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TRANSCRIPTION OF DOCKET(S) A-021178 and TO-030288

Item D1, Docket A-021178 and D2, Docket TO-030288

Chairwoman Showalter: Good afternoon, we resume our open meeting and we're here this afternoon to hear public comment, prior to our consideration of adopting what we call the financial reporting rules, and I want to emphasize that we're not here to adopt the rules, we're here to hear comments prior to adopting rules, if we adopt them. Mr. Ottavelli, why don't you go ahead.

Fred Ottavelli: Thank you Commissioners. I'm Fred Ottavelli with the Commission staff, and Items No. D1 and D2 in Dockets A-021178 and TO-030288 are rulemakings to consider financial reporting rules.

The Commission, in recognition of substantial financial difficulties being experienced by a number of regulated utilities, many times a result of negative impacts of failed diversification, along with rating downgrades which resulted in increase in cost of money, which of course, results in increased rates, have instituted this rulemaking.

They issued...the Commission issued a CR-101, a Preproposal Statement of Inquiry in A-021178 on October 2, 2002, and a CR-101 in TO-030288 on March 13, 2003. During the period of time...actually preceding the issuance of the CR-101 and today's date, there have been stakeholder meetings, participated in by the Commissioners and a number of the interested parties. There have been a number of draft rules that have been considered and commented upon, and a large number of written comments have been received.

On September, 1, 2004, the Commission issued a Notice of Proposed Rulemaking, a CR-102 in these proceedings, and at that time, requested written

comments on the rules. Written comments were received from several of the interested parties to include members of the financial community, and as a result of the comments from the financial community, the Commission sent a letter to the community...to those commenters inviting that they participate in today's hearing either in person or on the...or on our bridge line. As of this point in time, the Commission has not heard from any of those commenters as to their interest or intent in participating in today's meeting.

Chairwoman Showalter: Before you continue, I'll just ask, is there anyone on the bridge line who intends to comment on our rules here...our proposed rules.

Thank you.

Fred Ottavelli: In addition to the comments that are recited in the attached memorandum, mostly of a negative nature, comments were also received from the Washington Refuse and Recycling Association that were positive in terms of the rule proposed. The staff is available for questions, and I understand there are several here who wish to comment.

Chairwoman Showalter: Alright. Thank you. Well, I want to say we do have a number of written comments that are very thoughtful and careful and lawyerly, and also from the financial community, and we appreciate all those comments. In terms of people who have signed up, it looks like an "8" ball...probably not...maybe...no...yes...yes...maybe. What else was on the "8" ball? Anyway, but I will begin with one of the firm yes', Richard Potter.

Richard Potter: Good afternoon Commissioners, Richard Potter from Verizon. I just wanted to comment on one little point. It's the same thing that I commented on back in July...and it concerns proposed WAC 480-120-395...it's on page 84.

Chairwoman Showalter: Thank you...

Richard Potter: And I picked out the table there.

Chairwoman Showalter: Why don't you wait until we get to page 84...alright, maybe you can give us the paragraph number again.

Richard Potter: It's 480-120-395.

Chairwoman Showalter: The whole section. Okay.

Richard Potter: Yeah...well, it starts with number one. Currently we file an annual report on our transactions with affiliated interests, you know, separate companies that are also owned by the Verizon parent. The proposed rule would add a requirement that we also file a report of our transactions with subsidiaries, and as we talked about in July, Verizon Northwest has one subsidiary has one subsidiary. It's called Verizon West Coast Inc. It's an ILEC in the northwest corner of California. For historical reasons, it's incorporated separately. But the company runs it as part of the northwest company, and as you may recall, you suggested that when I was here in July, that perhaps there could be an exception in the rule if this subsidiary's a regulated LEC in another state, and we thought that was a good idea.

So, the financials related to the west coast subsidiary get taken care of under the FCC's normal accounting rules the same way we separate out the cost of our business in Oregon and the cost of our business in Idaho to end up with just what's on the books for the Washington operation, and we don't see that it would serve any additional purpose to have to jump through some new hoops for the west coast subsidiary, and try to force that "square peg" into the "round hole" of all the elements that are in the affiliated interest report. So, I just wanted to repeat our request so that the Commission seriously consider rewording this section slightly so that we did not have to file a new report for that little company.

