferred
14 to Xcel Energy to be used to increase REC prices.
15 Although Xcel Energy has signaled its intention to
16 increase REC prices immediately, by \$1 per watt for the
17 small customer-owned category, and proportionately for
18 the other categories, this plan is flawed by the same
19 inherent defect that has created the current prices,
20 namely, that Xcel Energy may fail to properly
21 administer a transparent and predictable decline of the
22 REC prices, as it has done in the current instance.

23 For all of these reasons stated, CoSEIA
24 requests that the Commission exercise its authority to
25 order Xcel Energy to reinstate the Solar Rewards

1 Program, to begin to accept applications, using the
2 statutory rebate of \$2 plus the 1 cent per watt REC
3 payment for the small customer-owned category, and the
4 1/10th of a cent REC payment per kilowatt-hour
5 generated for the other categories, and that the
6 Commission use the capacity targets that were in effect
7 on February 15th, 2011, which is the day before this
8 application was filed, until the Commission reaches a
9 final decision in this docket.

10 CoSEIA urges the Commission to fully
11 consider this docket on its merits, and believes that
12 an expedited schedule may not provide sufficient
13 opportunity to address the complex matters raised in
14 this docket.

15 The solar industry, in Colorado, has made
16 tremendous progress in the last six years, growing from
17 40 solar businesses to over 400 companies and 5,300
18 employees. Let's not kill the industry and throw away
19 all of these hard-earned jobs.

20 COMMISSIONER TARPEY: Thank you very
21 much. Mr. McGann.

22 CHAIRMAN BINZ: Jim, can you hear me?
23 This is Ron. Can you hear me?

24 COMMISSIONER TARPEY: I can hear you.

25 CHAIRMAN BINZ: Um, my flight was

1 delayed. I am very sorry I was late for this meeting.
2 I know the room is full of people. I want to say I
3 wish I could be there. I am in Ohio for my
4 mother-in-law's 91st birthday.

5 I am going to participate in the rest of
6 this hearing, Jim. I may have to put it on mute
7 occasionally. If you call me and just wait a second, I
8 will get unmuted.

9 COMMISSIONER TARPEY: That sounds fine.
10 We just had a statement by CoSEIA, basically
11 summarizing their arguments, adding to those that were
12 set forth in their motion. And we're about to turn to
13 Mr. McGann to hear his response.

14 CHAIRMAN BINZ: Just so you all know,
15 I've been on about 10 minutes. I heard most of
16 Ms. Perkins' statement.

17 COMMISSIONER TARPEY: She started a
18 little less than 15 minutes ago.

19 CHAIRMAN BINZ: Thank you.

20 MR. MCGANN: Thank you, Commissioner
21 Tarpey, Chairman Binz, Commissioner Baker. Let me just
22 start by saying that Public Service Company wants to
23 restart this Solar Rewards Program as soon as possible.
24 We share that concern with everyone here in this room.

25 The fact of the matter is that we are

1 essentially exceeding compliance with the Renewable
2 Energy Standard. We are charging the 2% retail rate
3 limit, in terms of -- we're charging the 2% retail rate
4 limit. And I noticed that one of the things that
5 Ms. Perkins said in her conversation was that the law
6 states that we are to essentially develop renewable
7 resources to the maximum extent possible allowed or
8 practicable.

9 The fact of the matter is, that we have
10 done that, and we are now exceeding that. I mean,
11 essentially, at this point in time, some of the numbers
12 are, that we only collect from -- for the 2% retail
13 rate that we charge customers, we only collect about --
14 a little less than \$5 million a year. We're
15 essentially spending more than that. We're on a
16 trajectory this year to spend, I believe it's closer to
17 \$90 million a year. So we're going to be advancing
18 significant sums of money at this point in time. And,
19 quite frankly -- and I will get to this a little
20 later -- if we were to adopt CoSEIA's proposal, we
21 would be overshooting those numbers by a significant
22 factor, so -- but I will get to that later.

23 So, I think one of the key things that's
24 missing, actually, from most of the proposals that have
25 been made by the parties, in their papers forwarded to

1 the Commission, is, essentially, what would the dollar
2 impact be of the acceptance of any of their proposals.
3 You'll generally see that there is no discussion of the
4 impact on the RESA with respect to the proposals that
5 have been offered so far. And in our papers, we
6 discuss the fact that, essentially, if you were to
7 adopt CoSEIA's proposal, which is, as I understand it,
8 we would essentially open the program back up to \$2.01,
9 and then we would accept another 95 megawatts --
10 additional 95 megawatts of applications.

11 By our calculations, we would essentially
12 be adding to -- that would essentially cost us another
13 \$200 million that would be over and above the 100
14 million or the 90-some odd million that we have already
15 spent. So, let's put this into perspective.

16 If we're only collecting \$5 million a
17 year, a little less than \$5 million a year from the 2%
18 charge on customer bills, we have now overshot those
19 collections by five times. If we implement the CoSEIA
20 proposal -- and, essentially, that that's improper, is
21 what we've said -- is, let's take a brief break, let's
22 have an accelerated procedural schedule, but let's come
23 to the Commission and try to realign these incentives
24 so that we don't head down the path that CoSEIA is
25 suggesting.

1 Now, CoSEIA's arguments are essentially
2 based upon the tiers that were set forth in the 2010
3 RES Compliance Plan. But what everyone seems to be
4 missing, in terms of that Compliance Plan, was that
5 that step down, was, essentially, a means to an end.
6 It was not the end in and of itself. And let me
7 explain that.

8 What we were trying to do was, what was
9 built into those tiers, were the fact that if we
10 stepped down the REC payments, we anticipated that that
11 would essentially manage the applications that we would
12 receive, and that it would also manage the dollars that
13 we have to spend, such that we would essentially hit
14 the estimates in terms of megawatts and dollars that
15 were contained in the 2010 RES Compliance Plan. So, if
16 you take a look at what those targets were, in the RES
17 Compliance Plan, the targets were -- and we have stated
18 in our papers as well -- we had a target of 22.5
19 megawatts for 2010, and we had a target of 19 megawatts
20 for 2011.

21 We have clearly exceeded those targets in
22 terms of the megawatts and in terms of the dollars
23 spent. So, again, the end results that we were trying
24 to reach by using those tiered steps were essentially
25 the targets that I just recited to you there. And we

1 were using the tiers as the means by which we would
2 essentially attempt to reach those estimates that were
3 set forth in the plan. We're where it far exceeds
4 those estimates, which is why we had to come back to
5 the Commission, now, and say, we have got to try to
6 realign the incentives here, which is why we've
7 deviated from the stair steps that were in the 2010 RES
8 Compliance Plan. And again, we did that because that
9 was a means to an end. And we were exceeding,
10 essentially, the estimates that were in the plan, which
11 is why we're here before you.

12 So, I know folks have made a lot about
13 those stair steps, and that the tier regulation that
14 was in the 2010 plan that was essentially the burn
15 behind that mechanism, and, so, that's why we're here
16 before you today, is because we're exceeding the target
17 that mechanism was designed to meet.

18 Now, I noticed that Ms. Perkins made a
19 couple of arguments with respect to the Commission's
20 authority to essentially reinstate the rebates. And
21 one of the arguments Ms. Perkins and CoSEIA have made
22 is that, essentially, that the statute states that
23 there has to be a \$2 standard rebate offer. And while
24 that is certainly true, there are other aspects of the
25 statute, other parts of the statute and also other

1 parts of the Commission rules that recognize the fact
2 that, especially when you are in the situation that we
3 are in, where we are exceeding compliance, we are
4 spending the 2% retail rate impact cap, and we have
5 actually gone beyond that, that there are opportunities
6 for the qualified retail utility to essentially suspend
7 the program. As you know, Black Hills did it, and
8 that's essentially what we did, after we implemented
9 the 3-megawatt cap, and that was reached. Essentially
10 what we have said is, we can't accept any more
11 applications until we realign the incentives, and we
12 have asked for the accelerated procedural schedule to
13 do that.

14 Now, we cited this in our papers. If you
15 take a look at, even your own rule, in terms of
16 reporting compliance with the RES plan, your own rule
17 basically says that the QRU may be excused from
18 compliance if compliance would mean the QRU would have
19 to exceed the retail rate impact cap. And,
20 essentially, what that means is that your own rule
21 recognized the fact that, at some point in time, a
22 utility may not be able to meet their RES compliance
23 requirements because of that retail rate limitation;
24 and, therefore, the rule basically says you'll be
25 excused from doing that. So, it seems to me inherent

1 in your rule is an acknowledgment that there may be
2 times where the program may need to be suspended.

3 So, I don't want to delve too much into
4 the, again, the legal arguments in our papers, I don't
5 want to delve too much into that, but I really think
6 that what we should be focusing on, here, is
7 essentially moving this process forward in an
8 accelerated fashion, so that we can restart the program
9 as quickly as possible.

10 I also want to say a little bit about
11 what I would call the, "elephant in the room," which is
12 the fact that, on the one hand, we're being asked by
13 CoSEIA to open the program, extend what I believe is
14 about \$200 million in additional funds; and, again,
15 given the fact that we have already advanced funds, and
16 I don't believe, at this point, we're willing to
17 advance any further funds. I question where those
18 funds are going to be coming from.

19 This leads to, I think, what I have been
20 calling the "elephant in the room." If I am reading
21 the staff intervention correctly, staff is essentially
22 saying not only, if I am correct, not only is the
23 future operation of the program in a deficit at
24 jeopardy, but also the fact that we have extended
25 funds, Public Service, in excess of the retail rate cap

1 limitation perhaps puts into jeopardy funds that you've
2 already collected.

3 And, so, I don't think that we can
4 essentially consider CoSEIA's motion without also
5 considering the fact that there are opposing views out
6 there, from your own staff, who is essentially saying,
7 that, at least in their view, they would like to
8 investigate, as part of this docket, whether or not the
9 funds we've already expended are somehow in jeopardy or
10 somehow we should not be guaranteed recovery of those
11 funds.

12 So, I caution the Commission, again, in
13 terms of granting CoSEIA's motion, to basically
14 consider that carefully, given the position that your
15 own staff has taken on that particular issue.

16 And, again, I apologize. I am skipping
17 around, going through my notes, based upon Ms. Perkins'
18 presentation.

19 (Pause.)

20 MR. MCGANN: Ms. Perkins talked about
21 sustaining the solar energy. That is absolutely
22 something that we are interested in doing. And I
23 think, as I have demonstrated by some of the numbers
24 that I have gone through here, we don't believe that,
25 at the current trajectory, that we would be able to do

1 that, given the 2% retail rate limitation.

2 What we are trying to do with our
3 proposal -- and I think what some of the other parties
4 to the case are attempting to do with their proposals,
5 now, whether it's called "pay-as-you-go," or whatever
6 name they give it, is we are all attempting to realign
7 the incentives so that we can sustain the industry.
8 That is truly all we are attempting to do.

9 And, actually, I am encouraged by the
10 fact that, with some of the proposals that have been
11 made by some of the parties, again, I think Solar
12 Alliance was calling it, "pay-as-you-go," we believe
13 that, from what we have heard, from the industry
14 members at least, we believe that there is some common
15 ground between us and the other industry members. So,
16 if we can work with them we believe that we can
17 actually take their proposals, and actually work with
18 them so that they actually get to the rules that we
19 were attempting to achieve by filing our applications
20 under the current statutory scheme, which requires us
21 to come to you and seek a lowering of the standard
22 rebate offer. So, I'm encouraged by that. I am
23 encouraged by the fact that I believe that we can work
24 with the parties to reach common ground.

25 What I would urge the Commission not to

1 do is do what CoSEIA is suggesting, which is to reopen
2 this program and essentially make what I would call, "a
3 bad situation," even worse," exacerbating a problem
4 that we attempted to head off by filing the application
5 that we filed.

6 (Discussion off the record between Public
7 Service Company's representatives.)

8 MR. MCGANN: That's all I have. Thank
9 you.

10 COMMISSIONER TARPEY: Okay. Thank you.
11 Commissioner Baker, did you have any questions at the
12 moment before we proceed?

