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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3 Petition of PacifiCorp d/b/a)
4 Pacific Power & Light Company) Docket No. UE-020417
5 for an Accounting Order)
6 Authorizing Deferral of) Volume I
7 Excess Net Power Costs,) Pages 1 to 71
8 _____)
9))
10 WASHINGTON UTILITIES AND)
11 TRANSPORTATION COMMISSION,) Docket No. UE-991832
12))
13 Petitioner,) (Consolidated for
14)) limited purpose of
15 vs.) hearing Petition to
16)) Rehear or Reopen
17 PACIFICORP d/b/a PACIFIC) Docket No. UE-991832)
18 POWER & LIGHT COMPANY,)
19))
20 Respondent.)
21 _____)

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14 A hearing in the above matter was held on
15 August 6, 2002, from 1:30 p.m. to 3:50 p.m., at 1300
16 South Evergreen Park Drive Southwest, Room 206, Olympia,
17 Washington, before Administrative Law Judge DENNIS MOSS.

18 The parties were present as follows:
19 THE WASHINGTON UTILITIES AND TRANSPORTATION
20 COMMISSION, by ROBERT CEDARBAUM, Assistant Attorney
21 General, 1400 South Evergreen Park Drive Southwest, Post
22 Office Box 40128, Olympia, Washington, 98504. Telephone
23 (360) 664-1188, Fax (360) 586-5522, E-Mail
24 bcedarba@wutc.wa.gov.

25 THE PUBLIC, by ROBERT W. CROMWELL, JR.,
26 Assistant Attorney General, 900 Fourth Avenue, Suite
27 2000, Seattle, Washington, 98164-1012, Telephone (206)
28 464-6595, Fax (206) 389-2058, E-Mail
29 robertcl@atg.wa.gov.
30 Joan E. Kinn, CCR, RPR
31 Court Reporter

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1 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,
2 by MELINDA DAVISON, Attorney at Law, Davison Van Cleve,
3 1000 Southwest Broadway, Suite 2460, Portland, Oregon,
4 97205, Telephone (503) 241-7242, Fax (503) 241-8160,
5 E-Mail mail@dvclaw.com.

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7 PACIFICORP, by JAMES M. VAN NOSTRAND,
8 Attorney at Law, Stoel Rives, LLP, 600 University
9 Street, Suite 3600, Seattle, Washington, 98101-3197,
10 (206) 386-7665, Fax (206) 386-7500, E-Mail
11 jmvannostrand@stoel.com.

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

2 JUDGE MOSS: Good afternoon, everyone. We
3 are convened this afternoon for our first pre-hearing
4 conference in the matter styled Petition of PacifiCorp
5 doing business as Pacific Power & Light Company for an
6 Accounting Order Authorizing Deferral of Excess Net
7 Power Costs in Docket Number UE-020417, and also in the
8 matter styled Washington Utilities and Transportation
9 Commission against PacifiCorp doing business as Pacific
10 Power & Light Company, Docket Number UE-991832, which
11 was a general rate proceeding that closed some time ago.

12 The Commission has previously entered an
13 order in the proceeding consolidating matters for
14 consideration, and after we take appearances, I will
15 speak briefly to the status of affairs vis a vis that
16 order, and then we will take our discussion from there
17 with our usual process and procedural discussion and
18 perhaps related matters.

19 But let's begin with the appearances, and we
20 will start with the company, Mr. Van Nostrand.

21 MR. VAN NOSTRAND: Thank you, Judge Moss. On
22 behalf of PacifiCorp, James M. Van Nostrand, Stoel
23 Rives. Do you want the full address, telephone numbers?

24 JUDGE MOSS: Yeah, let's do the full bit
25 since this is our first appearance, and then hereafter

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1 we can use the short form.

2 MR. VAN NOSTRAND: Okay. 600 University
3 Street, Seattle, Washington, 98101, telephone number
4 (206) 386-7665, fax (206) 386-7500, E-mail
5 jmvannostrand@stoel.com.

6 JUDGE MOSS: Thank you.

7 Ms. Davison.

8 MS. DAVISON: Thank you, Your Honor. Melinda
9 Davison, I am here on behalf of the Industrial Customers
10 of Northwest Utilities. My firm name is Davison Van
11 Cleve. We are at 1000 Southwest Broadway, Suite 2460,
12 Portland, Oregon, 97205, phone is (503) 241-7242, fax is
13 (503) 241-8160, and E-mail is mail, M-A-I-L,
14 @dvclaw.com.

15 JUDGE MOSS: Thank you.

16 Mr. Cromwell.

17 MR. CROMWELL: Robert Cromwell on behalf of
18 Public Counsel. My mailing address is 900 Fourth
19 Avenue, Suite 2000, Seattle, Washington, 98164-1012, my
20 direct line is (206) 464-6595, my fax number is (206)
21 389-2058, my E-mail address is robertc1, the number 1,
22 @atg.wa.gov.

23 JUDGE MOSS: And Mr. Cedarbaum.

24 MR. CEDARBAUM: Thank you. My name is Robert
25 Cedarbaum, Assistant Attorney General. My business

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1 address is 1400 South Evergreen Park Drive Southwest in
2 Olympia, Washington, 98504. The phone number is area
3 code (360) 664-1188, my fax number is area code (360)
4 586-5522, and my E-mail address is bcedarba@wutc.wa.gov.

5 JUDGE MOSS: And it's now B?

6 MR. CEDARBAUM: It always has been B.

7 JUDGE MOSS: I thought it was R, thanks,
8 that's probably why you never get my E-mails.

9 Are there any other appearances today?

10 Okay, I will just note for the record that in
11 terms of previous activity in this matter, we did have a
12 motion to consolidate and petition to rehear or reopen
13 that was a joint motion filed by Commission Staff,
14 Public Counsel, and Industrial Customers of Northwest
15 Utilities, all of whom have entered appearances here
16 today, and also the Northwest Energy Coalition and the
17 Opportunity Counsel/Energy Project, who have not entered
18 appearances. Let me ask if there is anybody on the
19 teleconference bridge line.

20 Apparently not. All right. We do have the
21 written petition to intervene by the Industrial
22 Customers of Northwest Utilities. Let me ask if there's
23 any objection.

24 MR. VAN NOSTRAND: No objection, Your Honor.

25 MR. CEDARBAUM: No objection.

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1 JUDGE MOSS: Okay, there being no objection,
2 I think the petition is well taken, and it will be
3 granted as filed.

4 I do not have any other written petitions to
5 intervene, so at this point at least we have our
6 parties.

7 I mentioned at the outset that I wanted to
8 say a word about the status of the proceeding, and I
9 will say that I had a brief telephone conversation with
10 Mr. Cromwell here a couple of weeks ago shortly after
11 the Commission entered its order consolidating, and I
12 recognized at that point the potential that some
13 unintended ambiguity had crept into the Commission's
14 order, and so I want to clarify that now to the extent
15 any misunderstanding might remain.

16 The order I think fairly could be read to
17 have granted the motion and petition, although it did
18 not say that. It simply said it granted the motion, and
19 that was its narrow intent. So at this juncture, what
20 we have is the consolidation of the Commission's
21 consideration of the company's petition and the motion
22 to rehear or reopen, so the Commission has not made a
23 decision on the motion to rehear or reopen, and we want
24 to discuss that today and talk about the procedural
25 posture of the case, what we need to do to go forward in

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1 the most efficient and I might add legal manner, because
2 I think there's some questions about what we can and can
3 not do in terms of reopening or rehearing the 991832
4 docket, and some of that was discussed in the written
5 motion and answer, and we need to talk about that a
6 little bit.

7 And indeed, I think with that we can move
8 directly to that since we have disposed of the
9 Industrial Customers' petition to intervene, so why
10 don't we talk about that. My first question will be
11 narrow or is narrow, and it is simply, is a motion to
12 reopen timely under the statute and rule.

13 And I will ask you, Mr. Cedarbaum, to speak
14 to that first.

15 MR. CEDARBAUM: Thank you, Your Honor. I
16 think that there is -- we could have a little bit of a
17 different procedural stance of the case, and when we
18 filed the motion for reopening, I think we tried to
19 cover all of our bases so that we could properly get --
20 have before the Commission a motion to be granted.
21 There are two basic provisions involving the Commission
22 hearing additional evidence in a case. One is -- just
23 so I don't misspeak, make sure I have the rule in front
24 of me.

25 JUDGE MOSS: We're going to look at

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1 480-09-820?

2 MR. CEDARBAUM: Yes, we are. That rule that
3 you just mentioned has two mechanisms. One is
4 rehearing, and there's reference to a statute in RCW
5 80.04.200, and then there is reopening. Reopening is
6 basically to ask the Commission to reopen a hearing
7 before a final order is entered. We're not in that
8 exact situation here since the Commission did issue a
9 final order in the rate case in that prior docket.
10 However, the Commission does have a procedural rule that
11 allows exceptions and modifications as the circumstances
12 may warrant, and that would be in WAC 480-09-010. I
13 think that's important, because the reopening provision
14 of the 820 rule doesn't rely upon a particular statute.
15 It's just a Commission rule, and so that even if the
16 Commission -- even if the strict reading of that rule
17 would only allow reopening when the record is closed but
18 before a final order is issued, the Commission could
19 modify that rule in a circumstance that it was
20 warranted. And for the reasons that we were stating in
21 our motion, we believe that would be the case here.

22 I also think rehearing would be a provision
23 that would apply since if you look at the statute that's
24 referenced, which is RCW 80.04.200, the statute does
25 begin by saying a public service company affected by an

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1 order is really one to trigger that statute and file for
2 rehearing, but later on -- and then there are some time
3 frames in which that can be done. But later on in the
4 statute, and this is the second to last sentence, it
5 does say, the Commission may in its discretion permit
6 the filing of a petition for rehearing at any time. So
7 at least in terms of timing, the petition can be filed
8 whenever the Commission finds it would be appropriate in
9 its discretion.