Commissioner Hemstad: I recall the earlier conversation. But, I've forgotten...did you provide us with suggested language to do that?

Richard Potter: One thing we have suggested in a previous round of comments was to provide an exception for local exchange companies, who are regulated in another state.

Chairwoman Showalter: But, have you...have you proposed language to us that is we propose...that, you know...

Richard Potter: I didn't send it again. I could provide it to you again.

Chairwoman Showalter: But you did in the past?

Richard Potter: Yeah...

Commissioner Hemstad: But we have it in our material?

Richard Potter: One of the prior rounds of comments, yeah...

Chairwoman Showalter: We just don't want to lose track of these issues because sometimes we do. I remember the same thinking well that sounds reasonable, but I...I don't actually remember if we have sat down and talked about it again or not, but we will.

Richard Potter: Okay, thank you.

Chairwoman Showalter: Thank you. Another positive yes...Karl Anderberg.

Karl Anderberg: Yes, Karl Anderberg with PacifiCorp, and what I wanted to provide just brief comment on is, WAC 480-100-275, and I believe that's on page 39 of the...of the handout.

And, it kind of deals with providing quarterly reports on a Washington basis. And, we have provided comment on that. I just wanted to talk about it a little bit. First of all, we appreciate changing the deadline from the original 45 days to 60 days. That will allow us the extra time to file FCC related reports, so that we don't have to worry about filing these confidentially.

PacifiCorp is a multi-jurisdictional electric utility doing business in six states, and we allocate calm and generation of transmission costs among those six states. Washington is the only state that requires a quarterly report. We

provide semi-annual reports in at least one of the other states in which we do business. Part of the difficulty in providing quarterly reports is that, the underlying data that is used to develop the allocation factors is only updated twice a year. So, if we have quarterly data, we're actually allocating that data which is more current with allocation factors that are somewhat dated. So, and it's quite a bit of work to update those underlying loads that are used to develop the allocation factors. So, that's the reason why it is only done twice a year.

So, that is extra work that is involved there...also, just the extra work of...of accumulating the data within the regulation department itself. We estimate to be two to five man hours per quarter, resulting in a cost of about \$5,000 to \$10,000. So, what we have proposed, and these have been provided in written comment, is that, for multi-jurisdictional companies such as PacifiCorp, that we provide Washington results on no less than a semi-annual basis, and on the off quarters to, report on a total company basis, and we feel that this, you know, would provide the Commission with what they need to properly monitor and regulate the company.

Chairwoman Showalter: I'm sorry, but do you mean this to be a language in the rule itself or you would request a waiver under those conditions?

Karl Anderberg: I guess I would like to see it in the rule itself, but one way or the other that you would recognize you know this particular situation.

Commissioner Oshie: Mr. Anderberg, is it the issue is, as to, you know, the allocation factors. Is it something...I guess the alternative would be as well...to file a quarterly report using the allocation factors that have been used for the prior period.

Karl Anderberg: Yes, and that's what we have done. That's how we've been doing it...yes.

Commissioner Oshie: Okay...which...that would not present...I realize it's extra work, but that's not as big an issue for the company, of course, as to re-set, if you will, the allocation factors and provide the report.

Karl Anderberg: Part of the point that I was making, was that we just had this mis-match between the allocation factors and the data on which it's being allocated, so you lose some precision and accuracy as to the amount that is being allocated. You know...based on the way that we are doing it.

Chairwoman Showalter: I wanted to ask PacifiCorp about a different part of its comments. I don't know if it's you or Mr. Van Nostrand, but with regard to your comments on the five day notice requirement and also the definition of a subsidiary or a definition of control. Is that...are you the right person to ask those questions.

Karl Anderberg: No, I think that would be Mr. Van Nostrand. He's one of the maybe's on your list.

Chairwoman Showalter: He just went from maybe to yes. Okay. Are there any other questions on this topic? Okay.

Karl Anderberg: Okay, thank you.

Chairwoman Showalter: Mr. Van Nostrand.

