

00198

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In the Matter of the)
4 Application of PacifiCorp and)
5 Scottish Power PLC for an)
6 Order (1) Disclaiming)
7 Jurisdiction, or in the) DOCKET NO. UE-981627
8 Alternative, Authorizing the) Volume 4
9 Acquisition of Control of) Pages 198 - 344
10 PacifiCorp by Scottish Power)
11 and (2) Affirming Compliance)
12 with RCW 80.08.040 for)
13 PacifiCorp's Issuance of Stock)
14 in Connection with the)
15 Transaction.)
16 -----

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11 A hearing in the above matter was held on
12 August 19, 1999 at 9:30 a.m., at 1300
13 South Evergreen Park Drive Southwest, Olympia,
14 Washington, before Administrative Law Judges DENNIS J.
15 MOSS and KAREN M. CAILLE and Commissioners MARILYN
16 SHOWALTER, RICHARD HEMSTAD, WILLIAM R. GILLIS.

17

18 The parties were present as follows:

19

20 SCOTTISHPOWER by JAMES M. VAN NOSTRAND,
21 Attorney at Law, Perkins Coie, 411 108th Avenue
22 Northeast, Suite 1800, Bellevue, Washington 98004.

23

24 PACIFICORP by KATHERINE A. McDOWELL, Attorney
25 at Law, Stoel Rives, 900 Southwest Fifth Avenue, Suite
2300, Portland, Oregon 97204.

26

27 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,
28 by MELINDA DAVISON, Attorney at Law, Duncan, Weinberg,
29 Genzer and Pembroke, 1300 Southwest Fifth Avenue, Suite
30 2915, Portland, Oregon 97201.

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1 NORTHWEST ENERGY COALITION by NANCY HIRSH,
2 Policy Director, 219 First Avenue South, Suite 100,
3 Seattle, Washington 98104.

4 THE PUBLIC, by SIMON J. FFITCH, Assistant
5 Attorney General, 900 Fourth Avenue, Suite 2000,
6 Seattle, Washington 98164.

7 THE WASHINGTON UTILITIES AND TRANSPORTATION
8 COMMISSION by ROBERT D. CEDARBAUM, Assistant Attorney
9 General, 1400 South Evergreen Park Drive Southwest,
10 Post Office Box 40128, Olympia, Washington 98504.

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Kathryn T. Wilson, CCR

Court Reporter

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

2 JUDGE MOSS: Good morning, everyone. My name
3 is Dennis Moss. I'm an Administrative Law Judge for
4 the Washington Utilities and Transportation Commission.
5 On the Bench with me is Administrative Law Judge Karen
6 Caille. The Commissioners will be joining us on the
7 Bench in a half an hour or 45 minutes once we have
8 dispensed of our preliminary business.

9 We are convened this morning In the Matter of
10 the Application of PacifiCorp and Scottish Power PLC
11 for an Order (1) Disclaiming Jurisdiction, or in the
12 Alternative, Authorizing the Acquisition of Control of
13 PacifiCorp by ScottishPower and (2) Affirming
14 Compliance With RCW 80.08.040 for PacifiCorp's Issuance
15 of Stock in Connection With the Transaction, Docket No.
16 UE-981627. Today is August 19th.

17 We're going to spend about half an hour or 45
18 minutes taking care of our preliminaries this morning.
19 We have a stipulated record in accordance with the
20 agreements achieved during the last prehearing
21 conference, which was last Thursday. I have
22 distributed this morning an exhibit list. We have
23 premarked all the exhibits in accordance with that
24 list. We have, of course, copies of those. Is it the
25 intentions of the Parties to submit clean copies this

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1 morning or for us to rely on the previously distributed
2 copies?

3 MR. VAN NOSTRAND: Previously distributed
4 copies, Your Honor.

5 JUDGE MOSS: We can do that, and our records
6 center has a clean set so we'll be able to have a
7 permanent record based on that. I hope the Parties
8 have taken the opportunity to review the exhibit list
9 and make certain it is correct because it is my
10 intention that we will simply do this en masse subject
11 to any corrections that need to be made, and one thing
12 that comes immediately to my mind is Mr. Kilpatrick's
13 testimony includes the original Stipulation achieved
14 between Staff and the Applicants. That was a June 20th
15 date, I believe.

16 MR. CEDARBAUM: June 10th.

17 JUDGE MOSS: Is it your intention that that
18 should be an exhibit in the record even though it's
19 been superseded by the subsequent Stipulation?

20 MR. CEDARBAUM: Yes, Your Honor. I think it
21 helps to make their testimony a complete package, and
22 we did distribute before we went on the record this
23 morning two attachments for Mr. Kilpatrick's testimony
24 and one for Mr. Schooley's testimony, and as I
25 explained to you earlier off the record, those

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1 attachments are our attempt to cross-reference the two
2 Stipulations and also to correct the numbering of the
3 paragraph items that are referenced in the Stipulation
4 to update them to the August 13th Stipulation, so with
5 those attachments, assuming they are being attached to
6 the testimonies, we'd like to have the June 10th
7 Stipulation part of the record as well.

8 JUDGE MOSS: That's fine, and I had marked it
9 and given it a number so we can do that easily, and we
10 will simply make the attachments, the documents you
11 distributed earlier that are labeled "attachment to
12 testimony of Thomas E. Schooley" and "attachment to
13 testimony of Douglas Kilpatrick," and there is a second
14 attachment to exhibit of Douglas Kilpatrick, and we'll
15 simply include those in those testimonies as part of
16 those previously marked exhibit numbers. Are there any
17 errata for any of the testimonies or exhibits that
18 anybody else wants to have included?

19 MR. VAN NOSTRAND: We have an errata sheet
20 for Mr. Jack Kelly's testimony.

21 JUDGE MOSS: Could you hand that up to the
22 Bench and distribute that to the Parties, please?
23 While he's distributing that, I will take care of one
24 housekeeping matter which is simply that if -- we will
25 be taking a break here at 10:00 or 10:15, whatever is

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1 the appropriate point to bring the Commissioners in, so
2 you can look forward to that, but, I want the Parties
3 to understand that if they feel the need for a break at
4 any time they should request that of the Bench, and
5 we'll try to accommodate you conveniently.

6 I want to remind the Parties too, a habit
7 that I'm guilty of is sometimes speaking too fast. I'm
8 probably doing it right now. Please try to keep your
9 speech pace moderate and speak clearly so the reporter
10 can accomplish her task as easily as possible. I'm
11 probably the worse offender in the room.

12 We do have the errata sheet for the direct
13 testimony of Mr. Jack Kelly and we'll include that as
14 part of the exhibit. Anything else from any other
15 Parties? Has everybody had an opportunity to review
16 the exhibit list? Mr. Van Nostrand indicates yes. I'm
17 seeing a lot of nods. I'm doing things a little out of
18 order. I normally come in here with my agenda sheet
19 and do these things in great order, but I'm not going
20 to do that this morning. I realize as I identified
21 Mr. Van Nostrand on the record I have failed to take
22 appearances this morning so we will interrupt the flow
23 here and do that now, and we'll start with
24 Mr. Van Nostrand.

25 MR. VAN NOSTRAND: On behalf of Joint

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1 Applicants and Applicant ScottishPower, James M. Van
2 Nostrand.

3 MS. McDOWELL: On behalf of Joint Applicants
4 and PacifiCorp, I'm Katherine McDowell, Stoel Rives in
5 Portland.

6 MS. HIRSH: On behalf of Northwest Energy
7 Coalition, I'm Nancy Hirsh.

8 MS. DAVISON: I'm Melinda Davison, and I'm
9 here representing the Industrial Customers of Northwest
10 Utilities.

11 MR. FFITCH: Simon ffitch on behalf of the
12 Public Counsel section of the Washington Attorney
13 General.

14 MR. CEDARBAUM: Robert Cedarbaum appearing
15 for Commission staff.

16 JUDGE MOSS: As I previously mentioned, we
17 did have our prehearing conference last Thursday, and
18 the Parties agreed that we would have a stipulated
19 record. We will take into the record the various
20 prefile testimonies. I'm just going to identify those
21 in sets, and we'll begin with Exhibits T-1 through 10,
22 which are the testimony and exhibits of Allen V.
23 Richardson. Any objections to the admission of those
24 exhibits? Hearing none, they will be admitted as
25 marked.

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1 Exhibits No. T-11 and T-12 are the
2 testimonies of Richard T. O'Brien. Any objection to
3 the admission of these exhibits? Hearing none, they
4 will be admitted as marked. Exhibit T-13 is the
5 testimony of Mr. Jack Kelly including the errata
6 previously noted on the record. Any objection?
7 Hearing none, it will be admitted as marked. Exhibit
8 T-14 is the testimony of Robin MacClaren. Hearing no
9 objection, it will be admitted as marked. Exhibits
10 T-15 through 19 are the testimony and exhibits
11 originally submitted under the name Robert D. Green
12 but for whom Graham L. Morris is substituting as the
13 sponsor. Hearing no objection, those will be admitted
14 as marked.

15 I'm going to stop here for half a second. I
16 see that one of these was previously indicated to be a
17 confidential exhibit and has marked with the
18 designation C-18 to indicate that. I want to ask if
19 the confidentiality needs to be maintained on that
20 document or can be waived?

21 MR. VAN NOSTRAND: Actually, that was the
22 preliminary proxy statement. The record may be more
23 complete. We can eliminate the confidentiality, and I
24 think it would be better if we substituted the final
25 proxy statement for that document and put that in there

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1 as Exhibit 18. I think that provides for a more
2 accurate and complete record.

3 JUDGE MOSS: It is the SEC Schedule 14A is
4 the proxy statement and you now have the final. Is
5 there any objection to the substitution of the final
6 for the preliminary? Being no objection, we can do
7 that. Do you have that or will you need to submit that
8 later?

9 MR. VAN NOSTRAND: We have copies here.
10 We'll make sure sooner or later everybody gets one.

11 JUDGE MOSS: So we can remove the
12 confidentiality?

13 MR. VAN NOSTRAND: Yes.

14 JUDGE MOSS: Exhibits T-20 through 29 are the
15 testimony and exhibits of Bob Moir. Any objection?
16 Hearing none, they will be admitted as marked. The
17 next set is Exhibits No. T-30 through 37, the testimony
18 and exhibits of Andrew MacRitchie, and again, we have
19 here four previously identified as confidential and so
20 marked. Is there a waiver of confidentiality with
21 respect to any of these?

22 MR. VAN NOSTRAND: No, Your Honor.

23 JUDGE MOSS: They will be maintained with the
24 prefix C, 33 through C-36 as confidential material and
25 be specially marked in the Commission's files. I

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1 assume there is no objection. Those will be admitted
2 as marked.

3 Next, we have a set of Exhibits No. 38
4 through 42, which were intended to be used as
5 cross-examination exhibits, but cross-examination has
6 been waived; nevertheless, it was stipulated that we
7 would have these exhibits in the record and they have
8 been marked as indicated. Any objections? Hearing
9 none, they will be admitted as marked. Next we have
10 Exhibit T-43 and Exhibit 44. These are the testimony
11 and exhibit of Doug Kilpatrick, and we have previously
12 noted on the record the addenda. Any objection?
13 Hearing none, they will be admitted as marked.

14 Next we have T-45 and Exhibit 46, Thomas E.
15 Schooley testimony and exhibit. Hearing no objection,
16 they will be admitted as marked. The next set is
17 Exhibits No. T-47 through Exhibit No. 60, the testimony
18 and exhibits of Lincoln Wolverton. No objection, they
19 will be admitted as marked. The next set is Exhibits
20 No. 61 through 81, and these were exhibits that the
21 Industrial Customers of Northwest Utilities had
22 intended to use during cross-examination.
23 Cross-examination has been waived, but the Parties have
24 agreed that the exhibits will become part of the record
25 by stipulation, and hearing no objection to those

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1 exhibits, they will be admitted as marked. Finally, we
2 have Exhibit No. 82, Stipulation among Applicant,
3 Staff, and Public Counsel filed August 13th, 1999, and
4 Exhibit No. 83, Stipulation among Applicants, NWECA, The
5 Energy Project, and Public Counsel filed August 12th,
6 1999, and those being the Stipulations, I'm sure there
7 is no objection and those will be admitted as marked.

8 I want to ask at this point, Mr. Cedarbaum,
9 you had indicated earlier that the Staff needed some
10 time to review that second stipulation and would
11 indicate this morning whether they were going to sign
12 on to that or might want to have some statement with
13 respect to it.

14 MR. CEDARBAUM: Yes, Your Honor, we did have
15 a chance to look at it, and we've also talked with the
16 other parties over the past couple of days. The Staff
17 is not prepared to join in the Stipulation, and we
18 would like the opportunity to present Mr. Kilpatrick
19 after the panel on that particular stipulation so that
20 he can present the Staff assessment of it and
21 recommendation with respect to that stipulation, and as
22 I've said, at least the stipulating parties to that
23 stipulation have already been advised of the Staff
24 position so there is no surprises coming up, at least
25 to them.

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1 JUDGE MOSS: And no objection to the
2 procedure you propose?

3 MR. CEDARBAUM: I don't think so, Your Honor.

4 MR. FFITCH: No objection, Your Honor.

5 MR. VAN NOSTRAND: No.

6 JUDGE MOSS: Is there anything else that any
7 party wishes to place on the record in this proceeding?
8 Thank you very much.

9 We'll first take the panel on the settlement
10 among Staff, Public Counsel and the Applicants, Exhibit
11 No. 82. Who will sit on the panel for PacifiCorp?

12 MR. VAN NOSTRAND: Bruce Hellebuyck.

13 JUDGE MOSS: For ScottishPower?

14 MR. VAN NOSTRAND: Matthew Wright.

15 JUDGE MOSS: And for Public Counsel?

16 MR. FFITCH: Matthew Steuerwalt.

17 JUDGE MOSS: And for Staff?

18 MR. CEDARBAUM: Douglas Kilpatrick.

19 JUDGE MOSS: On the second panel for
20 PacifiCorp?

21 MR. VAN NOSTRAND: On behalf of both
22 PacifiCorp and ScottishPower, Mike Marron.

23 JUDGE MOSS: For Northwest Energy Coalition?

24 MS. HIRSH: It will be Nancy Hirsh, and I'll
25 also be representing The Energy Project.

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1 JUDGE MOSS: The Energy Project is not a
2 party in the proceeding, but I understand they
3 participated in the negotiations and the Stipulation
4 itself. I just want to be clear on that. For Public
5 Counsel?

6 MR. FFITCH: Matthew Steuerwalt.

7 JUDGE MOSS: I don't know at this juncture
8 whether the Commissioners will wish to have individual
9 witnesses called after the panels. That will be a
10 decision they will make, and we were not able to
11 achieve closure on that prior to the hearing this
12 morning, so I understand everybody is going to be
13 available and we'll do what we need to do in that
14 regard.

15 I wanted to ask, the Industrial Customers of
16 Northwest Utilities are the one party who is not on one
17 stipulation or the other. Would it be your desire to
18 make a statement at some point with respect to your
19 position in the case?

20 MS. DAVISON: Your Honor, this is Melinda
21 Davison. Yes, we would like the opportunity to make a
22 very brief statement.

23 JUDGE MOSS: Is that something you would
24 prefer to do at the close of the panel discussions or
25 in the nature of a closing statement or an opening

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1 statement?

2 MS. DAVISON: Your Honor, I think it would
3 probably be more appropriate if we did it in the nature
4 of a closing statement.

5 JUDGE MOSS: Did PacifiCorp have a desire to
6 make an opening statement once we have the
7 Commissioner's present?

8 MR. VAN NOSTRAND: What we had anticipated,
9 Your Honor, was having each individual member of the
10 panel provide a short statement as to that party's
11 perspective. I guess that's how we propose to do any
12 kind of opening statement.

13 JUDGE MOSS: Rather than have counsel?

14 MR. VAN NOSTRAND: Yes.

15 JUDGE MOSS: And the other parties are in
16 agreement with that process?

17 MR. CEDARBAUM: Yes.

18 MR. FFITCH: Yes.

19 JUDGE MOSS: I've offered the Industrial
20 Customers of Northwest Utilities an opportunity to make
21 a closing statement. I would offer that same
22 opportunity to the other parties with the understanding
23 that the Applicants would go last. Does anybody else
24 want that opportunity?

25 MR. CEDARBAUM: I'd like the opportunity to

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1 ask for that if we think it's necessary. I'd like to
2 reserve it.

3 MR. FFITCH: That would be our position, Your
4 Honor.

5 JUDGE MOSS: We'll inform the Commissioners
6 of this process, and, of course, the Commissioners may
7 wish to inquire of counsel directly on some points or
8 ask you to make a closing statement in which case I'm
9 sure you will be forthcoming with eloquent speech.

10 I don't think I'm forgetting anything, but
11 you folks need to tell me if I am. We'll take about a
12 seven-minute recess and go collect the Commissioners
13 and then we'll get back on the Bench about 10 o'clock.

14 (Recess.)

15 JUDGE MOSS: We are reconvened after our
16 brief break this morning, and I would like to welcome
17 the Commissioners to the Bench. In our first half hour
18 this morning, we have produced our stipulated record
19 and reflected on the exhibit list, which everyone has.

20 We have our first panel seated. Once I swear
21 these panelists, which I'll do momentarily, then I
22 understand that each panelist will have a brief
23 statement with respect to the Stipulation under
24 consideration, and then the matter will be open for
25 inquiry by the Commissioners, and we will proceed with

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1 that until its conclusion, and then we will convene our
2 second panel -- we'll probably take a break in
3 between -- and follow the same process, and then at the
4 conclusion of the second panel, counsel for Staff has
5 indicated that Mr. Kilpatrick will make a brief
6 statement with respect to Staff's position on that.
7 Once we have concluded the panelists, if the
8 Commissioners desire to call any individual witness
9 whose testimony has been made part of the record to
10 inquire of that witness with respect to that testimony
11 or other matters of concern in this proceeding, then
12 that process will be followed to its conclusion.

13 The Industrial Customers of Northwest
14 Utilities, who are not signatories to either of the
15 Stipulations, have indicated an interest in making a
16 brief closing statement, and other parties will be
17 afforded an opportunity to do that if they desire, and
18 with that, I believe we should swear our panel.

19 (Witnesses sworn.)

20 JUDGE MOSS: Was the first statement to come
21 from the Applicant? Please proceed.

22 MR. VAN NOSTRAND: Good morning, Mr. Wright.
23 Could you please state your name and spell it for the
24 record?

25 MR. WRIGHT: My name is Matthew R. Wright,

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1 M-A-T-T-H-E-W, W-R-I-G-H-T.

2 MR. VAN NOSTRAND: What's your address,
3 Mr. Wright?

4 MR. WRIGHT: Business address is 500
5 Northeast Multnomah Street, Portland, Oregon.

6 MR. VAN NOSTRAND: You're employed by
7 ScottishPower.

8 MR. WRIGHT: I am.

9 MR. VAN NOSTRAND: And what is your
10 responsibility with respect to this process and your
11 role here in the United States?

12 MR. WRIGHT: I'm part of the regulatory team
13 seeking merger approval.

14 MR. VAN NOSTRAND: Do you have a brief
15 statement regarding the Stipulation, Mr. Wright?

16 MR. WRIGHT: I do. I would just like to take
17 a few minutes to explain how and why the Stipulation
18 came about, why I believe it more than meets the
19 standards for approval of the transaction in
20 Washington, and why the proposed merger is clearly in
21 the public interest.

