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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION

3 WASHINGTON UTILITIES AND )  
4 TRANSPORTATION COMMISSION, )  
5 Complainant, )  
6 vs. ) DOCKET NO. UE-991832  
7 PACIFICORP, d/b/a ) VOLUME 2  
8 PACIFIC LIGHT AND POWER, ) Pages 38 - 83  
9 Respondent. )  
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10 A prehearing conference in the above matter  
11 was held on April 21, 2000, at 1:30 p.m., at 1300 South  
12 Evergreen Park Drive Southwest, Olympia, Washington,  
13 before Administrative Law Judge DENNIS J. MOSS.

14  
15 The parties were present as follows:

16 PACIFICORP by JAMES M. VAN NOSTRAND, Attorney  
17 at Law, Stoel Rives, 600 University Street, Suite 3600,  
Seattle, Washington 98101-3197.

18 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,  
19 by MELINDA J. DAVISON, Attorney at Law, Duncan,  
Weinberg, Genzer and Pembroke, 1300 Southwest Fifth  
20 Avenue, Suite 2915, Portland, Oregon 97201.

21 NORTHWEST ENERGY COALITION, by DANIELLE  
22 DIXON, Policy Associate, 219 First Avenue South, Suite  
100, Seattle, Washington 98104.

23 THE ENERGY PROJECT, YAKIMA OIC, and VALLEY  
24 FARM WORKERS CLINIC, by CHUCK EBERDT (via bridge line),  
314 East Holly Street, Bellingham, Washington 98225.

25 PUBLIC COUNSEL, by ROBERT W. CROMWELL, JR.,  
Assistant Attorney General, 900 Fourth Avenue, Suite  
2000, Seattle, Washington 98164-1012.

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1 WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION, by ANN E. RENDAHL and ROBERT W. CEDARBAUM,  
3 Assistant Attorneys General, 1400 South Evergreen Park  
4 Drive Southwest, Post Office Box 41028, Olympia,  
5 Washington 98504-0128.

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24 Kathryn T. Wilson, CCR  
25 Court Reporter

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

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JUDGE MOSS: Good afternoon, everyone. This is Dennis Moss speaking. We are convened in the matter styled, Washington Utilities and Transportation Commission V PacifiCorp d/b/a Pacific Power And Light, Docket No. UE-991832. This is a prehearing conference. The basic agenda today will be to take appearances, as per usual. A late issue has arisen that I was advised of by correspondence dated yesterday concerning some revised direct testimony and the implications that may have for the case. Assuming we get beyond that, we will take up the matter of the order of the witness presentation, the cross-examination time estimates by counsel. We'll premark our exhibits, and we'll take up any other business that may come up during the course of the conference.

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With me on the bench today are the support staff for myself and for the commissioners, and part of our goal today is to organize our materials so we can proceed in an efficient fashion with the first round of cross-examination, but let us first turn to the matter of appearances, and I think it appropriate to begin with the Company.

MR. VAN NOSTRAND: Thank you, Your Honor. On

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1 behalf of PacifiCorp, James M. Van Nostrand with the  
2 law firm of Stoel Rives in Seattle.

3 JUDGE MOSS: Mr. Van Nostrand knows the  
4 convention, but I will remind anyone who does not that  
5 if you previously have entered an appearance, you need  
6 only state your name, your affiliation, and whom you  
7 represent. Go ahead.

8 MS. DIXON: Danielle Dixon with the Northwest  
9 Energy Coalition.

10 MS. DAVISON: I'm Melinda Davison, and I'm  
11 here representing the Industrial Customers of Northwest  
12 Utilities for law the firm of Duncan Weinberg.

13 MR. CROMWELL: Robert Cromwell with Public  
14 Counsel.

15 MR. CEDARBAUM: Robert Cedarbaum and Ann  
16 Rendahl, assistant attorneys general for Commission  
17 staff. Neither I nor Ms. Rendahl have appeared other  
18 than through a substitution of counsel in this case, so  
19 if you would like us to give all our vital statistics,  
20 we can do that.