13 COMMISSIONER BAKER: I will have more
14 questions and comments. I am interested if there are
15 any other parties who are -- after responses, I guess I
16 want to hear more.

17 COMMISSIONER TARPEY: Chairman Binz, did
18 you have any questions at this moment or, like
19 Commissioner Baker, did you want to wait?

20 CHAIRMAN BINZ: Yes. Thank you. Not at
21 this point, since I got a rental car going here. I
22 would probably have some questions.

23 COMMISSIONER TARPEY: Okay. I will
24 venture where I generally prefer not to and that's --

25 COMMISSIONER BAKER: Actually, I had one

1 question for Public Service Company, which I didn't
2 quite understand, from the various filings. You may
3 not know the answer to this.

4 But, when someone applies to the company,
5 applies for the rebates -- and this question gets at
6 how the 3 megawatts were used up so quickly. When
7 someone applies for those rebates, to get credit for
8 them, do they also have to demonstrate that they have a
9 deposit? Is it just kind of -- do you just go on the
10 Website and say, hey, I want to reserve those and then
11 you are liable for it? Thanks.

12 MR. MCGANN: If I may have a moment.

13 COMMISSIONER BAKER: Sure.

14 (Discussion off the record between Public
15 Service Company's representatives.)

16 MR. MCGANN: Thank you, Commissioner
17 Baker. My understanding is that when we were counting
18 the 3 megawatts, for the purposes of this particular
19 application, that we count the megawatts once the
20 application came in. And, then, the applicant, then,
21 had five days after that to submit the deposit.

22 But I think your question highlights the
23 difference between the way we were receiving the
24 applications before and the way we are doing it now.
25 In order to essentially get a better idea of the

1 megawatts that were coming in, we started counting them
2 when the application came in.

3 COMMISSIONER BAKER: So, before you
4 counted them, prior to February 15th, you counted the
5 application when there was proof of deposit and then,
6 afterwards, it was when the application came in, and
7 then they had five days to get the rebate?

8 MR. MCGANN: If I may have a moment?

9 COMMISSIONER BAKER: Sure.

10 (Discussion off the record between Public
11 Service Company's representatives.)

12 MR. MCGANN: My understanding, there were
13 a number of steps, but, primarily, it was with proof of
14 deposit and also submission of the one-line diagram.
15 And I think there may have been some other steps as
16 well.

17 COMMISSIONER BAKER: Got you.

18 COMMISSIONER TARPEY: With some
19 trepidation, we will invite other attorneys who may
20 want to speak to this issue, but I caution you, I am
21 not looking for people to repeat what has been said
22 previously by Ms. Perkins or Mr. McGann. If you have a
23 different perspective you wish to present, that's fine.

24 And, with that -- Mr. Fanyo, you are very
25 quick at the button.

1 MR. FANYO: Quick at the button. Thank
2 you.

3 COMMISSIONER BAKER: You could have beat
4 Watson on Jeopardy.

5 MR. FANYO: No. I would have lost on the
6 first question.

7 I am here representing two large
8 companies, but our perspective is the same, I believe,
9 as the ratepayers, in general; and that is that the
10 standards regarding cost limitations, as have been put
11 forth by the statute, be observed. Frankly, we got
12 into this a little bit late, so, I haven't actually
13 researched and evaluated this, but I am pretty familiar
14 with the statutes, having been involved with it from
15 the first and thence involved.

16 We're not taking a position specifically
17 on the relief that CoSEIA asked for, but we will urge
18 the Commission to be sure that you enforce the cost
19 limitations in the statute.

20 The Renewable Energy Standard,
21 essentially, has three elements -- well, two, and then,
22 a third that comes into play here. The first is the
23 standards that are set, year by year, for the total
24 amount of the renewable energy required, as well as the
25 subcomponents, particularly distributed generation,

1 retail distributed generation.

2 According to -- I can't confirm this
3 specifically, but Public Service represents that the
4 pertinent issue here, as it relates to standards, is
5 whether they have met the requirements in the statute
6 for retail distributed generation. If they represent
7 that they have, in fact, that they have exceeded them,
8 at least for the years 2011 and '12, so, they are in
9 compliance, according to their representation, which I
10 accept for the moment.

11 And in that event, then, Section
12 124(g) (I) (B) says, if the retail rate impact of 2% is
13 not exceeded, then the QRF may acquire more than the
14 minimum amount of renewable energy. Okay. Well, the
15 2%, we know, is about 5 million a year. That's what
16 they reported for 2010, and in their report filed
17 February 10th. And we know that, last year, they
18 exceeded that collection by about \$20 million, doubling
19 the deficit.

20 We know that, in their representations
21 here, they expect to, in 2011, even with their
22 proposal, exceed it by close to 100%, 97 million
23 expended, is what their papers say, versus 50 million
24 or so collected. So, we have gone from \$22 million to
25 another -- up to less than 5 million and then another

1 47 or so million this year. That certainly is
2 exceeding the rate impact.

3 Now, the statute goes on to say -- this
4 is the third element, as it pertains here -- that the
5 company, on its request, and with the Commission
6 approval, may advance funds, in the event that -- well,
7 what it actually says, "may advance funds from year to
8 year to augment the amounts collected from retail
9 customers under paragraph g for the acquisition of more
10 eligible energy resources." So, they are not really
11 stuck with the 2% cap. They can advance funds.

12 The suggestion they may, and the term,
13 "advance," suggests we're talking about them using
14 ratepayer funds -- I'm sorry -- using company funds for
15 this advance. In fact, what they are doing is taking
16 out a loan, by the ratepayers, to, then -- the proceeds
17 of which would be expended on this and possibly other
18 renewable programs.

19 Ratepayers didn't ask for the loan. They
20 have to pay it back. They have to pay interest on that
21 loan, at the post-tax weighted average cost of capital,
22 which I haven't calculated recently, but is somewhere
23 in the range of 9%, and that loan is fully secured,
24 because, if any individual ratepayer does not pay his
25 electric bill, including that 2% RESA, as long as the

1 RESA lasts, they go off the service. . . It's a 100%
2 secured loan to the company, by the ratepayers, that
3 we're talking about. That's what this advance really
4 is.

5 Now, there's only one -- and the
6 ratepayers don't get any say in whether that loan is
7 extended, or how much it is. There's only one limit on
8 that; that is the Commission has to approve the
9 advance. As we read these papers -- and I need to look
10 into this further to be absolutely sure -- it appears
11 that the approval of the advance was, to the extent of
12 the approval in the 2010 Renewable Energy Compliance
13 Plan, Docket No. 772E, and that the numbers in 2010, as
14 represented in Public Service's papers, the amount was
15 44.5. They expended 67.2. That appears to exceed what
16 was approved by \$23 million.

17 Again, their papers, they say the plan
18 approved an expenditure of 37.2, and, in fact, their
19 schedule, even with their proposal, in this
20 application, is to expend 89 million, maybe 97, I'm not
21 really sure about that. So, we're talking about
22 another 52 million exceeding the amount that appears to
23 be approved.

24 Mr. McGann's concern expressed about
25 staff's position is well-taken. There is a significant

1 issue as to whether the advances exceeding those that
2 have been approved in the 2010 Compliance Plan are
3 recoverable from the ratepayers. They have -- this is
4 an ongoing thing. We were just talking about how many
5 years we have, we add to the RESA, when there are no
6 expenditures out in the late years -- but
7 there's plenty of time to sort that out.

8 But the whole point of this is to raise
9 this issue and to ask them to take that into account,
10 and the maximum impacts on the ratepayers, not only the
11 2% but also this additional expenditure that we're
12 talking about here, whether it's, in Public Service's
13 proposal, or CoSEIA's proposal, that the ratepayers
14 would have to pay, and whether that is a reasonable
15 amount, given the fact that Public Service
16 represents -- we'll check this, but I have no reason to
17 doubt -- that they are in compliance and, in fact,
18 exceeding compliance for 2011 and 2012, as far as the
19 retail DG requirement is concerned.

20 So, I'm not taking a specific position on
21 CoSEIA's motion, but I am asking you to ensure that
22 there is compliance with these limitations that are in
23 the act. This is not an unlimited program.

24 COMMISSIONER TARPEY: Okay. Thank you.

25 MR. FANYO: Thank you.

1 COMMISSIONER TARPEY: Thank you. Any
2 other counsel wish to speak, give a different
3 perspective from what's been voiced?

4 MR. GOAD: Thank you, Commissioner
5 Tarpey. Briefly, on behalf of the Governor's Energy
6 Office, the Governor's Energy Office does not take a
7 position on the request for relief. The GEO is of the
8 belief that the incentives do need to be realigned;
9 however, we are concerned about the process. And our
10 interest is to get a quick resolution of this issue,
11 and we are very interested in facilitating that effort,
12 as Mr. McGann said, to reach some common ground. Thank
13 you.

14 COMMISSIONER TARPEY: Okay. Thank you.
15 Any other counsel? Ms. Hickey.

16 MS. HICKEY: Yes. If I may, on behalf of
17 the Solar Alliance, briefly. I too will not repeat all
18 of the arguments. The Solar Alliance shares strong
19 concern for the industry, because of this action by
20 Xcel, which was unilateral and not predicted, when
21 there was opportunity to have further discussion about
22 it. And the purpose of the Compliance Plan was to
23 complete a transparent and predictable market.

24 We do see the quandary and believe that
25 the Compliance Plan has been violated by this

1 termination, the language and spirit of the statute and
2 the rules, because the Compliance Plan had set forth
3 how the mechanisms worked, how the steps were laid out,
4 how much money was anticipated. But, also, we
5 recognize that the numbers are not consistent with the
6 Compliance Plan either, with regard to the borrowing
7 from the RESA.

8 We therefore ask for close Commission
9 monitoring, as we proceed forward. That will help us
10 to develop a program which will be transparent and
11 predictable. It's absolutely imperative for the
12 industry, of course, but, more importantly, for
13 Colorado consumers, because these interruptions cost
14 the consumers money. It reduces economies of scale,
15 obviously, the layoffs and then some, we hope, rehiring
16 if any layoffs occur. It costs these businesses money,
17 and that would be, essentially, the decline in solar
18 prices.

19 The company gets interest on the loan to
20 the RESA. Ratepayers have some protection from the 2%
21 and the recovery of the RESA funds, but solar industry
22 companies don't have that protection.

23 We are concerned that we have some
24 information that we can present to the Commission about
25 the relative net present values of the benefits and

1 incentives that are paid between and among the market
2 segments. We believe that we can gather information,
3 analyze it and produce that for the Commission within a
4 matter of just a few weeks. We stand ready and are
5 preparing to enter into discussions, as the Commission
6 asked us to do, to try to resolve these matters. And
7 again, timing is imperative. Layoffs will occur within
8 just a few weeks.

9 Therefore, we would ask that the
10 Commission prepare to hear us again, by the middle of
11 April, if we can. We can talk about those specifics,
12 because we know that that could be done; and that we
13 get the program up and running, as recommended by the
14 Solar Alliance, and in consideration of all of the
15 parties' statements today. Thank you.

16 COMMISSIONER TARPEY: Okay. Thank you.
17 I think that seems to be everyone that wanted to speak.
18 I did have some questions. I don't know if you do, at
19 this stage. Why don't I start. Now, I would start
20 with Mr. McGann.

21 Let me pose two situations to you, and we
22 can discuss whether or not these are, in essence, the
23 same or very different.

24 Let's assume, in 2011, you're looking at
25 your program for 2012, and doing the calculations, the

1 kinds of things you do, and at that stage, you are
2 going to be making a filing with the Commission to get
3 approval of your targets, et cetera, and you address,
4 in that filing, what it is you intend to do or not do
5 regarding advances. That seems to me to be certainly
6 consistent with the language of the statute, that a
7 qualified retail utility, with Commission approval,
8 that there may be an advance of funds. That seems to
9 me as being a very typical situation where that might
10 arise.

11 What we have here, it seems to me, is a
12 program that was agreed to in 2010. And we may have
13 some unintended consequences, maybe, about how that
14 would be done, but it seems that we had an agreement
15 that was worked out, signed off by the Commission, and
16 now we're talking about a change in that.