22 ScottishPower filed extensive testimony in
23 this proceeding. I won't dwell too much on the detail;
24 however, what we offered in our initial testimony was a
25 broad range of commitments which, in our view,

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1 represented substantial benefit to Washington's
2 customers. These included an unmatched package of
3 service standards of seven performance standards and
4 eight customer guarantees dealing with all the main
5 interfaces the Company has with its customer base, make
6 the Company more visible and accountable to its
7 customers. It is backed by penalties for
8 nonperformance, and the reliability aspects of that
9 package alone were estimated at a value of some
10 60 million dollars per annum system wide.

11 We also guaranteed corporate cost savings of
12 10 million dollars per annum system wide, which equated
13 to something less than a million dollars in Washington,
14 plus an offer to share in our transition plan after
15 closure of the transaction identifying where additional
16 savings could be made. We also offered extensive
17 environmental, community, and employee commitments
18 which resulted in a range of benefits consistent with
19 ScottishPower's values, which is to address the needs
20 of all of our stakeholder groups.

21 We certainly believed that this initial
22 offering met the standard here and, indeed, elsewhere.
23 Not all parties agreed with us, although many did.
24 Included amongst these was the WUTC Staff. Staff
25 testimony was supportive of the merger on the basis

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1 that ScottishPower certainly qualified in terms of its
2 financial and managerial fitness. We have an
3 established track record of running electrical utility
4 businesses in the UK. We run networks safely,
5 reliably, and efficiently, and we have a stronger
6 financial position than PacifiCorp standing alone.

7 We were also able to provide assurances on
8 such issues as cost of the merger; that they are not to
9 be borne by ratepayers of PacifiCorp. The impact on
10 rates, which is wholly positive in as much as we had
11 guaranteed a certain level of corporate cost savings,
12 and as I said, excluded the costs of the transaction,
13 and we believe we agreed to appropriate levels of
14 regulatory oversight, including appropriate access to
15 information and including various informational filings
16 regarding such things as affiliate transaction issues
17 and corporate cost allocations.

18 Staff also saw benefits in the customer
19 service and network reliability package and some of the
20 other commitments that we had offered, subject to
21 comfort on certain issues. Such comfort and assurances
22 were provided through the Stipulation that we signed
23 with Staff on the 10th of June 1999. This allowed
24 Staff to support the merger, we believe addressed all
25 of the issues raised in the Third Supplemental Order;

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1 although some of the commitments actually went wider
2 than that order and indeed was in the public interest.

3 Others did not recommend approval at this
4 stage, including Public Counsel and including ICNU.
5 ScottishPower continued to work with the Parties,
6 particularly Public Counsel, and as the debate advanced
7 in both Washington and other states, we were able to
8 give additional assurances and come closer together.
9 For example, we dealt with additional issues relating
10 to our service standards package, which Public Counsel
11 had some concerns regarding, and indeed, low-income
12 issues, which is the subject of a separate stipulation
13 to be described later.

14 My reference to the issues in other states
15 leads us to the issue of the merger credit. There is a
16 different standard in some of the states, and we have
17 had a long debate with Staff and intervenors in other
18 states as to whether ScottishPower's initial offering
19 met the standards in those states. In order to leave
20 no doubt about the positive benefits of the transaction
21 in these states, we adopted the concept of a merger
22 credit. This is a specific financial guarantee to
23 replace our previous commitments on cost savings but to
24 apply in addition to the other benefits an offer.

25 The merger credit, we feel, is a good idea

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1 because it allows benefits of the merger to be clearly
2 demonstrated without constraining other issues that are
3 best dealt with in rate cases. It is, in essence, the
4 down payment of some of the efficiencies ScottishPower
5 expects to make in the PacifiCorp business after
6 closure. It was sufficient to get strong support from
7 Staff and many intervenors in other states, notably in
8 Oregon and Utah; and therefore, having never recognized
9 the different standards and having consistently tried
10 to propose a generic set of commitments in all states,
11 although recognizing that there will be differences in
12 other states due to negotiations and due to different
13 starting positions, and an example there would be with
14 regard to the service quality standards.

15 They already had some service quality
16 standards in Oregon, for example, but regardless of the
17 no-harm standard, we wanted to be equitable in
18 Washington; and therefore, despite the existing
19 Stipulation that we have with Staff and, I believe, a
20 good continuing dialogue with Public Counsel, we
21 proposed the merger credit to apply in Washington at a
22 level of three million dollars for four years for a
23 total of 12 million dollars. This is similar in scale
24 on a pro-rata basis to what we've offered elsewhere.

25 This, as well as the resolution of other

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1 outstanding issues between us, allowed Public Counsel
2 to get on board with the merger, and Staff were
3 agreeable to a modification of their original
4 Stipulation to build in the credit. Having done so,
5 the Parties felt the most efficient way to proceed was
6 just with one stipulation covering the initial Staff
7 issues, the different Public Counsel issues which were
8 not inconsistent with the Staff issues, and the merger
9 credit. And that represents the Stipulation that is
10 before you now, the one dated August 13th, 1999.

11 The revised Stipulation therefore does
12 everything that the first one did plus addressing
13 Public Counsel's concerns and providing a
14 12-million-dollar merger credit. The Parties obviously
15 believe that the Stipulation is in the public interest,
16 and we believe that it far exceeds the standard for
17 approval in Washington and that no further conditions
18 are necessary for the Commission to approve the merger.
19 We therefore recommend that the Commission adopts the
20 Stipulation and grants approval of the Application.
21 Thank you.

22 MS. McDOWELL: Mr. Hellebuyck, can you state
23 your full name and spell it for the record, please?

24 MR. HELLEBUYCK: My name is Bruce H.
25 Hellebuyck, H-E-L-L-E-B-U-Y-C-K.

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1 MS. McDOWELL: Can you please state your
2 business address for the record?

3 MR. HELLEBUYCK: 825 Northeast Multnomah,
4 Portland, Oregon, 97232.

5 MS. McDOWELL: Are you employed by
6 PacifiCorp, Mr. Hellebuyck?

7 MR. HELLEBUYCK: Yes. I'm employed as the
8 regulatory policy director at PacifiCorp.

9 MS. McDOWELL: What responsibilities and
10 duties do you have in that position at PacifiCorp?

11 MR. HELLEBUYCK: I'm responsible to the vice
12 president of regulation for the management of
13 regulatory projects in the State of Oregon, Washington,
14 and California as well as the development of some
15 aspects of the Company's regulatory policy.

16 MS. McDOWELL: In that capacity, did you
17 become familiar with the Stipulation which has been
18 marked as Exhibit NO. 82 in this proceeding?

19 MR. HELLEBUYCK: Yes, I did.

20 MS. McDOWELL: Do you have a statement that
21 you would like to read into the record about that
22 stipulation?

23 MR. HELLEBUYCK: Yes, I do. In short, I'd
24 like to respond to what PacifiCorp's perception of the
25 Stipulation and the transaction are, and in short, I'd

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1 say PacifiCorp views this transaction and the
2 Stipulation very positively. Recall prior to this
3 transaction, PacifiCorp had announced a refocus on
4 customer service as well as the core utility business.
5 The goals of that refocus were to both improve customer
6 service while doing so at a very efficient cost level.

7 What we found in ScottishPower is a company
8 who very much shares the goals we announced in our
9 refocus program. I think what makes ScottishPower a
10 very attractive merger partner is they come to the
11 merger with a set of tools that PacifiCorp doesn't
12 have. It's another set of tools, if you will, that we
13 can use to achieve our goals. ScottishPower has
14 experience in transforming multiple utilities in the
15 UK, so what we have here is a merging of two utilities
16 with very similar goals; but again, we've got a partner
17 who has some very specific experience that we think
18 we'll be able to take benefit of.

19 But again, this is not just about PacifiCorp.
20 I think Matthew did a nice job outlining the benefits
21 we expect to be realized by customers as well, and I
22 think the fact that we are sitting here in a panel with
23 this diverse group of parties and supporting the
24 Stipulation I think speaks to the fact that this
25 transaction will provide benefits. I think the fact

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1 that we're sitting here also speaks to the fact that
2 ScottishPower, as PacifiCorp has been, will be willing
3 to work with Parties in resolving issues. I think
4 PacifiCorp has a very long experience of working with
5 Parties and resolving issues in a noncontentious way or
6 a less than fully litigious way, and I think what you
7 can expect, from what I'm seen, is ScottishPower, there
8 will be no degradation in that. ScottishPower has
9 shown at least as much willingness as PacifiCorp to
10 work with Parties to resolve issues in a less than
11 fully litigious manner. I would like to take the
12 opportunity to thank the other parties for working with
13 us to reach this stipulation.

14 In closing, again, I think this transaction
15 is good for PacifiCorp. It's good for our customers.
16 It's good for communities, and I would urge, also
17 second Mr. Wright in urging the Commission to adopt the
18 Application and the Stipulation that we're supporting
19 to it.

20 JUDGE MOSS: Thank you. Mr. ffitch?

21 MR. FFITCH: Thank you, Your Honor. Good
22 morning, Mr. Steuerwalt. Would you please state your
23 full name and spell your last name for the court
24 reporter?

25 MR. STEUERWALT: Matthew Steuerwalt,

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1 S-T-E-U-E-R-W-A-L-T.

2 MR. FFITCH: What is your business address?

3 MR. STEUERWALT: 900 Fourth Avenue, Suite
4 2000, Seattle, Washington, 98164.

5 MR. FFITCH: By whom are you employed?

6 MR. STEUERWALT: I'm employed by the Public
7 Counsel Section of the Washington Office of the
8 Attorney General.

9 MR. FFITCH: What is your position?

10 MR. STEUERWALT: I am the Public Counsel
11 Section's telecommunications and energy policy analyst.

12 MR. FFITCH: Are you familiar with the
13 Stipulation that's been referred to and placed in the
14 record as Exhibit 82?

15 MR. STEUERWALT: I am.

16 MR. FFITCH: How do you come to have
17 familiarity with the Stipulation?

18 MR. STEUERWALT: I was Public Counsel's
19 leading staff person for the entirety of the merger
20 negotiation.

21 MR. FFITCH: Thank you. Do you have an
22 opening statement with regard to the Stipulation?

23 MR. STEUERWALT: I do. I think the Company's
24 witnesses have adequately explained the process so I'll
25 focus on why Public Counsel is able to support this

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1 agreement. We do support this agreement with the
2 conditions that are involved in the Stipulation and the
3 corresponding Stipulation on the low-income issues.

4 We had some concerns with the Company's
5 initial proposal. Some of the elements in the proposal
6 were unclear to us, and this uncertainty raised some
7 questions for us about the level of risk from the
8 transaction and the change of ownership that the merger
9 posed to customers. We did work with ScottishPower and
10 PacifiCorp and other parties to address our concerns.
11 This agreement is the result of that collaboration. We
12 believe it clarifies many of the commitments that were
13 made by the Companies, and it includes some provisions
14 to mitigate risks and remove our uncertainty.

15 Therefore, we believe that the merger will be
16 beneficial to customers in four ways. One, the merger
17 credit provides a flow-through of the cost savings from
18 the transaction and provides some mitigation against
19 any possible risks from the deal. Two, the service
20 quality and network performance improvements that the
21 Companies have committed to we believe will benefit
22 customers. Three, the Company's customer service
23 commitments and ScottishPower's customer service
24 attitude we think will be an improvement, and fourth,
25 the provisions of the low-income Stipulation, which we

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1 will address in a separate panel, we think provide some
2 real benefits to low-income customers. With those
3 conditions, we believe that this transaction is in the
4 public interest.

5 JUDGE MOSS: Thank you. Mr. Cedarbaum?

6 MR. CEDARBAUM: Mr. Kilpatrick, if you could
7 please state your name and spell your last name.

8 MR. KILPATRICK: Douglas E. Kilpatrick,
9 K-I-L-P-A-T-R-I-C-K.

10 MR. CEDARBAUM: You're employed by the
11 Commission?

12 MR. KILPATRICK: Yes, I am.

13 MR. CEDARBAUM: What is your position with
14 the Commission?

15 MR. KILPATRICK: I am the electric industry
16 coordinator.

17 MR. CEDARBAUM: You filed what has been
18 admitted into the record in this case a direct
19 testimony and an exhibit; is that correct?

20 MR. KILPATRICK: That's correct.

21 MR. CEDARBAUM: And you were also involved in
22 the negotiations on behalf of the June 10th
23 Stipulation.

24 MR. KILPATRICK: Yes, I was.

25 MR. CEDARBAUM: Were you also involved in

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1 negotiation on behalf of Staff the August 13th
2 Stipulation?

3 MR. KILPATRICK: Yes.

4 MR. CEDARBAUM: Were you the principle
5 negotiator for Staff on those stipulations?

6 MR. KILPATRICK: Yes, I was.

7 MR. CEDARBAUM: So you're familiar with the
8 terms and conditions of the Stipulation?

9 MR. KILPATRICK: Yes.

10 MR. CEDARBAUM: Do you have an opening
11 statement with respect to the Stipulation?

12 MR. KILPATRICK: Yes. Without trying to be
13 redundant to the comments that were made earlier
14 regarding the process that we used to establish the
15 Stipulation, Staff is here this morning to present our
16 support to the Stipulation and to the merger of
17 ScottishPower and PacifiCorp.

18 Staff's focus in our work in this case came
19 from the direction that was given by the Commission in
20 the Third Supplemental Order where it asked or directed
21 that the focus or the issues should be regarding
22 ScottishPower's qualifications to take over control of
23 a jurisdictional utility, the costs associated with
24 proposed system improvements, impacts on present and
25 future rates, Commission access to books and records,

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1 and finally, the Company's proposed standard for
2 service quality. Staff has spent a great deal of time
3 reviewing these elements and is presented in my prefile
4 testimony.

5 Staff had some concerns and several questions
6 that arose out of our work in looking at the proposed
7 service quality proposals, and to reach agreement or
8 understanding about those proposals, we held a series
9 of meetings with the Company, asked a great deal of
10 questions and received answers that were in elaboration
11 to the original testimony that was filed by the Company
12 and to the proposed conditions themselves. These
13 answers and these understandings that came out of those
14 meetings form the basis for our original June 10th
15 Stipulation, and as is presented in my testimony, that
16 is how we came to agreement with the Company. We felt
17 that the conditions laid out in the Stipulation assured
18 that we had successfully cleared the bar that was set
19 by the Commission in the Third Supplemental Order.

20 At the time that we arrived at that
21 Stipulation, Public Counsel still had questions and
22 concerns about the merger agreement, and later they
23 were themselves able to cover those concerns and assure
24 themselves of mitigation of any of their perceived
25 risks or problems, and that resulted in the development

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1 of the August 13th Stipulation. These additional
2 conditions added to the June 10th Stipulation then in
3 our mind assured that we were clearing the bar at an
4 even higher level than we had previously, and we were,
5 therefore, interested in and ultimately did sign on to
6 the Agreement that is before you as the August 13th
7 Stipulation.

8 JUDGE MOSS: Thank you. I believe that
9 concludes the opening statements then and we can turn
10 now to questions from the Commissioners.

11 CHAIRWOMAN SHOWALTER: Maybe I'll begin with
12 a procedural question. It's very encouraging that the
13 Parties have reached a stipulation, obviously, because
14 it reflects that you've come to agreement on
15 substantive issues, and that's the greatest concern. A
16 general concern I have in reading through the
17 Stipulation is whether it is sufficiently clear that
18 three or four years from now, reading back, we know
19 what it says, and so I have several questions that you
20 should not take to be deep concerns, but I want to make
21 sure that the Stipulation which we are asked to adopt
22 is going to provide useful guidance in the future and
23 not more language to argue about later; that is, as we
24 look back, so I'm projecting us forward in time, trying
25 to look back and say, Now, what does this mean?

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1 Possibly we should go through chronologically, but if
2 you have a good idea about how we should proceed or the
3 other commissioners do.

4 JUDGE MOSS: I think working through from the
5 beginning would be the best way to go.

6 CHAIRWOMAN SHOWALTER: On that note, I think
7 the first question I have is on Stipulation No. 1.
8 It's agreement to all commitments and conditions in the
9 Application and the accompanying testimony and
10 exhibits, and that's very broad. It means you're
11 agreeing to everything you said, but what is that? It
12 makes it difficult when reading this to know what, in
13 fact, is being agreed to. I started to say, Well,
14 should I open up all the books again and look at
15 everything that was said?

16 I'm wondering why the Parties took that
17 approach or whether it's possible to crystallize more
18 objectively or more succinctly what you mean by all the
19 testimony.

20 MR. WRIGHT: I think it is possible to do
21 that, and if it helps, I think we can undertake to put
22 together an attachment to the testimony to a
23 Stipulation which captures other commitments that are
24 made in the testimonies, exhibits, et cetera. For the
25 benefit of the record, I think that's a good idea.

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1 CHAIRWOMAN SHOWALTER: Thanks.

2 COMMISSIONER HEMSTAD: How long do you think
3 that will take? Will that take a lot of discussion
4 with the Parties?

5 MR. WRIGHT: No. I think it should be fairly
6 straightforward.

7 MR. VAN NOSTRAND: If I could identify the
8 exhibit which has been marked as Exhibit 10, we
9 attempted to summarize in one document -- I remember
10 filing that after our initial prehearing conference --
11 all the benefits in one document of the various
12 categories: the performance standards, the customer
13 service guarantees, the corporate cost savings, so that
14 document really provides an excellent starting point of
15 when you look at Provision 1, what are all the
16 commitments and provisions. That's where we attempted
17 to pull that all together out of all the pieces of
18 testimony that we filed.

19 The Stipulation, the only one that really
20 modifies that is the merger credit does take the place
21 of the ten-million-dollar guarantee corporate savings,
22 but in all other respects that document remains a very
23 good compilation of all the commitments and conditions
24 that we're committed to.

25 CHAIRWOMAN SHOWALTER: Do the other parties

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1 agree? I don't mean to pin you down right at this
2 moment to say that Exhibit 7 is an adequate substitute
3 for everything else, but does Exhibit 7 tend to capture
4 the more objective of promises made in the Application?

5 MR. CEDARBAUM: I generally agree with
6 Mr. Van Nostrand's statement. That was my recollection
7 as well, but I'd like the chance to go back and look at
8 it and make sure it's accurate, but I think that
9 document would certainly be the starting point, and we
10 could tailor it as necessary, and then in accordance
11 with Mr. Wright's suggestion submit it as an attachment
12 to the Stipulation.

13 CHAIRWOMAN SHOWALTER: I think it may make
14 sense to take Nos. 2, 7 and 8 together because they get
15 at capital requirements, and it seems that No. 2 is
16 sort of the general statement of good will and not
17 particularly enforceable but perhaps noteworthy. But
18 No. 7 on the second sentence it says, "If the cost of
19 capital of electric operations of PacifiCorp increases
20 as a direct result of the merger, ScottishPower's
21 shareholders will bear that cost." The principle is
22 clear. How is this to be determined at some later
23 point in time?

24 MR. WRIGHT: If I could respond to that.
25 Part of the answer is actually Condition No. 8, which

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1 we'll use a hypothetical capital structure so it will
2 reference other electric utilities in the U.S. as a
3 benchmark of determining what PacifiCorp's capital
4 structure would be as a stand-alone. You can then look
5 at specifically the cost of debt and equity for those
6 companies and transpose that, if you like, onto
7 PacifiCorp.