10 The question then is who gets to file it, the
11 statute at the beginning having referenced the public
12 service company. I would say that in this situation,
13 there are two reasons why others than the public service
14 company involved can file the petition for rehearing.
15 The first is that that particular sentence that I cited
16 does not -- is not limited just to the public service
17 company. It just says the Commission on its discretion
18 may permit a filing of the petition for rehearing at any
19 time. It doesn't say who in particular that petition
20 could come from, although perhaps someone might argue
21 that, well, that's just in the context of this whole
22 statute, we're really just talking still about the
23 public service company, which leads me to my second
24 reason why this statute I think could still be
25 implemented by others than the public service company,

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1 and that is because in the company's response to the
2 motion, the company did not object to reopening. It
3 said it was up to the Commission in its discretion to
4 reopen if the Commission thought it would be helpful to
5 the Commission in deciding this case. So I believe that
6 in essence amounts to a waiver of any limitation that
7 the statute could be read to allow petitions only from
8 the public service company itself.

9 And that taken into combination with the
10 sentence that I mentioned that a petition could be filed
11 at any time, I believe it's appropriate that the
12 petition could be filed in this case by Staff, Public
13 Counsel, and ICNU. So at least in terms of a procedural
14 argument, I think it's properly before the Commission
15 and could be granted if in the Commission's discretion
16 it was thought to be a good thing to do as a rehearing.

17 Again, I also think that a reopening, the
18 Commission could have a modification to that rule for
19 this case and allow reopening after the record -- after
20 a final order in the prior rate case.

21 JUDGE MOSS: All right, thank you.

22 And let me turn to you, Mr. Van Nostrand, and
23 others will have an opportunity to speak as well, but I
24 just wanted to put the question directly to you. In
25 looking at your answer, I did read that to acknowledge

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1 the concept that the Commission would have the
2 discretion to basically reopen, rehear, or strike
3 whatever process option deemed appropriate in order to
4 have before it everything necessary to rule on or
5 everything the Commission believed necessary to act on
6 your petition. Am I reading that essentially correctly,
7 or would the company make a legal argument that it would
8 be improper to reopen or rehear?

9 MR. VAN NOSTRAND: I think, Your Honor, the
10 point of our response was to indicate that some of the
11 citations and authority we didn't believe applied to the
12 extent that these parties had a right to have it
13 reopened, that if it was reopened it would be because
14 the Commission's discretion determined that it was an
15 expeditious way to proceed. And I think you have stated
16 our position essentially correctly. We -- if the
17 Commission decides that's the way they want to proceed,
18 I think they do have the discretion under the -- to
19 permit the filing or petition of rehearing at any time
20 under 80.04.200, and we're comfortable with proceeding
21 on that basis.

22 JUDGE MOSS: So as I understand the posture
23 of the parties at least I have heard from so far, these
24 would be procedural options that would be available to
25 the Commission. Does anybody else have a comment on

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1 that? I'm most interested if anybody has a view to the
2 contrary.

3 Okay, well, of course I will have those
4 points in mind as we consider the disposition of the
5 motion.

6 Let me put then my next question, and I will
7 turn back to you again, Mr. Cedarbaum, and hear from you
8 first. I guess the question really is in two parts.
9 One, whether there is any practical difference between
10 reopening and rehearing, but the second part and perhaps
11 the more essential question that I have is why isn't it
12 simply -- why isn't it sufficient to simply recognize
13 the Commission's power to alter or amend its prior
14 orders under RCW 80.04.210 and WAC 480-09-815; why do we
15 need to go through the step of formally reopening or
16 rehearing the prior docket if we have that power?

17 MR. CEDARBAUM: I think, Your Honor, the
18 reason is that the -- it's important to reopen the prior
19 docket for a number of reasons, including the following.
20 We are asking the Commission, there is a fair --
21 evidence within the docket of that prior rate case that
22 we would like to be able to examine in that context of
23 the prior docket. That is not something that's easily
24 done or perhaps can't -- maybe can't even be done
25 without reopening that proceeding.

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1 I think another practical aspect is that just
2 by reopening, we're knee deep in that case as opposed to
3 just, you know, trying to argue around the order and the
4 edges of it as to what the Commission should do to
5 change it. So there's some practical reasons for
6 actually reopening the case rather than just amending a
7 Commission's order afterward.

8 But the other reasons why we would like to
9 have the case reopened is that there are very clear
10 limitations in the Commission's order in the prior
11 docket and the stipulation of the parties in that case
12 involving the rate plan and what can be done to allow
13 the company to increase its rates during the rate plan.
14 I don't need to go into the specifics of that, but it
15 has to do essentially with interim rate relief. And so
16 it's the Staff's position, and I think perhaps the other
17 parties but they can chime in, that if the company is
18 not going to be in an interim rate position, then the
19 rate plan bars Commission increasing rates during the
20 rate plan, which would be the ultimate effect perhaps of
21 this deferred accounting petition.

22 But Staff also recognizes that there may be
23 circumstances in which it's a legitimate exercise to
24 take a look at the status of this company to determine
25 whether some sort of rate relief is necessary, and that

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1 should be done in the full context of the company's
2 entire operations, and that seems best to be done by
3 reopening that prior docket again to look at the
4 evidence of that record and the positions of the parties
5 with respect to the rate plan and other matters.

6 I just think again as a practical -- as a
7 practical matter, as a -- and in terms of what the
8 ultimate result might be from this case, reopening the
9 docket is the best alternative rather than just having
10 the Commission amend its order after, you know, in the
11 way that you mentioned.

12 JUDGE MOSS: In terms of the record itself,
13 do you see any impediment to the Commission simply
14 taking official notice of the prior record or portions
15 of it that might be pertinent?

16 MR. CEDARBAUM: I believe the Commission's
17 official notice rule allows it to take official notice
18 of its files, and those items would be in the file, so I
19 don't think there's any prohibition against that, no.

20 JUDGE MOSS: And understand what I'm
21 exploring here is the range of options that are
22 available. I'm not trying to suggest any preconceptions
23 about how we should proceed, but rather to explore what
24 options are available to proceed and what the
25 implications of those options are.

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1 And with that last point in mind, were the
2 Commission to reopen or decide it should rehear the
3 prior docket, do you see that as having a different set
4 of implications than were the Commission to instead
5 simply go forward with the 020417 docket and again
6 possibly modify its prior order, take cognizance of the
7 prior record in whatever fashion would be appropriate or
8 to whatever extent would be appropriate? In other
9 words, if we, if the Commission were to reopen or decide
10 to rehear, would that essentially mean with respect to
11 the stipulation that was previously approved all bets
12 are off?

13 MR. CEDARBAUM: I don't think the intent of
14 the motion was to -- I would have to go back and read
15 the stipulation and see what other subject matters were
16 covered. There were, I believe, other subjects beyond
17 the rate plan itself, which is really the focus of the
18 motion. So I don't think necessarily -- I don't think
19 its necessary that all issues in that prior case have to
20 be readdressed. Primarily the focus of the motion is on
21 the rate plan and the implications of the rate plan. It
22 would take me a couple minutes perhaps if someone else
23 speaks to review that order just quickly and see what
24 other issues I don't think would be implicated.

25 JUDGE MOSS: And knowing all of you

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1 reasonably well after a number of years together, I am
2 confident that if you have something important to say
3 you will let me know even if I don't necessarily
4 recognize you expressly, so please feel free to chime in
5 if you have something to add or disagree with or
6 whatnot. I'm just wanting to explore this in a more
7 conversational format with you at the moment.

8 MR. CROMWELL: If I may.

9 JUDGE MOSS: Yeah, please.

10 MR. CROMWELL: For the record, Robert
11 Cromwell. Just first I do agree with what Mr. Cedarbaum
12 said, and I think that perhaps an example would
13 illustrate some of the difficulty around this point. I
14 think the Commission does have the authority to take
15 notice of the record in the other docket, but it is not
16 a complete docket, or I'm sorry, it's not a complete
17 record in the sense that the case was settled prior to I
18 believe the non-company parties, at least some of the
19 non-company parties' testimony was going to be filed,
20 and there had been no briefing. This is, I think,
21 relevant, because the company's petition relies at least
22 in part upon prefiled testimony that the company made in
23 that rate case docket with regard to power supply costs.
24 And without getting into the nitty gritty of it so to
25 speak, there are issues there and requests for recovery

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1 that we would have contested if this had not -- if that
2 prior rate case had not settled.

3 I think to put it simply, one of our concerns
4 about not having access to the rate case record if the
5 Commission does consider the company's petition that's
6 now before it is that we would be prejudiced in our
7 ability to effectively argue the position we would take
8 in the petition docket because of the circumstances and
9 the timing of the settlement in the rate case docket
10 where we did not by virtue of timing fully articulate
11 the position we would have taken on issues that are
12 directly relevant to the petition now before the
13 Commission.

14 JUDGE MOSS: I will turn to you, Mr. Van
15 Nostrand. I suppose in a technical sense, the relief
16 the company seeks here is pretty narrow. You're looking
17 for an accounting order, you're looking for an order
18 that would permit the company to put certain costs as
19 articulated in the petition in a special account. And
20 then at some point in the future, there would be some
21 further filing presumably that would speak to the
22 question of whether and how any or all of those costs
23 might be recovered through rates or surcharge or what
24 have you.

25 On the other hand, the petition is cast in

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1 terms of a pretty broad context. Indeed, there are
2 references to other Commission proceedings and actions
3 that the Commission has taken recently with respect to
4 two other jurisdictional electrical companies and
5 related matters that places it in a pretty broad
6 context.