17 And, so, I question whether or not that
18 statutory language still applies, as opposed to you
19 having to come in, you the company, in that situation,
20 since you had agreed last year to an approach, that you
21 would have to, in fact, get our approval before you
22 would change that advance, or the consequences of the
23 advance.

24 MR. MCGANN: Change the advance of funds,
25 is that your -- the advance that you're talking about?

1 COMMISSIONER TARPEY: Correct. I see,
2 this is the way that the steps work out, is that it's
3 leading to lots more than that you anticipated it
4 leading to, a higher amount of advances, and you are
5 saying that the utility is not willing to continue with
6 that, and that's why you stopped.

7 And I am questioning, under the
8 circumstances, is that different from what was
9 contemplated by the statute as to when the utility has
10 the right to say, we make the request and the
11 Commission gets to approve?

12 MR. MCGANN: Let me see if I
13 understand -- let me see if I can answer your question,
14 and then tell me whether or not this did.

15 COMMISSIONER TARPEY: I can do that.

16 MR. MCGANN: I believe, in the 2010 RES
17 Compliance Plan, I believe, if I'm not mistaken, and in
18 the 2009 RES Compliance Plan -- I can check this -- and
19 actually, why don't I check this fact before I state
20 it.

21 (Discussion off the record between Public
22 Service Company's representatives.)

23 CHAIRMAN BINZ: Jim, can you hear me?

24 COMMISSIONER TARPEY: We can now.

25 CHAIRMAN BINZ: Okay. Good. I will have

1 some questions. And I'm sorry. I am sort of in
2 equilibrium now.

3 COMMISSIONER TARPEY: Okay. I just got a
4 few and then we'll move towards your questions.

5 MR. MCGANN: I suppose this is perhaps
6 the difficulty I am having in answering your question.
7 Let me just state this. In 2009, it's my
8 understanding, in the 2009 and in the 2010 RES
9 Compliance Plans, we showed the RESA balance being in a
10 deficit position as part of the plan, and that plan was
11 approved by the Commission. And the plan also showed,
12 essentially, what we believe were, essentially,
13 estimates or targets for our acquisitions as well as
14 our spend. Those were all approved by the Commission
15 as part of the plan.

16 So, that's why I am having a little
17 difficulty, I suppose, answering your question about
18 the difference between the statute and what was
19 approved in the plans, because it's my understanding,
20 in the plans, that deficit spending was approved as
21 part of these plans.

22 COMMISSIONER TARPEY: Well, I thought
23 that the, out of the recommended decision by our ALJ,
24 that there was approval of the various steps that you
25 were talking about, and that that was causing problems

1 with regard to -- is now causing problems in 2011, with
2 regard to the amount of the advances, the amount of
3 commitments, et cetera.

4 MR. MCGANN: Well, I think, again, this
5 gets back, probably, to the way I view those steps and
6 what they are designed to do. They were the means to
7 the end and not the end.

8 COMMISSIONER TARPEY: Okay.

9 MR. MCGANN: And that's why, in the RES
10 Compliance Plan, we had a megawatt estimate of what we
11 required, along with our expenditures, in terms of what
12 it would cost us to acquire those megawatts. And,
13 essentially, those tier steps were designed to get us
14 to those targets.

15 And what we have said, clearly, our
16 acquisitions -- clearly, what we believe is that the
17 subsidies are too rich that are built into those
18 targets, built into those steps, so that we're
19 acquiring more and spending more than the estimates
20 that were set forth in the plan, which is why we're
21 asking you to revisit those incentives.

22 COMMISSIONER TARPEY: Okay. Now, with
23 regard to that particular proceeding, what is it, in
24 the testimony or the exhibits, that indicates just what
25 you're saying? Those were only a means to an end, they

1 were not meant to be firm, they were not meant to be
2 relied upon, because, based upon the review we've been
3 able to do so far, we're not coming up with the kind of
4 information that might be helpful to you.

5 MR. MCGANN: If I am not mistaken, if I
6 take a look at, I believe it's Exhibit PGN-2 -- and I
7 don't have the exhibit numbers from the docket, but,
8 these were essentially exhibits to Ms. Newell's
9 testimony, her Rebuttal Testimony. I think this is
10 where she laid out what the megawatt acquisition
11 targets were going to be for 2009 and 2010, 2011.

12 And, so, that's where I am finding that,
13 essentially, the tier steps were designed to reach the
14 estimates that were set forth in our plan, and those
15 estimates, megawatt estimates are actually set forth in
16 PGN-2.

17 COMMISSIONER TARPEY: Okay. Is there
18 anything in the testimony or in the exhibits that
19 indicates that if, in fact, this turns out to be much
20 higher, these are the steps that the company will take,
21 or if these turn out to be much lower, these are the
22 steps the company will take, or is it silent?

23 MR. MCGANN: I am taking a moment to
24 review some testimony from the proceeding.

25 COMMISSIONER TARPEY: Okay.

1 (Pause.)

2 MR. MCGANN: I am reading from, for
3 example, Ms. Kittel's testimony. This is her Direct
4 Testimony, at page 20, starting at line 16, where she
5 basically describes the plan and the forecast and says,
6 this is Public Service's forecast and the actual market
7 participation may be higher or lower, due to market
8 response.

9 And I believe Ms. Kittel, and others,
10 were asked about this particular dynamic in the
11 hearings, and testified in a similar manner; that,
12 essentially, these were forecasts and that, again, what
13 our plan was designed to do was acquire a certain
14 amount of megawatts that we estimated, and to spend
15 certain funds, as we estimated, as part of the plan.

16 COMMISSIONER TARPEY: Okay. Well -- and
17 you may get an opportunity to discuss that more if
18 we -- you referred us to very specific transcript
19 references -- if we are, in fact, going to call for
20 stuff, for additional submissions.

21 Question, Ms. Perkins, I have for you.
22 Mr. McGann made a reference to the advances of 47
23 million, that the proposal put forth by your clients
24 would actually result in advances from the company of
25 \$200 million. Are those numbers that you have not had

1 a chance to verify, but that they are generally the
2 magnitude of the consequences if we adopt what you are
3 asking, or can you give me some feedback as to what you
4 know about those numbers from Public Service Company?

5 MS. PERKINS: Certainly, if you'll give
6 me just a moment.

7 CoSEIA believes that, since the REC
8 payments were reduced very dramatically, from 35 cents
9 to 1 cent, which is even below the lowest on the tiers
10 that were listed on Xcel's Website, of 5 cents, that
11 that 35 cents should buy a lot of capacity, if you
12 will; and likewise, the 5 cents per kilowatt-hour
13 generated payment was reduced to 1/10th of 1 cent. So,
14 those are dramatic reductions. And we don't have the
15 wherewithal to run those economics from Xcel Energy,
16 but we believe that if they ran those economics, that
17 they would find that that reduction, in and of itself,
18 would be substantial.

19 As I am understanding, from their
20 testimony, they are saying they need to go all of the
21 way to something like \$1.50 in order to get things
22 right. But what that really represents is a shift from
23 basically \$2.35 to \$1.50, which is an 85 cent drop in
24 the REC prices, when the participating public in the
25 solar industry was looking at predictable declining

1 tier prices and quantities available from Xcel's
2 Website.

3 And just to give you an idea, when we got
4 this run out -- I think it's very close to February
5 15th, there were still over 2 megawatts remaining in
6 Tier No. 7, at 35 cents. So, the signal being sent to
7 the industry, 1.8 megawatts have been confirmed. There
8 were another 2.1 megawatts remaining in that step,
9 almost 2.2, for a total of 4 megawatts in that step. I
10 hope that answers your question.

11 COMMISSIONER TARPEY: Well, mainly, I was
12 just trying to get a sense of where, since they made
13 the argument, that the impact of your proposal would be
14 about 200 million, whether that's a fair number to be
15 thinking about, or that's a number that would need to
16 be reviewed and analyzed, because I gather you are
17 saying it's high, but you are not really sure what
18 magnitude that is?

19 MS. PERKINS: It's definitely a number
20 that needs to be very thoroughly reviewed and analyzed.

21 COMMISSIONER BAKER: Commissioner Tarpey,
22 can I ask a follow-up, just on that specific question?
23 And this one -- I wasn't quite sure how the 200 million
24 was expected to play out.

25 The way I understood CoSEIA's proposal

1 was that we would order the reinstatement of the
2 program, and then there would be a proceeding to
3 determine the way forward -- and if I am misreading
4 your thing, let me know -- the \$200 million is your
5 estimate of what the amendment would cost between now
6 and when a proceeding was done, or is that what the
7 proposal would cost if it were to play out through the
8 life of the Settlement Agreement? Does that question
9 make sense, Mr. McGann?

10 MR. MCGANN: I think it does. My
11 understanding of CoSEIA's proposal is essentially that
12 we would raise the incentive levels to \$2.01, and we
13 would essentially carry that out to the 95 megawatts.
14 I think that they have suggested, in their papers,
15 which is where I am deriving essentially my numbers,
16 which we believe that every megawatt is about -- would
17 cost us about \$2, is where we're coming from --

18 MS. KITTEL: Two million.

19 MR. MCGANN: -- which comes up with 190
20 million or \$200 million.

21 COMMISSIONER BAKER: So, if you were to
22 provide -- the way I am reading it -- and I was
23 confused about that -- have you done an estimate of how
24 much that might cost?

25 MR. MCGANN: And you're talking about the

1 way you were reading it, which is that we go to \$2.01
2 and then carry it out through the end of this
3 proceeding.

4 COMMISSIONER BAKER: The proceeding, yes,
5 and there are other issues around that. I am just
6 trying to get the cost and see if that's --

7 MR. MCGANN: Here's the difficulty, and
8 that I am having in answering that particular question.
9 What we have seen, in the past, whether it was in 2008
10 or 2009 or when we filed this application, we
11 essentially, at the time, were getting a run on the
12 bank. And, so, it's very difficult for me to -- I
13 don't believe we've run those numbers. But I think it
14 would be difficult to run numbers, because, given what
15 we have seen in the past, I think we would see a flurry
16 of applications. So, I'm not sure where those numbers
17 would end up.

18 COMMISSIONER BAKER: My last question
19 touched on this. It does seem like there is a way to
20 manage it, even though -- if you are only releasing a
21 megawatt a week -- that you could kind of do those
22 kinds of things. But the idea that it was \$2 million a
23 megawatt basically answers or gives me some way to
24 answer that question, so, thank you.

25 COMMISSIONER TARPEY: Chairman Binz, I

1 got a few other questions, but why don't you go ahead
2 with yours. We'll see where we go next.

3 CHAIRMAN BINZ: Okay. This is for each
4 of the counsel who have spoken, or any of them who wish
5 to respond.

6 I am interested in knowing how quickly we
7 can take action in this matter. You seem to be united
8 in the belief that we must do something quickly, or we
9 should do something quickly.

10 My question, I will just make it as stark
11 as I can, to just get the sense of where each of the
12 parties is.

13 CoSEIA, you are apparently thinking we
14 could act on your motion today. Do you also agree we
15 could -- or do you agree that we could, if we chose to,
16 within our jurisdiction, approve the Xcel proposal
17 today? I am not suggesting we should. I just want to
18 know legally, if you think there's any impediment to
19 this Commission acting on the application as it was
20 filed?

21 MS. PERKINS: I'm pausing, Commissioner
22 Binz, I apologize, but I think your question is, that
23 CoSEIA is asking the Commission to act on CoSEIA's
24 request today, and your question is, does CoSEIA
25 believe that the Commission has authority to act on

1 Public Service Company's entire application today,
2 their request for relief?

3 CHAIRMAN BINZ: That's -- well, that's
4 exactly right, or as much as we choose to. I am asking
5 about the process of law, and how much due process you
6 believe is required to take either of the actions that
7 are being proposed right now.

8 MS. PERKINS: Well, in response to that,
9 CoSEIA's request is based on a existing plan that was
10 already approved by this Commission, and on which the
11 solar industry was relying. We were blindsided by this
12 application. The Solar Rewards Program is frozen.
13 Jobs are being lost and businesses are closing.