8 The intention of these clauses is really to
9 put a financial ring fence around PacifiCorp such that
10 the costs of capital are not impacted by whatever
11 happens in the ScottishPower Agreement. As it happens,
12 so far, the impact of that is a positive one in as much
13 as PacifiCorp has been placed on credit watch with
14 positive implications as a result of the proposed
15 merger. What that means is there is every likelihood
16 that the rating agencies will be increasing the
17 strength of their rating for PacifiCorp on the close of
18 the merger.

19 But there was a concern amongst parties that
20 in the future -- ScottishPower is quite a large group.
21 Although not terribly diversified, we are very much
22 into utilities, but there was a concern that if we did
23 undertake more risky ventures, that could somehow
24 impact on the regulated operations of PacifiCorp.
25 These clauses prevent that by both proposing that rates

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1 can go down but not up as a result of that and also by
2 reference to a hypothetical capital structure involving
3 other companies to get that cross reference and
4 benchmark.

5 CHAIRWOMAN SHOWALTER: On No. 8 it says a
6 hypothetical structure will be used and a capital
7 structure will be constructed. It's the passive voice,
8 but how does that play out? If you're going to
9 implement this stipulation, who is going to do what to
10 make this occur?

11 MR. WRIGHT: I believe it's fairly standard
12 practice currently.

13 MR. HELLEBUYCK: I think if we were to file a
14 rate case, we would, in fact, advocate use of a
15 hypothetical capital structure, and Matthew is correct.
16 We look at comparable companies in the United States,
17 and then we would submit testimony that supports that
18 capital structure. It would be up to us to make the
19 initial case in a rate filing that this is what we
20 think the capital structure should be, and then we
21 would have to support that capital structure.

22 COMMISSIONER GILLIS: If I could follow up on
23 that directly with Staff. From time to time, the
24 Commission has determined that actual capital structure
25 is more appropriate than the hypothetical capital

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1 structure depending on the circumstances. Do you
2 understand the Stipulation to preclude that advocacy
3 from the Staff that that would be in your judgment then
4 the right approach to take?

5 MR. KILPATRICK: No. Staff understands that
6 hypothetical capital structure is one that may be
7 proposed but that Staff has not precluded from looking
8 at other alternatives as well.

9 CHAIRWOMAN SHOWALTER: Isn't that at odds
10 with, it says, A hypothetical capital will be used by
11 the Parties?

12 MR. CEDARBAUM: Just to add that the
13 beginning of that sentence says, Unless otherwise
14 approved by the Commission, so I think Staff has
15 interpreted that to mean that the general rule is a
16 hypothetical capital structure which is consistent with
17 Commission practice, but if Staff or any other party
18 believes that a different method should be used, then
19 they have an opportunity to propose that and seek
20 Commission approval to use that.

21 CHAIRWOMAN SHOWALTER: That's not what I
22 would have thought it said. I would have thought that
23 it was limiting the Parties to a hypothetical unless
24 the Commission in it's essence overrules that, but
25 that's part of the reason I want to seek this

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1 clarification.

2 MR. CEDARBAUM: Mr. Kilpatrick, correct me if
3 I'm wrong, but that's my understanding of Staff's
4 understanding.

5 MR. KILPATRICK: That's correct.

6 CHAIRWOMAN SHOWALTER: What about
7 ScottishPower?

8 MR. WRIGHT: I don't think it necessarily
9 ties us to this hypothetical capital structure. I
10 think it implies that's the default to be used, but if
11 it's otherwise approved, then we could look at it.

12 CHAIRWOMAN SHOWALTER: And it's permissible
13 for a party to seek approval of another structure.

14 MR. CEDARBAUM: Again, I think that's the way
15 Staff looked at it. We had this discussion last week
16 amongst the Parties and I expressed that position. I
17 don't think anyone disagreed with it but it was stated.

18 CHAIRWOMAN SHOWALTER: Thanks.

19 JUDGE MOSS: Anything else on Paragraph 2?
20 Then we can move on to 3.

21 MR. WRIGHT: Maybe could I just add, I guess
22 this clause is really trying to deal with the new
23 situation created by ScottishPower and the concern
24 about how that might impact capital structure. We're
25 not seeking in any sense to change established

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1 ratemaking practice in any respect in this stipulation,
2 and if it touches on things, that's really to try and
3 deal with issues and concerns raised by Parties in the
4 transaction. We're not seeking to change other aspects
5 of ratemaking policy.

6 CHAIRWOMAN SHOWALTER: Just so I understand,
7 on No. 8, it essentially means unless otherwise
8 approved by the Commission upon request by a Party, a
9 hypothetical capital will be used so a Party could not
10 later challenge a Party's seeking to move.

11 MR. CEDARBAUM: I think that would go along
12 with what I've stated.

13 COMMISSIONER HEMSTAD: I translate that in
14 the effect there is a presumption of a hypothetical
15 capital structure would be a starting point for
16 discussions, but that depending upon the circumstance,
17 it would not be used, but that would be the starting
18 point for the presentations.

19 MR. CEDARBAUM: Mr. Kilpatrick can correct me
20 if I'm wrong, but I think that's right.

21 MR. KILPATRICK: That's our understanding at
22 this time.

23 JUDGE MOSS: If there is nothing further on
24 2, 7 or 8, then we'll go to 3.

25 CHAIRWOMAN SHOWALTER: Is this a restatement

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1 of current practice, or is it intended to be more
2 restrictive?

3 MR. HELLEBUYCK: I believe it's a restatement
4 of current practice as well as an indication that that
5 current practice extends to the renewables that we
6 would require as a result of our commitment, so I think
7 in essence you're right. It's a restatement.

8 MR. KILPATRICK: Staff asked for this
9 statement to be put in here as a restatement of current
10 practice and based on the proposals in the Company's
11 testimony about it adding renewable resources to its
12 portfolio.

13 COMMISSIONER GILLIS: Is it a correct
14 understanding that by this paragraph, the Applicants
15 would bear the burden of demonstrating that any
16 renewable resource investment is, in fact, prudent and
17 cost-effective in the general sense of ratemaking?

18 MR. KILPATRICK: Yes.

19 JUDGE MOSS: If there is nothing further on
20 3, we'll move on to 4, which I believe is the merger
21 credit provision.

22 COMMISSIONER HEMSTAD: I would start the
23 inquiry by asking for some further illumination of, I
24 believe it's approximately the fourth sentence down
25 where it says, "PacifiCorp/ScottishPower may reduce or

00243

1 offset the three-million-dollar merger credit to the
2 extent that cost reductions related to the merger are
3 reflected in the rates." Could someone elaborate on
4 what that sentence means?

5 MR. WRIGHT: I will try. The three million
6 dollars per annum is guaranteed. It's guaranteed as a
7 specific merger credit, or what we're intending to say
8 here is if we join in the course of the four-year
9 period the merger credit applies, file a rate case or a
10 rate case is filed, when we can demonstrate in that
11 case that we have achieved an equivalent amount of
12 savings directly as a result of the merger; i.e.
13 savings but for the merger would not have occurred,
14 that we can offset the merger credit that we were
15 applying by other savings in order to avoid a double
16 count.

17 It really relates to the recognition that the
18 way in which the Company will fund the merger credit is
19 by making the Company more efficient by achieving
20 savings in the business. Therefore, we wanted to avoid
21 the situation where we do that. Those savings are
22 reflected in the results of operations. We come in for
23 a rate case; the lower cost level is taken as the basis
24 for setting rates, but then on top of that, we still
25 have to apply the merger credit, so it's to avoid an

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1 explicit double count of merger benefits, and that's
2 why it's there.

3 If there is no rate case during that period,
4 then the three million dollars would continue. If
5 there is a rate case to the extent that we can
6 demonstrate the offset, and the burden is all ours, to
7 the extent we can demonstrate offset, then the merger
8 credit would be reduced by an equivalent amount such
9 that it's still guaranteed. It's just guaranteed in a
10 different way. It's actually taken into account in the
11 ratemaking process rather than the explicit line or
12 rebate credit or whatever on the bill, so the amount
13 would be provided through rates or as a line item on
14 the bill as a credit. Does that help at all?

15 COMMISSIONER HEMSTAD: I think so.

16 CHAIRWOMAN SHOWALTER: That does help explain
17 that sentence. Supposing if you come in for a rate
18 increase, then let's say the increase is five million
19 dollars, then how does it work? It would have been
20 eight but now it's five because of the three, or are we
21 going to get into arguments over that?

22 MR. WRIGHT: We would seek to avoid arguments
23 at all cost. The basis on which we will attempt to
24 demonstrate that the savings are merger related will be
25 our transition plan, which is subject to a separate

00245

1 condition later. I think it's 9.

2 We will provide a transition plan which will
3 detail the initiatives that we will be taking within
4 the business to achieve greater efficiencies. We
5 maintain that those efficiencies would not be made but
6 for the merger with ScottishPower because they would be
7 as a result of specific initiatives and specific skill
8 sets that we bring to PacifiCorp. Therefore, in your
9 example, Commissioner, there may well be a requirement
10 for a rate increase for other reasons outside of our
11 control, be it increases in costs elsewhere or interest
12 rate increases or whatever it is, but this specific
13 piece will only relate to the merger related cost
14 savings, so we will have to demonstrate that the three
15 million is being offset regardless of whatever else is
16 going on in a rate case. The intention is not to
17 prejudge outcomes of rate cases but try and ring fences
18 and treat it separately.

19 CHAIRWOMAN SHOWALTER: When we get to 9, I'll
20 ask you more about how you're going to determine those
21 cost savings.

22 JUDGE MOSS: If we're ready to move on to 5.

23 COMMISSIONER GILLIS: If the anticipated
24 deficiency savings for some reason don't materialize
25 and also be funded by a direct internal funding, is the

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1 essence of this that the Applicants remain responsible
2 for financing a network expenditure?

3 MR. WRIGHT: That's essentially correct. We
4 have undertaken that the costs of this service
5 improvement package that we have proposed we will
6 absorb. We will absorb it in the sense that there will
7 be no incremental costs to customers. We're confident
8 in our ability to make efficiencies within the capital
9 and operating budgets of PacifiCorp to offset the cost
10 of this commitment.

11 Just to put this in some perspective, the
12 clause here talks about a 55-million-dollar estimate to
13 implement the service standards package. That is
14 system wide and it is over five years, so we're looking
15 at 11 million dollars a year against a capital
16 operating budget of some 400 million dollars a year, so
17 doing the math quickly in my head, it's 55 million
18 dollars out of two billion dollars over the five-year
19 period.

20 We're certainly confident that we can make
21 that level of efficiencies, but to get back to the
22 question, in the event that we don't, we can't
23 demonstrate that -- and you'll notice again the burden
24 is ours to report funding sources and expenditures. If
25 we came into a rate case situation and we couldn't

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1 demonstrate that, then again, without prejudging it,
2 but we wouldn't expect that that would be an allowable
3 expenditure because we would be in breach of that
4 specific commitment.

5 COMMISSIONER GILLIS: If the need was to have
6 more network expenditures than the amount anticipated
7 from the Company's standpoint, then you'd be seeking
8 that from ratepayers?

9 MR. WRIGHT: We're very confident we can do
10 it within the estimate. That is an estimate that we
11 have provided based upon a certain amount of work, a
12 good deal of work that's gone into looking at the costs
13 of this proposal. We actually believe, having looked
14 at it again, it may be slightly on the high side, so
15 we're confident we can do it for that amount if the
16 circumstance were to arise.

17 COMMISSIONER GILLIS: A question for Staff on
18 this is, is the general intent within the Stipulation
19 that the Applicants continue to bear the burden of
20 demonstrating that these investments are prudent and
21 justified in the normal sense of evaluating that in a
22 future rate case? There is no sense of preapproval
23 with this, is there?

24 MR. KILPATRICK: No. In all of our
25 discussions with the Company regarding these

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1 expenditures or estimate, and in addition, back to
2 No. 4 on the three-million-dollar credit, the Company
3 has always talked about bearing the burden of proof to
4 show that the expenditures are, for example, in the
5 case of the three million dollars per year, that they
6 are directly related to merger benefits, and in the
7 case of these other amounts, that the amounts are
8 prudent expenditures, so that has been our
9 understanding throughout those discussions.

10 COMMISSIONER GILLIS: You're apparently
11 satisfied that the various reporting requirements will
12 give you the information to make that determination?

13 MR. KILPATRICK: We hope so.

14 JUDGE MOSS: Then we're ready for 6.

15 CHAIRWOMAN SHOWALTER: I think the sentence
16 is clear, but I think we're getting to No. 9 when we
17 figure out what these costs are. Is that really where
18 the costs are going to be determined?

19 MR. WRIGHT: 6 is really about the costs
20 associated with getting the merger complete.

21 CHAIRWOMAN SHOWALTER: Just the transaction
22 cost.

23 MR. WRIGHT: Yes. So what we're looking at
24 here is the extortion of merchant banker's fees and
25 lawyers fees.

00249

1 CHAIRWOMAN SHOWALTER: I stand corrected. 9
2 doesn't really handle how those costs are determined,
3 so how are those costs determined?

4 MR. WRIGHT: There is an estimate of those
5 costs in the proxy statement that we've already
6 provided. All of the accounting systems are in place
7 to make sure all the costs associated with the
8 transaction -- and that includes the fees I've
9 mentioned and also the time reporting for the people
10 involved in the transaction. It made very clear that
11 they are booked to separate cost codes, separate
12 accounting codes, and will be excluded. They actually
13 will be booked at either the ScottishPower level or at
14 the PacifiCorp group holdings level. They won't come
15 into the regulated entity of PacifiCorp business, so
16 they will be right outside of that.

17 In any event, we're subject to audit so you
18 will be able to see, parish the thought, if we snuck
19 any costs into regulated business, but the intention is
20 clearly to book those elsewhere within the corporate
21 structure.

22 JUDGE MOSS: Can you tell us what those
23 estimates are?

24 MR. WRIGHT: It's approximately 250 million
25 dollars.

00250

1 JUDGE MOSS: Does that cover both the
2 transactional costs and the premium paid?

3 MR. WRIGHT: No. That's the transaction
4 costs. The premium will be a function of price of the
5 closing at transaction. It moves; it varies.

6 JUDGE MOSS: In what range?

7 MR. WRIGHT: In the range of about 800
8 million dollars to about 1.5 billion dollars.

9 JUDGE MOSS: Anything else on 6? We've
10 already talked about 7 and 8, so that does, in fact,
11 bring us to 9.

12 CHAIRWOMAN SHOWALTER: I guess my question on
13 this one, you've outlined a process for both the
14 transition plan and identifying the costs, and I
15 suppose if this is where it is, it's important to be
16 able to identify these costs or have a good firm
17 process for identifying the costs so they can be
18 excluded later.

19 MR. WRIGHT: I agree with you.

20 CHAIRWOMAN SHOWALTER: Maybe you could offer
21 some assurances as to why you think this is sufficient.

22 MR. WRIGHT: It seemed that we had really two
23 options. One was to try and track what PacifiCorp
24 would have done absent the merger, which is replete
25 with difficulties because the further out you go, you

00251

1 have to try and second-guess what PacifiCorp would have
2 done, what savings they would have made. It would be
3 extremely difficult, and I think there has been some
4 experience, even within PacifiCorp to the previous
5 merger of trying to do that, which was not terribly
6 successful.

7 We propose a different approach; that is, we
8 will provide to the Commission and Staff and Public
9 Counsel a transition plan. The transition plan is a
10 very detailed exercise we will conduct post closure of
11 the transaction and will take some six months to put
12 together. The output of that will be a specific set of
13 initiatives -- I don't know many, but it could be as
14 many as 70 to 100 -- that ScottishPower will take to
15 improve the efficiency, effectiveness, service, et
16 cetera of the PacifiCorp business.

17 We will document those initiatives. We will
18 provide a numerical value in terms of what they will
19 achieve in terms of efficiency in the business. We
20 would use that as the template in subsequent rate cases
21 if we were in the situation to say, This is what we
22 said we were going to do, and this is what we've done,
23 and we'll be able to demonstrate against that template
24 what we have achieved.

25 The purpose of the second piece of the

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1 paragraph there, which is actually specific to
2 Washington, is that we will, having come up with this
3 plan -- it's more than an estimate. It's more than a
4 typical business plan. It's a very detailed piece of
5 work. Having done that, if we say, for example, that
6 we're going to make five million dollars worth of
7 savings in the business in 2002, and we're going to do
8 it by these 15 initiatives, we then can't dispute the
9 fact that we said we're going to do that, so we will
10 stand by that commitment if there was some known and
11 measurable aspect of a future rate case that tried to
12 impute that level of savings going forward. We would
13 say, That's what we've said. It will be taken into
14 account as one of the items in a rate case on a pro
15 forma basis to say that you have stated that you will
16 achieve five million dollars, and we believe you're
17 going to impute that level of savings.

18 So the comfort, I guess, comes from the fact
19 that it's going to be a very detailed piece of work.
20 It's going to provide a very clear benchmark against
21 which you can monitor our performance, and we will
22 provide, as it says there, updates of the transition
23 plan, and we will through the various filings that are
24 contained in this stipulation, you will be able to
25 monitor our progress against that.

00253

1 We think that's a wholly preferable way of
2 doing it than the alternative which is to try to guess
3 what PacifiCorp would have done as a stand-alone and
4 then have arguments about what we did as opposed to
5 what we didn't do, so that's why we arrived at this
6 particular condition.

7 CHAIRWOMAN SHOWALTER: A very small point on
8 the second to last line of No. 9, it says that
9 ScottishPower will not dispute figures used as a basis
10 for pro forma adjustments by Staff or Public Counsel.
11 I take it these are proposed adjustments to the
12 Commission. Staff is not making adjustments, is it?

13 MR. KILPATRICK: Those would be proposed
14 adjustments.

15 JUDGE MOSS: I would like to follow up on
16 this with you, Mr. Kilpatrick, and just ask the
17 question in this way: If in a future rate case, for
18 example, the transition plan included an estimate of
19 five million dollars achieved savings on the basis of
20 15 initiatives, and the rate case was filed and the
21 actual data reported was four million dollars, but
22 Staff reviewed and audited the matter and said, Well,
23 you should have saved six. You wouldn't be locked into
24 these transition plan numbers, would you?

25 MR. KILPATRICK: I believe your statement is

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1 correct.

2 JUDGE MOSS: Let me state it a little
3 differently. Let's assume the estimate had been five
4 and the actual is six. Would Staff's pro forma
5 adjustment be tied to the transition plan five or the
6 actual six, or would Staff be free to advocate, Well,
7 you should have gotten seven?

8 MR. KILPATRICK: I believe the point here
9 says that Staff or Public Counsel could make whatever
10 proposals they would like with regard to pro forma
11 adjustments, but the agreement here, as I understand,
12 again came back to trying to have a known and
13 measurable and the basis for that being either a model,
14 if you will, or a prediction of what PacifiCorp would
15 have done on its own versus what ScottishPower has laid
16 out as their particular transition plan action items
17 and felt that this provided a better basis for making
18 those adjustments and making those proposals.

19 JUDGE MOSS: I guess maybe I'm not being
20 clear in my question. What I'm trying to find out is
21 if this in any way locks in Staff's pro forma
22 adjustments in a future rate case, or if Staff will be
23 free to propose whatever pro forma adjustments it feels
24 are appropriate at the time regardless of what this
25 transition plan may say?