James Van Nostrand: Thank you Commissioners, James Van Nostrand with Stoel Rives on behalf of PacifiCorp. It seems like a number of folks have commented on the five...on the five day...I mean this is...this is based with our conversation with the folks at the company who routinely do these filings, that it is a problem for the reasons that we've identified...and it seems like the other commenters have made that plain as well... and I think, as far as the basis, it seems like, when a statute proscribes a particular time period, and a rule seemingly goes beyond that, I think that, that's where...and the issue may arise...and again, as a practical matter, it seems like a number of the commenters

have talked about the implications of issuing securities and the possibility that this notice requirement in and of itself could force up capital costs.

And, then I'll let the folks from Qwest who've filed those comments or those letters address that. But, it (inaudible) home, what we're trying to accomplish versus what may be an unintended consequence.

The other issue you raised on the definition...I guess...you know...we're always looking at trying to achieve compliance with rules and trying to avoid having clients out of compliance with the rules, and we're looking for language that makes it very clear whether you're in compliance or not in compliance...and this...this notion of indirect control...and that basically a subsidiary would be, sort of deemed to be under the control of a subsidiary, unless the utility can demonstrate that there is not control...it just struck me that the language is...is imprecise...and that the utility's in the position of bearing the consequences of that ambiguity, because now the utility has to prove that there is no...there is no control...there is no way of effecting the power to direct or cause the direction of the management of policies of a company.

I don't know how you would prove that. I mean...there's just a number of (inaudible) in operating this huge gray area...and it just seems like if we're trying to send clear signals as to what we want you to do and to bring your client into compliance, it's really difficult to advise when you are operating in a sort of a gray area where. I don't how you'd go about proving something like that.

Chairwoman Showalter: Well...one of the reason we picked that language is it comes right out of the SEC regulations and I agree with you if we invented it ourselves and had to decide what it means...that would be more problematic than what I would think would be the case...is that...my understanding is, you along with all the other companies have to file regular reports with the SEC...that used this definition. So, I would think both the

companies individually...but the SEC too...would have developed an understanding or maybe even rules or case law...I'm not sure as to what that does mean. But, I would have thought we...should we adopt this rule...would not be adding confusion...we'd be fitting into an existing understanding and definitions...and that is one of the things I wanted to ask you.

James Van Nostrand: Okay...that may...that may be...I'm not aware...I mean...I'm not sure the reporting requirements that are triggered or the possible implications of not complying are the same. I'm just worried about some of the...the potential of being...being penalized for non-complying with the rule...in this state...by this Commission...if the position is taken that well, that subsidiary is within your control, you should have filed that...and I understand the point...that perhaps we're picking up on an SEC requirement...and I don't know what the case history is, and (inaudible) or not the risk and clause on their, but it just...looking at the definition...and we've commented on this rule round, and maximum things that Mr. Ottavelli did, it seemed like we were...at one draft round, I thought, yeah, this is more precise and we know what we're dealing with here, then I think later versions, we just sort of "back slid" in terms of precision and enforceability.

I understand that if that's the concept we're trying to get across...covered by the SEC approach, then you are...

Commissioner Hemstad: Just a general comment. At least the proposed language...whatever we ultimately do here...was modified to make it precisely the same language, with just a very slight context change, with that used by the SEC, for the reason that PacifiCorp and the other utilities have to deal with that continuously. But, I was surprised with the assertion...that is...vague and unknowable as to its content, when it is a live-standing SEC use of that very language.

James Van Nostrand: I'm not...I don't know the context with what the SEC has used that language, and like I say, if it has the same sort of implications of possibly being out of compli...and I think the company takes its regulatory obligations and it's file (inaudible) to this Commission seriously, and we don't want to be out of compliance. I don't know....

Commissioner Hemstad: I understand your concern, but that was...the reason, as far as you described, "backsliding" was a...was a criticism, when you are trying to use language that with which a corporation ought to be...have some reasonable comfort because they have to deal with it rather continuously.

Chairwoman Showalter: And possibly, we could...we could in our order indicate that is...that is what we intend to do, is live by the same definition. Not...not really committing to that, because I think that's something we...the three of us would of decide, but that might clarify that we want to draw the same kind of line the SEC has drawn so that we all know what we are talking about. I don't think it means the definition is "crystal clear," but surely, there must have developed over time, a fairly good understanding, because I would think you'd be as least as concerned about not filing the right thing with the SEC. Maybe not. Maybe you're more concerned about the UTC.