14 COMMISSIONER BINZ: I appreciate all of
15 that.

16 MS. PERKINS: Yeah.

17 CHAIRMAN BINZ: I am really not
18 interested in your advocacy. I just want to know your
19 legal position.

20 MS. PERKINS: What I am saying here, is,
21 that we come here, asking for a reinstatement of the
22 program. And I guess the answer to your question is,
23 we would definitely be interested in agreeing upon
24 terms very quickly to reinstate the program, both as to
25 the pricing and as to the amount of capacity.

1 But to your question as to whether I
2 think the Commission has authority to grant, wholesale,
3 Xcel's application today, for the entire relief? I
4 would say, no. I would say that the question of the
5 dramatic reduction of the \$2 rebate to 25 cents without
6 a full consideration as to whether market changes
7 justify that reduction. And whether that reduction
8 constitutes an unlawful delegation of the Commission's
9 statutory authority over the rebate payments to Xcel
10 Energy is definitely in question.

11 CHAIRMAN BINZ: Thank you. Mr. McGann.

12 MR. MCGANN: Well, Chairman Binz, if I am
13 understanding your question -- and if I am putting an
14 assumption in here that was not in your question,
15 please let me know. But, quite frankly, I thought
16 where your question was leading was, could the
17 Commission, for example, enter an interim order that
18 established the rebate at \$1.25, for example, and then,
19 essentially, set the capacity limits that were set
20 forth in our -- excuse me -- in our application on an
21 interim basis and then continue to hear the proceeding,
22 to essentially move to final order, to set the ultimate
23 rebate level.

24 CHAIRMAN BINZ: I think that's an
25 improvement on my question, and that's a better

1 version. So, yes, that is my question.

2 MR. MCGANN: It seems to me, sitting here
3 today, I believe that is something the Commission could
4 implement.

5 CHAIRMAN BINZ: And what if we choose to
6 implement, say, a restoration during the interim? Is
7 that legal?

8 MR. MCGANN: I think, following the same
9 logic, yes, although given some of the caveats that we
10 have discussed here, which is in terms of the positions
11 that have been taken with respect to the parties, in
12 terms of whether or not we're able to collect those
13 RESA dollars. If the Commission were to, for example
14 guaranty us the relief we seek, or guaranty our
15 recovery of these dollars in a reasonable amount of
16 time, I think, for the reasons I stated before, that
17 would be bad public policy.

18 CHAIRMAN BINZ: I understand that. I am
19 just asking about our authority.

20 MR. MCGANN: But I believe, at this point
21 in time, I think the Commission could enter an interim
22 order that, essentially, reset those rebates levels. I
23 would simply ask the Commission, again, to do something
24 to guaranty our recovery of those funds and decide the
25 case as quickly as possible.

1 COMMISSIONER BINZ: Mr. Fanyo, do you
2 have anything to add?

3 COMMISSIONER TARPEY: It's not necessary.

4 MR. FANYO: No. I just surprised
5 Commissioner Tarpey.

6 COMMISSIONER TARPEY: Yes, you do.

7 MR. FANYO: The answer is, no, I don't.

8 COMMISSIONER TARPEY: Ric, are you not
9 feeling well?

10 MR. FANYO: If you give me one more
11 encouragement, I would have something to say.

12 CHAIRMAN BINZ: Let's see. That was one
13 question. Another was -- and I think I know, well,
14 another question is, assuming we move forward on an
15 expedited basis, to have a hearing, enter an order,
16 what's each party's realistic estimate of how quickly
17 that can be done?

18 COMMISSIONER BAKER: Commissioner Binz,
19 are you addressing that to all of the representative
20 counsel here or just the ones --

21 CHAIRMAN BINZ: Well, the same two who
22 spoke is fine.

23 MR. MCGANN: Chairman Binz, may I start?
24 This is David McGann.

25 CHAIRMAN BINZ: Sure.

1 MR. MCGANN: We believe that -- and we
2 have actually been in discussions with parties
3 concerning a procedural schedule. Not all parties have
4 agreed to this; however, the Governor's Energy Office
5 exchanged a procedural schedule which, essentially, had
6 us going to hearing either the 23rd through the 25th of
7 this month or the 28th through the 30th of this month,
8 with statements of position on April 8th. And we have
9 already told the Governor's Energy Office that we could
10 meet that schedule.

11 CHAIRMAN BINZ: Has that been agreed to
12 by CoSEIA? I think they were about to speak.

13 MS. PERKINS: We are not agreed to the
14 schedule. Of course, our primary concern is
15 reinstating the program, and then, if there's some
16 relief in that regard, we are very willing to expedite
17 the schedule as much as possible.

18 COMMISSIONER TARPEY: And maybe a
19 follow-up to the question just asked. With regard to
20 the timing of the hearings, does a lot of that depend
21 upon whether or not the relief you sought is granted?

22 MS. PERKINS: Yes, sir.

23 COMMISSIONER TARPEY: So, if the relief
24 is granted -- and I think you indicated you would like
25 to have a more in-depth review. And if the relief is

1 not granted, then I assume you want this to go as
2 quickly as possible.

3 MS. PERKINS: Yes, Commissioner. We
4 would like to see this relief granted, to have a
5 starting point, so we can stabilize the market and
6 stabilize the industry. And at that point, we would be
7 willing to participate in an expedited hearing. We
8 would prefer a full consideration on the merits.

9 COMMISSIONER TARPEY: All right.

10 CHAIRMAN BINZ: Commissioner Tarpey, I
11 have two more questions for CoSEIA. The first is
12 that -- shall I proceed?

13 COMMISSIONER TARPEY: Yeah. Go ahead.

14 CHAIRMAN BINZ: Ms. Perkins, in the
15 testimony filed by Public Service with this
16 application, there were some models of how much various
17 levels of rebates would mean in terms of the
18 contribution of the customer towards the total costs.
19 Are you familiar, generally, with what I am talking
20 about?

21 MS. PERKINS: Yes, Commissioner, I am.

22 COMMISSIONER TARPEY: I realize this is
23 not an evidentiary hearing, and you can answer this as
24 advisably as you need to. But I wonder if CoSEIA has
25 any -- has it done any analysis of that? Do you have

1 any disagreements fundamentally with the notion that
2 the percentage required by the customer has changed
3 relatively dramatically in recent years and months?

4 MS. PERKINS: Well, we would take issue
5 with lumping all solar projects into one category, for
6 example, customer-owned solar has different parameters.

7 So, we -- CoSEIA is very supportive of
8 exploring incentives, such as production-based
9 incentives or having more of the net present value be
10 in a production-based payment, as opposed to an
11 up-front payment. But at the same time, CoSEIA is very
12 mindful of the impact to a certain segment of the
13 market, of the rebate and having that preserved for
14 that segment of the market.

15 COMMISSIONER BINZ: My last question to
16 Ms. Perkins, and then I think I would like an answer
17 from Mr. McGann.

18 Ms. Perkins, you talked about, in your
19 statement, the fact that the Commission needs to
20 restore the status quo ante, I think you said, to give
21 CoSEIA some leverage in negotiating a rework of the
22 plan; is that fair? Is that your position?

23 MS. PERKINS: Well, it's fair. I guess
24 there are two things I would say about that. First of
25 all, it's not purely the status quo ante, because

1 CoSEIA is reluctantly acquiescing in the dropped REC
2 prices. And I think we shouldn't lose sight of the
3 fact that those REC prices have absolutely plummeted.
4 And, in addition, Xcel Energy is requesting for a
5 substantial reduction in the rebate.

6 So, that's the first point. And, I'm
7 sorry. What was the remainder of your question?

8 CHAIRMAN BINZ: So, your point was the --
9 refresh me. Your point was the \$2.01 total payment is
10 still less than what you think is the status quo ante.
11 It was 2.35 previously. It's 2.01 for small systems;
12 is that fair?

13 MS. PERKINS: Yeah. I think the rest of
14 your question, are we asking for the Commission to
15 perhaps bolster our bargaining position. And I think
16 our pleading really took a different tack. And it said
17 that when exercising abrupt and unexpectedly stopping
18 the program and, then saying we will only restart it if
19 we reenter into negotiation, it gives us absolutely no
20 breathing room. What we're really worried about is the
21 closure of businesses and layoffs, not working on these
22 numbers.

23 And our position is that there are
24 processes to evaluate these numbers without having the
25 collateral damage of losing rooftop of the solar

1 industry.

2 CHAIRMAN BINZ: I don't know if you
3 remember about a week ago. Commissioner Baker talked
4 about the most efficacious way of moving was to bring a
5 settlement. You and Public Service seem to be quite
6 far apart. And, so, the reason for my question,
7 previously, was, is it advantageous, in your view, for
8 us to establish a level that gives each of you
9 incentive to negotiate? That was really my question.

10 Mr. McGann, if she answers, I would like
11 for you to answer the same question.

12 MS. PERKINS: I will say, unquestionably,
13 yes. That is why we would like to negotiate. What we
14 have heard in this conversation is that there is
15 certain things that Xcel Energy may need in terms of
16 guaranteed approval of a pay forward or a spend
17 forward. What we would like is some guaranteed
18 capacity and reopening of the program and a rapid
19 ability to negotiate the price, respective of the
20 different categories of solar in Colorado.

21 COMMISSIONER TARPEY: Mr. McGann, I think
22 it now is your turn.

23 MR. MCGANN: If I understand the
24 question, Chairman Binz, let me put it plainly, where
25 your question was, do I need additional incentive to

1 try to reach a settlement, because I don't think I need
2 any additional incentive. If you would, Chairman Binz,
3 why don't you just, so it's fresh in my mind, if you
4 could please reask your question.

5 CHAIRMAN BINZ: Well, we have several
6 options before us today, I think. And, again, I'm
7 really following Commissioner Baker's lead, of a week
8 ago, in which he said, the only way to get this done
9 quickly -- and Matt, if I am mischaracterizing what you
10 said, please fix it.

11 COMMISSIONER BAKER: No, that's it.

12 CHAIRMAN BINZ: The only way to really
13 get this done quickly, as it seems to be everybody's
14 wishes, is to get an agreement brought to us. And my
15 thinking goes to us, in fact, entering an interim
16 order, of some of sort, that would do that.

17 And, ideally, it's one that neither party
18 likes, so that you have some reason to negotiate. And,
19 two -- or maybe both parties like it. I can't really
20 know. In any event, I was just testing this out with
21 Public Service Company.

22 MR. MCGANN: Well, I have to say that I
23 think we can get this -- we have already committed to
24 an accelerated schedule, getting this done as quickly
25 as possible, whether it is through the Commission

1 process -- and I think I have already tried to indicate
2 the fact that we believe there is common ground, given
3 the papers that have been filed so far, we are
4 encouraged by that. There's common ground with at
5 least some of the parties. And, so, we are actually
6 encouraged by those papers, and the fact that we
7 believe that there is an opportunity for settlement
8 here.

9 So, if your question is, do I need
10 additional motivation? Do I believe we can get this
11 done quickly, and do I need additional motivation to do
12 that? The answer is no. I believe we are motivated
13 right now to do that, given the way things are right
14 now. We have committed to accelerate the schedule, and
15 we are committed to meeting with the parties. And,
16 again, we're encouraged by the papers that the parties
17 have filed, that suggests that there is common ground
18 with some of them.

19 COMMISSIONER TARPEY: Would you like this
20 hearing room for the rest of the day, and we will
21 leave?

22 CHAIRMAN BINZ: Commissioner Tarpey, I
23 just want to say one more thing, and then I am going to
24 shut up for a while. I asked both parties, sort of,
25 what they saw as the extent of our authority at this

1 point in the process. And I realize that the three
2 Commissioners have not talked about any of this, so I
3 have no sense of whether this is anything that either
4 of you either want to consider.

5 But one of the things that I had done in
6 preparation for today's hearing is put together a
7 strawman proposal, which I may offer to the Commission
8 as a potential interim order, which would, in fact, get
9 things moving again, without committing us to, as it
10 turns out, either of the two contending positions.
11 Again, I would not say more about that until there's
12 some indication that the two of you are interested in a
13 direction like that.