00255

1 MR. KILPATRICK: I believe that Staff can
2 make whatever adjustment proposals that it wants to.
3 That's my understanding with the way Staff conducts its
4 business. I would, I suppose, defer for any further
5 clarification perhaps to Mr. Schooley, who might be
6 able to help on that.

7 JUDGE MOSS: I wanted to ask Mr. Steuerwalt's
8 view on the same question.

9 MR. STEUERWALT: I could perhaps offer a
10 slight clarification to your hypothetical where if the
11 Company had identified five million but actually got
12 six. I think that this clause is to address savings
13 that have not yet occurred but are known and measurable
14 in the rate year, so if there was six million dollars
15 of actual savings, I think we'd go with that, and it's
16 to address those things that have not yet happened but
17 to which the Companies have committed to achieve.

18 JUDGE MOSS: I understand you may not have
19 actual data to support a known and measurable change
20 depending on the timing of the rate case and test year,
21 but you might have some good basis for projecting those
22 pro forma estimates to be something other than what's
23 included in the transition plan, and that's the point
24 of my question, and I think perhaps one of our other
25 witnesses wishes to chime in on this before we close.

00256

1 MR. WRIGHT: The intention is not to bind
2 Staff or Public Counsel from making that
3 representation. In fact, all it says is we will not
4 dispute the figures.

5 CHAIRWOMAN SHOWALTER: This language binds
6 only the Company. It doesn't bind the Staff in any
7 way.

8 MR. WRIGHT: That's correct.

9 JUDGE MOSS: Anything further on 9? We can
10 move to 10.

11 CHAIRWOMAN SHOWALTER: My question on this
12 one is it says the Parties will work together to
13 establish a baseline, and if things don't work out, you
14 will bring it before the Commission and let the
15 Commission decide. What if you do agree? Do you bring
16 this back to the Commission or you're off somewhere
17 agreeing with one another?

18 MR. KILPATRICK: I think if the Commission is
19 interested in seeing what the baseline is, assuming
20 that the Parties were to reach agreement, we would be
21 glad to file that with the Commission as an
22 informational basis or whatever. I think this
23 provision was put in here in case Parties were not able
24 to reach agreement, and then Parties would bring the
25 various positions or understandings to the Commission

00257

1 and allow the Commission to make a final decision, and
2 everyone would live by that.

3 CHAIRWOMAN SHOWALTER: I suspect it's a good
4 idea to bring it before the Commission. I don't really
5 know, but since these parties are not all of the
6 parties that might be interested, I would guess that if
7 I were another party, such as Ms. Davison, who is
8 nodding her head, other people might be worried that
9 they don't know what this agreement is.

10 MR. KILPATRICK: I guess I could anticipate
11 that this kind of agreement or this kind of benchmark
12 could be developed in the form of a tariff of some kind
13 that the Company would then file in the regular
14 fashion, and in this case, it would come before the
15 Commission in a regular opening meeting and be
16 presented, and all parties who were interested in
17 making comment would have an opportunity to do so at
18 that time.

19 MR. WRIGHT: In terms of the going forward
20 position, one of the commitments is that we will
21 publish on an annual basis our performance against
22 those baselines so the baselines will become known and
23 also very publicly our performance with respect to our
24 commitment to improve by a specific amount, so we would
25 encourage it to be a public process.

00258

1 JUDGE MOSS: We can move to 11 then.

2 CHAIRWOMAN SHOWALTER: I don't know if this
3 is a question to do with this one or not, but supposing
4 the Commission adopts some general customer service
5 quality provisions in a rule. What is UE-990473? Is
6 that a rulemaking?

7 MR. KILPATRICK: It's a rulemaking for
8 electrical and gas rules.

9 CHAIRWOMAN SHOWALTER: So supposing we end up
10 adopting standards that are less stringent than is in
11 this agreement otherwise, are you bound by the more
12 stringent standards, and then let's take it the other
13 way: We adopt something in the rule that's more
14 stringent than what is otherwise in this agreement.
15 How do the rules that we adopt integrate with this
16 agreement?

17 MR. KILPATRICK: Staff's understanding with
18 regard to that is that the Company has established for
19 itself its own minimum benchmark for these performance
20 standards, so if the Commission were to adopt rules
21 that had a lower performance standard in them,
22 PacifiCorp and ScottishPower will hold themselves to
23 their own proposals.

24 However, in all of our discussions, they have
25 also acknowledged that the Commission's rules do apply,

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1 and should the Commission adopt rules that were somehow
2 more stringent, they have also acknowledged that they
3 would abide by Commission's rules and standards.

4 COMMISSIONER GILLIS: To follow up on that a
5 little bit, I would assume part of the discussion in
6 the rulemaking is some effort to evaluate cost
7 effectiveness in different service quality
8 improvements.

9 As part of that rulemaking, if there were an
10 outcome that a decision was made that it may not be
11 cost-effective to go to the full extent that is
12 proposed by the Applicants in this proceeding, and we
13 wanted to go back and reevaluate that, would we still
14 have the flexibility to lessen the service quality
15 commitments that are being made in this stipulation at
16 a future time?

17 MR. WRIGHT: My understanding is that you
18 would have that capability through Condition 19 at the
19 very least, which talks about the review after two
20 years, and basically says in the light of more
21 experience if it is felt that what we're shooting for
22 is either too high or too low, then they can be
23 revisited. This is not fixed five years regardless of
24 whatever else happened, and we've built into it a
25 review period after two years to allow for changes.

00260

1 COMMISSIONER HEMSTAD: I would just make a
2 general comment that the Commission has an inherent
3 authority to require cost-effective expenditures.
4 Irrespective of what is said here, if the conclusion
5 were later determined that a different standard were
6 more cost-effective, that would have to be applied.

7 MR. WRIGHT: Agreed.

8 MR. KILPATRICK: I think this point in the
9 Stipulation also addresses not only the existing
10 rulemaking docket that's mentioned here, but it also
11 anticipated that should the Commission initiate any
12 other rulemaking with regard to performance standards
13 or service quality or reliability and they were then to
14 affect rules based on that opening of rulemaking that
15 the Company acknowledges that the Commission has the
16 authority to do that and to set rules and levels of
17 performance within those.

18 JUDGE MOSS: Looks like we're ready for 12.

19 CHAIRWOMAN SHOWALTER: On No. 12, I
20 appreciate you're agreeing to abide by a rule, but I
21 hope that doesn't imply you're not going to abide by
22 all of our other rules, and I gather the reason to put
23 this in was that your initial Application was somehow
24 at odds with this rule so this is to clarify that
25 point.

00261

1 MR. HELLEBUYCK: That's right, simple
2 clarification.

3 JUDGE MOSS: 13?

4 COMMISSIONER GILLIS: In the paragraph about
5 the fourth sentence down, you refer to the level of
6 such complaints. Just a clarification by "level," do
7 you mean any particular measure, number, percentage, or
8 what does that mean?

9 MR. KILPATRICK: In my testimony, we did have
10 some discussion about the current level of Commission
11 complaints by PacifiCorp customers, and that formed the
12 basis for us discussing that all parties agreed that
13 the service quality improvements that the Company was
14 proposing, should, if they are effective, result in a
15 reduced number and that we wanted to take a look at
16 where they were.

17 Now, we put this paragraph in the Stipulation
18 with the understanding that there are a variety of
19 reasons that customers call the Commission, and we
20 didn't want to place an absolute number on the Company
21 because, for example, in some future year in the next
22 three or four years, we may have a significantly hard
23 winter storm or something that results in calls to the
24 Commission that is sort of unusual, so we didn't want
25 to bind the Company to a historic number of calls but

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1 rather the concept that the work that they were
2 proposing to do would result in reductions in the long
3 run, and we wanted to be able to review that with them.

4 COMMISSIONER GILLIS: My understanding is
5 that there is different measures of complaints. The
6 number of complaints has different implications than
7 the percentage of households with complaints in a given
8 area, whatever might be used, and the Parties would be
9 free to utilize a variety of measures of level.

10 MR. KILPATRICK: Yes, that's correct. Total
11 numbers is one such measure. It's just one kind of
12 gross measure that could be used, but there are others.

13 JUDGE MOSS: Looks like we're ready for 14
14 then.

15 CHAIRWOMAN SHOWALTER: This seems to me that
16 this is a consumer education provision that the Parties
17 are going to get together and work out effective ways
18 to let the consumers know what their rights are. It's
19 not addressing, because I assume it's addressed
20 somewhere else, what those rights are, and this gets to
21 the question or a question of the automatic payment if
22 you miss an appointment, that kind of thing. If it is
23 automatic, is it automatic it just comes, or do you
24 need to tell the consumers how to press their claims?
25 This is a question that's really tangential to this

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1 paragraph.

2 MR. WRIGHT: It's an aspect of detail. There
3 is an expert witness, Mr. Moir, in the audience who may
4 be called later. I'll try my best to answer. There
5 are eight customer guarantees which would involve
6 payments to customers. My understanding is that six of
7 them are automatic. The other two, it would be
8 expensive to implement systems to automate the
9 payments.

10 What this would do is set out how customers
11 can claim a payment, what the process is to make sure
12 it's sufficient and make sure it's appropriate and
13 doesn't involve undue bureaucracy. They are aware of
14 when and how they can claim and what they should do in
15 the event they don't receive the payment, so most will
16 be automatic, and there will be credits on customer's
17 bills, and two will involve a claim, but we'll set out
18 very clearly how that claim is to be made.

19 We'll also, as part of this education
20 program, be setting out in detail what the standards
21 are, what customers can expect, so the idea is they are
22 very public and very well aware of this commitment
23 going forward. Indeed, as you probably are aware,
24 we've sent out a bill stuffer along with the details of
25 the public comment meeting to be held. We also started

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1 to discuss the service standards package and set out
2 some examples that were coming. We will build on that
3 as an education program and send out the details
4 involving this whole package in due course.

5 MR. KILPATRICK: Chairwoman Showalter,
6 Staff's concern or interest in this area did have to do
7 with the customer guarantees and the payments that were
8 being made to customers and that kind of thing. If I
9 could direct you to my prefile testimony on Page 17,
10 Line 12, we start to talk about the Company's
11 guarantees and our interest that the customers be well
12 aware of those guarantees, and going further on the
13 next page, Page 18, we talked about two of the
14 guarantees that the Company was making that it said
15 rather than the payments being automatic to customers'
16 bills, that the customer had the right to claim a
17 payment, and we were interested that customers knew
18 what the methodology would be for making that claim and
19 that the Company was helpful to them in being able to
20 process those kinds of claims.

21 CHAIRWOMAN SHOWALTER: Thanks.

22 COMMISSIONER GILLIS: I had one question on
23 that one. The customer education programs can range
24 from using media, which gets expensive at times, to
25 just putting bill stuffers in, and it appears you're

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1 going to have the discussion about how you want to go
2 about that, but have you had discussion about who pays
3 for the program? Has that been part of your
4 discussion?

5 MR. KILPATRICK: We've not included that in
6 the discussion at this point. Only the concept that we
7 believe an effective education program was desirable
8 and would be implemented.

9 COMMISSIONER GILLIS: Is that further things
10 to come?

11 MR. KILPATRICK: Yes.

12 JUDGE MOSS: 15 then.

13 CHAIRWOMAN SHOWALTER: I don't have any
14 problem with this other than to ask why. I would think
15 the business office would have to be able to process a
16 complaint as opposed to what?

17 MR. KILPATRICK: This again related back to
18 the two points, the two guarantees where customers had
19 the opportunity to claim a payment, and there was some
20 discussion about how customers might do that, and what
21 we received was information from the proceedings in one
22 of other states that said that a customer hot line
23 would be set up, and it may or may not necessarily be
24 the regular hot line number that a customer would
25 normally call in the business office, and our interest

00266

1 here and the assurance that the Company gave us was
2 that those representatives at the business office would
3 be able to effectively direct customers to be able yo
4 make their claim.

5 MR. STEUERWALT: If I might add just a little
6 to that. If you look in No. 18, there is a sentence
7 where PacifiCorp will report on how many claims are
8 made and how many are processed so that we can make
9 sure that this is, in fact, working for customers.

10 JUDGE MOSS: 16? 17? Probably we can move
11 on to 18.

12 CHAIRWOMAN SHOWALTER: We must have gotten
13 tired of reading at this point. I don't have anything.

14 JUDGE MOSS: 19 then? 20? Do I hear 20, 21,
15 22?

16 CHAIRWOMAN SHOWALTER: When I first read
17 this, the word "penalties" to me connotes government
18 imposed penalties, and I thought, Aren't penalties
19 supposed to be deposited in the general fund, so I'm
20 looking at it further. Do I take it that this doesn't
21 mean penalties in that sense; it means something else?

22 MR. CEDARBAUM: I guess they are payments for
23 failure to meet the service standard, but these were in
24 addition to any penalties that the Commission might
25 assess under its penalty statutes, so this was an

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1 agreement amongst the Parties to go beyond the existing
2 statutory authority of the Commission and a mechanism
3 set up on how to determine where those moneys should
4 go.

5 CHAIRWOMAN SHOWALTER: I think some
6 clarification needs to be made there, because I don't
7 think our own penalties can be deposited into another
8 account.

9 MR. CEDARBAUM: That's right. The penalties
10 of the Commission were assessed under RCW 80.04 after
11 going into the general fund, but these types of
12 payments don't fall within those statutes. These are
13 in addition to that or otherwise from that, and it's an
14 agreement amongst the Parties as to how they will be
15 treated. They don't need to be called penalties. They
16 can be called payments.

17 CHAIRWOMAN SHOWALTER: Then it raises the
18 second issue if they are separate, but what happens if
19 some type of conduct both violates these standards, and
20 therefore, the payment needs to be made but also
21 violates one of our rules and we have a penalty?

22 MR. CEDARBAUM: Back in Paragraph 11, that's
23 covered, I think. There is a provision toward the end
24 that says that the provisions with respect to penalties
25 don't affect the Commission's assessment of penalties

00268

1 as part of any rules.

2 MR. WRIGHT: Just by way of background, these
3 penalties are penalties that the Company has proposed,
4 performance standards as part of our customer service
5 package relate principally to improving the reliability
6 of the network. What we said is that we will improve
7 reliability by certain fixed amounts within a five-year
8 period. If we don't do that, what we're saying is we
9 will pay penalties. If it's in the amount of one
10 dollar per customer for each failure, we will
11 voluntarily pay those penalties because we failed on
12 our very public commitment.

13 What we originally proposed was that those
14 payments be made into the PacifiCorp Foundation, which
15 is an established foundation for the dispersion of
16 funds to worthy causes within the PacifiCorp territory.
17 However, what we arrived at after discussion is that
18 we'll defer a decision as to how those moneys, if
19 payable, are applied and consult with Public Counsel,
20 Staff, and the Commission in terms of what an
21 appropriate mechanism for dispersion of those funds
22 would be.

23 CHAIRWOMAN SHOWALTER: That raises the
24 question of whether it's appropriate for this
25 Commission to designate this kind of thing. It's come

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1 up before where a telephone company didn't get its
2 equipment in on time and decided to donate computers to
3 a school, and we were asked to order that and we
4 refused to order that. We thought it was a great idea,
5 but we thought it went beyond our authority, so are we
6 getting into that territory here?

7 MR. CEDARBAUM: Again, I don't think so
8 because this is a voluntary commitment by the Company
9 which you would just be approving as opposed to an
10 order of the Company to do something they are not
11 willing to do without that order.

12 CHAIRWOMAN SHOWALTER: When we approve this
13 stipulation, is this on its face an enforceable
14 provision where if they don't donate, on its face we
15 would put in force?

16 MR. CEDARBAUM: I think we would then be in a
17 situation where the Company was not complying with a
18 Commission order. I suppose there are penalty
19 provisions on that. I'm not sure if we can actually
20 tell them they have to follow through on this
21 commitment. I'm not sure about that.

22 There is some precedent, not directly
23 analogous but some precedent with respect to Puget
24 Sound Energy. There is a customer service standard
25 there and penalties paid for failure to comply, and

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1 there, you've got the penalties go to reduce rates.
2 They don't go into the general fund. They are not
3 treated like other penalties. That's not exactly the
4 same here, obviously, but a situation where penalties
5 or payments are made by a company for failure to comply
6 with a condition of a Commission's merger order
7 involving customer service, and those moneys go to
8 places other than the general fund.

9 CHAIRWOMAN SHOWALTER: I would think just a
10 little more thought to this provision and whether it's
11 appropriately worded. It seems like it could be worded
12 as an acknowledgment that this will happen other than
13 our ordering it, and I'm sure its inappropriate for us
14 to order, but there is something that seems a little
15 different about this to me.

16 MR. CEDARBAUM: I'm assuming the Parties can
17 work on that and make it more comfortable.

18 MR. KILPATRICK: Staff's understanding with
19 regard to the discussion of the Commission in here was
20 not so much the ordering of payment of penalties but
21 rather if the Parties were unable to agree to an
22 appropriate organization for the moneys to go to,
23 again, bringing it to the Commission for the Commission
24 to make some decision on the organization.

25 CHAIRWOMAN SHOWALTER: That's my very point.

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1 I don't know if it's within our jurisdiction to be
2 designating charitable organizations. We could say the
3 general fund and that might be okay.

4 JUDGE MOSS: Anything on 23?

5 COMMISSIONER HEMSTAD: I don't understand 23.
6 When it says, PacifiCorp shall maintain separate debt
7 and, if outstanding, preferred stock ratings. Would
8 someone elucidate on that?

9 MR. WRIGHT: The purpose of this really ties
10 again back to the previous discussion regarding the
11 ability to calculate the cost of capital for the
12 Company, PacifiCorp, and without sort of leakage, if
13 you like, from the ScottishPower group. What we're
14 saying is PacifiCorp the regulated entity will maintain
15 separate debt if outstanding preferred stock is
16 relating to the fact that there is a plan to retire
17 some of the preferred stockholding, but it really is a
18 cost of capital item again.

19 JUDGE MOSS: 24? 25 then? 26?

20 COMMISSIONER HEMSTAD: Would one of the
21 panelists provide a bit more background for the purpose
22 of 26?

23 MR. WRIGHT: Yes. The purpose of 26 is that
24 as a result of the merger, ScottishPower will be
25 required to form a new holding company structure which

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1 is subject to Securities and Exchange Commission
2 jurisdiction. The creation of that gives rise to some
3 complications with respect to corporate cost
4 allocations in as much as the ScottishPower group will
5 consist of a holding company. The existing
6 ScottishPower group business will become known as
7 Scottish Power, UK PLC, and PacifiCorp will also fit in
8 under the holding company. As a result of that, we
9 have the situation where to the extent that we allocate
10 costs from the existing UK business to PacifiCorp, that
11 would form the basis of an affiliate transaction.

12 Under certain rules of the holding company,
13 you may be required to form a separate services
14 company, which just adds to the complication in as much
15 as you have another entity in there which is trading
16 through it. What we're seeking to do here is to put in
17 the most simple structure that we can in order to cut
18 down on the details associated with affiliate
19 transactions, and that's basically the main reason
20 behind that clause, I believe.

21 COMMISSIONER HEMSTAD: It says in the first
22 sentence, "... and does not include a new separate
23 entity to provide corporate services as proposed in the
24 Amended and Restated Merger Agreement." What does the
25 last clause modify? Is that referring to does not

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1 include a new separate entity to provide corporate
2 services as proposed?