7 And I guess the overriding question that
8 perhaps I should have started with instead of building
9 to is, you know, what is it that we need to deal with
10 here in this proceeding? Is this a reasonable way to
11 proceed in this fashion where we have first the
12 accounting petition and then some anticipated filing
13 perhaps a year from now? What I'm hearing from the
14 movants on the motion to reopen or rehear is that the
15 Commission can not or should not hear your accounting
16 petition absent hearing perhaps a host of other issues
17 that are in some way related I think ultimately to the
18 potential recovery of the costs as opposed to their
19 accounting treatment in the interim. What's the
20 company's view of that? I mean obviously you did not
21 anticipate the motion at the time you made your
22 petition, so now that perhaps the posture of things has
23 changed, then I would like to hear what you have to say.

24 MR. VAN NOSTRAND: Sure. I think what we
25 have been hearing from the parties since we filed this

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1 is I think not really wanting to consider the accounting
2 deferral request in isolation from whatever our proposal
3 is for rate recovery. I mean I think when we filed
4 this, the idea was to at least get the line in the sand,
5 so to speak, so that we could begin tracking these costs
6 and not be precluded from recovering them in rates, at
7 least track them.

8 And then at the time we filed this, obviously
9 the Avista and the PSE cases were fairly early on, we
10 were watching them closely with respect particularly to
11 issue of power costs and power cost trackers and how
12 those utilities were being handled with respect to the
13 issue of extraordinary power costs that all utilities in
14 the western United States have experienced since June of
15 2000. But we're also understanding that the parties
16 want to be able to consider a proposal for rate recovery
17 and without -- and aren't comfortable proceeding with a
18 deferred accounting in isolation.

19 And I guess, you know, at the time we filed
20 this, we were looking at a particular couple of
21 petitions for accounting that had been granted, and my
22 experience frankly has been, you know, defer now and
23 track the costs and sort out the rate recovery issues
24 later, and that was -- and that was our plan, to begin
25 -- to not lose the ability to have these costs recovered

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1 in rates by being at least allowed to track them. And
2 frankly, having filed this on April 5th asking for
3 deferrals to begin effective June 1, we have now lost
4 potentially two months of deferrals, and we had asked
5 for the June 1 date because of forward purchases that
6 were made last summer before the FERC price cap order
7 was entered, seeking the same type of relief we think
8 that the other utilities in this state have received
9 with respect to extraordinary conditions in the power
10 market. So just the passage of time to some extent we
11 feel has denied us relief potentially for a couple of
12 months.

13 But going forward, I think we do recognize
14 the parties' concerns that what is our specific proposal
15 for recovery, what sort of showing can we make. And I
16 think we would like the opportunity to be able to make a
17 filing discussing the company's financial circumstances
18 in Washington. Perhaps it meets the interim standard,
19 perhaps it doesn't. Perhaps we need to meet that
20 standard, perhaps we don't. But I think we're certainly
21 willing to make a more complete filing that lays out the
22 issues more completely and address the interim standard
23 to the extent the parties feel that's appropriate before
24 we can be entitled to even entertain a request for
25 relief.

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1 But we remain concerned that the passage of
2 time without any action on the petition to defer
3 essentially denies us any relief. I mean we just wanted
4 the ability to hold those costs for consideration of
5 recovery in rates, and not being able to defer or track
6 them takes away -- I mean it's, you know, relief delayed
7 is relief denied for us to the extent you can't recover
8 those costs, particularly during the summer months when
9 we did have adverse impacts due to forward purchases
10 last summer prior to the June 19th price cap order.

11 I think it's worth noting, I understand the
12 Commission's concern with sort of business as it used to
13 be before June of 2000, which was defer now and sort it
14 out later, because you did have a situation where Avista
15 got a quick order to defer, and within 19 months they
16 had over \$200 Million in power costs that are on their
17 books that need to be dealt with. And in the case of
18 PacifiCorp, we are not looking for financial reporting
19 purposes to have these deferrals. Under UK accounting
20 under which Scottish Power operates, deferrals don't
21 mean anything for purposes of financial reporting, so it
22 isn't as though there's going to be an income statement
23 effect whether we're seeking to -- immediate earnings
24 effect because of this. It's just preserving the
25 ability to consider these costs for later rate recovery.

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1 That's all we're seeking.

2 If it turns out after we make our filing, the
3 parties say, gee, you're not even close to satisfying
4 us, or the Commission says, this isn't what we had in
5 mind, fine. Whatever costs we defer, they're gone.
6 They're not really written off, because they never
7 really existed for financial reporting purposes. But
8 going forward, I think we would -- it's important that
9 we preserve the ability to at least have those costs
10 considered. If we make our case, they're there, we can
11 look at them, partial recovery, no recovery, some
12 recovery, all recovery. But to not allow us to even
13 track or record them is sort of defeating the purpose of
14 what we filed this for, which has now been five months
15 ago I guess in April, four months.

16 JUDGE MOSS: What legal impediment do you see
17 to the Commission entering an accounting order that
18 would allow you to treat these costs for accounting
19 purposes from the June 1 date I think? Wasn't it June 1
20 you requested to initiate that?

21 MR. VAN NOSTRAND: I don't see any legal
22 impediment. In fact, the precedent from the Avista
23 proceeding that they filed June 23rd of 2000 seeking to
24 implement deferred accounting as of July 1. The
25 Commission issued an order August 9 granting their

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1 deferral retroactive to July 1. As long as the deferral
2 date is after the date we filed, I think I don't see a
3 legal impediment.

4 JUDGE MOSS: Does anybody else see a legal
5 impediment? And Mr. Van Nostrand is correct, I believe,
6 in terms of the timing on the Avista order.

7 MR. CEDARBAUM: Yes, Your Honor, let me just
8 briefly respond to Mr. Van Nostrand's discussion about
9 at least the Staff's perspective on the case. And he is
10 right with respect to our hope that we could look at
11 issues broader than just the specific deferred
12 accounting request. We do think it's important to look
13 at the need for the deferred accounting, the mechanism
14 on how the deferred accounting would occur, and also the
15 methodology for recovering if the Commission were to
16 allow for a deferred accounting. And there are a couple
17 of reasons for that.

18 One is the practical reason of, again
19 referring back to Mr. Van Nostrand's recitations of the
20 Avista situation, you had a deferred accounting that
21 wasn't expected to be as large as it turned out to be.
22 It turned out to be enormous, and there were
23 implications of that on Wall Street and all kinds of
24 practical problems with that. So resolving it now as
25 opposed to later helps in that regard.

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1 And now getting to your question about legal
2 impediments, the other point about why issues should be
3 broader now is that we do think that there's a
4 retroactive rate making prohibition against going back,
5 allowing deferred accounting retroactively. I recognize
6 that that's inconsistent with what the Commission did
7 with Avista. However, that particular issue didn't come
8 up, wasn't raised by anyone in the case and wasn't
9 directly resolved by the Commission or even considered.
10 That is a problem, we think, with this request.

11 And we would ask that when we get to
12 scheduling that we somehow factor in briefing on that
13 issue to the Commission for either an earlier
14 resolution, or keep it to the end of the case. So
15 probably makes sense to do it sooner than later, but we
16 want to tee that issue up, because we don't think,
17 contrary to the Avista precedent, that the Commission
18 can do that, and we think it needs to be decided in this
19 proceeding.

20 JUDGE MOSS: Well, the prohibition against
21 retroactive rate making is just that, and an accounting
22 order is not rate making, is it?

23 MR. CEDARBAUM: That's part of the problem.
24 Retroactive rate making, as I understand it, basically
25 says that customers should be placed on notice as to the

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1 costs that they will be required to pay to allow the
2 company to recover through the rates the customers pay.
3 And when the Commission issues a deferred accounting
4 order allowing for deferred accounting but having no
5 discussion about the recovery of that and how it will
6 occur and whether it will occur, customers have notice
7 really of nothing other than the deferred accounting
8 itself. They don't know at the time they purchase
9 electricity or any of the services from the company what
10 costs they may or may not be responsible for.

11 JUDGE MOSS: But that would preclude ever
12 entering a deferral order, because if you don't order a
13 recovery mechanism simultaneously, then there is always
14 uncertainty with respect to recovery of deferred costs,
15 isn't there?

16 MR. CEDARBAUM: And that has been a problem
17 that, again recognizing that my discussion now is
18 inconsistent with the Commission's practice, that is
19 still believed to be a problem. And when the Commission
20 issues an accounting order that doesn't alert customers
21 as to, you know, what their recovery may be, that could
22 raise a retroactive rate making problem. And in this
23 situation when you ask for deferred accounting
24 retroactively before when a Commission issues its order,
25 that even exasperates that issue and problem.

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1 And so again, I'm not -- I wasn't trying to
2 argue the issue now. I just wanted to alert you to it,
3 as Mr. Van Nostrand did, and suggest that we -- Staff is
4 amenable to an early resolution of that issue through a
5 briefing process in this matter.

6 JUDGE MOSS: When you say that issue?

7 MR. CEDARBAUM: The issue as to whether -- we
8 would be looking at whether the Commission has the
9 authority to allow deferred accounting retroactive --
10 effective prior to its final order in the case, and
11 that --

12 JUDGE MOSS: Recognizing that, you know, I'm
13 actually the one who raised the issue by my question,
14 and I just want to discuss it so that I understand where
15 people are with respect to questions that I have about
16 the proceeding without asking you for argument or
17 expecting that this would be your argument and that you
18 would be foreclosed from other argument, and recognizing
19 that I didn't send my questions out in advance, surely
20 you would want to do some research and cite some
21 authority in connection with my questions to the extent
22 they become issues in the proceeding, but just exploring
23 the matter a little bit further, do you recognize, does
24 Staff recognize sitting here today the concept of
25 deferred cost as being an exception to retroactive rate

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1 making? Isn't that a principle of regulatory rate
2 making?