14 And it may be only after we have met with
15 advisers, or something, that we could come to that
16 conclusion. I don't intend to reveal this unless there
17 seems to be interest in doing something other than the
18 options that are available to us today -- the options
19 brought us to by the parties today.

20 COMMISSIONER TARPEY: Why don't we hold
21 off for a bit. I do have some other questions I want
22 to ask.

23 Mr. McGann, you had, in your pleadings,
24 indicated that the company did not want to be making
25 additional advances, the whole thing about amount

1 owing, et cetera, I have got some idea for what the
2 reasons are for that, what the primary reasons are for
3 the company not wanting to go further with regard to
4 advances, in taking into account what our previous
5 decisions have been with regard to how those would be
6 handled.

7 MR. MCGANN: It really just has more to
8 do with the fact that there has to be a reasonable
9 expectation that the money is, essentially, that has
10 been advanced, can be recouped. And, so, you've run
11 into a situation where you're trying to figure out
12 where is that, the crossover point is.

13 And at this point in time, I think the
14 company has gotten to the point where the funds that we
15 have advanced -- we have advanced funds to a certain
16 point -- we're comfortable in doing that, given your
17 prior orders, but at this point in time, we're worried
18 about the fact that if the amounts grow beyond this, we
19 start getting into a gray area as to the expectation of
20 getting that money back.

21 So, I think it's simply, before we get to
22 that point, we simply come to the Commission and said,
23 we have advanced some funds we would like to recover,
24 the incentives. We believe what we have advanced so
25 far, we are comfortable with advancing, but at this

1 point in time, we're not comfortable going any further.

2 COMMISSIONER TARPEY: And, so, in the
3 context of wanting reasonable assurance of recovery,
4 what is it that you are looking for that accomplishes
5 that?

6 MR. MCGANN: Well --

7 COMMISSIONER TARPEY: Reaffirmation that
8 what we have previously said stands or are you looking
9 for some special treatment?

10 MR. MCGANN: May I have a moment,
11 Commissioner?

12 (Discussion off the record between Public
13 Service Company's representatives.)

14 MS. HICKEY: Mr. Commissioner, may I have
15 a moment when he's finished or at some point when you
16 find it appropriate?

17 COMMISSIONER TARPEY: Sure. Did you have
18 anything, Matt?

19 COMMISSIONER BAKER: I do.

20 (Discussion off the record between Public
21 Service Company's representatives.)

22 COMMISSIONER TARPEY: Go ahead,
23 Mr. McGann.

24 MR. MCGANN: I was consulting with my
25 clients. Essentially, to perhaps further explain my

1 answer, we are comfortable in terms of the Commission's
2 prior orders, in terms of our approving our plans, in
3 terms of advancing what was set forth in our
4 application, which is that we would acquire the
5 additional megawatts under the lower incentives that we
6 have set forth in that application. That puts us on a
7 trajectory of a certain spend. We're comfortable with
8 that spend. What we're not comfortable with is
9 spending beyond that. Essentially, what we are talking
10 about is what we would be spending through 2011, based
11 upon the assumptions that were set forth in our
12 application.

13 Beyond that, what we intended to do was
14 take this decision, along with the other resource
15 planning decisions that we have to make, and
16 essentially rerun those numbers, given, as you all well
17 know, all of the various assumptions and how they move
18 and how they affect those balances.

19 So, that's just by way of further
20 explanation in terms of your question, which is what
21 your hesitancy is right now? It really is, we're
22 comfortable with where we are in the assumptions in our
23 application. It's really beyond 2011, where we have to
24 take these other factors into consideration, where we
25 are saying, we would like to put these assumptions into

1 place right now, and then revisit those balances later,
2 only for 2011 and beyond.

3 COMMISSIONER TARPEY: I may have missed
4 something here, and I apologize for that. Are you
5 saying to us that, with the assumptions in your
6 application -- are you saying that, if the program had
7 continued, prior to your filing, you are okay with this
8 idea of 97. It's what that meant beyond that, that's
9 what concerns you?

10 MR. MCGANN: It's a very good question.
11 I'm sorry if my answer was confusing. No, it's more
12 the assumptions, if the application were granted, which
13 is, there would be the lower rebate levels, and with
14 the additional acquisitions, to take us up to, I think,
15 the 59 megawatts. If that were in the application, at
16 those lower rebate levels, those are the assumptions I
17 am talking about.

18 COMMISSIONER TARPEY: What is it about
19 that number and the associated dollars versus megawatts
20 in the 97, as you move from one to the other --
21 apparently, you're okay with the reasonable recovery at
22 the 59 megawatts, but not at the higher number?

23 MR. MCGANN: With reasonable recovery at
24 the 59 megawatts through 2011, yes, it's essentially --
25 what I am understanding is, in 2011, we're going to now

1 add an additional \$200 million to that RESA balance,
2 there's higher incentives levels, that is exactly what
3 we are uncomfortable with. I mean, if you had to give
4 a range, the range between that 97 million and then
5 adding an additional 200 million on top, for what I
6 understand to be a \$300 million spend, yes, that makes
7 us uncomfortable, to spend that much money for 2011.

8 COMMISSIONER TARPEY: Those are the
9 bookends.

10 MR. MCGANN: As I see them, based on the
11 responses, between what CoSEIA has put forth and what
12 we're recommending in our application.

13 COMMISSIONER TARPEY: Okay. You had
14 indicated earlier you were having some discussions with
15 parties about a proposed schedule. And just in --
16 we've leaving out some of the intermediate dates, but,
17 in general, what were you looking at for hearing dates?

18 MR. MCGANN: The hearing dates we were
19 looking at -- I'm sorry, Commissioner Tarpey. Were you
20 asking for the hearing dates or intermediate dates?

21 COMMISSIONER TARPEY: I was going to
22 start with the hearing dates, then we might go
23 backwards.

24 MR. MCGANN: The hearing dates that had
25 been circulated by the Governor's Energy Office were

1 essentially March 23rd to 25th or March 29th to March
2 30th, with statements of position filed on April 8th.

3 COMMISSIONER TARPEY: Okay. I'm sorry.
4 I thought you had been working on a separate schedule,
5 a schedule that was different than the one that you
6 ultimately -- GEO came up with. Is that the only --
7 excuse me. You were looking at --

8 MR. MCGANN: We actually proposed a
9 schedule.

10 COMMISSIONER TARPEY: Okay.

11 MR. MCGANN: That, essentially, ended up
12 with dates -- essentially hearing dates March 31st,
13 April 1st and April 4th. It's my understanding that
14 you are gone from the Commission during that period of
15 time. That essentially led to a staff proposed
16 schedule, which extended matters out, I think, to your
17 return. That then led to further discussions to move
18 those hearing dates up, which we ended up, essentially,
19 with the Governor's Energy Office schedule.

20 So, there are, essentially, a couple of
21 schedules out there. One is the staff schedule that
22 extends things further, and then there's the Governor's
23 Energy Office schedule which moves things up.

24 COMMISSIONER TARPEY: Okay. Commissioner
25 Baker, I think you indicated you had some questions.

1 COMMISSIONER BAKER: Yes. My question
2 was whether staff and OCC will agree to the Governor's
3 Energy Office schedule, or whether that was
4 problematic. That was my only -- one of my questions.

5 MR. SOUTHWICK: As far as the OCC, we're
6 open to whatever schedule the Commission presents. We
7 can go with the Governor's Energy Office, or we can go
8 with the staff. We could go either way.

9 COMMISSIONER TARPEY: Ms. Botterud?

10 MS. BOTTERUD: The schedule that GEO
11 proposes presents some problems for staff. We think,
12 having the hearings in March, is really problematic
13 because it doesn't provide any of the parties, or the
14 Commission, really much opportunity to prepare and
15 conduct discovery, et cetera, which is the reason for
16 the proposal that we initially set forth to the
17 parties.

18 That said, if that's what the Commission
19 decides, we'll make an accommodation.

20 COMMISSIONER TARPEY: Thank you.
21 Ms. Perkins.

22 MS. PERKINS: Well, we continue to share
23 the staff's concerns about the ability to conduct
24 discovery and to examine these complex issue, and, at
25 the same time, we are highly motivated to resolve these

1 issues.

2 COMMISSIONER TARPEY: Okay. And
3 Ms. Hickey, whether it's on this topic or others, I
4 think you had indicated you had some comments you would
5 like to make.

6 MS. HICKEY: Thank you, sir, we would.
7 And we have proposed, to the parties -- we urge the
8 earlier dates and are poised to work as hard as we need
9 to to give information and ask the right questions to
10 prepare for that.

11 We would also say, we appreciate
12 Commissioner Binz's idea to try to move us forward in a
13 way that is along the lines of an even keel. And I
14 would ask the Commission, generally, to consider the
15 Solar Alliance's comments to date, which strongly
16 prefer production-based incentives. And we would
17 subject that, based on the RESA anticipated recovery,
18 we could potentially acquire five times as much
19 megawatts with the production-based incentive.

20 MR. MICHEL: Steven Michael of WRA. Can
21 I say something?

22 COMMISSIONER TARPEY: Well, Ms. Hickey
23 was in the middle of making some comments. So, if you
24 could hold off. . .

25 MR. MICHEL: I'm sorry. I thought she

1 was done.

2 MS. HICKEY: That's fine. And I was
3 closing with that. Thank you, sir.

4 COMMISSIONER TARPEY: Okay. Mr. Michel.

5 MR. MICHEL: Yes. Commissioner Tarpey, I
6 think this is a little bit dangerous, but we have great
7 confidence in Commissioner Binz's ability to fashion
8 interim relief that could keep things relatively stable
9 for a while. This is a very complicated case, and
10 we're a little concerned that trying to get this heard
11 and resolved this month may be at the expense of the
12 kind of deep analysis that may be needed. So, we're a
13 little more inclined towards staff's schedule, but we
14 recognize the urgency that's needed.

15 So, if there is some interim solutions
16 that the Commission could craft, that could give us
17 more time to hear this in a more deliberate manner, we
18 would kind of like to go down that path.

19 COMMISSIONER TARPEY: Okay. Thank you.
20 Commissioner Baker.

21 COMMISSIONER BAKER: Well, my next
22 question -- and they are kind of follow-ons, I guess,
23 to what Mr. Michel was talking about.

24 As I read the things that have been filed
25 around these applications -- and there are a lot of

1 parties that haven't filed, so I don't want to read too
2 much into it. It seems to me there are two problems.
3 One is what to do right now and how and whether that is
4 a business problem, i.e., for the program stopping.
5 And, then, two, what does the whole program look like?
6 How much does it cost? How does it fit into the
7 context of all of the other renewables that we want to
8 do? There are fairly, I don't want to say, "radical,"
9 but different ways of dealing with it, like the
10 production tax, a production benefit program.

11 So, it does -- there's a side of me that
12 says a longer proceeding, where we could really get at
13 some of these issues, and look at them, at not just
14 what the REC payment should be, but look at it in a
15 broader context seems very helpful. At the same time,
16 we have information before us that indicates time may
17 be of the essence.

18 So, in keeping, a little bit, with some
19 of the things that Commissioner Binz laid out, this is
20 a question for Mr. McGann. And assume, for a moment --
21 and I don't want to get into this particular issue --
22 but assume, for a moment, that the Commission agrees we
23 can't order you to start your program -- we can't order
24 Public Service to start the program. And, then, assume
25 for a moment that there was --

1 CHAIRMAN BINZ: Hey, Matt, I didn't hear
2 that last -- assume what?

3 COMMISSIONER BAKER: Assume for a moment
4 that we accept the argument that Public Service lastly
5 made, that the Commission does not have the authority
6 to order Public Service to start their program. Just
7 for the sake --

8 CHAIRMAN BINZ: Thank you.

9 COMMISSIONER BAKER: Just for the sake of
10 this question. And assume there was an interim order,
11 or something set through some process, where the
12 Commission says, for some duration of time, at some
13 megawatt target, at some rebate price, that was not
14 \$1.25 and it might not be \$2, but let's just assume
15 it's not \$1.25. And, then, that the Commission said
16 this much money, you know, 5, 10 whatever the amount of
17 money is, that, then, we're going to take that for this
18 intermediate period, we're going to take that money out
19 of play, and we're going to -- that will be deemed
20 prudent, assuming you manage it.