21 JUDGE MOSS: I think it would be best if we  
22 do flesh the record out with the telephone numbers and  
23 e-mail at least so people will have something to refer  
24 to.

25 MR. CEDARBAUM: I'll give mine and then

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1 Ms. Rendahl will do her own. Our business address is  
2 the Heritage Plaza Building, 1400 South Evergreen Park  
3 Drive Southwest, Olympia, Washington, 98504. My own  
4 phone number is area code (360) 664-1188. Both of our  
5 fax number is area code (360) 586-5522, and my e-mail  
6 is bcedarba@wutc.wa.gov.

7 MS. RENDAHL: This is Ann Rendahl. My phone  
8 number is area code (360) 664-1189, and my e-mail  
9 address is arendahl@wutc.wa.gov.

10 JUDGE MOSS: I had a telephone message from  
11 Mr. Eberdt who said he would not be able to attend  
12 today. I was unfortunately not able to return that  
13 call, but are you on the line, Mr. Eberdt?

14 MR. EBERDT: Yes, I am.

15 JUDGE MOSS: Would you please enter your  
16 appearance?

17 MR. EBERDT: Charles Eberdt from the Energy  
18 Project.

19 JUDGE MOSS: Do we have anyone else on the  
20 bridge? It appears we do not.

21 The matter that was brought to my attention  
22 by e-mail correspondence dated yesterday at 10:27 a.m.  
23 was to advise me that there were some revisions to the  
24 Company's filing and that that might have some  
25 implications for our proceedings, so I'll ask

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1 Mr. Cedarbaum to address that.

2 MR. CEDARBAUM: Thank you, Your Honor, and  
3 I'll apologize if it takes me a couple of minutes, but  
4 I just want to advise you of the sequence of events so  
5 you will have a full picture of what happened, and just  
6 to start off, and I guess to correct the record on your  
7 point, the Company has not revised its case before the  
8 Commission. Nothing has been filed with the Commission  
9 to revise the direct testimony and exhibits of  
10 PacifiCorp. It has provided through some e-mail, which  
11 we started to receive at 6:50 p.m. on this past  
12 Wednesday, is provide documentation to Staff of some  
13 revised adjustments it intends to make, but whether  
14 that material has been provided to anyone other than  
15 Staff, I'll let other parties state.

16 That material has now been filed or provided  
17 with the Commission, and the Company has not actually  
18 revised its case with it yet, so to the extent that  
19 Staff is prejudiced by what's going on today, I would  
20 imagine that the other parties and the commissioners  
21 are even worse off than we are, and we already feel  
22 quite prejudiced to begin with, as I'll explain in more  
23 detail.

24 The second introductory point I would like to  
25 make is if we get to the point either next week or at a

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1 later time at hearing where the Company makes these  
2 revisions and the impact on revenue requirement is  
3 shown in total to be above what the Company has  
4 requested in its filed tariffs, and we don't know the  
5 answer to that question because, as I will discuss  
6 later, we have just been given the adjustments and not  
7 the impact on revenue requirement, but if that is the  
8 case, it's our position as a matter of law that the  
9 Commission cannot authorize tariffs that would produce  
10 more revenue than what was filed in this case to begin  
11 with, so we wanted to put the Company on notice of that  
12 so they would understand our position in that issue  
13 when it comes up later on.

14           Getting to the sequence of events, as I  
15 discussed in the e-mail, the problem that we have  
16 encountered is the Company, as I understand it from  
17 discussions with Staff, just this past Tuesday  
18 indicated to Staff that the Company intended on making  
19 some revisions to some adjustments in its direct case.  
20 That, as I understand it, came as just a verbal  
21 communication. There was no indication specifically  
22 what the adjustments were, the numbers that were  
23 involved, the impact on revenue requirement, support  
24 for those adjustments, anything, so at that point,  
25 there was really nothing, nothing before us, other than

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1 that indication.