3 MR. CEDARBAUM: Staff does, but again, I
4 think it's with the qualification that when a Commission
5 allows for deferred accounting, to avoid the retroactive
6 rate making prohibition, it should include in its order
7 an indication of how recovery will occur so that when
8 the order goes out, if I'm a rate payer and I want to
9 purchase electricity from a particular company, I will
10 know, I'm on notice that -- of the rate making
11 consequences of that decision, not just that costs are
12 put into a deferred account and may or may not be
13 recovered through my rates. So I'm not saying it -- I
14 recognize -- I agree with you, it's an exception, I
15 don't know that exception is the right word, it's not
16 retroactive rate making if properly formulated in an
17 order.

18 JUDGE MOSS: I think I draw the word
19 exception from Goodman's Discourse on the subject. I
20 think he says it's a well recognized exception to the
21 principle. Whether you agree with Goodman or not,
22 that's the question I'm exploring.

23 Anybody else want to comment on this subject
24 matter?

25 MR. CROMWELL: Just very briefly, Your Honor.

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1 I think that from a factual standpoint, what the
2 Commission will have in front of it are three questions
3 that are going to need to be answered, and I think
4 you've been focusing on the first one, which is the
5 appropriateness of deferred accounting and the recovery
6 of that in the future and whether it's retroactive in
7 this example or not. The second is what will be
8 accounted for, and what are the appropriate power costs,
9 if any, that should be included in the account that the
10 company would propose to create and book for later
11 recovery. And then third, of those costs, what, if any
12 of them, should be recovered from rate payers through
13 rates. And I think that the -- that that is how I would
14 analyze the issue, that it breaks down into those three
15 pieces.

16 And I think that from our perspective and
17 pulling it back to the motion, one of the issues for us
18 is that we did enter into a stipulation resolving that
19 rate case that had very clear exceptions for reopening
20 that rate case, and I think that's implicated in the
21 third, the third of the three parts that I have
22 articulated, and that is what or whether this type of
23 deferred power costs could be recovered from rate
24 payers. And that's again why we think it's important to
25 look at this petition in the context of the record.

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1 And I gave you the example a little bit
2 earlier about what I'm thinking of as the second piece,
3 which is what are the appropriate power costs that if
4 accounting is allowed should be allowed to be placed
5 into that account. The company has proposed as a base
6 line its testimony from the rate case. We would take
7 issue with some of those facts.

8 So to that extent, I think that we -- our
9 perspective would be that the retroactive rate making
10 goes to that first piece of whether the accounting is
11 appropriate, and then the Commission also has the next
12 two pieces of the analysis, and that's where the record
13 in the rate case docket would be helpful.

14 MS. DAVISON: Thank you, Your Honor, this is
15 Melinda Davison on behalf of ICNU. The way that we see
16 this case is that it is extraordinarily complicated from
17 a legal perspective, and I can identify a few issues
18 that we see right off the bat that are not obvious in
19 terms of the resolution in addition to the retroactive
20 rate making that you have been exploring with
21 Mr. Cromwell and Mr. Cedarbaum.

22 And Mr. Cromwell seized on one issue that is
23 sort of obvious from the beginning, is that this is not
24 a what we think of as a traditional deferred accounting
25 case where a company has incurred costs or is going to

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1 incur costs associated with an ice storm, and those
2 costs are segregated and identifiable as above and
3 beyond what are normal costs. Now the company has come
4 in and said that yes, they have extraordinary power
5 costs, but the question becomes, well, compared to what,
6 and how do you identify what are the excess net power
7 costs. And that exercise alone, having just gone
8 through that in another jurisdiction, is not a simple
9 matter, and I'm sure it will be subject to a lot of
10 debate as to what is the correct number, and how do you
11 deal with that also in light of some of the
12 jurisdictional issues and allocation issues. So even if
13 you decide to set up a deferred account, figuring out
14 what the dollars are that go into that account we don't
15 think is a straightforward matter.

16 The second issue that comes to mind is in
17 light of the rate plan, there -- I believe if you look
18 at page or paragraph 23 of PacifiCorp's petition for the
19 accounting order, at least in, and I'm sure Mr. Van
20 Nostrand will correct me if I am reading this
21 incorrectly, but my reading of that paragraph is an
22 admission that under the rate plan the company can not
23 seek amortization of the deferral. And so what they're
24 asking for is to establish the deferred accounting but
25 not to seek recovery of those dollars, because in

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1 essence that violates the rate plan. So the question
2 becomes, if that amortization at this time violates the
3 rate plan, then why doesn't it violate the rate plan to
4 collect those dollars after the rate plan, because those
5 dollars are incurred during the period of rate plan? So
6 we think that there are lots of -- I mean I'm giving you
7 one example of what we think are numerous issues that
8 come into play with regard to the rate plan.

9 And then the last thing I would just touch
10 upon is our confusion, we're not really quite sure what
11 the company is asking for with regard to a PCA. Looking
12 at the first page of the petition, it appears to be
13 argued in the alternative, but we're not sure. Again,
14 you know, setting up a PCA and evaluating a PCA is an
15 extremely complex issue that gets into a lot of issues
16 that you look at in a general rate case as well.

17 Thank you.

18 JUDGE MOSS: Mr. Van Nostrand, you have been
19 taking some notes over there, I should give you an
20 opportunity to speak before I go on to another question.

21 MR. VAN NOSTRAND: So many notes and so
22 little time.

23 JUDGE MOSS: We have all afternoon.

24 MR. VAN NOSTRAND: I guess I would like to
25 drop back to the first issue that we were discussing,

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1 which was the retroactive rate making, and I guess I do
2 agree with Mr. Cedarbaum to some extent and disagree
3 with him in other respects. I think ideally you would
4 have a Commission order in place before you start
5 deferring. It's kind of a continuum. I think arguably
6 you can go back to the time that the company filed the
7 petition, and I think that's at one end of the
8 continuum. I think the other end of the continuum is
9 where the Commission issues an order saying you can
10 defer and here's our method for amortizing those
11 deferrals in rates. And I think that's a pretty widely
12 accepted exception to the rule against retroactive rate
13 making. There's no problem there.

14 I think in between there you're in a gray
15 area, and we had filed this April 5th to ask for a July
16 1 effective date with the idea we would have a
17 Commission order in place. Because in my mind, I think
18 that's acceptable to have an order in place that -- in
19 my view, rate payers are put on notice at that point
20 that these costs are being deferred, and there is a
21 possibility of future rate recovery of them. And
22 whether we can go -- I think pushing back and seeing a
23 retroactive implementation date so the Commission order
24 is -- has a retroactive effect I think is in a little
25 more gray area. Perhaps it's entirely lawful and

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1 proper, but it's more at the other end of the continuum
2 than we would rather -- than we would rather be. But I
3 don't agree -- I said I don't agree with Mr. Cedarbaum
4 that you need to have the mechanism in place before you
5 can even allow deferrals, because that's certainly
6 contrary to a number of Commission decisions over the
7 last few years.

8 On the issue of, you know, what is the base
9 line, both Mr. Cromwell and Ms. Davison mentioned this
10 issue of what is the base line, what is it we're
11 deferring. You know, the base line that we were
12 proposing was what we asked for. In other words, had
13 there been no disallowances whatsoever in the last rate
14 case, that's what we would have gotten. And it's \$486
15 Million, and I think our petition indicates that our
16 best estimate of the annual level of power costs is in
17 excess of \$650 Million now.

18 And so I understand Mr. Cromwell's argument,
19 yeah, that case wasn't completely litigated, but would
20 it have gotten better for the rate payers if it had been
21 completely litigated. I mean if the base line is low,
22 that means we defer more. So if Mr. Cromwell's
23 litigation is successful and our power costs are
24 reduced, that means it's a lower base line and so we
25 defer more. And by accepting \$486 Million as the base

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1 line, the highest number that could have come out of
2 that filing based on what we filed, we figure that's a
3 pretty conservative estimate from which to measure, you
4 know, that's the amount that's presumed to be in rates.

5 And it's a simple matter, we attached to our
6 petition the monthly power costs. It's whatever is in
7 excess of the amount that's determined to be in rates is
8 what we're asking to defer. Obviously down the road we
9 can debate as to what percentage recovery of those we
10 should get. There may be issues about what belongs in
11 there and what doesn't. As Ms. Davison acknowledged, we
12 have had a protracted litigation in Oregon about the
13 source of some of those deferred power costs, but as to
14 whether or not they are in excess of the amount in rates
15 is a matter that can be fairly easily agreed upon. And
16 I think with us agreeing to a \$486 Million base line, it
17 can't get much worse for us than that.

18 As far as the amortization violating the rate
19 plan, I do not read paragraph 23, to no surprise, the
20 same way as Ms. Davison. We made it clear in that
21 filing we were making no proposal to amortize rates with
22 this filing. That would be subject to a later filing.
23 I think we are acknowledging that there are limitations
24 in the rate plan on adjustments to base rates, but there
25 are a lot of things that can be done that don't amount

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1 to adjustments to base rates.

2 And as an example, in Idaho, this company was
3 subjected to a two year rate freeze in the wake of the
4 Scottish Power/PacifiCorp merger, and these power costs
5 were deferred in the period that was within the two year
6 rate freeze imposed by the commission, yet nonetheless
7 we were allowed to recover \$25 Million out of the \$38
8 Million that were deferred. Part of that was done
9 through offsetting the merger credits and the Centralia
10 sale credits the customers were otherwise given in
11 rates. Base rates were not changed, but there were
12 other credits that customers were getting.

13 You could decide, okay, Centralia, customer's
14 going to get a credit to forward the proceeds of the
15 Centralia sale, we will use those instead to offset
16 these higher power costs, not disturb base rates, but
17 still allow some recovery for these extraordinary costs.
18 What we're acknowledging in paragraph 23 is there are a
19 number of ways, assuming we defer costs and there is
20 some recognition that we should get some way of
21 recovering in the rates, there are a number of different
22 ways we can go, and we're not making a proposal at this
23 time.