James Van Nostrand: The SEC seems to be "cranking down" pretty seriously on some of these things, so...

Commissioner Oshie: I have one question Mr. Van Nostrand. It looks like you're ready to pack it up and get off this...

James Van Nostrand: Maybe you know...I just want to sit back down...

Commissioner Oshie: ...but you know, once you're up there....

James Van Nostrand: Yeah...

Chairwoman Showalter: Not so fast...

James Van Nostrand: In for the whole "show"...

Commissioner Oshie: It's my understanding that Oregon has a pre-approval process or requires pre-approval before the issuance of securities, and I don't...I'm not more familiar with it than that. Are you familiar with Oregon's statute, and if so, what process the Commission uses to exercise its authority under the law.

James Van Nostrand: No, Commissioner Oshie, I'm...I don't do the Oregon...folks at the company in the finance area generally put these things together, and that's who we relied upon for implications of this rule. I'm just not familiar with what Oregon requirements are and how the company complies.

Commissioner Hemstad: There may be a practice in Oregon that has evolved, may almost surely is, but the language of their statute talks about pre-approval.

Chairwoman Showalter: Which is, ORS 759.315...and again, one of the reasons we asked for comments from the financial community and the companies is we genuinely are interested in how much extra work or difficulty is involved in these rules, because we have to weigh that off against whatever benefit we would get out of it. But, our assumption was, if another jurisdiction is already using this definition or already requires this type of thing that would suggest it isn't a lot of extra work. And we need to be balancing these things against each other.

James Van Nostrand: You know...I'd be happy to look into that and report back if you'd want me to file a supplemental letter or something and report back to what and how the company complies with that or how it's (inaudible). I'd be happy to look into that and report back. I think it is a good point, that if other jurisdictions are doing it, and we're in compliance with the other jurisdictions, it shouldn't be an additional cost.

Chairwoman Showalter: Well...we'd appreciate that...if you tell us about Oregon.

James Van Nostrand: I'd be glad to do that...thank you...am I excused?

Chairwoman Showalter: Are there any other questions for Mr. Van Nostrand...alright. Thank you.

Well, moving along down to maybe's...well let's see, Bruce Folsom.

Bruce Folsom: Good afternoon, my name is Bruce Folsom with Avista Corporation. Avista did not file comments on September 22nd, because our comments two rounds ago, and May 18th, 2004, indicated that our issues had been addressed to our satisfaction in the rule. Our recent experiences, has shown that these processes are workable and meet our needs. The confidentiality and flexibility about the required amount of detailed has been appropriately handled by staff and the Commission as it relates to our securities filings.

I should note that our issues may be different than those of other utilities in that Avista has historically sought three written securities orders from our three northwest states upon 15 days notice. So, we approach securities, I think a little bit differently than my colleagues behind me. But, we are satisfied that the rule meets our needs and are satisfied.

Chairwoman Showalter: We received several comments to the effect that the market is now a very nuanced, rapidly developing thing, and sometimes you have to make a very quick judgment...maybe the same day...that you're going to take advantage of the market. Are you saying that, that's just not the way your company operates...that you would not be...would not need to be that "nimble?"

Bruce Folsom: That's not really what I'm trying to say. Let me give an example. This spring, we had a unique securities issuance. It was different than the plain vanilla sort of debt that we put out...and we looked around at our three northwest states, looking for the state that would probably give us the most challenge in terms of meeting the rules and the laws...and that was Oregon. So,

we approached the Oregon staff and went through what could go wrong with this financing if certain details became public before its time...and in fact, we were concerned that it could affect our stock price, could, but more importantly, would affect the terms and conditions, and the pricing of the financing. So, the Oregon, Idaho, and Washington staffs worked with us to do two things: one is to have a range of terms and conditions as well as confidentiality beyond that. So, what I'm trying to say, probably, and artfully, is that your staff has worked with us in this regard to our satisfaction...and we have been able to be innovative in the marketplace.

I don't think we actually pulled the trigger on that financing. The market changed a little bit...went a little different direction than we had thought it would go, but we were poised with a written order we had from you to...to pull the trigger on that if we wanted to.