3 MR. WRIGHT: No. It means that we proposed
4 in the Amended and Restated Merger Agreement that we
5 would not include a new separate entity, so it's not a
6 contradiction of that. It's a restatement of what's in
7 the Amended and Restated Merger Agreement. Perhaps the
8 language is a bit clumsy there.

9 JUDGE MOSS: We're ready for 27 then? 28?

10 CHAIRWOMAN SHOWALTER: My question on 28 is,
11 I don't know if it's stating what the law is or not,
12 but the law is the law. If the Commission's approval
13 is required for something, it is, and if we don't have
14 jurisdiction, we don't, so I don't know what the
15 purpose of this sentence is unless it muddies up
16 possibly our jurisdiction or nonjurisdiction over
17 something.

18 MR. CEDARBAUM: I actually thought about that
19 question. In RCW 80.08.130, there is a requirement
20 that if any public service company assumes an
21 obligation or liability as a guarantor, endorser,
22 surety or otherwise, it has to comply with the
23 Commission's filing requirements for securities, which
24 is just a filing requirement, not an approval
25 requirement, so this provision actually is more

00274

1 stringent because it would require approval by the
2 Commission.

3 CHAIRWOMAN SHOWALTER: But you can't by an
4 order create jurisdiction in ourselves. Is there some
5 discretionary bunch of actions that could get our
6 approval but need not?

7 MR. CEDARBAUM: My thought on that is similar
8 to the prior thought about the payments, that this is
9 an agreement by the Company to seek your approval, and
10 you have the authority to approve that agreement.

11 CHAIRWOMAN SHOWALTER: We have the authority
12 to approve this agreement, but it can't contain
13 provisions that exceed our authority, so I guess the
14 question I have is what is being positive here within
15 our authority to approve, in the first place, absent
16 this agreement?

17 MR. CEDARBAUM: The current statute does not
18 require approval for this type of transaction. This is
19 a higher hurdle that the Companies agreed to comply
20 with.

21 CHAIRWOMAN SHOWALTER: It doesn't bootstrap
22 jurisdiction, does it?

23 MR. CEDARBAUM: I don't think you could order
24 the Company to do this absent their agreement to do it,
25 but they've agreed to do it.

00275

1 CHAIRWOMAN SHOWALTER: And since they've
2 agreed to do it, you think we have the jurisdiction to
3 order them to do it?

4 MR. CEDARBAUM: I think my answer is yes.

5 JUDGE MOSS: 29? 30? 31?

6 COMMISSIONER HEMSTAD: I assume that the
7 phrase, "... the Commission's then-existing practice,"
8 anticipates the future; in other words, whatever is
9 then the standard.

10 MR. CEDARBAUM: That's my understanding that
11 if the current practice were to change then the
12 practice at that time will be adopted.

13 CHAIRWOMAN SHOWALTER: What does that mean?
14 Supposing we have another case with another company and
15 we adopt some new practice? Does that mean this
16 company comes in right away? Obviously, if anything is
17 before us and we order something, then the Company is
18 subject to our jurisdiction, but is it intended to....

19 MR. CEDARBAUM: I didn't talk about that
20 particular question. I don't know if any of the
21 panelists did or other counsel as to whether or not one
22 case involving another company established a practice
23 for purposes of this specific document.

24 CHAIRWOMAN SHOWALTER: What is behind this
25 provision? Who is wanting to assure what in this?

00276

1 MR. WRIGHT: I believe this is another one of
2 these for the avoidance of doubt type conditions. It
3 simply says that we will comply with practice with
4 respect to ratemaking achievement for affiliate
5 transactions. That practice may change in the future
6 and we'll comply. If it helps, the more advantageous
7 cost of market seems to be a fairly good standard that
8 we probably wouldn't depart from as it seems to capture
9 most things, so there probably won't be a departure
10 from the current standard, but in the event that there
11 is and that is ordered, then we would comply with
12 whatever the standard is.

13 CHAIRWOMAN SHOWALTER: This is one of those
14 provisions where it seems to me that if this merger is
15 approved, of course you've got to comply with all the
16 rules. That's a given, so what does it mean to restate
17 it on specifics in here? If it's no more than
18 redundant, I say maybe it shouldn't be here. If it
19 means to be addressing something that might otherwise
20 be different, then it should make that clear.

21 COMMISSIONER HEMSTAD: I'll make the general
22 comment that this matter has had some contentiousness
23 with regard to what should be the standard between
24 affiliates. It seems to me if the matter is
25 essentially put to rest here that it obviates something

00277

1 that otherwise would be a substantial dispute, and I
2 think it's an attractive provision to have in here.

3 MR. KILPATRICK: Commissioner Hemstad, my
4 understanding of where this provision may have come
5 from is, again, there was a number of them that the
6 Company put in and that Staff believed were appropriate
7 that had to do with statements of sort of restating the
8 obvious, if you will. However, in the Commission's
9 Third Supplemental Order, it said it was seeking to
10 make sure the Company would provide the assurances to
11 things such as access to books and records and some of
12 those kinds of things, so I think that's maybe where
13 this came from was again a statement of the obvious but
14 an affirmative commitment that we had taken seriously
15 the issues that the Commission said were germane for
16 this hearing.

17 CHAIRWOMAN SHOWALTER: To me, the second
18 sentence seems substantive. It's a real commitment,
19 not the challenge to one way of the advantageous or the
20 cost versus market standard, but the first sentence
21 seems to me superfluous.

22 JUDGE MOSS: The context of 31, I take it,
23 would be in the event of a rate filing. There is not
24 some sense that if there is a change in Commission
25 practice with respect to affiliate transactions that

00278

1 the Company would have to come in and do something.

2 MR. HELLEBUYCK: That's our interpretation.

3 It would kick in if and when we filed a rate case.

4 JUDGE MOSS: 32? 33? 34? 35? 36?

5 CHAIRWOMAN SHOWALTER: I have a question on

6 this one. Are we being asked here to approve of a

7 provision that prevents a party from asserting

8 jurisdictional issues?

9 MR. CEDARBAUM: This provision, as I

10 understand it, would preclude the Company from

11 asserting that the Commission's jurisdiction was

12 preempted by any provisions of the Public Utility

13 Holding Company Act or any subsequent modifications or

14 repeal of that act.

15 COMMISSIONER HEMSTAD: But what if the Act

16 does say that an amendment by congress to the PUHCA,

17 the consequence of which the state jurisdiction is

18 preempted?

19 MR. CEDARBAUM: I think we will probably be

20 bound by that.

21 COMMISSIONER HEMSTAD: I don't think there is

22 any question we would be, but isn't it saying we would

23 not be?

24 MR. CEDARBAUM: I'm not sure what your

25 question is.

00279

1 COMMISSIONER HEMSTAD: Maybe I'm misreading
2 the last sentence. The Company would then agree not to
3 claim preemption has occurred when the federal statute
4 has a consequence of preempting. Isn't that what the
5 last sentence -- it would prevent the Company from
6 making an assertion, even though it were the law?

7 MR. CEDARBAUM: I think that's the intent.

8 CHAIRWOMAN SHOWALTER: To me it's one thing
9 for the Company to agree it won't assert a lack of
10 jurisdiction, but it's another for this Commission to
11 approve that provision. How can we, in effect, order?

12 MR. CEDARBAUM: In this case, I don't think
13 you would be ordering them to do it. This is their
14 agreement not to assert these defenses.

15 CHAIRWOMAN SHOWALTER: Maybe it would help us
16 to understand what's behind this stipulation and why
17 it's important.

18 MR. WRIGHT: What's behind this in
19 particular, PacifiCorp is not currently subject to
20 PUHCA because it doesn't have a holding company. As I
21 mentioned earlier, as part of its transaction,
22 ScottishPower won't register a holding company.

23 I understand that the current situation with
24 regard to PUHCA is that even the FCC staff believe it
25 to be something of an anachronism in the way it's

00280

1 applied. It's very common for companies that are
2 subject to PUHCA to waive this preemption of the
3 federal regulatory level in respect of issues at stake.

4 This was a particular concern in some of the
5 other states where we are seeking approval. Wyoming's
6 brings to mind where there was a concern there that we
7 would assert the jurisdiction of PUHCA at the federal
8 level and that would curtail them in terms of their
9 ability to regulate the Company at a state level, so we
10 made a very explicit statement to the effect that we
11 won't seek preemption at the federal level, so it's
12 more of a protection to state regulators to say that
13 they will be free to continue to do their job, and we
14 won't claim some higher authority, if you like, with
15 respect to certain issues. It arises purely out of the
16 fact that the holding company is created by this
17 transaction. That's the background to it.

18 CHAIRWOMAN SHOWALTER: Is this a subject area
19 where we do have jurisdiction unless a party takes us
20 out of it, or we either do or we don't have
21 jurisdiction regardless of what the party procedurally
22 does?

23 MR. CEDARBAUM: This area has to do with
24 affiliated interest transactions which this Commission
25 has the specific statutory authority concerning, so

00281

1 yes, the Commission does have jurisdiction over the
2 affiliated interest transactions of the Company.

3 COMMISSIONER HEMSTAD: The problem is that
4 PacifiCorp does not fall within the PUHCA to date, but
5 you're saying in the new structure, it would, which has
6 potentially certain amount of consequences for state
7 regulations, and the Company here is agreeing as part
8 of this merger agreement that it won't assert those
9 claims.

10 It's an interesting question as to what the
11 consequences will be, but I suppose for purposes of
12 this stipulation's approval, it's in the interest of
13 this Commission to accept this agreement from the
14 Company. I don't know what the legal consequences are.

15 MR. WRIGHT: It's certainly designed to give
16 comfort that regulatory oversight at the state level
17 will not change as a result of the holding company.

18 CHAIRWOMAN SHOWALTER: I guess one way to put
19 it is regardless of whether you assert jurisdiction or
20 not, in any proceeding before us, we've got to
21 determine we've got jurisdiction, so if there is some
22 situation later where you could have asserted that we
23 don't have jurisdiction or were preempted but you
24 don't; nevertheless, we're going to have to work
25 through that ourselves, I guess.

00282

1 COMMISSIONER HEMSTAD: The issue at some
2 point may well be obviated if Congress, as it seems at
3 some point to do, will repeal PUHCA.

4 JUDGE MOSS: It appears we've brought that
5 discussion to a close, so we can move to 37.

6 CHAIRWOMAN SHOWALTER: I think I have a very
7 similar question on this one but maybe it's answered in
8 similar ways.

9 MR. HELLEBUYCK: This was designed to provide
10 us a report that's very similar in format to the report
11 that we already provide. Again, in part, it is a
12 restatement of business as usual.

13 CHAIRWOMAN SHOWALTER: It was the last
14 sentence that I was referring to.

15 JUDGE MOSS: Any specific questions on 37?
16 No. 38? 39 seems straightforward enough. 40, and
17 here, I believe, we move into the general terms and
18 conditions of the Stipulation and might move quickly
19 through these. 41? 42? 43? 44 and 45, 46? It seems
20 uncontroversial enough.

21 That brings us to the conclusion of the
22 paragraph-by-paragraph analysis. Before we release
23 this panel, we'll give the Commissioners further
24 opportunities to inquire if they have any further
25 general questions.

00283

1 CHAIRWOMAN SHOWALTER: I think your answers
2 to many of my questions have been good because they've
3 put on the record some of the clarifications I've been
4 seeking. None the less, if anything that we've asked
5 has caused you to wonder, Well, what did those words
6 mean or why did we put them in there, and if there is
7 anything you think should be slightly modified or
8 removed or something that would simply remove an issue
9 if this morning's discussion has created one, I'd
10 encourage you to go off and do that.

11 MR. WRIGHT: We will.

12 JUDGE MOSS: Do counsel have any further
13 inquiry of the panelists before we release the first
14 panel? Ms. Davison for the Industrial Customers.

15 MS. DAVISON: Thank you, Your Honor. I would
16 like to turn to Paragraph 4 of the Stipulation. I
17 don't have this question directed to any particular
18 panelist so anyone can feel free to answer it. I just
19 have a general question as to what is the overall
20 rationale for the three-million-dollars-a-year merger
21 credit?

22 MR. WRIGHT: With reference to the merger
23 credits that we have applied in both Oregon and Utah,
24 on a pro rata basis it is approximately the same, so
25 we're trying to be equitable as amongst states with

00284

1 respect to customer numbers. In fact, I think it's
2 only on that basis because there are some
3 600-some-odd-thousand customers in Utah with a merger
4 credit of 12 million, and there are about 116,000
5 customers in Washington, so I think on that basis,
6 Washington has done better than a strict pro rata. We
7 didn't want to get into 2.93-million-dollar merger
8 credits so we rounded it up.

9 MS. DAVISON: What I was specifically
10 interested in is to provide an example. In Oregon, in
11 that particular proceeding in that stipulation that has
12 a merger credit there was a lot of discussion about
13 compensating customers for risk. Is this provision
14 intended to do the same thing?

15 MR. WRIGHT: No. And as you know, that was
16 not our position in Oregon either. We did not believe
17 the merger credit was a compensation for risks. We
18 believe merger credit is, in effect, a down payment of
19 merger savings that we anticipate that we'll achieve.
20 Risks were dealt with via a stipulation in Oregon, and
21 all 24 conditions in that stipulation has been dealt
22 with in that stipulation, so it really is a down
23 payment for merger savings and not a compensation for
24 risks.

25 MS. DAVISON: How will the three million

00285

1 dollars be applied among customer groups?

2 MR. WRIGHT: I believe it says.

3 MR. HELLEBUYCK: I think it said describes a
4 uniform percentage basis; so in other words, each
5 customer class, each customer will get the same
6 percentage decrease as a result of the three million
7 dollars.

8 MS. DAVISON: This question is directed to
9 probably PacifiCorp. How many special contract
10 customers do you have in the State of Washington?

11 MR. HELLEBUYCK: Currently we have one, one
12 such customer.

13 MS. DAVISON: Can you tell me who that
14 customer is?

15 MR. HELLEBUYCK: No, I don't think I can. I
16 don't think it would be appropriate.

17 JUDGE MOSS: I must say I'm having a
18 difficult time understanding the relevance of such a
19 question to the inquiry with respect to the
20 Stipulation.

21 MS. DAVISON: Your Honor, perhaps if I could
22 be pointed about it. It is a public record who is a
23 special contract customer in the State of Washington.
24 This particular special contract is not treated
25 confidentially. It's part of a filed rate schedule, so

00286

1 I'm not trying to get into any confidential
2 information.

3 What I was trying to elicit from the panel is
4 the fact that the provision that is contained in
5 Paragraph 4 that has the parenthetical about halfway
6 through the paragraph that says, Excluding customers
7 served under special contracts, is an explicit
8 exclusion of Boise-Cascade, and that was the purpose of
9 my inquiry is to develop a record as to what the
10 purpose of that parenthetical provision is.

11 MS. McDOWELL: Your Honor, if I might on
12 behalf of PacifiCorp. There is a couple of points I'd
13 like to make. First of all -- and I think this is a
14 very general point that needs to be made here -- we are
15 under the understanding that ICNU has waived
16 cross-examination on this panel; that these questions
17 are strictly in the nature of follow-up to the
18 questions that came from the Bench this morning.

19 There is really only two questions on the
20 merger credit about how the merger credit was to be
21 offset, and I think I've been letting this go a bit to
22 see where we are going, but I believe we're beyond
23 follow-up. So that's my first question. I do believe
24 that counsel waived cross-examination and needs to live
25 by that waiver here this morning.

00287

1 The second point I'd like to make is it's my
2 understanding that while the special contract is on
3 file with the Commission, the identity of the customer
4 is confidential, and Mr. Hellebuyck's response, I
5 believe, was not that he couldn't identify the customer
6 because he doesn't have the information, but that he
7 was bound by confidentiality restrictions in
8 identifying that customer, so on that basis, I would
9 object on both of those bases to any further
10 questioning along that line.

11 JUDGE MOSS: I believe ScottishPower's
12 objection is well taken. I know you weren't present at
13 the prehearing conference, Ms. Davison, but that was
14 the agreement by Industrial Customers of Northwest
15 Utilities as well as all the other participants that
16 there would be a waiver of cross-examination; that
17 Parties could ask clarifying questions that were
18 triggered by the questions from the Bench, and your
19 inquiry to me seems far more pointed than a clarifying
20 question, and the purpose of it still evades me, so I
21 think I'm going to ask you to close off that line of
22 questions, and if you have any clarifying questions,
23 you still have the opportunity to ask them now.

24 MS. DAVISON: Thank you, Your Honor. Well, I
25 will move from that provision to -- I believe there

00288

1 were a series of questions that were asked regarding
2 the transition plan, and I don't know if I have the
3 exact paragraph here in the Stipulation.

4 CHAIRWOMAN SHOWALTER: No. 9.

5 MS. DAVISON: Thank you. My question for the
6 panel is, will this transition plan be the same for
7 each state, or do you anticipate that you will have a
8 different transition plan for each individual state?

9 MR. WRIGHT: I think in general terms, it
10 will be the same transition plan. What we're about is
11 transforming the whole of PacifiCorp. There may be
12 initiative related to specific parts of the business
13 that might just be resident in one state. For example,
14 there is the corporate office in Portland, Oregon.
15 There is a large office in Salt Lake City, Utah. I
16 don't know, but in general terms, the transition plan
17 will be for the whole of PacifiCorp.

18 MS. DAVISON: Thank you. I don't have any
19 further questions.

20 JUDGE MOSS: Does anybody else have any
21 clarifying questions? Then I believe that will bring
22 us to a conclusion with respect to this panel, and I'd
23 like to thank the panelists on behalf of the Bench, and
24 you are excused.

25 We are hard on the noon hour here, and it

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1 would seem prudent to take a break for lunch and then
2 convene our second panel immediately after. Is an hour
3 adequate for the Bench? Or we could even make it
4 shorter if you prefer.

5 COMMISSIONER HEMSTAD: I was about to say
6 could we take a five-minute break and go to the next
7 panel and get done here?

8 JUDGE MOSS: If that's the preference of the
9 Bench.

10 MS. McDOWELL: Your Honor, we do have some
11 witnesses with scheduling problems as we get later into
12 the day, so I suspect on behalf of our witnesses here,
13 they would concur with Commissioner Hemstad's
14 suggestion that we go right through. On the other
15 hand, I don't want to inconvenience anyone who needs
16 some time over the lunch hour.

17 COMMISSIONER HEMSTAD: I think the second
18 panel would be much shorter than the first.

19 MR. CEDARBAUM: My question was just there
20 are witnesses being held in the audience for questions
21 because we weren't sure if you had questions for them.
22 If you do, that will change the time frame in which we
23 get done today so I don't know if you had thought more
24 about that or not.

25 CHAIRWOMAN SHOWALTER: I don't think we're

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1 going to have more. I don't have questions.

2 COMMISSIONER GILLIS: I don't.

3 JUDGE MOSS: The signal from the Bench
4 appears to be that we won't be calling the individual
5 witnesses who are present this afternoon so they might
6 be able to go get lunch even if nobody else does.

7 MS. McDOWELL: Can we just formally move to
8 have those witnesses excused so they can feel
9 comfortable leaving?

10 JUDGE MOSS: I'm seeing some affirmance on
11 the Bench. The witnesses who were previously holding
12 themselves available in the event the Commissioners
13 might have questions with respect to individual
14 testimonies are released. We thank you for appearing.