2           Wednesday, we received an e-mail at 6:52 p.m.  
3 which all it contained was a list of 19 adjustments,  
4 and I have copies if you would like them, but a list of  
5 19 adjustments that the Company said would be revisions  
6 to Mr. Larsen's Exhibit JKL-2 and that it would provide  
7 a revenue requirement impact of those to us the  
8 following morning, which would have been Thursday  
9 morning, so again, Wednesday after work, we received  
10 only a list of adjustments; no support, no numbers, no  
11 revenue requirement impact, just a list.

12           Thursday morning, we received another e-mail  
13 with an attachment that had a spreadsheet, which just  
14 has column after column of 19 adjustments, which  
15 presumably are the revisions. That was followed by a  
16 calculation of each adjustment for those 19 columns.  
17 Again, however, we weren't given any basis for the  
18 adjustments, any support for the numbers. These  
19 numbers were essentially unaudited, no work papers.  
20 All we received were the adjustments themselves and how  
21 they were calculated.

22           The final message we got was an e-mail that  
23 came in -- and again, I should also emphasize that  
24 throughout all of this, we have yet to see any  
25 revisions to Mr. Larsen's exhibit or the impact that



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1 any of these revisions might have, other witnesses, for  
2 example, cost of service or rate design, so not only do  
3 we not have support for the adjustments, we don't know  
4 what the impact is on revenue requirement of any  
5 specific adjustment or the total impact.

6         The final e-mail we got was yesterday  
7 afternoon, and that was simply a chart, again, listing  
8 the 19 adjustments and providing us a reference to  
9 either errors identified in the Utah proceeding or  
10 responses to Staff data requests. There is also a note  
11 that some of these revisions were formally provided to  
12 Merton Lott of Commission staff. It's my understanding  
13 from Mr. Lott that those revisions were never provided  
14 to Mr. Lott. These are just a list of the adjustments,  
15 a description of where these adjustments may have been  
16 derived, no support, no numbers, no analysis. Again,  
17 numbers that Staff may or may not have audited  
18 whatsoever, and certainly no further discovery on these  
19 late-filed revisions, and the Company may argue,  
20 perhaps, that while we directed you to exactly what  
21 data request responses these revisions were prompted  
22 by, at least on a number of them, and so we're really  
23 not prejudiced because we know where we can find the  
24 information. That just doesn't hold water with us for  
25 the basic reason that looking at the data request

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1 response doesn't mean that we have yet had time to  
2 verify the numbers, search for additional discovery and  
3 work papers on those numbers, and audit those numbers  
4 to make sure these new adjustments are accurate, and  
5 just as an example, one of the adjustments that is  
6 being made concerns depreciation expense, and the data  
7 request that we were referenced by the Company that we  
8 asked was our Data Request 386. That shows a total  
9 amount of depreciable plant of 10 million 999 thousand  
10 and some change.

11 In response to the Commission's Bench  
12 request, which was Bench Request No. 1, that same  
13 figure is shown to be 10.797 million, and in  
14 Adjustment 6, which is the sixth revised adjustment we  
15 received, the amount is a different amount. It's 10  
16 million 954 thousand. There is a lack of support not  
17 only for the adjustments, but there is a discrepancy in  
18 the support we've been given on these adjustments.