21 Maybe I am going too far on that, but how
22 would Public Service respond to something around those
23 kind of parameters, or another way of saying that, is,
24 would they restart the program or does it really depend
25 on a lot of things?

1 MR. MCGANN: May I have a moment?

2 COMMISSIONER TARPEY: Okay.

3 COMMISSIONER BAKER: Okay.

4 (Discussion off the record between Public
5 Service Company's representatives.)

6 MR. MCGANN: To answer your question,
7 Commissioner Baker, I think the phrase comes to
8 mind, the devil is in the details, but let me try to
9 give you a general answer.

10 To the extent the numbers essentially
11 are -- that you work through, in terms of the rebate
12 levels, megawatts, were, essentially, aligned with what
13 we proposed to spend in 2011, I think that is something
14 the company could consider. If the Commission were
15 doing something different, I think that's where, again,
16 I think we would have to take a look at the proposal
17 and see exactly where the numbers end up. Because,
18 again, we're sensitive to restarting the program, but
19 we're also sensitive to how much money we're spending.

20 COMMISSIONER BAKER: That's it for now.

21 MR. FANYO: If I might make a brief
22 comment on that.

23 COMMISSIONER TARPEY: Okay.

24 MR. FANYO: If that approach was to be
25 used, given the history that we've seen, where targets

1 of megawatts and rebate levels and tiered systems don't
2 always end up at the total dollar number that was
3 anticipated, in fact, apparently, they have exceeded
4 that. So, if that approach was to be used on an
5 interim basis, I would suggest that it include a
6 not-to-exceed cap of total dollars. Otherwise, if we
7 have another run at the bank right up to the moment of
8 the decision on the final case, we may get to that 97
9 or the 200, or who knows, maybe more.

10 COMMISSIONER TARPEY: Well, yeah. It
11 seems, first of all, from the perspective of the bench,
12 there's a -- I can only speak for myself at the
13 moment -- that there's a number of theories here that
14 need to be explored. I was raising with you earlier
15 the one about whether or not the statutory language, as
16 the utility requested with the Commission approval,
17 applies to a situation different than that, and that,
18 in fact, you have some implied request being made
19 previously. And we have had discussions internally
20 about that, and, so, where that comes out, I don't
21 know.

22 Similarly, this idea of the dollars that
23 are being mentioned, I don't know what CoSEIA's members
24 thought originally, when all of this was being done, as
25 to what the potential would be. And I am not going to

1 surmise about that statute. I think that becomes a
2 factor that we need to take into account, that at some
3 point here, this is not, we're going to guaranty solar
4 jobs. We certainly need that as a factor, but it's not
5 the only factor.

6 It's in that kind of balancing that I
7 think, at least for a while, the parties could work out
8 something that would be a reasonable balance. And they
9 would need to take into account the consumer aspects,
10 and some of the larger issues we're getting very close
11 to. They made the one filing -- or even as part of
12 that, what does it mean to be putting things into
13 advance and to be collected in the future? What are
14 the ramifications? Where is that going, et cetera?
15 All of those can be taken up later.

16 It seems to be -- certainly the
17 discussion here, there's a good indication the parties
18 could come together and come up with something. And
19 maybe, yes, we just set a date in a week or two, when
20 they can come back. And, in the meantime, we can talk
21 about the schedule that they can come up with, or if,
22 basically, they want a status report. And in that
23 meeting, we'll come up with a solution, and we'll be
24 asking for additional information with that. Maybe we
25 need to just take a break for 10 to 15 minutes. Does

1 that make sense?

2 COMMISSIONER BAKER: Yes. I would like
3 to talk a little bit more when we come back.

4 COMMISSIONER TARPEY: Certainly. Feel
5 free to do it now.

6 COMMISSIONER BAKER: I was just going to
7 say, I definitely agree with this thrust. Yes, I would
8 prefer -- I mean I would prefer something that was a
9 richer hearing, a richer process, and, but, possibly
10 with some interim issues, so that we're not putting
11 everything on hold for six weeks, seven weeks, eight
12 weeks or, you know, even longer, and given the urgency.

13 So, I am -- and I agree with what you are
14 laying out. If we were to come back in a week or
15 two -- and there wasn't necessarily a consensus on what
16 to get done in the short term -- I would like to be
17 able to have the information to decide whether or not
18 something should be done in the short term, and if so,
19 what. That's what I would flesh out a little bit.

20 And I think it gets a little bit at what
21 Commissioner Binz was laying out. It would just be
22 more in terms of trying to -- it would be less in terms
23 of making that decision today and maybe making that
24 decision in a week or two weeks. I don't know if
25 Commissioner Binz is still on or if we lost him.

1 COMMISSIONER TARPEY: Well, I think --

2 CHAIRMAN BINZ: I am still here.

3 COMMISSIONER BAKER: Okay.

4 COMMISSIONER TARPEY: And if you have
5 anything to add at the moment, that would be fine.

6 COMMISSIONER BINZ: Well, Jim, you were
7 suggesting a break at this point; is that what I heard?

8 COMMISSIONER TARPEY: Only in the
9 magnitude of 10, 15 minutes. And let me just
10 reiterate, because I want make sure that you
11 understood, as far as what I was saying. What if we
12 were to actually set up a hearing schedule, and with
13 the idea that we're looking for an interim solution,
14 and we're encouraging the parties to come up with it.
15 We want a report back in a week or two.

16 So, today, we're not going to try to
17 decide what that is, but at that status report,
18 whatever we want to call it, and in the meantime, we
19 would be asking for additional information. I would
20 like a better understanding of how Public Service
21 Company came up with the \$200 million. So, there might
22 be some other things we would like to better
23 understand. So that, when we do come back together,
24 we're prepared to do something, if they have not come
25 up with a solution.

1 And I agree. I'm also very concerned.
2 Certainly something can be done to have the hearings in
3 March, but I just think, in terms of what needs to be
4 done for parties to understand, that, to me, is a
5 schedule that I'm not sure we can get what we really
6 want out of it.

7 COMMISSIONER BAKER: So, I would put down
8 a little bit of what I was thinking. There were three
9 questions I was interested in, that I thought could
10 fill the record to the point where we could make the
11 decision. And this is not necessarily knowing what you
12 were going to propose, Commissioner Binz.

13 One was, you know, is this a temporary
14 problem, is this an issue that needs to be addressed
15 now. Do you think so? Do you think, yes, or why not?

16 The second thing was, if there was going
17 to be some interim action taken, and that you assume
18 the Commission has control of the rebate, for some
19 period of time, what should that rebate be, for how
20 many megawatts. And, ultimately, what cost. I would
21 prefer it to be capped, but there may be arguments for
22 not to, but, then, do you have a better idea in the
23 interim?

24 Those were the kind of questions, so
25 that, at the end of that time, if there was not enough

1 consensus for a settlement, and we looked at the -- we
2 read the filings, we could even then make the
3 determination, yeah, we want for this to extend a
4 longer period of time. We do think there's a urgent
5 issue that does or does not need to be addressed. And
6 then we can make this interim decision, if we wanted
7 to, or thought that it was justified, to either get the
8 program up and running or, say, well, we think we'll be
9 fine for another whatever period of time.

10 COMMISSIONER TARPEY: Okay.

11 COMMISSIONER BAKER: I don't know how
12 that is different than what Commissioner Binz was
13 saying, or the same, but --

14 COMMISSIONER TARPEY: Chairman Binz.

15 CHAIRMAN BINZ: I think it's actually
16 pretty close. Again, I realize that, thanks to the
17 open meeting law, we are surprising each other
18 continuously. I prepared something which addresses REC
19 prices and, well, let's just not -- total subsidies.
20 The rebate plus the REC on the small solar side for 37
21 megawatts, which I think was the tranche -- with the
22 history was the tranche that was in the previous
23 settlement. No surprise, it's in between the two
24 contending proposals.

25 My belief is that we could put that in

1 place. I am echoing; is that what I am hearing?

2 COMMISSIONER BAKER: We don't hear
3 anything.

4 CHAIRMAN BINZ: I am hearing an echo.
5 Anyway, we could put that in place, subject to RRR, to
6 start us in case something is terribly wrong with it.
7 And it would be designed to allow Xcel to reopen the
8 program under this interim agreement or interim rates.

9 It would signal, for the parties, I would
10 be so bold to suggest, that that is the sort of thing
11 that the Commission would like to see as a final
12 outcome. In other words, we don't hold truth at the
13 Commission, but at least it would give us a point for
14 the parties to key on, if they want to come up with
15 some other agreement. That could be worked over as
16 much as or as little time as this required. That's the
17 consistency -- the advisers know what I am talking
18 about. Neither of you do. I realize that by putting
19 this out, that would sort of change the course of the
20 river here a little bit. And I don't know if we want
21 to do that.

22 So, my suggestion is that we talk to
23 legal counsel and advisers, on a short break. I would
24 like to do that and see if it's something you want to
25 entertain.

1 Commissioner Tarpey, I understand your
2 thinking. What about allowing the parties to pick
3 their own fillies in the next week or so, and then come
4 back and see if they got agreement. That's a great
5 idea. I don't know if the leverage as between the two
6 parties is correct right now for that outcome to be
7 anticipated. But more importantly, they seem to be so
8 far apart right now, I'm not sure, without somebody
9 sort of pushing them together, that I don't know if
10 that's going to happen.

11 COMMISSIONER TARPEY: I've always
12 thought, if the parties think you may go 100% one way
13 or the other, that's a lot of motivation to get to the
14 table. But, anyway, why don't we --

15 MR. GOAD: Commissioner Tarpey, if I may
16 just add quickly a little food for thought for our
17 break, along the lines of what you're discussing. We
18 would propose that the parties bring to the Commission
19 a settlement a week from today, the 11th, or that may
20 force the parties to focus on what is really crucial to
21 their positions, and bring, if not a settlement, then
22 bring to the Commission issues that need to be resolved
23 immediately.

24 COMMISSIONER TARPEY: Okay. That's a
25 good point. Ms. Perkins.

1 MS. PERKINS: May I just add two
2 thoughts. First all of, when we are talking about the
3 small solar category, if the incentives are set too low
4 on an interim basis, for example, it will also have the
5 effect of freezing the market. Because, in the
6 customer's perception, things are going to get better.
7 So, therefore, it will continue the frozen ground that
8 we're on right now.

9 And then, secondly, there's been some
10 discussion about whether CoSEIA is urging \$200 million
11 to build out the 5 megawatts in the next six weeks or
12 eight weeks or so. And that's, of course, ludicrous,
13 because as we can see from the tier structure, it takes
14 a long period of time to build-out these tiers. And so
15 I just want to set the record straight, that that 95
16 megawatts is not going to happen in any kind of short
17 term.

18 COMMISSIONER TARPEY: That's actually
19 a --

20 COMMISSIONER BAKER: I was just going to
21 ask a question. Would CoSEIA endorse a specific
22 megawatt target for the duration of this proceeding?

23 MS. PERKINS: Yes, yes, it would.

24 COMMISSIONER TARPEY: And, I think, just
25 having an understanding of what that build-out would be

1 would answer -- or should cover quite a bit.

2 MS. PERKINS: If I may add, subject to
3 that caveat, if the incentives are set too low,
4 relative to the last incentive, it will, I'm sure,
5 freeze out the market.

6 COMMISSIONER TARPEY: Okay. With that,
7 why don't we take -- I believe we'll probably be about
8 15 minutes. Sorry it takes so long. We do have
9 internal issues about how we communicate with advisers.
10 Let's come back at 1:15. Thank you very much. We'll
11 leave the Webcast on and return at 1:15.

12 (Recess.)