15 MS. McDOWELL: Thank you.

16 MR. FFITCH: Public Counsel is comfortable
17 with the short break and the continuation approach if
18 that's the Bench's preference.

19 JUDGE MOSS: Hearing no strenuous objection
20 to the idea, I think we should take a break long enough
21 to permit those of us who are slightly hypoglycemic to
22 have a snack, so we'll break until five after the hour.

23 (Recess.)

24 JUDGE MOSS: Let's go back on the record.
25 After our brief recess, we're ready to proceed with our

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1 second panel with respect to the Stipulation among
2 ScottishPower and PacifiCorp and Public Counsel, the
3 Energy Project and Northwest Energy Coalition. I'll
4 ask that the panelists rise to be sworn.

5 (Witnesses sworn.)

6 JUDGE MOSS: We'll follow the same procedure
7 that we did before. The witnesses will have an
8 opportunity to make a preliminary statement and then
9 we'll turn to inquiry from the Bench with respect to
10 the Exhibit No. 83 Stipulation, so why don't we begin
11 again with the Applicant.

12 MR. VAN NOSTRAND: Thank you, Your Honor,
13 Mr. Marron, could you state your name and spell it for
14 the record, please?

15 MR. MARRON: My name is Mike Marron,
16 M-A-R-R-O-N.

17 MR. VAN NOSTRAND: By whom are you employed?

18 MR. MARRON: ScottishPower.

19 MR. VAN NOSTRAND: What is your position with
20 ScottishPower?

21 MR. MARRON: A member of the U.S. based
22 merger team.

23 MR. VAN NOSTRAND: In that capacity, you were
24 involved in the negotiation of what has been marked as
25 Exhibit 83?

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1 MR. MARRON: I was.

2 MR. VAN NOSTRAND: Do you have a statement
3 with respect to the Stipulation?

4 MR. MARRON: I do.

5 MR. VAN NOSTRAND: Could you proceed?

6 MR. MARRON: What I'd like to do is just
7 explain the purpose of the Stipulation, look at what it
8 contains, the main points of it, and then why we
9 proposed the Stipulation in conjunction with the other
10 parties.

11 The Stipulation is signed by the two
12 companies, Public Counsel, Northwest Energy Coalition
13 and the Energy Project. What it does is it details our
14 commitments for low-income customers and it refrains
15 the original proposals that was in Jack Kelly's
16 testimony to ensure that it specifically addresses the
17 needs of PacifiCorp's customers here in Washington.

18 What it does, it commits the Company to work
19 with the appropriate partners, not just those that
20 intervened in this proceeding, but others like the
21 Energy Project who have an interest in this subject
22 matter and an interest for these customers. We will
23 work with these partners to identify and implement
24 suitable programs that pervades sustainable benefit for
25 low-income customers. The approach that we propose

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1 will ensure that programs, once identified, can be
2 implemented in a cost-effective manner to ensure to
3 meet the regulatory requirements as they exist in this
4 state and also the normal business practices that we as
5 a company would want to ensure happens, and what it
6 will do is build on what is currently under way in this
7 state. There has been a lot of work done in the last
8 few years on weatherization, for instance, and we
9 intend to build on that work.

10 However, it will not only improve the energy
11 efficiency aspects of the homes of low-income families
12 but will address the much needed area of bill payment
13 issues. Our experience has been that you actually have
14 to tackle the whole problem of low-income people with
15 regards to payment of bills, not just one aspect of it.

16 We're specifically making a commitment to
17 make available \$300,000 per annum, as well as the
18 \$560,000 that has been funded over the last year for
19 weatherization programs. We intend to maintain this
20 level of spend for the three years following the
21 merger. We do recognize that for the \$560,000 funding
22 for low-income weatherization, that is dependent on
23 approval by the Commission for the continuation of
24 existing tariffs or the approval of new tariffs.

25 In addition, we also intend to file before

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1 the Commission a revised tariff schedule within 60 days
2 of the completion of merger to seek approval to
3 eliminate the \$1,350 cap or per unit. As stated in
4 Jack Kelly's testimony, this partnership approach is
5 building on our experience in the United Kingdom where
6 we have managed to deliver significant benefits to
7 customer groups which are quite often ignored by many
8 utilities. By tailoring this approach to meet the
9 needs of PacifiCorp customers here in Washington, we
10 believe that we can deliver, along with our partners,
11 more benefit per dollar invested and to assist their
12 customers in this state moving towards
13 self-sustainability. They will not only be getting
14 assistance but getting the ability to move to a better
15 way of life.

16 The objectives that we are seeking to achieve
17 is to maximize the effectiveness of our low-income
18 programs by maximizing first of all the number of
19 PacifiCorp customers that are assisted; secondly,
20 making best use of all available funds and to provide a
21 sustainable benefit to individual customers of
22 PacifiCorp here in Washington. Thank you.

23 JUDGE MOSS: Public Counsel?

24 MR. FFITCH: Good morning again

25 Mr. Steuerwalt. You've already given your name and

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1 spelling and address for the record and stated that
2 you're a telecommunications and energy policy analyst
3 for Public Counsel; is that correct?

4 MR. STEUERWALT: That is correct.

5 MR. FFITCH: I just want to ask you if you're
6 familiar with the Stipulation that's been marked as
7 Exhibit 83 in this proceeding?

8 MR. STEUERWALT: I am.

9 MR. FFITCH: How do you come to be familiar
10 with that low-income Stipulation.

11 MR. STEUERWALT: I'm the lead staff for
12 Public Counsel on all aspects of the merger.

13 MR. FFITCH: Do you have a brief opening
14 statement with regard to this stipulation?

15 MR. STEUERWALT: I do. I believe Mr. Marron
16 has addressed in some detail the benefits and the
17 reasons why we would come to this agreement, and I will
18 just address why Public Counsel supports the
19 Stipulation.

20 Mr. Kelly's initial testimony was not as
21 clear as we had hoped on what the Company's commitments
22 for Washington customers were. We sought to clarify
23 those commitments by working with PacifiCorp,
24 ScottishPower and other parties. We made particular
25 use of Mr. Ebert and the Energy Project for his

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1 expertise, and we believe we've come to an agreement
2 that will provide some benefits for Washington
3 low-income customers. I think the \$300,000 of
4 shareholder funding for new initiatives for three years
5 designed to address not only energy efficiency but
6 affordability is a definite benefit. We intend to work
7 with the Companies and other partners to
8 collaboratively design and implement programs, and the
9 ongoing commitment of weatherization funding is also a
10 benefit with consideration of the issues that are
11 listed in the Stipulation that might improve program
12 design and delivery.

13 JUDGE MOSS: Thank you. Ms. Hirsh, I
14 understand you are appearing for the Northwest Energy
15 Coalition and without counsel present, so as we
16 sometimes do with parties who participate in
17 proceedings without counsel, I will inquire from the
18 Bench as to the basic necessities and then give you
19 time to make your statement.

20 Would you please state your name for the
21 record and spell your last name?

22 MS. HIRSH: Nancy Hirsh, H-I-R-S-H.

23 JUDGE MOSS: And by whom are you employed?

24 MS. HIRSH: The Northwest Energy Coalition.

25 JUDGE MOSS: Your address?

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1 MS. HIRSH: 219 First Avenue South, Seattle,
2 Washington, 98104.

3 JUDGE MOSS: In what capacity are you
4 employed by the Northwest Energy Coalition?

5 MS. HIRSH: I'm the policy director.

6 JUDGE MOSS: Are you familiar with the
7 Stipulation that has been previously been admitted into
8 evidence as Exhibit 83?

9 MS. HIRSH: Yes, I am.

10 JUDGE MOSS: Do you have a brief statement
11 you'd like to make with respect to that stipulation?

12 MS. HIRSH: Yes.

13 JUDGE MOSS: Please proceed.

14 MS. HIRSH: Our initial concerns at the
15 outset of this proceeding are that the impact of the
16 merger might have detrimental impacts on low-income
17 households in PacifiCorp's territory in Washington, and
18 we felt that the testimony provided by Mr. Kelly was
19 not sufficient in details to assuage us of that
20 concern, but this stipulation now does provide us with
21 confidence that low-income households in Washington
22 state in PacifiCorp's service territory will receive a
23 benefit from this merger.

24 The Stipulation addresses both the energy
25 efficiency elements for low-income households, and as

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1 Mr. Marron has already outlined, the bill assistance
2 programs. We think the Stipulation contains a mixture
3 of program design elements as well as financial
4 commitments that will offer a more robust low-income
5 delivery program in Washington State. Given the
6 low-income Stipulation and the Stipulation previously
7 discussed this morning, we think the merger is in the
8 public interest and that the Commission should approve
9 it.

10 JUDGE MOSS: Thank you, Ms. Hirsh. I believe
11 that will conclude our opening statements, and we turn
12 to any inquiry from the Commissioners.

13 COMMISSIONER HEMSTAD: I have one quite
14 narrow inquiry on Section 3, the low-income
15 weatherization and energy efficiency section. The
16 second paragraph, ScottishPower will within 60 days
17 file a revised tariff schedule that eliminates the
18 \$1,350 funding cap for weatherization measures. Would
19 someone elaborate on that a little bit more? Why is
20 that being lifted?

21 MR. MARRON: This cap, as far as I
22 understand, was set about seven or eight years ago and
23 was approximately to make sure that the funding was
24 shared fifty-fifty between the Company and the other
25 agencies pervading funds. What we found over that

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1 period of time is that costs have changed and yet the
2 cap hasn't, and there are some units that we can't deal
3 with because, in fact, it would cost us more to do so.

4 So our intention here is to come forward with
5 a proposal that recognizes the relative costs of
6 doing -- but still complying with the normal audit
7 method of ensuring that it is value from when it's
8 being delivered, and it's basically on that basis that
9 we're doing it.

10 CHAIRWOMAN SHOWALTER: And I take it by our
11 approving this provision, we're merely approving the
12 fact that you'll come forward to us with a proposed
13 tariff change. It doesn't prejudge in any way what
14 we'll do with it.

15 MR. MARRON: That's correct.

16 JUDGE MOSS: It does not appear the Bench has
17 further inquiry of this panel. I can't imagine that
18 would have prompted clarifying questions from counsel,
19 but I should offer the opportunity since that is our
20 process, and seeing no indication there is any, then
21 this panel is released, and thank you very much for
22 appearing.

23 We had provided that Staff would have an
24 opportunity to comment on this settlement to which it
25 is not a party, and I believe we'll have

00300

1 Mr. Kilpatrick back for that purpose, and you have been
2 previously sworn and remain under that oath.

3 MR. CEDARBAUM: Mr. Kilpatrick, you're the
4 same witness that testified this morning on the other
5 stipulation; is that right?

6 MR. KILPATRICK: Yes.

7 MR. CEDARBAUM: Are you familiar with the
8 terms of the Stipulation that are included in Exhibit
9 83?

10 MR. KILPATRICK: Yes.

11 MR. CEDARBAUM: Staff is not a signatory to
12 that stipulation; is that right.

13 MR. KILPATRICK: Staff is not.

14 MR. CEDARBAUM: Can you please explain to the
15 Commissioners why Staff did not sign on?

16 MR. KILPATRICK: Staff saw the early drafts
17 of this stipulation as it was being worked on by the
18 other parties, and we were asked if we were interested
19 in becoming a party to it. One of the provisions or
20 statements that is in this that caused the Staff to not
21 become a party to it was in Section 2 on the low-income
22 programs. The one I have does not have a page number
23 on it, but it is the second to next page after where it
24 says No. 2. Down in about the bottom quarter, there is
25 a sentence that says, The Parties agree to support

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1 ScottishPower, PacifiCorp filings of said programs
2 before the Commission to recover through rates any
3 program costs that are recoverable under Commission
4 rules in Washington law.

5 My understanding of this is that an argument
6 could be made that by becoming a party to this
7 stipulation that Staff would be essentially
8 preapproving the filing that may be made pursuant to
9 this statement. Staff has no intention of taking
10 opposition to such a filing at this point, and we do
11 intend to work with the Company and the other parties
12 to develop this filing, but we wanted to make sure and
13 maintain our ability to have an objective look at the
14 filing that is eventually made and make a
15 recommendation to the Commission at the appropriate
16 time, so we do not want to become bound by anything
17 that was in this agreement that would take away our
18 ability to be objective and neutral on this.

19 With that said, I would also say that the
20 Staff has no objections or it takes no issue with the
21 basic content of the Stipulation or the purpose behind
22 the Stipulation, and we do, as I said before, intend to
23 work with all the Parties on the various filings and
24 the various pieces that are mentioned in here.

25 MR. CEDARBAUM: Thank you. Mr. Kilpatrick is

00302

1 available for questions from the Bench, if they have
2 any.

3 JUDGE MOSS: Seeing there is no indication of
4 questions from the Bench, you are released. Thank you
5 very much for appearing.

6 We provided that there would be an
7 opportunity for the Industrial Customers to have a
8 closing statement and also that opportunity would be
9 extended to other counsel as they saw fit, so I think
10 we are to that point now, and I'll ask Ms. Davison to
11 please go ahead.

12 MS. DAVISON: Thank you, Your Honor. First I
13 would like to address my remarks to the Stipulation and
14 the process upon which that stipulation was developed,
15 and I'm not referring to the low-income Stipulation.
16 I'm referring to the overall Stipulation that Staff was
17 a part of.

18 We are concerned that there was no public
19 process or notice or involvement in these settlement
20 negotiations. We were never approached regarding
21 settlement, and we were, therefore, not included in any
22 of these discussions, and I believe that is a
23 significant disadvantage for us as a party to this
24 proceeding. In fact, when we were aware that there was
25 a stipulation that was being developed, largely at the

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1 urging of Public Counsel, we asked to see a draft of
2 that stipulation so we would be aware of, and we were
3 told we could not see that stipulation until it was
4 developed in a final form.

5 We were then told at the prehearing
6 conference last week that the Stipulation was final,
7 and that at that point if we were interested in signing
8 onto it that that would be fine. We find that quite
9 offensive. I think that is not an appropriate process
10 or way to deal with Industrial Customers and
11 particularly how to deal with settlement in this case.
12 And along the same lines in follow-up of questions this
13 morning, I would urge this Commission to have a public
14 process in the development of the transition plan as
15 well as in the development of the baseline that is to
16 be used in implementing the Stipulation if, in fact, it
17 is approved by this Commission.

18 Secondly, I would like to point out to the
19 Commission's attention that in our opinion we do not
20 believe that the Stipulation that is reached in
21 Washington is as good as the Stipulation that has been
22 developed in other states. We have included in this
23 record the Stipulation that was entered into by the
24 parties in Oregon as well as in Utah for the
25 Commission's review. I'll give you a couple of

00304

1 examples to support our contention on this.

2 For example, the Stipulation in Utah contains
3 a very clear statement that says that rates in Utah
4 shall not increase as a result of the merger. We think
5 that is an important commitment that should also be
6 present in Washington. Another example of, I think --

7 COMMISSIONER HEMSTAD: Shall not increase, I
8 assume, for some period of time?

9 MS. DAVISON: There is no time restriction
10 as a result of the merger.

11 COMMISSIONER HEMSTAD: As a result of the
12 merger itself.

13 MS. DAVISON: Exactly.

14 CHAIRWOMAN SHOWALTER: If it's in the
15 Stipulation that merger costs cannot increase rates,
16 does that amount to the same thing or not?

17 MS. DAVISON: You anticipated my next
18 comment. My next comment is that the Washington
19 Stipulation at Paragraph 6 says that transaction costs
20 associated with the merger are excluded. I would bring
21 to your attention that the Oregon Stipulation says that
22 all costs associated with completing the merger should
23 be excluded from rates. We believe there is a
24 significant distinction there, as explained by the
25 panelists this morning.

00305

1 CHAIRWOMAN SHOWALTER: What is the
2 distinction?

3 MS. DAVISON: The distinction is that costs
4 that would not have incurred but for the merger are
5 excluded from rates in other states. That specific
6 provision is not included in this Washington
7 Stipulation, and I interpret transaction costs to be
8 precisely those costs that were identified by
9 ScottishPower, bankers' fees, attorneys' fees. The
10 interpretation of the Oregon language of all costs
11 associated with completing the merger is a much broader
12 category of costs than just transactional costs.

13 COMMISSIONER HEMSTAD: What would be an
14 example?

15 MS. DAVISON: I think an example would be --
16 one point of cross-examination that we had in Oregon
17 that was agreed to by ScottishPower was there are two
18 or three PacifiCorp executives who have left the
19 company. There is in this executive severance package
20 a commitment to pay those individuals two million
21 dollars upon completion of the merger. In Oregon, I
22 believe it was ScottishPower committed that that
23 two-million-dollar payment would not be part of rates
24 in Oregon. That commitment is not here.

25 COMMISSIONER HEMSTAD: Are you suggesting

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1 that we would be precluding from rejecting that if the
2 Company in a rate case sought to include it?

3 MS. DAVISON: No, I would not suggest that.
4 In fact, I would strongly urge you to reject that in
5 any future rate filing, but I believe that the fact
6 that they have made that commitment in Oregon takes
7 that issue off the table, and no one has to spend any
8 time or attention focused on such things as executive
9 severance programs.

10 Along the lines of an example, I certainly
11 don't intend my list to be comprehensive. I don't want
12 to belabor the point, and I certainly believe that the
13 Stipulations that are submitted as evidence in this
14 record are fairly straightforward in terms of what the
15 differences are among the various states, but I do not
16 believe that costs associated with the transition plan,
17 for example, should be included in rates, nor do I
18 believe that executive severance packages, which are
19 quit a lot of money in this instance, should be
20 included in rates, and we would certainly urge this
21 Commission not to do so in the future, but again, I
22 believe that's it important that these issues be dealt
23 with up front so that we don't have contentious
24 proceedings down the road in which these are issues
25 that are deferred to at a later day.

00307

1 I would like to address a very specific
2 concern that we have, and perhaps my cross-examination
3 was not a very effective way of addressing that, so I'd
4 like to just address it point-blank.

5 MS. McDOWELL: I hate to interrupt but she
6 referred to cross-examination and there was no
7 cross-examination.

8 MS. DAVISON: I'm sorry; I apologize. It was
9 follow-up questions or whatever you want to call it.
10 First, in Paragraph 4 of the Washington Stipulation,
11 you will see the specific exclusion that I was
12 referring to that says, The merger credit shall be
13 allocated among PacifiCorp's retail tariff
14 customers(excluding customers served under special
15 contracts.)

16 That parenthetical refers explicitly to
17 Boise-Cascade. I believe the record should be clear on
18 that point. It doesn't refer to anyone else other than
19 Boise-Cascade. We believe that that type of blatant
20 type of discrimination is prohibited by RCW 80.28.090,
21 as well as by RCW 80.28.100. I believe that is
22 inequitable and unlawful to exclude special contract
23 customers from this merger credit. I believe that
24 Boise-Cascade represents a very significant portion of
25 PacifiCorp's total Washington load. I don't have a

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1 precise number, but it's somewhere around 12 percent.

2 COMMISSIONER HEMSTAD: How was that issue
3 dealt with in Utah?

4 MS. DAVISON: It was not specifically dealt
5 with. There is no prohibition, but that issue was not
6 specifically dealt with -- I am not aware of, in
7 Oregon, that that is an explicit exclusion.