24 And I think, you know, the reference to it's
25 unclear what we're asking for with respect to PCA is,

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1 well, this was filed back on April 5th well before the
2 Puget and Avista cases had been sorted out and really
3 what sort of power cost adjustment mechanism were
4 approved for those companies. We want to take a look at
5 those and see if we could perhaps propose a similar sort
6 of mechanism for us.

7 So I think that addresses all the issues. I
8 mean again I think it's important that we -- I mean we
9 are willing to make a filing that more completely
10 develops a proposal and includes a proposal for
11 recovering these amounts in rates, but I think we would
12 like to get the deferral issue established.

13 JUDGE MOSS: Well, the scope of the
14 proceeding is obviously the overriding subject of
15 interest here. The company has filed a petition seeking
16 what I would characterize as a fairly narrow form of
17 relief, an accounting order. It has done that in the
18 context -- in a broader context. The other parties have
19 raised questions largely concerning the broader context,
20 although perhaps not exclusively.

21 There has been some comment with regard to
22 the proper base line, for example, to establish if there
23 were a deferral account established, what should go into
24 it. However, my recollection is that in both Avista and
25 Puget, when the Commission entered its accounting orders

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1 in those proceedings, that was one of the issues that
2 was reserved for later consideration along with
3 recovery, what costs and what recovery, if any. Those
4 issues were all reserved in that connection.

5 So the company has indicated that it would be
6 willing, and I gather you mean in the fairly near term,
7 to file a case seeking broader relief, but your interest
8 in doing that would turn in large part on getting this
9 narrow issue resolved quickly. Is that essentially
10 correct?

11 MR. VAN NOSTRAND: Yes, and I mean --

12 JUDGE MOSS: Well, let me just stop you
13 and --

14 MR. VAN NOSTRAND: If we could eliminate some
15 of the retroactive rate making in -- I mean even if we
16 from this day forward, if we were authorized to defer,
17 that would be, you know, that would be acceptable to the
18 company too in the interest of expediting things. But,
19 you know, the way I understand what Mr. Cedarbaum was
20 saying is that he doesn't think we can even issue an
21 order authorizing deferral without a recovery mechanism,
22 so that's --

23 JUDGE MOSS: Have the parties had an
24 opportunity to discuss among themselves the posture of
25 this case prior to this conference?

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1 MR. CEDARBAUM: Your Honor, my understanding
2 is that Staff, Mr. Buckley, has had some discussions
3 with company staff, Ms. Omahundro, and we can go off the
4 record and talk about that maybe in more detail. My,
5 again, my understanding was I thought we were moving
6 towards an agreement on the filing of testimony on the
7 broader context, and I was offering to have teed up this
8 legal issue about retroactive rate making, you know,
9 before the testimony might be filed so we could get that
10 resolved and things would kind of go in sequence that
11 way.

12 JUDGE MOSS: Or there might be some other
13 possibilities to make that question go away. I wonder
14 if it would be advantageous for us to go off the record
15 for say half an hour or so and allow the parties to
16 discuss among themselves some of the things we have been
17 talking about in a more formal posture on an informal
18 basis. And, you know, I'm frankly open to ideas at this
19 juncture about how we proceed. You know, the Commission
20 has set the matter for hearing, and so clearly the
21 company is going to be expected to put on some sort of
22 case in connection with the request for an accounting
23 order, but that's your petition. To the extent there is
24 an interest and a common interest in broadening the
25 scope of the proceeding as is suggested by the others,

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1 and perhaps the company I think has expressed an
2 openness to that idea at least, it might be beneficial
3 for you all to discuss among yourselves for a reasonable
4 period and see where we stand after that. Does anybody
5 see that as a useless exercise?

6 MR. CEDARBAUM: I think that would be fine.

7 JUDGE MOSS: Okay, well, why don't we go off
8 the record then let's say until 3:00; would that be
9 adequate do you think?

10 MR. CEDARBAUM: Your Honor, before we do
11 that, can I just --

12 JUDGE MOSS: Sure.

13 MR. CEDARBAUM: And this, again, this is just
14 for the record, but Mr. Van Nostrand indicated the
15 petition was filed in April and here we are August and
16 nothing has happened other than this pre-hearing
17 conference. I don't think the implication was that
18 Staff has been sitting around doing nothing.

19 JUDGE MOSS: No.

20 MR. CEDARBAUM: But just for the record, I
21 wanted you to know that there has been quite a bit of
22 discovery requests by Staff of the company and some
23 difficulty, quite frankly, in getting what we're after,
24 but we're going to try to work through that and
25 hopefully accomplish what we want. But I just wanted

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1 the record to be clear.

2 JUDGE MOSS: Yeah, I took Mr. Van Nostrand's
3 remark to be in terms of official action and perhaps
4 action by the Bench, and so I don't think it was meant
5 to cast any aspersions on Staff or otherwise to suggest
6 that there had not been some informal effort, so I think
7 we're --

8 MR. VAN NOSTRAND: I can acknowledge that
9 there has been some informal discussion among all
10 parties.

11 JUDGE MOSS: Okay, great, thank you.

12 All right, well, let's be off the record for
13 about a half an hour, and I'll come back in around 3:00
14 or sooner if you all will find me.

15 (Discussion off the record.)

16 (Recess taken.)

17 JUDGE MOSS: We're back from our recess
18 during which time the parties have had an opportunity to
19 discuss procedural options for going forward, and so I
20 will ask if somebody can give me a report on where we
21 are in that regard, including the possibility that we
22 made no progress at all.

23 MR. CEDARBAUM: Well, I think Mr. Van
24 Nostrand will probably do some talking after I'm done,
25 but we weren't able to agree on a schedule. The

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1 company, as I understand it, is going to make a proposal
2 which the other parties can respond to. I think there
3 was some discussion about an alternative to that, and we
4 can discuss that afterwards I suppose would be the best
5 course of action.

6 JUDGE MOSS: All right.

7 MR. CEDARBAUM: But as I -- I think --
8 whether it was on the record or during our informal
9 discussions, it was a Staff proposal to allow the
10 company to prefile direct testimony of all of the issues
11 that we discussed before we went off the record, and
12 that can be done at their convenience. Then we would
13 then ask the Commission to have a telephone conference
14 call with you the week after that filing came in so that
15 the parties could judge how much more time they needed
16 to file their direct cases. But prior to all of that
17 happening, we would have a briefing schedule on the
18 legal issues in the case and try to get a quick
19 resolution to those.

20 That proposal was not acceptable to the
21 company, but I will let Mr. Van Nostrand speak to that.

22 JUDGE MOSS: Okay. What does the company
23 propose? It is your petition.

24 MR. VAN NOSTRAND: Well, Your Honor, back to
25 that continuum discussion that we had in terms of

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1 legality of the deferred accounting, we were exploring
2 the possibility of having a deferred accounting order
3 entered within the next week or so that would allow us
4 to defer prospectively from the date of that order and
5 so -- and then we would have the issue as to any
6 deferrals prior to that date.

7 That was unacceptable to the parties, but the
8 company would nonetheless make that proposal, that the
9 Commission issue an order within the coming week or so
10 that would allow as of that date forward the deferral of
11 excess net power costs as proposed in the company's
12 petition and could include in that order very clear
13 instructions that any deferrals would be strictly for
14 the purposes of tracking these costs for consideration
15 of future rate recovery, that under no circumstance
16 would any deferrals be booked for financial reporting
17 purposes nor recognized as income in the company's
18 financial statements until there is a ruling on the
19 ultimate recovery of any deferred amounts in rates.

20 And I think we also need then to establish
21 the briefing schedule in the event the Commission
22 doesn't issue that deferred accounting order that would
23 allow us to brief the issue of the legality of the
24 Commission approving retroactive or approving deferred
25 accounting effective June 1, which we are willing to

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1 defend the legality thereof but would rather not. And I
2 think depending upon what the Commission does in our
3 request for deferred accounting, the company is at risk
4 for -- basically precluded from even having considered
5 recovery of any costs each day that goes by until that
6 issue is resolved. We would ask for a fairly aggressive
7 briefing schedule on that particular issue. I'm
8 thinking we would file our simultaneous briefs on August
9 23rd and reply briefs on August 30th on those issues.
10 In the event the Commission determines that it can't
11 implement it retroactive to June 1 and doesn't approve
12 our request for deferred accounting as of mid August,
13 those dollars are lost. They're just forever precluded
14 from consideration for rate recovery.

15 JUDGE MOSS: Now I want to make sure I
16 understood, the company had proposed that the parties
17 might agree and perhaps advance to the Commission
18 through some joint filing the initiation of deferred
19 accounting as of say mid August and then proceed to
20 consider these broader issues related to recovery
21 mechanisms, whether they encompass PCAs and other
22 matters.

23 MR. VAN NOSTRAND: Correct, yes.

24 JUDGE MOSS: And the parties were unable to
25 agree to proceed in that fashion. The alternative

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1 proposal then being that, and this is the piece I'm a
2 little fuzzy on, would the company intend to file a
3 motion perhaps supported by affidavits or other
4 information in support of an immediate or say by mid
5 August -- let me back up a half a step. It would be in
6 the nature of a motion for summary determination on the
7 accounting petition essentially is what I'm thinking.
8 Is that part of the proposal, or is the only alternative
9 then to brief the issue of whether an accounting order
10 might be retroactively imposed, or that's not the right
11 way to put that, whether an accounting order could have
12 retroactive effect in terms of the timing of the
13 deferrals. So were there two proposals or three, I
14 guess?