Commissioner Oshie: Mr. Folsom, are you familiar enough with the Oregon process to be able to explain it briefly to the Commission, as to whether there is...what the prior filing requirements may be before that Commission issues an order?

Bruce Folsom: I'm not expert on it enough to tell you anything other than that is the jurisdiction we'd to go to first...to plan our securities around...and the approvals. And, that's indeed what we did in that May example...is we spoke with the Oregon staff to make sure that what we wanted to do was doable under their rules. So...no, I can't go into the detail of their requirements, but I can tell you we're focused on making sure we can do our business under all three Commission rules.

Commissioner Hemstad: But, in any event, your company policy is that for your own purposes, you want the approvals of the Commissions when you go to Wall Street.

Bruce Folsom: Yes...your rules are permissive and do not have an order or to have an order or bond counsel or others. For our purposes...seek orders...which sets us apart from my colleagues, I believe.

Chairwoman Showalter: I want to correct myself Mr. Van Nostrand...the statute I gave you...that applies to telecommunications only. So, that was the Oregon statute, but I believe...I believe that I should have been point to ORS 757.410, which deals with utilities, and there's a couple more after that.

Bruce Folsom: Thank you very much.

Chairwoman Showalter: Well...I'm into the "probably not" range...which is James Sells...turn into a definite no....okay. Now, I'm in the "no" range so...but I'd like to acknowledge that you are here. Gordon Walgren, if you'd like to say anything...are you interested in making a comment...alright...and Lisa Anderl is too tired from this morning's argument.

Lisa Anderl: But Mr. Cummings...has a little bit of light to shed on some of the rules in Oregon.

Chairwoman Showalter: Okay, Mr. Cummings...

Peter Cummings: I'm Peter Cummings with Qwest and I'd like to talk just a little bit about the Oregon regulations because I do deal with them, and I do have some familiarity with them. The rules are different for energy utilities than they are for telecommunications companies...and I can't comment on the energy utilities, but for the telecommunications companies...for companies with multi-state operations...for those companies who have 75 percent or more of their revenues from outside of the state of Oregon...Oregon has no securities approval requirements.

My company falls into that category and we do, do securities issuance reporting for the state of Oregon...which is similar to the after-the-fact reporting that we do here in Washington. There is a 30-day report after the securities are

issued with the details of the issuance that are known at that point, followed up by a report in 90-days at which time, all the miscellaneous expenses associated with the issue have been identified...and we have for them a firm all-in-cost of the security issuance.

Commissioner Oshie: Mr. Cummings, are there are states in Qwest's service territory that require some type of pre-approval before the issuance of securities or prior filing requirements?

Peter Cummings: No...the only requirements are in Washington and Oregon...and I just spoke about the Oregon requirements, and obviously we're discussing the Washington requirements. Today, in the Washington requirements, as they currently exist, require notification in advance of securities issuance. Those are the only states in our territory.

Chairwoman Showalter: And of course, it's our law...our statute...

Peter Cummings: Yes...

Chairwoman Showalter: ...that requires that at least for some set of transactions that we're talking about. It's always dangerous to read other state's statutes on the "fly." But it appears to me that the rule was...if the utility derives one half or more of its gross revenue...that's what I'm reading in this Oregon statute.

Peter Cummings: It may have been revised since I last looked at it.

Chairwoman Showalter: Right...that is, of course, a more generous...

Peter Cummings: More generous standard...yes.

Commissioner Hemstad: Are you familiar with the SEC filings of Qwest?

Peter Cummings: Generally, yes.

Commissioner Hemstad: In the standards they use for their control and the like...

Peter Cummings: I can't shed any light on that one. I was sitting in the back of the room trying to come up with the parallel of what's in the SEC rules and

regulations...and I'm afraid I can't comment on that...I just don't know. Thank you.

Chairwoman Showalter: Thank you. That is everyone I believe who's signed up to comment or signed up not to comment. Would anyone else like to comment... and in particular, would anyone else like to address the issue of the five days. We do have quite a bit of written comment on that, but we didn't hear much about it today. Alright...any other comments...then that will conclude this hearing.

This is not an open meeting item. Under the rulemaking process, we will take all of this into consideration and decide whether or not to adopt a rule, and if we adopt a rule, what it says.