8 JUDGE MOSS: Other counsel will have an
9 opportunity to respond in due course. This is a
10 closing statement.

11 MS. DAVISON: Certainly what I can tell
12 you -- and we will certainly be briefing this issue and
13 we'll provide you with specific citations to support
14 this -- this issue came up and was a significant issue
15 in the PGE-Enron merger. In that proceeding, there was
16 a contention that special contract customers should be
17 excluded from the merger credit. That stipulation was
18 revised to allow special contract customers to receive
19 part of the merger credit.

20 COMMISSIONER HEMSTAD: I suppose the argument
21 is, and I'm not taking a position on, but a special
22 contract is what it is. It's a contract. It's entered
23 into between parties that fixes the terms of service,
24 and in that sense is different from tariffs and,
25 therefore, should be treated differently. What's

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1 you're response to that?

2 MS. DAVISON: My response to that is twofold.

3 First, I think that if you look at a merger

4 transaction, there are always risks associated with

5 that transaction. We can't predict the future today,

6 and I believe those risks that are inherent on all

7 customers are also applicable to special contract

8 customers, so I don't think that Boise-Cascade is in

9 any different position with regard to those risks

10 associated with a merger.

11 I also think that you have a customer that is

12 of such a large magnitude that perhaps you could even

13 make the argument that they are subject to more risks

14 than other customers because of the high percentage of

15 their load, of the total load of PacifiCorp.

16 CHAIRWOMAN SHOWALTER: Maybe we're getting

17 off into a different argument here, but supposing there

18 were costs or various things that all the other

19 ratepayers had to pay. Doesn't a special contract

20 insulate the customer from various things because

21 whatever the terms are set up in the contract? So

22 isn't it insulated potentially from either up or down,

23 benefits or risks?

24 MS. DAVISON: Again, I have two responses to

25 that. The first one is that if you go back and you

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1 look at the purpose for special contract, and that is
2 to meet that statutory requirement to get a special
3 contract, that customer has demonstrated, particularly
4 in the case of Boise-Cascade, a viable bypass, so in
5 the case of Boise-Cascade at the time they signed that
6 special contract, while it is a lower rate than the
7 tariff rate, it was still a higher rate than they could
8 have received on the market, and I believe that
9 PacifiCorp is recovering a great deal of revenue under
10 this contract and that they are certainly covering a
11 lot of costs associated with the PacifiCorp operation
12 in Washington.

13 The second issue is that a special contract
14 by its very nature is short term in duration. I think
15 that when you look at the total circumstances
16 surrounding a customer like Boise-Cascade, that to
17 provide a merger credit to every single customer but
18 Boise-Cascade is as explicit a discrimination as I
19 believe you can find, and for that reason, we do not
20 believe it's legally permissible.

21 JUDGE MOSS: Let me interject there and ask
22 you, the issue really is whether there is undue
23 discrimination and not simple discrimination, and I'm
24 curious, given the amounts of money that we're talking
25 about here, which are relatively small, whether you

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1 believe the magnitude of difference that this would
2 make as between one customer class and Boise-Cascade
3 would constitute passing that threshold of undue?

4 MS. DAVISON: I appreciate the question, and
5 I believe absolutely it passes the threshold of undue
6 discrimination. I don't think that there is any secret
7 that the pulp and paper industry has been on hard times
8 and has been on hard times for quite some time, and
9 that's particularly true of Boise-Cascade.

10 The amount of money that we're talking about
11 here that would be applied to Boise-Cascade if this
12 merger credit included them would be a substantial sum
13 of money for Boise-Cascade, given again the percentage
14 of their load of PacifiCorp's total load in the State
15 of Washington.

16 JUDGE MOSS: Are the economic circumstances
17 in which the pulp and paper industry finds itself
18 relevant to our inquiry as to whether there is undue
19 discrimination as between classes of customers?

20 MS. DAVISON: I bring that to your attention
21 simply to demonstrate that where the pulp and paper
22 industry is right now, virtually any amount of money is
23 important to them, but particularly the amount of money
24 that is at stake here is critically important.

25 JUDGE MOSS: How much money are we talking

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1 about?

2 MS. DAVISON: Subject to check -- and we will
3 certainly provide very explicit numbers in our
4 briefing -- it is approximately \$400,000 a year.

5 JUDGE MOSS: We don't anticipate there is
6 going to be briefing, so you might want to provide
7 whatever you want to provide for the record today.
8 That's \$400,000 out of the three million per annum?

9 MS. DAVISON: Yes.

10 JUDGE MOSS: That would be on an allocation
11 basis as currently proposed but including the special
12 contract?

13 MS. DAVISON: Yes, Your Honor. What we heard
14 today is that the merger credit is supposed to be a
15 down payment on many operational cost savings, largely
16 nonproduction costs savings that ScottishPower will
17 achieve at PacifiCorp. These operational efficiencies
18 will reduce the cost of serving special contract
19 customers just as it would reduce the cost of serving
20 tariff customers. Again, it is our position that all
21 customers, including Boise-Cascade, should receive the
22 benefit of this merger credit.

23 A final point that I would like to make is
24 that we appreciate the Commission's clarifying
25 questions today. We believe that the Stipulation will

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1 be subject to future contention if it is not as clear
2 as possible. We will be living with this document for
3 some time. We should not let time restrictions in
4 settlement negotiations permit it from being very
5 carefully and very explicitly drafted. As I just
6 mentioned, in pursuing what has been identified this
7 morning as various cleanup of the Stipulation, we urge
8 you to require the Parties to remove the special
9 contract prohibition from Paragraph 4.

10 I don't want to take up further time. I just
11 think that in general, this process is of concern to
12 us. I believe that the attitude that we have
13 personally experienced from ScottishPower in this
14 merger process toward Industrial Customers is of
15 concern to us, and I believe that is reflected in this
16 issue that is contained in Paragraph 4 of the
17 Stipulation. I appreciate your time. Thank you.

18 COMMISSIONER HEMSTAD: I'd like to pursue the
19 special contract issue. How many special contracts do
20 you know are outstanding in Oregon?

21 MS. DAVISON: I'm sorry. Off the cuff, I can
22 identify probably five or six major special contracts,
23 and there is probably as many as a dozen smaller
24 special contracts.

25 COMMISSIONER HEMSTAD: Is it your position

00314

1 that the Oregon Stipulation, which I believe -- has
2 that now been adopted by the Oregon Commission?

3 MS. DAVISON: No, it has not. We did submit
4 briefs in that proceeding, and we finished briefing
5 last week, and we are awaiting a Commission decision.

6 COMMISSIONER HEMSTAD: But what is in front
7 of the Oregon Commission then for its approval or
8 modification, what is your position as to what it says
9 about including special contractors with respect to
10 merger credits?

11 MS. DAVISON: I guess I'm confused by the
12 outcry of the participants in the audience. I was part
13 of that proceeding. We were very, very active
14 participants there, and Paragraph 18 of the Oregon
15 Stipulation deals with this issue, and it says that the
16 Commission shall determine the allocation of the merger
17 credit among customers at the time of the
18 implementation of the credit. I certainly never
19 interpreted that as excluding special contract
20 customers.

21 COMMISSIONER HEMSTAD: Thank you.

22 JUDGE MOSS: Ms. Davison, thank you very much
23 for your closing statement. I'll ask you, Ms. Hirsh,
24 if you have anything to say in closing?

25 CHAIRWOMAN SHOWALTER: I have one more

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1 question for Ms. Davison. You articulated today
2 several issues. I have notes next to Paragraph 6,
3 Paragraph 9 and Paragraph 4 of the Stipulation relating
4 to the merger credit. I'm working backwards, actually,
5 hoping that there would be something more specific
6 about severance plans and transition plans as excluded
7 from ratemaking later on and the narrowness of the term
8 transaction costs versus all merger costs, and finally,
9 I think you mentioned that you would hope that the
10 transition process and the baseline development of the
11 process would be open.

12 Are those your issues with this stipulation?
13 Because I heard you also to suggest that we should take
14 more time to develop things, but this is the time now
15 to quarrel with this stipulation if you have quarrels.

16 MS. DAVISON: I would elaborate on that in a
17 couple of regards. We have been very troubled by what
18 we identified as the "but for" world, and that is that
19 we are asked here to assume that PacifiCorp would have
20 been X, Y, Z in the future, but for the ScottishPower
21 merger, and we believe that is a virtually impossible
22 analysis to go through.

23 We think that in order to very clearly and
24 specifically identify either costs as, these are merger
25 costs or, these are normal operational costs that you

00316

1 have to do that analysis now. We don't think it's
2 something that you can effectively do in the future.
3 We are very concerned about -- maybe I could categorize
4 it as three general concerns with this. We do not want
5 to see rates in Washington go up in any respect with
6 regards to any aspects of this merger, and we do not
7 see that specific protection here in this stipulation.

8 Secondly, any expenditures that ScottishPower
9 makes with regard to these merger benefits that they
10 have laid out in this docket in this proceeding, we do
11 not believe customers should pay for those. With
12 regard to the 55 million, what you heard today is that
13 ScottishPower said, Well, we're not going to go in and
14 ask for rate increase for that 55 million dollars.
15 We're going to find that 55 million dollars as a result
16 of efficiencies or improvement or cost cutting. We do
17 not believe that that is the same by a long shot of
18 Scottish Power saying that we're going to come in and
19 give shareholder money to make these customer service
20 improvements. If that were the case, we would be here
21 saying, Yes, we think that is a benefit of the merger,
22 but we think if you have a situation in which you are
23 simply taking one pot of money here that was going to
24 be spent for whatever and move it over here to customer
25 service or service quality improvements, we not believe

00317

1 that is a benefit of the merger, and we believe that
2 there are opportunity costs and other costs associated
3 with that kind of activity or commitment here.

4 Then I would say that the last concern we
5 have is that we do believe there are risks associated
6 with this merger. We believe there are risks
7 associated with virtually all mergers, and we don't
8 believe this merger is any exception to that, so we
9 believe that, again, we can't go through that
10 predicting the future today analysis, so we think that
11 it is important that there be very specific,
12 identifiable, concrete customer benefits that the
13 Commission receives today to try to protect customers
14 in the future.

15 CHAIRWOMAN SHOWALTER: So what is your bottom
16 line position here? Are you going to either oppose --
17 are you suggesting we disapprove this merger? Are you
18 suggesting we approve it with conditions, and if so, is
19 your position virtually the same as your written
20 materials?

21 MS. DAVISON: Yes, they are. Our position is
22 this: We would urge you not to approve the merger. In
23 the alternative, if you decide to approve this merger,
24 we would urge you to take a look at the Stipulation,
25 engage in some cleanup of that stipulation and

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1 specifically remove the special contracts prohibition
2 from Paragraph 4.

3 JUDGE MOSS: Public Counsel, did you have any
4 closing statement? I've already given the opportunity
5 to Ms. Hirsh and she's declined.

6 MR. FFITCH: Thank you, Your Honor,
7 Commissioners. Some brief closing comments. I think
8 first of all I'd like to just reiterate very briefly
9 the ways that we see the merger being beneficial to
10 consumers. Just to recap what Mr. Steuerwalt said, and
11 that is that we see four major benefit areas. One is
12 the merger credit, which flows through cost savings to
13 customers and helps protect the tariffed customers,
14 residential and small business customers in particular
15 from the risks of the merger and helps ensure that they
16 get the benefit of the merger savings.

17 Secondly, which is very important, is the
18 service quality of network and performance
19 improvements. We believe the Stipulation really does a
20 good job of clarifying those particular commitments of
21 the Company. The customer service guarantees, again,
22 we think are a very valuable component, and those are a
23 reflection, I think, of an approach or a mind-set we
24 see with the Company with regard to that area. That's
25 been something they've talked about from the outset and

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1 we think that's a positive approach to dealing with
2 customers, and we are even more pleased to be able to
3 get those particular commitments into the Stipulation,
4 and finally the low-income provisions we think in the
5 other stipulation are a component of this that make the
6 transaction in the public interest.

7 Just to respond to a couple of Ms. Davison's
8 points. While we have also engaged in comparisons with
9 other states, I think that it must be recognized that
10 Washington's standard for merger review is what's
11 called a no-harm standard, and other states referred to
12 by Ms. Davison have a net-benefit standard so that the
13 parties in other states are working within a different
14 framework than we are here in Washington.

15 Having said that, I believe that we have a
16 quite strong set of conditions here which may not have
17 been arrived at in a pure no-harm standard approach,
18 might not have been arrived at after going to hearing.
19 We believe that we have obtained some benefits in this
20 state because of the settlement process which I think
21 have enabled us to take advantage of some of the other
22 agreements that have been reached in other states to a
23 certain extent and put us in a better position than we
24 might have been in isolation with a no-harm standard,
25 so I think that's an important perspective to maintain.

00320

1 With regard to discrimination, I think that
2 some of the flaws with that argument have perhaps
3 already been addressed by some of the questioning.
4 Special contract customers do have the option of
5 terminating their special contracts and accepting
6 service under the general tariff provisions that are
7 available in that case would also be entitled to merger
8 credit benefits. Obviously we're not briefing this at
9 this point, and if there is any further discussion to
10 be had, that would yield to a more thorough analysis,
11 but certainly this is an issue of there is undue
12 discrimination, whether Boise-Cascade is identically
13 situated to a residential customer with regard to this
14 merger credit issue.

15 I guess finally we certainly agree with ICNU
16 that we also do not want to see rates go up as a result
17 of this merger transaction. We think there are a
18 number of provisions in the Stipulation that do
19 mitigate the risk of that. It is true that this
20 stipulation does not have that specific language in it
21 that she referred to from other jurisdictions and that
22 the Company is not precluded from coming in for a rate
23 case at some point in the future. However, we think
24 that the provisions excluding certain costs and the
25 merger credit provision do adequately address that.

00321

1 This is a compromise. This is a settlement, and we are
2 comfortable recommending it to the Commission.

3 JUDGE MOSS: Thank you Mr. ffitch. For
4 Staff?

5 MR. CEDARBAUM: I won't repeat what
6 Mr. Kilpatrick said this morning as to the Staff's
7 position on the Stipulation, the reasons why Staff
8 joined. I would like to just direct my comments in
9 response to Ms. Davison's comments.

10 The first point that I think Mr. ffitch hit
11 on quite well was her argument with respect to
12 stipulations in other states and what's better or worse
13 comparing this state to other states. My understanding
14 is that there are different standards being applied by
15 Commissions in other states, not the standard that this
16 Commission has set in this case, which was part of the
17 Third Supplemental Order, so I'm not sure how
18 productive it is to make direct comparisons and
19 criticize our stipulation because it may or may not
20 contain a provision in another stipulation where the
21 test was a benefits test.

22 The second point with respect to
23 discrimination, again, Commissioner Hemstad also noted
24 those are contracts and the Parties are governed by the
25 contracts they have entered into under the special

00322

1 contract rule. The other point I'd add to that though
2 is that the standard for discrimination is undue
3 discrimination between customers receiving like or
4 contemporaneous service under similar circumstances,
5 and that standard is picked up in the special contract
6 rule under which the Company's special contract
7 customer has been allowed special contracts, so there
8 has already been a finding by this Commission that that
9 customer is not similarly situated to other customers
10 and doesn't need to be treated the same as other
11 customers, so I don't think as a legal matter there is
12 unlawful discrimination if the Commission were to
13 accept Item No. 4 in the Stipulation with that
14 parenthetical to exclude special contract customers.

15 The final point just gets to the procedural
16 one that Ms. Davison started off with about whether
17 it's unfair for you to consider the Stipulation today
18 as opposed to another day in the future. I would like
19 to just point out three things. The first is that the
20 Stipulation that we presented to you today has 47
21 provisions or 46 provisions. 30 of them came from the
22 original stipulation that Staff entered with the
23 Companies on June 10th, so I assume counsel have had
24 those provisions, at least, for quite a long time.
25 They may not have known they were going to be directly

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1 incorporated, but I think certainly no unfairness with
2 respect to having the Stipulation considered today.

3 Also, as Ms. Davison has indicated, my
4 understanding is that her client has been active in
5 other states where a credit mechanism has been
6 proposed; so again, that notion, maybe not the
7 specifics of this one but at least the idea on how it
8 may work is not new to them; and third when we had the
9 prehearing conference last week, it was very clear we
10 were going to be presenting the Stipulation today, and
11 there was no objection to that. In fact, ICNU waived
12 any cross-examination that they would otherwise have
13 been allowed to do, so they came today knowing exactly
14 what was going to happen, and if they had wanted to
15 object on Thursday about a process not having seen the
16 Stipulation yet, I think they should have done that,
17 and their failure to do that I think they have to live
18 with.

19 So those are the three points I wanted to
20 make in response to Ms. Davison's comments. Otherwise,
21 I'd just ask you to go back to Mr. Kilpatrick's
22 statement this morning and his answers to questions
23 with respect to the Stipulation.

24 JUDGE MOSS: Thank you, Mr. Cedarbaum.

25 MR. FFITCH: Excuse me, Your Honor. I'm

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1 reminded by Mr. Cedarbaum that I forgot to direct a
2 brief remark on the process question, if I might
3 interject. I really don't see any purpose being served
4 by trying to reconstruct history, but I believe
5 Ms. Davison indicated that Public Counsel had declined
6 to provide a copy of the draft stipulation; is that
7 correct?

8 MS. DAVISON: Actually, it gives me an
9 opportunity to answer the question. I want to clarify
10 for Mr. Cedarbaum and I want the record to be very
11 clear what my position is with regard to process. We
12 asked counsel for PacifiCorp for a draft, and we were
13 told we could not have a copy of that draft until it
14 was executed.

15 My position with regard to the process is not
16 that you should not be considering the Stipulation
17 today. I think it is perfectly appropriate for you to
18 be considering it today and we anticipated you'd be
19 considering it today. I was merely pointing out to the
20 Commission that we were concerned with how the
21 settlement negotiations took place and that we were not
22 allowed to be present in those negotiations, because we
23 were present in the Oregon negotiations, and there is a
24 lot of benefit for us to be at the table. While we
25 didn't sign on to the Oregon Stipulation, we understand

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1 that stipulation very well because we were part of
2 those settlement discussions, and we know what the
3 intent was and what the purpose was. We don't have
4 that benefit here since we were not included, so that
5 was my point, Mr. Cedarbaum.

6 JUDGE MOSS: I think that's all very clear
7 now.

8 MR. FFITCH: I would just like to clarify for
9 the record as Ms. Davison has indicated, we did not
10 decline to provide a copy of the draft, and, in fact,
11 I'm advised that we notified ICNU that these
12 negotiations were occurring.

13 MS. DAVISON: That is correct, and we are
14 very appreciative of that.

15 JUDGE MOSS: Let's move on with our
16 presentations here. We are to the Applicants. Do both
17 of you wish to speak or just one of you?

18 MR. VAN NOSTRAND: I'll speak generally, Your
19 Honor. I'd like to have Ms. McDowell address the
20 Boise-Cascade --

21 I think Mr. Wright this morning on the panel
22 summarized the benefit to customers that we see flowing
23 from this transaction. I think it's revealing that
24 throughout Ms. Davison's remarks, although they are
25 opposing the merger, there is no reference to the

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1 standards which this Commission should be applying in
2 evaluating this merger, and that's whether or not it's
3 consistent with the public interest, and we believe the
4 record demonstrates that this application easily
5 surpasses that standard. Mr. Wright indicates there is
6 an unmatched set of service quality proposals including
7 network performance, customer service performance,
8 customer service guarantees. I think Mr. Wright
9 indicated the package attempts to address the needs of
10 all stakeholders, and we've had another stipulation on
11 low-income issues, commitments to the environment,
12 commitments to the community.