15 MR. VAN NOSTRAND: I think our view is that
16 there is a sufficient basis on the petition alone to
17 either grant or deny the limited relief of just being
18 able to defer for future consideration the excess net
19 power costs. I don't anticipate any further filings to
20 reiterate that request. But recognizing that there will
21 need to be something that comes from the Commission, I
22 think we also need -- and if that is denied, then we
23 would like to have it deferred effective as of June 1,
24 and so we need to establish a briefing schedule to do
25 that. And in the event the Commission decided it can

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1 not implement it retroactive to June 1, then time is of
2 the essence, and therefore we're looking for a fairly
3 aggressive briefing schedule on that issue of
4 retroactive effect of an accounting order.

5 JUDGE MOSS: I see no impediment to an
6 aggressive briefing schedule on that legal issue. It
7 seems to me that's something that can be accomplished in
8 a matter of a couple of weeks.

9 MR. VAN NOSTRAND: I'm not sure I answered
10 all your question.

11 JUDGE MOSS: Yeah, the concern that I have is
12 the posture of the case today is that the company filed
13 for the accounting order perhaps anticipating that the
14 Commission would act on it as an open meeting item as
15 was done in the case of Avista and PSE over the course
16 of the last couple of years. That did not occur. The
17 Commission instead had set the matter over for hearing,
18 and so I would anticipate that the company would need to
19 make some additional affirmative requests beyond its
20 petition to have the Commission consider acting
21 immediately.

22 Now it's not up to me, of course, to give you
23 guidance as to what that might be. I can discuss with
24 you what procedural mechanisms and options exist in
25 terms of what you might file substantively in support of

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1 the Commission granting your accounting petition
2 immediately. That would be for the company to determine
3 perhaps in light of what has happened over the last
4 couple of years and what took place in those cases. And
5 obviously there's no predicting on my part or yours or
6 anybody else's what the Commissioners may do with that,
7 but I would think that you would need to either -- I
8 would think the most obvious procedural mechanism would
9 be a motion for summary determination supported by
10 appropriate papers, to which, of course, the other
11 parties would have an opportunity to respond, also with,
12 you know, the assertion that there are material issues
13 of fact.

14 Short of that -- and we can set a date for
15 that process if the company chooses to avail itself of
16 such a process, and I'm not suggesting that's the only
17 process. You folks have proven to be imaginative in the
18 past, and you may be imaginative in the future. But we
19 can set some dates for that, and we can also set a
20 briefing schedule for the question of the legality of --
21 in fact, we could make it a more or less simultaneous
22 schedule I would think. I think it is an important
23 question in the context of this case that the company
24 did file in April for relief commencing in June. It is
25 now August, and the company states that there's some

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1 urgency to the matter and ought to have an opportunity
2 to make that showing.

3 And then beyond that, I suppose what we would
4 do, perhaps the best course of action would be to
5 determine today whether the company wants the
6 opportunity to make such a filing. And if so, then we
7 don't really need to set any further scheduling beyond
8 those two items we have been discussing. And then
9 depending on the Commission's action on the dispositive
10 motion, we could set a schedule for the filing of
11 testimony.

12 I'm a little concerned about the framing of
13 the issues in the case, and, of course, that's one of
14 the main purposes of a pre-hearing conference is to
15 establish what are the issues in the case. From the
16 company's perspective, as I see it, there is only the
17 narrow issue of whether the company should be allowed to
18 establish a deferral account for what it asserts to be
19 excess power costs, reserving for future consideration
20 in another proceeding following another filing the
21 question of what the appropriate deferred costs are,
22 whether any or all of those costs should be recovered,
23 and by what mechanism. The other parties are taking the
24 position that the last issues I mentioned are
25 necessarily considered in the context of the accounting

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1 petition and would wish to make that argument out. I
2 don't know that the motion to reopen or rehear provided
3 an adequate opportunity for those arguments to be made
4 thoroughly.

5 Are there other process and procedural issues
6 we need to determine today? I mean do we need to go
7 ahead and try to set a full schedule for hearing until
8 we decide these other issues?

9 MR. VAN NOSTRAND: Well, in light of your
10 comment that it would essentially require a motion for
11 summary determination and an opportunity for other
12 parties to respond, it gets pushed out quite a bit. I
13 wonder if we just don't go more to the -- focus more on
14 the merits of the whole thing and get a deferred
15 accounting prospectively from some later date. Because
16 it's apparent we won't get -- I mean it's -- I guess we
17 still preserve the argument that it could be effective
18 as of June 1 whatever the -- whenever the Commission
19 rules on the merits of the whole application, that
20 argument would always be preserved.

21 JUDGE MOSS: Yes, it would.

22 MR. VAN NOSTRAND: It's just -- I think it's
23 a stronger position that we have a Commission order and
24 it's effective prospective from that date. I was trying
25 to avoid having to defend the retroactive application of

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1 a deferred accounting order.

2 MR. CEDARBAUM: Your Honor, I was just going
3 to make the point that I think maybe we have come full
4 circle back to Staff at least or other parties, if I
5 understood Mr. Van Nostrand correctly. I thought we
6 were now at the point of talking about the company
7 filing its direct case in support of its application,
8 but I believe there's no disagreement about having the
9 broader scope issues brought in and then in the meantime
10 have the legal issue of retroactive rate making. And we
11 talked about some other legal issues involved in the
12 rate plan that could also be brought to the Commission
13 sooner on an expedited schedule. But then we would ask
14 if that's the plan that when the testimony gets filed by
15 the company, then we see what it looks like before we
16 schedule the rest of the case.

17 JUDGE MOSS: What would you contemplate the
18 company would file testimony on? What do you assert to
19 be the issues of material fact?

20 MR. CEDARBAUM: The issues involve the
21 financial need, the basis for deferred accounting, what
22 is the company's case for the need for deferred
23 accounting either from, you know, purely factual point
24 of view, the financial impact point of view, those sorts
25 of issues, just what is its case in support of deferred

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1 accounting in and of itself. Secondly, there would be
2 we would expect testimony on the methodology for the
3 deferred accounting. And by that I mean, and an
4 accountant would know this much better than I do, but
5 just the mechanism for how you defer these costs, what
6 accounts are utilized, just specifically the mechanics
7 of that. And the third general area would be of the
8 recovery mechanism for recovering those costs that are
9 placed into the deferred accounts, however that
10 mechanism would occur.

11 So those are the three general areas, you
12 know, again broadly speaking, that Staff would be
13 interested in, and we have had some discussions with the
14 company, and we can have further discussions on exactly
15 what from Staff's perspective would be necessary.

16 JUDGE MOSS: Any of the rest of you want to
17 identify discreet issues aside from those Mr. Cedarbaum
18 has identified that you think ought to be in the
19 proceeding?

20 MS. DAVISON: Yes, thank you, Your Honor.
21 This is Melinda Davison. There are several issues that
22 we think are relevant, and actually, if I understand
23 what Mr. Van Nostrand came back around to, I think I
24 agree that we should look broadly at the legal issues.
25 I think that may actually expedite the case as opposed

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1 to delay the case to take the legal issues up front,
2 let's get them all resolved, and then we can deal with
3 whatever is remaining at that point. And for that
4 reason, I am a little uncomfortable with having too
5 expedited of a briefing schedule. I would like to have
6 enough time to really thoroughly research and think
7 about these issues and present them in a coherent manner
8 to the Commission.

9 But some of the issues that we have
10 identified up front are related to the two issues that I
11 brought up earlier. One is what is permissible under
12 the rate plan and whether a deferred account of this
13 nature is permissible under the rate plan. A second
14 issue that comes to mind relates to what dollars,
15 assuming that that answer is that the company may set up
16 a deferred account under the rate plan of this nature,
17 then the question becomes what dollars can go into that
18 deferred account, and how do you calculate that. And we
19 do respectfully disagree with Mr. Van Nostrand that it
20 is not just simply a matter of taking the 486 and
21 compare it to the month-to-month power costs, and I will
22 identify a few but not all the issues we see with that.

23 For example, the company has had two 3% rate
24 increases. Presumably those 3% rate increases encompass
25 some power cost dollars that need to be taken into

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1 consideration when you set a base line. In addition to
2 that, there is a question about fuel costs. A lot of
3 these increased power costs are related to fuel costs.
4 We believe that the rate plan explicitly put fuel cost
5 risk on the company, and that would be encompassed in
6 the dollars that they are seeking to incur are put into
7 the deferred account. And I don't believe that those
8 are related to the extraordinary power costs and the
9 explosion of the power market in the year 2000. So
10 again, I think that it is a complicated analysis to
11 figure out what are the excess power costs and what are
12 permissible under the rate plan.

13 We also have some issues regarding the power
14 cost models. The company at the time that the rate plan
15 was entered into used PDMAC model. They now use a model
16 called the grid model. That has to be looked at to see
17 what that does to the numbers and assumptions that are
18 included. There are issues regarding a new power plant
19 that PacifiCorp has leased from PPM, which is called
20 West Valley, that I presume would be included in these
21 costs. That raises a whole nother set of issues for the
22 Commission to consider. There are issues regarding a
23 SMUD contract, which no one else but Mr. Van Nostrand
24 will know what I am speaking of, that has been disposed
25 of in other jurisdictions. I don't want to go on and on

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1 but --

2 JUDGE MOSS: You should probably spell SMUD.

3 MS. DAVISON: S-M-U-D, which stands for the
4 Sacramento Municipal Utility District.

5 And then there is last, one of the last
6 issues, and I will stop, that we have identified on a
7 preliminary basis is split between power costs related
8 to retail sales and power costs related to PacifiCorp's
9 wholesale activities. Again, we think that that
10 suggests that it's a somewhat complicated factor to
11 figure out what the dollars are that you put into the
12 deferred account if, in fact, you determine that the
13 deferred account is legal. I will stop with that.

14 MR. CROMWELL: I think, Your Honor, that
15 Mr. Cedarbaum and Ms. Davison probably articulated all
16 the issues I would have identified. It's probably
17 implicit in a lot of what's been said here this morning,
18 but it's probably worth noting that one of our
19 perspectives on the company's petition is that if it is
20 granted and there is a recovery for costs during the
21 rate plan that that would in effect be a single issue
22 rate making since we would be adjusting rates based on
23 this single issue without a general rate case.