13 COMMISSIONER TARPEY: Come to order
14 again, please. Okay. We'll go back on the record.

15 Commissioner Baker, did you have some
16 questions?

17 COMMISSIONER BAKER: I just had a
18 question for Mr. Goad, but he may be gone.

19 COMMISSIONER TARPEY: Here he comes. So,
20 Mr. Goad, what's your answer to the question?

21 MR. GOAD: Whatever you want.

22 COMMISSIONER BAKER: The question was
23 what was your most embarrassing moment?

24 COMMISSIONER TARPEY: Go ahead.

25 COMMISSIONER BAKER: I just had a

1 question about your offer that you made earlier on.
2 Are you thinking of this -- you know, if you are not
3 sure, you don't want to answer it, that's fine. Are
4 you looking at a settlement that would answer all
5 issues? Are you looking at kind of a short-term
6 settlement or, who knows, whatever will be will be.

7 MR. GOAD: As much as possible, we think,
8 perhaps naively, that a settlement is a very realistic
9 possibility here. But, you know, we haven't had a
10 chance to sit down with the parties to discuss that.
11 But we think that's a real possibility.

12 And we would hope that we can at least
13 get something agreed to between all of the parties, so
14 that we can move forward on this, because we do think
15 there's a great deal at stake.

16 COMMISSIONER BAKER: Knowing what you
17 know now, do you think it's important for the
18 Commission to have enough to act on, if there wasn't a
19 settlement at the end of, whatever that -- end of the
20 week, whatever time period you set?

21 MR. GOAD: In terms of the facts, I
22 hesitate to say.

23 COMMISSIONER BAKER: Okay.

24 MR. GOAD: For example, the discussion we
25 have had about \$200 million and the 2000 jobs, we

1 don't -- the GEO doesn't know enough to take a position
2 on that. That may need to be adjudicated in a hearing,
3 if a settlement is not reached. We don't take a
4 position on the legal issues, whether or not you have
5 the authority to do so. We'll leave that to others.
6 But we are very interested in and will host,
7 facilitate, drive a settlement, if at all possible.

8 COMMISSIONER BAKER: No further
9 questions.

10 COMMISSIONER TARPEY: And from what you
11 are saying, I realize that, the broader the settlement,
12 the better, but it would seem also that a resolution of
13 at least the short-term issues would be high on your
14 list?

15 MR. GOAD: Yes. Definitely.

16 COMMISSIONER TARPEY: And if that's what
17 you were successful in resolving, that, in itself,
18 would be a success.

19 MR. GOAD: Yes.

20 COMMISSIONER TARPEY: So, the issues --
21 Chairman Binz are you on the phone? Okay. He said he
22 might be a few minutes late, but. . .

23 So, the issues are, do we want to take
24 Mr. Goad up on his offer, and look at rescheduling this
25 for Friday of next week, or shortly thereafter. And in

1 the meantime, do we want to indicate anything about
2 possible direction or leave it to the parties and not
3 get involved in doing that?

4 COMMISSIONER BAKER: I would error -- I
5 would try not to get involved, but I would like to have
6 the information that we had talked about earlier, maybe
7 in a more general sense than what was laid out. So,
8 that if there was -- if it was determined there was a
9 need to act, or if we determine there was a need to
10 act, we would be able to --

11 COMMISSIONER TARPEY: That was in
12 response to the three questions that you posed earlier.

13 COMMISSIONER BAKER: I might even make
14 that more general, but I'm also interested in the cost
15 issues as well.

16 COMMISSIONER TARPEY: Right. To the
17 extent there are issues that either side thinks needs
18 more clarification or elaboration, that they certainly
19 feel free to do that, I want to say, whoever is
20 participating in this proceedings.

21 And then the other is whether we set a
22 procedural schedule today on the assumption that
23 Mr. Goad is not successful, or do we make that
24 something we would basically do at the next meeting.

25 COMMISSIONER BAKER: I don't know that

1 we -- I guess my position would be not necessarily to
2 set a procedural schedule here, but it might be helpful
3 for people to get a sense of, kind of, at least what we
4 were thinking about and kind of lay out what the
5 thoughts were, based on what we have heard. I believe
6 Mr. Davis has a procedural schedule. Do you agree that
7 that might be helpful, for people to get a sense of
8 what we were thinking about?

9 COMMISSIONER TARPEY: I think, generally,
10 that would be fine. If we, in fact, ourselves, are
11 going to entertain the possibility that we will come up
12 with an interim solution, then, we can get some sense
13 of what we think that schedule will be and the parties
14 have a sense of that.

15 COMMISSIONER BAKER: For the interim
16 solution, you are saying?

17 COMMISSIONER TARPEY: Yeah. That we
18 would address that, to the extent we think we need to,
19 and then what that schedule would be.

20 COMMISSIONER BAKER: Right.

21 COMMISSIONER TARPEY: So, in general
22 terms, do you want to speak about it or --

23 MR. DAVIS: I am Ron Davis, adviser with
24 the Commission. I would be happy to present to you a
25 procedural schedule that the advisers would like the

1 Commission to consider, that we think would accommodate
2 consideration of some interim relief for the
3 stakeholders, and would also lead to a proceeding in
4 which the matters surrounding the company's application
5 could be considered with the benefit of discovery and
6 written testimony. And I am prepared to present that,
7 if you would like me to do that now.

8 COMMISSIONER TARPEY: Why don't you just
9 talk about the dates for the hearings, and we might
10 just talk about rounds of testimony. We won't get into
11 discovery issues.

12 MR. DAVIS: Are you interested in what --
13 the concept of a status conference or just the hearings
14 date?

15 COMMISSIONER TARPEY: What I think we
16 kind of talked about, the status conference being next
17 Friday, or very early the week thereafter?

18 MR. DAVIS: Okay. In our schedule, what
19 we contemplated -- the two are linked. What we
20 contemplated is a status conference on March 18th. And
21 what we had in mind, that would allow for the parties
22 to use the next week to reach a settlement that had the
23 agreement with all or most of the parties in this
24 proceeding, now, that we have parties. And to give the
25 Commission the benefit of another week to address any

1 procedural issues that may need to be addressed at the
2 weekly meeting, the following week, and to schedule a
3 status conference on March 18th.

4 And we also think that that kind of a
5 approach would accommodate Commissioner Baker's desire
6 to perhaps have more information than just the
7 settlement, in the event the Commission wants to do
8 more on March 18th. So, we think two weeks was
9 appropriate for that. And then, with that time spent
10 upfront, we propose a hearing the week of April 25th,
11 perhaps, two or three days.

12 COMMISSIONER TARPEY: Go ahead.

13 COMMISSIONER BAKER: I was just going to
14 say, if we were to take Mr. Goad up on his offer, we
15 would kind of move everything up a week. So, a status
16 conference essentially, next week, next Friday plus --
17 there may be scheduling issues around the hearings, but
18 the idea would be a status conference on Friday. If
19 there was not a settlement, then we could decide, then,
20 whether we want replies or -- do you see what I am
21 saying?

22 MR. DAVIS: Yes. What we did not have in
23 our proposal were interim dates, between now and the
24 status conference on March 18th. Our concern is that
25 it's very difficult for the Commission to take action

1 on a settlement that's presented to them on March 11th
2 on March 11th. And our concern is that that is a
3 possibility, and that it is beneficial, I think, to the
4 entire process, if the Commission has some time to
5 review the settlement, to think about questions, to
6 consult with their advisers.

7 And, therefore, we propose the 18th,
8 because that would accomplish that; however, if the
9 Commission would like to see the 11th as a target for
10 making a decision, then, I think that means that the
11 Commission would like to see a settlement on Wednesday
12 or Thursday morning of next week, in order to have an
13 useful status conference and deliberation with the
14 Commissioners.

15 COMMISSIONER TARPEY: Let's approach it
16 this way: How about if we set sometime for next Friday
17 to hear where the parties are, and whether or not --
18 what the progress is. We can also set sometime on
19 March 18th, and, then, we'll see whether or not we need
20 that. I was not thinking in terms of filing of a
21 settlement prior to March 11th. I thought it meant we
22 were going to hearing on March 11th. It's just us
23 getting comfortable that we're there, and we may, in
24 fact, want to have some further proceedings or dates
25 where we can actually pursue that in more detail. That

1 will just depend a lot on the nature of the settlement.

2 COMMISSIONER BAKER: So, for example,
3 Commissioner Tarpey, if all of the parties sign off on
4 something, and it came in, and it was dealing with a
5 relatively straightforward piece of it, conceivably you
6 could act on it right there.

7 COMMISSIONER TARPEY: Right.

8 COMMISSIONER BAKER: Other factors might
9 say, we will take a day, two days, three days, four
10 days, five days, to act on it, but we would love --

11 COMMISSIONER TARPEY: See what GEO --

12 COMMISSIONER BAKER: We would love to be
13 able to act on something as quickly as possible,
14 because that makes our job easier.

15 COMMISSIONER TARPEY: As you say, address
16 just basically the capacity and dollars and nothing
17 else, then maybe we can easily take care of that. And
18 if it's more involved than that, we want to do
19 something else or -- on March 12th, if they tell you
20 they are close but they need more time, we have got
21 let's say, March 11, that we have March 18th set aside,
22 or some time on March 18, and we will come up with
23 your -- what those would be. Does that work?

24 MR. DAVIS: Sure. We're happy to draft
25 an order that would establish two --

1 COMMISSIONER TARPEY: Chairman Binz.

2 CHAIRMAN BINZ: Hey, Jim. This is Ron.

3 COMMISSIONER TARPEY: Hi.

4 CHAIRMAN BINZ: I got about the last
5 minute. I picked up the tail end of that conversation.
6 Can you recap for me? Do you mind? Sorry.

7 COMMISSIONER TARPEY: The discussion that
8 Commissioner Baker and I were having is that we would
9 take GEO up on their offer to facilitate, lead,
10 participate in trying to get the parties together to
11 come up with a settlement, at least of the short-term
12 issues. And if it's broader, so much the better, but
13 certainly on the short-term issues.

14 And we would have a status conference on
15 that, on next Friday, the time to be determined, and
16 that would either be a presentation that there is one,
17 that it's pretty straightforward, we can deal with it
18 right there; or that they are making progress and they
19 would like us to set a second date; or that they have
20 one, but it's kind of involved and that would mean we
21 would have a separate date to actually explore it in
22 more detail.

23 And that we would also set March 18 with
24 the idea that that's a follow-up to whatever happens on
25 March 11th. And then I think also, on March 11th --

1 Mr. Davis threw out the hearing dates that advisers
2 have put together. And we would look at fleshing out
3 the schedule in more detail, if, in fact, there is no
4 settlement. And this seems to make sense, that we go
5 ahead and set a schedule, okay? Does that cover
6 your -- Commissioner Baker.

7 COMMISSIONER BAKER: Yeah. Except there
8 was the option to act on the 11th.

9 CHAIRMAN BINZ: I can't quite hear you,
10 Matt.

11 COMMISSIONER BAKER: There was the option
12 to act on the 11th, should we so decide, if we wanted
13 to deal with short-term -- there wasn't a settlement,
14 we wanted to deal with short-term issues, we would have
15 the capability. Whether we would or wouldn't is a
16 different issue, but we would have the capability to
17 act, if we thought it was in the public interest.

18 COMMISSIONER TARPEY: Right. If the
19 parties were close or came up with something, that's
20 fine, but otherwise we might very well be prepared to
21 just resolve it ourselves on the interim basis.

22 CHAIRMAN BINZ: What would be our -- I
23 have heard concerns that we don't have a record
24 sufficient to adopt something on the interim basis.
25 Are you suggesting that we will have that in a week or

1 two weeks?

2 COMMISSIONER BAKER: I was suggesting, in
3 the order, we ask some questions of the parties -- what
4 Mr. Goad suggested was that we encourage the parties to
5 settle. We have a meeting, and if there's not a
6 settlement, they can come in and address what issues
7 need to be dealt with quickly.