13 The entire package easily surpasses the
14 no-harm standard, and that's even before the
15 introduction of the merger credit, which was extended
16 to Washington as a result of this stipulation that is
17 before you today, so we believe the Application as a
18 whole easily surpasses that standard and that the
19 remarks should really be mindful of the standard that
20 we're attempting to meet here, and I guess I would
21 commend to the Commission's consideration Exhibit 7,
22 which is the exhibit I referenced earlier accompanying
23 Mr. Richardson's testimony which summarizes all the
24 testimony of the benefits from the transaction.

25 Referring back to the way Mr. Kilpatrick

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1 indicated Staff approached the transaction, I think
2 it's also instructed to look back to the Commission's
3 Third Supplemental Order where it indicated the issues
4 that it would like to have addressed in this
5 proceeding, and on the issue of rates, the Commission
6 made it clear it is not a general case, and I think the
7 merger credit is an advantage because it recognizes
8 that this is not a general case. It is a specific tool
9 which flows through the customers' benefits which flow
10 from this transaction, so it's mindful of this not
11 being a general rate case, but the merger credit does
12 allow savings flowing from this transaction to be
13 flowed through to customers.

14 I think the other issues in particular are
15 addressed. The Commission points out the access to
16 books and records in the affiliated interest
17 transactions. I think those are representative of a
18 large number of the conditions which are included in
19 the Stipulation because that is what Staff and Public
20 Counsel are concerned about in ongoing rate proceedings
21 is, is the Commission going to have the necessary
22 regulatory oversight to do its job and are these
23 parties going to have the access to the books and
24 records to do their jobs in critically evaluating
25 Company rate filings.

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1 Referring to some of the points raised by
2 Ms. Davison, the issue of rates not increasing as a
3 result of the merger, there are several provisions in
4 this stipulation directly on this point. The
5 transaction costs not being allocated to customers, the
6 acquisition premium, which ranges from 800 million to
7 1.5 billion as testified by Mr. Wright, none of those
8 costs will be born by customers. Specifically
9 mentioned in the Stipulation of the 55 million dollars
10 that's going to be spent to implement the service
11 quality proposals, those are all going to be recovered
12 through efficiencies or through reallocation of the
13 existing capital budgets. There is not going to be any
14 incremental costs associated with that.

15 In terms of the executive severance, I think
16 that is a proper rate case issue, and along with the
17 costs of the transition plan -- and there has been a
18 suggestion that the cost of transition plan and the
19 transition process should be excluded -- I think you
20 would apply to that the same sort of analysis as any
21 other utility expenditure. The utility has the burden
22 to show that the costs incurred will be offset or more
23 than offset by savings which they generate. I think in
24 the case of the transition plan, there will be costs
25 that ScottishPower will incur in transforming this

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1 company, and in substantially all circumstances, they
2 will lead to savings which will more than offset those
3 costs, and that's the burden the Company will have to
4 show and that it attempts to recover these transition
5 costs and rates, and I think the same sort of analysis
6 applies to executive severance. If you have a
7 situation where an officer leaves the Company and is
8 not replaced, that will lead to savings in the future.
9 If there is some portion of that which is specifically
10 related to the merger, a case can be made for excluding
11 that as transaction costs, but whether there is a
12 reduction in costs on an ongoing basis, it might be
13 reasonable to allow the severance costs which produced
14 those savings in the future to be recovered in rates,
15 and again, those are rate case issues. I think the
16 Stipulation provides the framework and the parameters
17 by which those issues will be evaluated.

18 The issue of the merger credit, for the
19 record, I think Ms. Davison has indicated the Oregon
20 Stipulation it neither excludes or includes special
21 contract customers. It's left to the Commission to
22 allocate in the future. In Utah, the special contract
23 customers are specifically excluded, and I think I
24 would echo the comments of Public Counsel and Staff on
25 the undue discrimination issue, and I'll leave it to

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1 Ms. McDowell to comment on the particulars of the
2 Boise-Cascade situation.

3 Finally, I guess there has been reference to
4 risks associated with the merger and what may be
5 arising from this transaction, and again, so many of
6 the provisions of the Stipulation are intended to
7 address the specific circumstances that arise from this
8 transaction. There are risks in the ongoing business
9 activities of the utility, and certainly we can't
10 address those risks nor should we in this proceeding,
11 but the Stipulation does make an effort to identify
12 those risks which are unique to this transaction which
13 arise from the transaction and specifically address
14 those risks, and I think the cost of capital example is
15 a good one and some of the ring-fencing provisions
16 where Washington customers will be insulated from any
17 of the possible adverse activities that may be going on
18 anywhere else in the Company. So at this point, I'd
19 like to turn over to Ms. McDowell with respect to the
20 Boise-Cascade situation.

21 MS. McDOWELL: Thank you. Ms. Davison really
22 raised two issues with respect to the special contract
23 issue. The first issue is, is it illegal. Is it
24 discriminatory to preclude the special contract
25 customers from access to the merger credit, and the

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1 second is, is it really fair to do so. So turning to
2 the first issue first, is it unlawful discrimination to
3 exclude special contract customers from the merger
4 credit. I think the answer there is clearly that it is
5 not. Discrimination laws prohibit unfair
6 discrimination between classes but not among a class,
7 and the law is quite clear that special contract
8 customers constitute their own class, so there is not a
9 discrimination among special contract customers here.
10 If there is any differential in treatment, it's a
11 differential in treatment between regular tariff
12 customers and special contract customers, and there is
13 certainly basis for treating those customers
14 differently. They are in very different circumstances,
15 so our view of the legal issue of whether it's illegal
16 to make this distinction is absolutely it's legal.

17 Now, that doesn't completely answer her
18 concern because there is a second issue. Is it fair to
19 treat this class of customers differently, and we would
20 submit it is fair to do that. The particular special
21 contract customer in question here, the contract is on
22 file here at the Commission, so we believe you could
23 take judicial notice of the terms of that contract even
24 though we have not made that an exhibit here, and as I
25 understand the terms of the contract, the contract ends

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1 on January 1st, 2002, so since this is a four-year
2 merger credit, we're talking about at most, under the
3 terms of contract, that they would be excluded from the
4 merger credit for one year. If they chose to become a
5 regular tariff customer at that point, they would be
6 eligible for the credit just like any other tariff
7 customer, so it's a one-year period we're talking
8 about.

9 During the term of that year, the contract
10 terms, as I understand it, are quite favorable to this
11 customer, so while they may not get the merger credit,
12 they have a rate that is quite favorable. Favorable
13 enough that notwithstanding the bypass opportunity
14 they had, they chose to stay on the PacifiCorp system.

15 Finally, I'd like to point out with respect
16 to the contract terms our calculation of what the
17 credit would be if they chose not to renew the contract
18 or that did not occur and they defaulted to the normal
19 tariff rate is not the 400,000 figure that ICNU
20 suggested but less than half that amount. Our
21 calculation is closer to 170,000. So I think that is
22 an issue that the Commission ought to take a look at
23 the terms of the contract since you're getting
24 different representations from the Parties here, but I
25 believe the contract would speak for itself on those

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1 terms, and those terms ought to be reviewed by the
2 Commission.

3 As far as how other states have treated this,
4 it's clear that Utah did include, the Stipulation there
5 does include the exact same provision that you have in
6 front of you here. The Oregon Stipulation, you've
7 heard the language, and it's just clear that the issue
8 was not addressed one way or the other. As far as
9 Oregon precedent, which was cited to you in terms of
10 the PGE/Enron merger credit being shared by special
11 contract customers, there were two types of credits
12 being offered in that case on a 105-million-dollar
13 credit dealing with the transfer of regulated
14 operations to the unregulated entity, Enron, and there
15 was an agreement in all of the stipulated materials in
16 Oregon that part of Enron/PGE precedent was really not
17 relevant to the ScottishPower PacifiCorp transaction
18 being there was no transfer of operations. There was a
19 second part of PGE/Enron order which dealt with cost
20 savings, which really is the analogous provision to the
21 merger credit we're talking about here, and in that
22 case, those amounts were not shared with special
23 contract customers, so while the issue is open in
24 Oregon, if the Commission looks to its past precedent,
25 I suspect that they may preclude special contract

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1 customers from access to the merger credit in Oregon a
2 year from now when that issue is litigated, so I just
3 wanted that issue to be clear.

4 I just want to, on a more general note, end
5 our presentation by stating something that really
6 hasn't been stated before, which is that the merger
7 credit that really supplements and revises the
8 Stipulation here, that's the key difference. Certainly
9 there are other differences between the June 10th
10 Stipulation that was originally filed and the
11 Stipulation you have before you now, but the key
12 difference is the merger credit, and I think it's
13 important to note that that merger credit was developed
14 in states that have a net-benefit standard. Either the
15 Commission had articulated that or the Parties were
16 rigorously arguing for that, so really the Companies,
17 the Applicants had to contend with a net-benefits
18 standard. That's where the merger benefit concept
19 comes from, and if you look at the situation here in
20 Washington, the Staff agreed with the Company in June
21 that based on the standard that prevails in this state,
22 a no-harm standard, that what we had in our testimony
23 originally, that what is really outlined and refined in
24 the June 10th Stipulation, net to standard in this
25 state, and what the Applicants have done here in the

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1 most recent stipulation is taken a provision that's
2 been developed in states that have a higher standard,
3 or at least there is a strong argument they have a
4 higher standard, and we've applied that to this state.

5 The Commission's order is quite clear that
6 it's a no-harm standard, so I think out of the various
7 things that the Stipulation panel said this morning,
8 one that I thought actually stated the position about
9 where we are now quite well was Mr. Kilpatrick's
10 statement where he stated that while the Staff agreed
11 that the Company cleared the bar in June, that with the
12 additional provisions, the clearance is that much
13 higher, and I think that is a result of taking a
14 provision that was designed to meet a bar that is
15 higher in other states and applying it equitably to
16 Washington customers and doing so so that we don't have
17 the difficult and awkward situation of giving customers
18 in one state a credit and not giving customers in
19 another state that credit. That doesn't seem like a
20 good place to come out at the end of day, so the
21 Company has offered that credit here, which we believe
22 makes your job that much easier in determining whether
23 or not we met the statutory standard, so with that, I
24 conclude my remarks.

25 JUDGE MOSS: Thank you. It appears there is

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1 no inquiry of the Applicants from the Bench, so at this
2 point we need to talk about further process and then
3 we'll stand in recess.

4 In terms of our further process, we'll hear
5 from the Parties briefly, but as we typically do, I'd
6 indicated earlier a preliminary thought that there was
7 no need for briefing in the case given its current
8 posture. Parties may wish to comment on that. There
9 was a suggestion from the Bench earlier that the
10 Parties might want an opportunity to consider at least
11 some clarifications to the Stipulation document that
12 would necessitate its been being refiled, of course,
13 and we should touch briefly on that subject.

14 There was some discussion quite early on
15 about the addition of an appendix, and I believe there
16 was a commitment on the part of the Applicants to
17 develop that. We should talk about the timing for
18 that, and if there are any other further process
19 issues, then those should be discussed. My suggestion
20 is that we have that discussion, and we would then
21 stand in recess. I don't know if the Commissioners
22 wish to remain on the Bench for that or not. Seeing no
23 suggestion to the contrary, they will stay on the Bench
24 and hear that then. Any arguments on the subject of
25 briefs? The suggestion from the Bench is that we don't

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1 need briefing. Does anybody want to be heard on that?
2 Go ahead, Ms. Davison.

3 MS. DAVISON: Thank you, Your Honor. I
4 believe that the legal issues that are presented in
5 this stipulation do warrant briefing. I did not come
6 today prepared to provide you with detailed legal
7 authority on the issue of discrimination that we
8 believe is present in Paragraph 4 of the Stipulation.
9 I would like to have that opportunity to provide you
10 with a more thoughtful analysis of that issue. I think
11 it's a significant issue, and I would like the
12 opportunity to brief that issue.

13 In addition, I believe that there are some
14 other statements that were made by counsel today. For
15 example, I do not agree with Ms. McDowell's
16 interpretation of the PGE/Enron Stipulation, and I
17 would like the opportunity to put that in writing why I
18 don't believe that it's exactly the same --

19 COMMISSIONER HEMSTAD: If I can make a
20 comment. Those were interesting comments. I'm frankly
21 not sure why we would need to know precisely the
22 framework of that arrangement in Oregon. Different
23 Commission, different environment. I just don't see
24 the need for receiving briefs and reply briefs on an
25 issue like that. That's my reaction to that.

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1 MS. DAVISON: I certainly wouldn't suggest
2 reply briefs. I would recommend one round of briefing,
3 and I guess the last point I would bring to your
4 attention is while we heard a lot about different
5 statements in different states, we did brief the issue
6 in Oregon, and it was the position of ScottishPower and
7 PacifiCorp that the standard in Oregon is a no-harm
8 standard and not a net-benefit standard, for whatever
9 it's worth.

10 JUDGE MOSS: Anybody else want to be heard?

11 MR. CEDARBAUM: Your Honor, I just don't see
12 the need for briefs. I think the case has been well
13 developed and presented today. There is a legal issue
14 on discrimination I think has been argued well enough
15 so that the Commission understands the issue and the
16 arguments of the Parties, and I agree with Commissioner
17 Hemstad that what happens in the PGE/Enron case, what
18 may or may not occur in Oregon and Utah is not really
19 germane in this proceeding. I don't see the need for
20 briefs. If there are to be briefs, I actually do think
21 we should have an opening brief by ICNU with reply
22 briefs by the other parties, but I don't see a need for
23 briefs.

24 JUDGE MOSS: Anything else?

25 MR. FFITCH: Public Counsel agrees with the

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1 position articulated by Mr. Cedarbaum.

2 MR. VAN NOSTRAND: I think we always
3 envisioned there would be briefs, but if the Commission
4 preferred we did not have briefs, we can abide by that.

5 JUDGE MOSS: Is it your preference one way or
6 the other?

7 MR. VAN NOSTRAND: Given the presentation of
8 the case today, I'm not sure they are necessary. It
9 does allow for all the materials to be compiled and
10 presented in a way that captures everything, and there
11 is something to be said for the review process
12 associated with that, but it's entirely up to the
13 Commission if they feel they will benefit by having
14 written briefs. I think we can go either way on it.

15 JUDGE MOSS: I'll say subject to contrary
16 direction from the Commissioners --

17 CHAIRWOMAN SHOWALTER: I might have one. I
18 don't know. What are you about to say? It seems to me
19 that the issue of the merger credit as applied to the
20 special contract is a legal issue that couldn't have
21 been addressed until this stipulation had within it the
22 exclusion, so I'm interested in argument on that point,
23 not on the others. If we don't have briefs, I think
24 we've got the resources within our Commission to look
25 into the question, but it seems to me a question has

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1 been raised if perhaps it's so simple legally that it's
2 not worth briefing, but I don't know that personally.

3 JUDGE MOSS: It appears to me then that it
4 might be an opportunity here momentarily to take a
5 brief break and the Bench can confer privately and make
6 a decision on whether we'll have briefing on this
7 single issue and then announce that decision at the
8 appropriate moment in time.

9 With respect to the other process, again, it
10 is no doubt a fresh suggestion that certainly arose
11 today that there might be some desire on the part of
12 the Parties to the Stipulation which we have as Exhibit
13 82 to at least have some clarifying language in that,
14 so I think you should have an opportunity to do that,
15 and I don't think it's appropriate to put you on the
16 spot about whether you will or will not do that at this
17 moment, so I would recommend that we allow a brief
18 period of time for that. What would the Parties think
19 is required, one week?

20 MR. VAN NOSTRAND: Would this include the
21 appendix to which we've compiled our commitments?

22 JUDGE MOSS: That's a good point. Let's role
23 that in and consider a single time frame to accomplish
24 both tasks.

25 MR. VAN NOSTRAND: Two weeks.

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1 JUDGE MOSS: I'm not trying to press you. I
2 just threw that out as a suggestion as a starting
3 point. If you think two weeks is required, then we
4 can, subject to other parties' comments, allow that.

5 CHAIRWOMAN SHOWALTER: The point of the
6 appendix, it seems to me, without trying to bind the
7 Parties as to what they are going to agree to, that it
8 should in essence be a substitution for Paragraph 1 of
9 the Stipulation. What I find troubling is a
10 stipulation where people agree to everything in the
11 case, that it makes it very difficult to know how to
12 pin something down later, and if this appendix is an
13 appendix but it narrows Paragraph 1, it's easier to
14 know what we're agreeing to here.

15 MS. McDOWELL: Chair Showalter, we followed
16 that same process in Oregon because of the same
17 concerns that the Staff had there, which was we started
18 with the general provision, and there was some
19 discomfort about the ambiguity of that kind of
20 provision, so we did the exercise of updating the
21 statement in Mr. Richardson's with further commitments
22 in the rebuttal testimony minus anything that was
23 changed in the Stipulation, and actually, that was a
24 useful exercise, but because that's been done in
25 Oregon, I don't think it will be a challenging job to

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1 complete for Washington.

2 JUDGE MOSS: So what time frame? While
3 you're all working that out, the Bench is going to take
4 a brief recess to conclude this issue.

5 MR. FFITCH: Your Honor, I was going to try
6 to interject this. Because the issue of briefing has
7 come up, I will note that I will be out of the office
8 for three weeks beginning Monday so that if briefing
9 schedules are being discussed, that would be a factor.

10 JUDGE MOSS: Can you just give me dates on
11 that?

12 MR. FFITCH: August 23rd to September 10th.

13 MR. CEDARBAUM: Also just for scheduling
14 purposes, I will be out of the office next week, which
15 is less burdensome.

16 (Recess.)

17 JUDGE MOSS: There has been a discussion by
18 the Bench to discuss the question of briefs that we've
19 given the Parties an opportunity to comment on, and the
20 decision that has been reached is that Commission is
21 sufficiently informed on the issue from the argument
22 that has been heard today and sufficiently capable in
23 terms of its own legal resources to not require briefs,
24 and that decision is taken to with an eye to
25 maintaining an efficient process as we move forward to

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1 a decision and conclusion to this particular docket, so
2 there will be no briefing.

3 I believe we need to hear back from the
4 Parties with respect to the time frame during which
5 there would be an appendix prepared and also the
6 opportunity then for some minor amendment to the
7 Stipulation, so let's hear from the Applicants on that.

8 MR. VAN NOSTRAND: We've worked out a
9 schedule. We believe Tuesday, August 31 is workable.
10 That gives us a little bit over a week to make the
11 necessary revisions to the Stipulation and compile the
12 appendix. We'll file that on Tuesday August 31, if
13 that is acceptable to the Bench.

14 JUDGE MOSS: Did you discuss this with other
15 parties to be sure that will provide an ample
16 opportunity for everyone to agree with the revised
17 language and so forth?

18 MR. VAN NOSTRAND: Yes.

19 JUDGE MOSS: So we'll be looking for a filing
20 on August the 31st, a Tuesday, and at that point, the
21 Commission will take the Stipulation in advisement and
22 issue an order in due course. Is there any further
23 business the Parties wish to bring before us today?
24 Seeing no indication that there is, we'll stand in
25 recess. Thank you all very much for your very

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1 professional participation.

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(Hearing concluded at 1:30 p.m.)

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