24 JUDGE MOSS: You're suggesting that if the
25 Commission were to permit deferral accounting, that

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1 would constitute single issue rate making?

2 MR. CROMWELL: I think that in the context of
3 this case wherein we have a stipulated settlement
4 accepted by order of this Commission to a general rate
5 case, and we have before this Commission a petition,
6 which if recovery is permitted during that rate plan
7 period, our perspective would be that it does implicate
8 the question of whether or not the Commission is in
9 effect creating a single issue rate making case rather
10 than examining that issue in the context of the
11 company's general rate case where that more normally
12 would occur.

13 JUDGE MOSS: But at this juncture at least,
14 the company isn't seeking to recover these costs.

15 MR. CROMWELL: Well, I think it's fair to
16 infer -- well, no, it actually is quite explicit in the
17 company's petition that they do intend to do so.

18 JUDGE MOSS: Through a separate filing.

19 MR. CROMWELL: Right, and so I think that the
20 Commission could take notice of that fact and that to
21 the extent they seek recovery, as they have indicated
22 they intend to do, for costs incurred during their rate
23 plan that that would be in violation of the rate plan.

24 JUDGE MOSS: Do you want to respond to any of
25 that before I move on? You don't have to, but I will

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1 give you the opportunity.

2 MR. VAN NOSTRAND: I guess one of the
3 concerns I have, and I see the legal briefing, I think
4 there is a -- there would be a basis for sort of
5 establishing a briefing on the legal issues including
6 the one we have discussed on whether or not the
7 Commission has the ability to approve a retroactive
8 application of deferred accounting.

9 I guess some of the other legal issues that
10 Ms. Davison was talking about is just compliance with
11 the rate plan, is this permitted under the rate plan, I
12 think Mr. Cromwell probably also. To the extent the
13 company is seeking amortization during the rate plan
14 period, how can it do so and still comply with the rate
15 plan. And I guess rather than having that be a legal
16 issue, I mean I -- when Mr. Cedarbaum identified the
17 issues that he thought our testimony would address, I
18 would put a fourth category in there, the financial
19 issues and the demonstration the company could make on
20 demonstrating it meets the interim standard for
21 reopening under the rate plan.

22 And I would hate to have the parties debate
23 the legality in a vacuum without the benefit of evidence
24 if we intend to make that showing. If we acknowledge
25 that yes, before we can get rate relief, maybe we will

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1 have to make that showing, and here's our case. And
2 rather than spending time debating the legality of that,
3 let's just look at the evidence and decide whether it's
4 sufficient. I mean if we're willing to accept for
5 purposes of framing up the issues, yes, we think we need
6 to meet this standard before we can get any relief under
7 the rate plan and here's our testimony, then it seems
8 our time is better spent focusing on what we offer as
9 testimony rather than debating about whether or not we
10 should even be able to offer the testimony.

11 So I would tend to want to break that legal
12 issue out and dispose of it by filing testimony and
13 still preserve the legal issue of retroactive
14 implementation of deferred accounting, which may not be
15 all that urgent since you either can or you can't. And
16 whether you decide that next April or tomorrow, it's
17 going to go back to June 1 whether the Commission can or
18 can't. So I'm not sure what -- I think we still need to
19 have that legal question resolved, and then if the
20 Commission decides they can't, we would like to have a,
21 you know, date by which they will.

22 MR. CEDARBAUM: Your Honor, if I could, just
23 a quick response. The Staff would have no objection if
24 the company -- to the company's addition of that fourth
25 element, the interim rate testimony. I would point out

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1 that that may or may not raise another rate plan legal
2 issue, because the rate plan says you can file for
3 interim rate relief if you meet the PNB standards and
4 you're seeking interim rate relief in your other two
5 largest jurisdictions. You know, we've got that
6 potential hurdle to cross too. But as an evidentiary
7 matter, we would have no objection to that being part of
8 the company's case reserving the legal issues for later.

9 So from the Staff perspective, it's okay with
10 Staff to have the preliminary legal briefing be on the
11 retroactive rate making issue and have the rate plan
12 type legal issues come at the end, others. That's -- we
13 could do them earlier too, but if that would move us
14 further along on this pre-hearing conference, we could
15 proceed that way from Staff's perspective.

16 JUDGE MOSS: Well, I realize this pre-hearing
17 conference is dragging on a bit, and the reason for that
18 is that the case is, in my view, in a very unusual
19 posture. What we have before us is the company's
20 petition for an accounting order. That's it. Now the
21 other parties, it seems to me, seek to broaden the
22 proceeding to encompass a much larger range of issues.
23 It's beginning to sound like a full blown rate case in
24 the context of the rate plan order and all the legal
25 issues about whether we can or can not do that under the

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1 interim rate reopener if those standards have been met.

2 I mean we're -- my concern is that we not
3 turn this case into something more than it is on the
4 basis of the petition. And I'm thinking, well, do I
5 need to give the company an opportunity to file an
6 amended petition to encompass all of these issues. I
7 mean at this juncture you haven't put forward anything
8 in terms of requests for interim rates or any form of
9 rate relief. Are these other -- are you other parties
10 suggesting that we should broaden this inquiry to a
11 point where one of the outcomes will be a decision that
12 the company should or should not be entitled to rate
13 relief?

14 MR. CROMWELL: If I may, Your Honor. I would
15 respectfully disagree with your characterization. I
16 think it is implicit in the company's petition that all
17 of the issues that we have identified for you today need
18 to be addressed in order for this Commission to make a
19 determination regarding the company's petition, that
20 they are necessarily implicit in the company's request.

21 JUDGE MOSS: We have to decide the question
22 of recovery before we can decide the question of whether
23 we should allow an accounting mechanism; is that what
24 you're saying? I'm just trying to understand,
25 Mr. Cromwell.

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1 MR. CROMWELL: Right.

2 JUDGE MOSS: I'm not really trying to
3 characterize it other than to say quite plainly I'm
4 confused. I'm trying to figure out what this case is
5 about so that I can present it to the commissioners in
6 some sort of coherent fashion and tell them what it is
7 they're going to be expected to decide. And at this
8 juncture, I frankly don't feel like I could do that.

9 MR. CROMWELL: I certainly understand that,
10 and I think it's our perspective that the company's
11 petition clearly implicates the rate case that was
12 resolved by settlement and order of this Commission.
13 The reason we joined with the other parties here today
14 in filing the motion was purely because of that reason,
15 that we felt it was so strongly tied to the facts of the
16 rate case that it best served this Commission's inquiry
17 to have that record before it.

18 You know, I'm not sure if what Mr. Van
19 Nostrand said a few moments ago regarding interim rate
20 relief is something they would like to bring forward. I
21 mean that would be another way to proceed to resolving
22 this if the company filed a petition for interim rate
23 relief based upon the power costs they have incurred and
24 felt they should reopen the rate case. That's an avenue
25 for relief they could pursue.

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1 I do take your point that what is before the
2 Commission today is a petition for an accounting order.
3 However, the perspective that we bring to this issue is
4 that the company's request clearly implicates a range of
5 issues that were resolved in the rate case by
6 settlement, not on a line item by line item
7 determination. You can't go back to the rate case
8 settlement and say the parties agree power costs will be
9 X, because that wasn't done at that time. We simply
10 resolved the case and allowed the company a certain
11 amount of rate increases over the rate plan period.

12 JUDGE MOSS: But that -- again, we keep --
13 let's not keep mixing up an application for a rate
14 change and a petition for an accounting order. Section
15 9 of the stipulation explicitly provides that the
16 company may file petitions for accounting orders. So to
17 that extent, the company has facially not done anything
18 that's not allowed under the rate plan. Do you agree
19 with that?

20 MR. CROMWELL: No. I think then the question
21 we would pose to the Commission is whether the company's
22 interpretation of that provision of the rate plan is a
23 reasonable interpretation of that provision of the rate
24 plan and whether the parties at the time they entered
25 into that settlement intended that provision to cover

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1 this type of request or whether the more typical type of
2 accounting filings that this Commission receives in its
3 day-to-day business of regulating these utilities was
4 what the parties intended that provision to cover.

5 JUDGE MOSS: You argue that that provision,
6 Section 9, is ambiguous in some way?

7 MR. CROMWELL: No, I'm arguing that it is
8 quite clear and that it intended to cover the, if you
9 will, ministerial or day-to-day provisions of accounting
10 that all regulated utilities are required to disclose
11 and file and have approved by this Commission, that the
12 company's request in this petition now before you was
13 not what the parties intended.

14 JUDGE MOSS: Well, you wouldn't get to make
15 that argument if it's unambiguous, would you?

16 MR. CROMWELL: I'm sorry, I don't get your
17 point.

18 JUDGE MOSS: If the provision is plain on its
19 face, then you don't get to bring in evidence of what
20 the parties intended.

21 MR. CROMWELL: You're correct, and I was not
22 meaning to suggest that the provision was ambiguous.
23 What I was suggesting was that -- well, we can go down
24 that road if you would like.

25 JUDGE MOSS: It's complicated, isn't it?

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1 MR. CROMWELL: It is, clearly, and I think
2 again that gets back to the question of what is -- what
3 would best help this Commission make its decision, and
4 it's our perspective that the record in the rate case is
5 a necessary set of factual evidence for this Commission
6 to make a determination regarding the petition now
7 before you.