8 I put a little sharper point on it, based
9 on some of the questions that I was interested in
10 seeing answered, namely, you know, what should we do
11 and how, with the assumption that if we thought there
12 was the need for temporary action, or interim action,
13 that we would, then, have the record sufficient to be
14 able to issue an order, even on the 11th, again
15 assuming -- based on the parties that are here, and the
16 quality of the folks, and that we should be able to do
17 that. Does that make sense, Mr. Chairman, or --

18 CHAIRMAN BINZ: Well, I would definitely
19 bring your legal counsel into that discussion. Is Ms.
20 Overturf there?

21 MS. OVERTURF: Yes, I am.

22 COMMISSIONER BINZ: Does what you just
23 heard described by Commissioner Baker make you believe
24 that we could take action, if there's no settlement
25 among the parties, as soon as the 11th or the 12th or

1 something like that?

2 MS. OVERTURF: What I heard -- and
3 Commissioner Baker, tell me if I am echoing back to you
4 correctly -- is that we would set March 11th as the
5 deadline for parties to either come forward or come
6 forth with a comprehensive, and however you want to use
7 that term, "settlement," and at the same time set it as
8 the deadline to which parties must submit comments on a
9 variety of issues that you have laid out, and that we
10 may further expand on, in our order.

11 If there is a settlement, and it is the
12 simplest settlement we have ever seen, I suppose
13 there's a possibility we may dispense with it on March
14 11th; however, I think that may be, given the
15 complexity of the issues, somewhat unlikely.

16 My assumption would be that we would
17 receive that information on the 11th, get an update
18 from the parties at the status conference, and, then,
19 move forward on the 18th with either a deliberation on
20 the settlement, the interim settlement or settlement,
21 or deliberation on the Commission, setting up its own
22 proposal, based on the comments that we received on the
23 11th; is that correct?

24 CHAIRMAN BINZ: Okay. I'm sorry, Matt;
25 is that yes?

1 COMMISSIONER BAKER: Well, go ahead with
2 your question.

3 CHAIRMAN BINZ: My question is what
4 happens if there is no settlement on the 11th and no
5 reasonable assumption about a settlement?

6 MS. OVERTURF: I think, if I
7 understand -- based on my interpretation of what's
8 going on, I think what would happen is that the
9 Commission would then utilize the comments we received
10 on March 11th to craft a proposal for the parties,
11 which we would deliberate on the 18th, or some other
12 date that week, depending on the Commission's schedule.

13 CHAIRMAN BINZ: You're confident that
14 that set of answers to your queries would constitute a
15 sufficient legal basis for us adopting an interim
16 position?

17 MS. OVERTURF: It's hard for me to say
18 that. I hope it does.

19 COMMISSIONER TARPEY: I think there's a
20 lot in the record, and based upon what has transpired,
21 to leave us a lot of leeway as to how we proceed.

22 CHAIRMAN BINZ: Well, I am okay with it.

23 COMMISSIONER TARPEY: All right.

24 Mr. Fanyo.

25 MR. FANYO: I hate to throw cold water on

1 this, but if there are disputed issues of fact that are
2 presented in the comments that would be submitted a
3 week from now, assuming no settlement, then, I think,
4 you, without having testimony under oath and cross
5 examination with respect to whatever those factual
6 disputed issues are, would have to decide, having a
7 record that you could defend, for a decision a week
8 later.

9 COMMISSIONER TARPEY: Well, I think a
10 lot -- and we're finally getting to our theory here. I
11 think a lot depends on -- there may be a factual
12 dispute, when we're making a ruling, based upon
13 everyone's response, in legal interpretation, that's
14 not relying on those facts, it's a very different
15 situation. And we could very easily say we're
16 resolving this on legal grounds, and the information we
17 are relying on is sufficient in the record.

18 MR. FANYO: I agree. It would have to be
19 a material factual dispute.

20 COMMISSIONER TARPEY: Sure. Sure.

21 COMMISSIONER BAKER: It's also possible,
22 after you get the comments, you ask for replies, or if
23 you have --

24 COMMISSIONER TARPEY: More information.

25 COMMISSIONER BAKER: More information.

1 So. . .

2 COMMISSIONER TARPEY: Anything further?

3 Any other comments? All right. So --

4 MR. SOUTHWICK: Excuse me. Could you

5 explain, Your Honor. Mr. Tarpey, what --

6 COMMISSIONER TARPEY: It's one of those.

7 MR. SOUTHWICK: I was having trouble

8 turning on my microphone. So, you're proposing to put
9 questions in an order that we would comment on; is that
10 correct; is that what I am hearing?

11 COMMISSIONER TARPEY: Yes. I think, to a
12 large extent, I think a lot of the parties know what a
13 number of these are. Commissioner Baker had read out
14 earlier questions to both sides, about the 200 million,
15 the background to all of that. And there are a few
16 others. I think I see nodding of heads by Ms. Perkins
17 and Mr. McGann. They don't need to wait for our order
18 to start thinking what the answers may be.

19 MR. SOUTHWICK: Let me raise one point
20 from the OCC's perspective, as far as an answer to
21 comments.

22 COMMISSIONER TARPEY: Okay.

23 MR. SOUTHWICK: Our big concern is the
24 rate impact to customers. And as much as can be set
25 forth in the comments, the OCC would like to know what

1 the rate impact is of some of the responses or comments
2 by the various parties. That's a big concern for us.

3 COMMISSIONER TARPEY: Okay. And I assume
4 there's two aspects to that, and that is with regard to
5 the 2%, what those dollars are and what that translates
6 into in a rate impact. And also to the extent that
7 money is advanced and put on hold for future years,
8 what's the ramification of that, because there's
9 slightly different answers to both.

10 MR. SOUTHWICK: That's correct. And
11 also, if there's any interim order of what's going on,
12 you know, any interim order presented on what would go
13 forward until the Commission makes a final decision,
14 how that would impact ratepayers. So, our biggest
15 concern is ratepayer impact.

16 COMMISSIONER TARPEY: Sure. That's a
17 fair inquiry. Okay.

18 MR. DAVIS: This is to clarify, to ensure
19 we understand what the deadlines are; that, with the
20 status conference on the 11th, and a status conference
21 on the 18th, if it's necessary. So, on the 11th,
22 parties would be required to file comments and parties
23 would be -- that is also the target date for a
24 settlement. And that is by close of business on the
25 11th. And that we would also have a status conference

1 sometime during the 11th.

2 COMMISSIONER TARPEY: If we are going to
3 have a status conference on the 11th, we want the
4 comments filed on the 10th.

5 MR. DAVIS: Okay. Good. That's why I
6 asked. So, the comments deadline would be close of
7 business on the 10th.

8 COMMISSIONER TARPEY: That's fine. And
9 we can maybe do a quick check on the 11th. We could
10 meet at 10 o'clock or so. That would give us a chance
11 in the morning to catch-up. Would that work?

12 COMMISSIONER BAKER: Yes, that does. I
13 just had one other clarification question. I just
14 wanted to make sure I understood it, from Public
15 Service Company, that we can do that, when we're done
16 with this.

17 COMMISSIONER TARPEY: Does that help you?

18 MR. DAVIS: Yes, that's what I needed
19 help with. Thank you.

20 COMMISSIONER BAKER: And this -- you
21 already answered this question. It was my question on
22 kind of the line drawings. And I just want to make
23 sure that I understand what the criteria was prior to
24 the 15th. If you were going to get an application, you
25 needed a line drawing and you needed some proof of

1 deposit; is that accurate? And then, after the 15th,
2 you needed to demonstrate those but in some time line
3 after? You didn't need those two elements to actually
4 reserve the credit -- or the rebate in the REC?

5 MR. MCGANN: If I may have a moment just
6 to make sure?

7 (Discussion off the record between Public
8 Service Company's representatives.)

9 COMMISSIONER BAKER: Just so I --

10 MR. MICHEL: Commissioner Tarpey, this is
11 Steve Michel. If you could, when all of this is
12 finally figured out, if you could repeat what has
13 finally been decided, that will help me. I am having
14 trouble hearing some of the other parties, and I'm not
15 sure exactly what you're looking for in the comments.
16 I know there were some suggestions.

17 COMMISSIONER TARPEY: Okay.

18 MR. MICHEL: That would be very, very
19 helpful, if you could.

20 COMMISSIONER TARPEY: Okay.

21 MR. MCGANN: Commissioner Baker, I think
22 the way you described it is correct. So, hopefully,
23 let me -- again the difference was, after the filing of
24 the application, the megawatts contained in that
25 application were, essentially, counted against the cap,

1 once they were submitted, prior to the filing of the
2 application. You're absolutely right. The megawatts
3 were counted against the tiers when those other
4 elements had been submitted, including the deposit and
5 the one-line drawing.

6 COMMISSIONER BAKER: Got you. Okay.
7 Thank you.

8 COMMISSIONER TARPEY: Okay. Chairman
9 Binz, any other questions?

10 CHAIRMAN BINZ: Thanks. I am covered.

11 COMMISSIONER TARPEY: Okay. Mr. Michel,
12 I would repeat what we have talked about earlier. On
13 March 10th, by 5 p.m., parties will file any comments
14 that they wish, to submit additional information,
15 et cetera, as a result of the discussion here, at this
16 prehearing conference today.

17 Also, on March 10 by 5 p.m., Mr. Goad, on
18 behalf of the GEO, will give us a status report about
19 settlement discussions and maybe actually be submitting
20 a settlement agreement for us by the close of business,
21 or just let us know where things are.

22 On March 11th, and tentatively at 10
23 a.m., we will hold a prehearing conference here to take
24 into account where we stand with regard to the
25 settlement agreement, whether we're able to -- if there

1 is one, if we're able to actually approve it, then. If
2 it's something more involved, and we need to have those
3 additional hearings, we'll consider that. And to the
4 extent there is no settlement, and it may not be going
5 anywhere, we reserve the right to, at that stage, to
6 look at a resolution on an interim basis, by the
7 Commissioners, if we think that's appropriate to do.

8 And then we're also reserving March 18th,
9 again, tentatively at 10 a.m., with the idea that,
10 depending on what happens on March 11th, March 18th may
11 be a date that's very helpful to us and having it on
12 the calendar is very useful.

13 And the last thing I would go back to,
14 March 11, is that if we are not getting the settlement,
15 and that doesn't seem to be going anywhere, we will,
16 then, work out dates for this proceeding. And we had
17 the idea thrown out earlier that we would probably be
18 looking at something at the last week of April, for
19 several days, two or three days that week. Does that
20 help?

21 MR. MICHEL: Thank you.

22 COMMISSIONER TARPEY: You're very
23 welcome. If there is nothing -- whoops, Ms. Botterud.

24 MS. BOTTERUD: One question for
25 clarification. Will the Commission be issuing an order

1 identifying some of the issues that we're expected to
2 address, and in the comments that will be filed on the
3 11th, or are the parties just to provide comments on
4 issues they believe are important?

5 COMMISSIONER TARPEY: I think we may
6 touch on some of these, but I suggest you either rely
7 on your notes, or look at the transcript for dialogue,
8 to see if there were things that are of interest, you
9 would like to have your input on. I don't think we're
10 going to capture everything that's in the dialogue
11 today, and you might have something that we didn't
12 think was a worthwhile question to put in our decision.
13 You may think there's very something very important
14 that needs to be discussed.

15 MS. BOTTERUD: All right. Thank you.

16 COMMISSIONER TARPEY: Okay. With that, I
17 want to thank you all for your help in moving this
18 forward today. And we thought if we started at 11, the
19 lunch hour, it would get everything moving. I think
20 that's what we've done pretty well.

21 I appreciate your time and your effort,
22 and hopefully we'll see you next week with an interim
23 resolution. We're adjourned.

24 (Whereupon these proceedings were
25 adjourned on March 4, 2011.)

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CERTIFICATION

STATE OF COLORADO)

CITY AND COUNTY OF DENVER)

I, Harriet Weisenthal, do hereby certify that I was present and reported in stenotype the proceedings in the foregoing matter; that we thereafter reduced our stenotype notes to typewritten form, with the aid of a computer, composing the foregoing transcript; further, that the foregoing official transcript is a full and accurate record of the proceedings in this matter held at Denver, Colorado on March 4, 2011.

FILED at Denver, Colorado _____.

Harriet Weisenthal