8 JUDGE MOSS: All right. What does the
9 company feel it needs to do to support its petition for
10 an accounting order at this juncture, being mindful of
11 the fact that the Commission did not act on this as an
12 open meeting item, it has set this matter over for
13 hearing suggesting that it is open to the receipt of
14 evidence and argument to the extent necessary for the
15 company to establish its burden of proof and for other
16 companies to make their best efforts to defeat that
17 effort, so what would the company like to do? Would
18 you, at this juncture, would you like to file some sort
19 of dispositive motion, would you like to file an amended
20 petition, would you like to file evidence or some
21 combination of those things?

22 MR. VAN NOSTRAND: I guess it would be our
23 plan to file additional evidence much like a direct case
24 in support of the petition.

25 JUDGE MOSS: All right, when do you want to

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1 do that?

2 MR. VAN NOSTRAND: October 18th.

3 MR. CEDARBAUM: I'm sorry, what was the date?

4 JUDGE MOSS: October 18th. All right. And

5 do you want to just defer briefing the question of

6 whether the Commission can legally order an accounting

7 mechanism to be effective retroactively, or do you want

8 to go ahead and argue that early?

9 MR. VAN NOSTRAND: I guess we should have
10 that argued early, because to the extent the Commission
11 determines it can't, then we'll probably want to make
12 some sort of a motion for a summary determination for an
13 immediate accounting order to have effective
14 prospectively.

15 JUDGE MOSS: And you might even consider some
16 other forms of relief at that juncture. It does sound
17 prudent under the posture of the case that we do that
18 early, and several parties have suggested that is a good
19 alternative, so I would certainly be agreeable to that.
20 When would you like to file your argument on that?

21 MR. VAN NOSTRAND: I believe Mr. Cedarbaum
22 has some -- are we going to file the company goes first
23 or simultaneous briefs, what?

24 JUDGE MOSS: I will hear from you on that,
25 what do you want to do?

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1 MR. CEDARBAUM: I guess my thought was
2 simultaneous opening and simultaneous replies.

3 JUDGE MOSS: Close in time though I think.
4 We don't want to delay this.

5 MR. CEDARBAUM: Right, I mean I was thinking,
6 you know, if it's just on the retroactive rate making
7 issue, then I was thinking the replies could be one week
8 after the opening, but, you know, I was hoping to get a
9 little bit more time on the opening because I have some
10 conflicts in the next week, but I wasn't sure how much
11 -- how fast you intended to move on that.

12 JUDGE MOSS: How fast would you intend to
13 file that?

14 MR. VAN NOSTRAND: Well, the day that came to
15 mind was August 23rd, but we could slip that.

16 JUDGE MOSS: Well, that's several weeks off,
17 wouldn't that be enough time?

18 MS. DAVISON: That's not very far.

19 JUDGE MOSS: Today is the 6th, that's 17
20 days.

21 MR. CEDARBAUM: If it would be possible to
22 have it for three weeks from tomorrow or about. I just
23 have a personal conflict. I also have on the Puget case
24 we have testimony coming up on the gas, the remaining
25 gas portion of that case, and that's a work conflict.

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1 So I was hoping that we could have the openings it would
2 be three weeks from tomorrow and then replies a week
3 after that.

4 MS. DAVISON: That would be August 28th.

5 JUDGE MOSS: August 28th.

6 MS. DAVISON: For the opening, and then we
7 have a holiday in there.

8 JUDGE MOSS: We don't take holidays around
9 here, Ms. Davison.

10 MS. DAVISON: I knew I was going to get that,
11 and then I would get a reminder about how I screwed up
12 everybody's Christmas.

13 JUDGE MOSS: Did you do that; I had
14 forgotten.

15 MS. DAVISON: Yeah.

16 MR. CEDARBAUM: I'm sorry, I don't have a
17 calendar in front of me, but what is the exact date a
18 week later than August 28th?

19 MR. VAN NOSTRAND: September the 4th. We
20 could slip that to the 5th in light of the Labor Day
21 Holiday which some might want to observe, Your Honor.

22 JUDGE MOSS: Does that work for you, the
23 company?

24 MR. VAN NOSTRAND: Yeah.

25 JUDGE MOSS: Okay, so we'll say August 28th

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1 for initial briefs and, I'm sorry, September 5th?

2 MR. VAN NOSTRAND: 5th.

3 MS. DAVISON: Could we do 6th?

4 MR. VAN NOSTRAND: 6th.

5 JUDGE MOSS: The company is being agreeable.

6 MS. DAVISON: Thank you.

7 JUDGE MOSS: September 6th on reply briefs.

8 All right, I guess I will go on the holiday too. Okay,
9 let's see --

10 MR. VAN NOSTRAND: And the subject of this
11 brief would be the retroactive implementation of an
12 accounting order?

13 JUDGE MOSS: Of a deferral accounting order
14 or order for deferred account or however you want to
15 phrase it, yeah. Now I don't really -- I don't see the
16 need to broaden the issues for early determination. I
17 mean that's sort of a key issue for you in terms of how
18 you decide to proceed after that, Mr. Van Nostrand, so
19 these other issues we really could do at another time in
20 terms of whether it's allowed in the rate plan or not
21 and that sort of thing.

22 MR. VAN NOSTRAND: Yes.

23 JUDGE MOSS: And it might also shape how you
24 posture in that aspect of the case, and I meant that
25 only in the sense of orient yourself.

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1 MR. VAN NOSTRAND: Yes, I understand.

2 JUDGE MOSS: It's one of those days. All
3 right, so we will have those early briefs on that one
4 issue of the Commission's authority to approve the
5 mechanism retroactively, and then we'll have the
6 company's evidence on October 18th in support of its
7 application.

8 And what about the evidence from Staff,
9 Public Counsel, and Interveners?

10 MR. CEDARBAUM: The thought was, with the
11 Commission's permission, would be to schedule a, it
12 could be just by telephone, a conference with you say on
13 the 25th of October and then schedule the case, you
14 know, with the understanding that we're trying to be
15 expeditious here. But it's difficult to come up with a
16 date certain now until we see the company's direct
17 testimony. So we could have a pre-hearing conference by
18 phone with you a week after the 18th. We could then
19 have a better understanding of the schedule for the rest
20 of the case.

21 JUDGE MOSS: Well, that's not going to work,
22 I'm afraid, because I'm going to be gone from, well,
23 that week of the 21st of October, I don't recall, it's a
24 Saturday and Sunday, I guess Sunday is the 20th.

25 Let's be off the record.

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1 (Discussion off the record.)

2 JUDGE MOSS: All right, we have worked out
3 that on August the 28th there will be simultaneous
4 initial briefs on the single legal issue of whether the
5 Commission has the authority to approve an accounting
6 mechanism to be effective as of a date prior to an order
7 approving such a mechanism. There will be simultaneous
8 reply briefs on September the 6th, and the Commission
9 will endeavor to resolve that question quickly. In the
10 meanwhile, the company will prepare its direct case in
11 support of its accounting petition and will file that
12 evidence by October the 18th. I will anticipate
13 receiving from the parties a proposed procedural
14 schedule for further testimony to be filed in the
15 proceeding by October the 28th. And I will notice a
16 pre-hearing conference that we can do by telephone or
17 live as suits everyone's needs that week of October
18 28th. I will check my calendar, and I will just put a
19 notice out on that.

20 While we were off the record, a suggestion
21 was raised that we should probably make appropriate
22 arrangements for discovery. I understand that some
23 discovery has been ongoing on an informal basis. I
24 gather the parties do wish to have the Commission invoke
25 the discovery rule, WAC 480-09-480, and operating on

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1 that belief, that will be done.

2 What about a protective order, do we need a
3 protective order? Is there anything here that's
4 potentially commercially sensitive?

5 MR. VAN NOSTRAND: Yes.

6 JUDGE MOSS: All right, well, we will go
7 ahead and enter the Commission's standard protective
8 order, and if the parties require any special amendment
9 or addition to that, then we can take that up by motion.

10 I have mentioned several times today the
11 subject of dispositive motions. No one seems
12 particularly inclined at this juncture to file one, but,
13 of course, the Commission's procedural rules are there,
14 if someone does decide to make such a filing, that can
15 be done, but we won't set a date for it.

16 I will remind the parties that the
17 opportunities are present for, of course, settlement
18 discussions, stipulations, that sort of thing on your
19 own, but the Commission has in the past year on a number
20 of occasions made available to the parties the services
21 of one of our administrative law judges to facilitate,
22 act in the role of a mediator, and if the parties wish
23 to take advantage of that opportunity, let me know, and
24 I will take the appropriate steps to see if we can
25 identify someone who can do that. And, of course, the

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1 parties well understand their options to negotiate or
2 discuss matters informally without the assistance of a
3 Commission mediator, or, of course, they can use a
4 private mediator if they choose.

5 I have inquired as to the need for copies of
6 filings for the Commission's internal distribution. As
7 of the time of the pre-hearing, I didn't get a response,
8 and so for the moment at least we will call for the
9 original and 19, but I will probably alter that through
10 a written pre-hearing conference order once I learn more
11 about that.

12 Filings, of course, as always, must be made
13 through the Commission's secretary by mail to the
14 Secretary at the Washington Utilities and Transportation
15 Commission, Post Office Box 47250, 1300 South Evergreen
16 Park Drive Southwest, Olympia, Washington 98504-7250, or
17 by other means of delivery to the Commission's offices
18 at the street address.

19 I want to stress that filings should be
20 accompanied by an electronic version whenever possible
21 either in the form of a diskette or by an E-mail
22 attachment in either Word Perfect V or later, MS Word 6
23 or later, or PDF format, and that service on all parties
24 must be simultaneous with filing.

25 I will enter a written pre-hearing order to

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1 memorialize today to the extent of my capacity to do so,
2 and I expect we will have some additional pre-hearing
3 process and orders along the way.

4 Is there anything else that we need to take
5 up today, any questions?

6 I thank you all for your patience and
7 indulgence with the difficult procedural matters and
8 look forward to working with you through the course of
9 the proceeding. We're in recess.

10 (Hearing adjourned at 3:50 p.m.)

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