19 So that's the sequence of events that Staff  
20 has experienced. Ms. Davison is just shaking her head  
21 over there because she is completely confused as to  
22 what I'm talking about because she hasn't seen this  
23 stuff, and I don't know about Public Counsel whatsoever  
24 and the other intervenors. The bottom line is that we  
25 can't go forward on Monday cross examining the

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1 Company's revenue requirements case and to the extent  
2 it impacts cost of service, rate design, and rate  
3 spread until we are allowed to do a thorough audit and  
4 discovery on these revised adjustments, and our  
5 suggestion is -- it's a request of the Company,  
6 essentially, and that is that the Company withdraw its  
7 case, ask the Commission to allow its tariffs to be --  
8 the suspension order to be lifted and tariffs to be  
9 removed. That's what should happen here. Absent that,  
10 if the Company is not willing to do the right thing,  
11 what we should do is have a delay in this case, and we  
12 have a proposal on what this could be, not having  
13 reference to the Commission's calendar, so it's  
14 probably useless, but we have a proposal, but that will  
15 require a waiver of a suspension period for a  
16 sufficient amount of time for a delay, and if the  
17 Company is not willing to do that, then we believe the  
18 case should be dismissed because of the prejudice that  
19 is brought not only to Staff and the other parties but  
20 to the Commission itself.

21 I think that's essentially my summary of the  
22 circumstances. That, again, has only happened since  
23 Wednesday evening, and it's Friday morning with hearing  
24 on Monday, so we think we have got a real bind here for  
25 the hearings. We think the burden is really on the

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1 Company to correct this, but absent that, there are  
2 ramifications to that, and we have a suggestion for a  
3 delay in the schedule which we can get to, if need be.

4 JUDGE MOSS: Has there been any informal  
5 discussion between counsel on this?

6 MR. CEDARBAUM: I've had discussions with  
7 Mr. Cromwell and Ms. Davison, just essentially all of  
8 us just reacting to what's going on.

9 JUDGE MOSS: I really meant with counsel for  
10 the Company.

11 MR. CEDARBAUM: Nothing really of substance.  
12 Nothing that would add to this discussion.

13 JUDGE MOSS: The gauntlet has been cast down.  
14 Before we turn to the Company, I'll hear from the other  
15 parties as to anything they might wish to add so the  
16 Company can respond fully. Mr. Cromwell, go ahead.

17 MR. CROMWELL: Your Honor, as to the sequence  
18 of events, my first notice of this issue formally came  
19 through the e-mail that Mr. Cedarbaum sent to you and  
20 CC'd to counsel of various parties afterwards. I  
21 believe he sent his e-mail to you at 10:27 a.m.  
22 Thursday the 20th, yesterday. I received a CC of it 11  
23 minutes later at 10:38. That was the first formal  
24 indication I had of this issue.

25 I had received from my co-counsel,

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1 Mr. ffitch, a voice mail message -- I correct that. He  
2 called me on his cell phone earlier and said that he  
3 had spoken to Ms. Rendahl, that there seemed to be  
4 something happening without an idea of what, firmly, so  
5 my first solid indication of what was going on in  
6 writing was from Mr. Cedarbaum's e-mail. He and I did  
7 speak at the end of the day Wednesday. The first  
8 indication that Public Counsel had from the Company of  
9 this was at 12:50 p.m. Thursday afternoon, the 20th,  
10 when we received a copy of the e-mail that they sent to  
11 Staff, the one that contained the spreadsheet for the  
12 19 adjustments. We did not receive anything from the  
13 Company previous to that and didn't hear from them on  
14 this issue at all. There is other discovery issues out  
15 there, but this isn't the time and place for this.

16 As to Mr. Cedarbaum's position regarding this  
17 issue of Mr. Larsen's adjustments, we concur. We have  
18 not had the opportunity to review the information  
19 contained in the e-mail Excel spreadsheet sent to us  
20 yesterday. Public Counsel believes it has been  
21 materially prejudiced in its ability to prepare for  
22 next week's cross-examination and would feel prejudiced  
23 if the Court determined that it was appropriate to  
24 proceed with cross-examination next week because of our  
25 lack of opportunity not only to digest the information

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1 we've just been given by the Company but perform any  
2 analysis, any true-up, any auditing, and fundamentally  
3 do any discovery. That's a process that as we've got  
4 in place now pursuant to the Court's order would take a  
5 few weeks at a minimum.

6 We concur with counsel for Staff that if the  
7 Company is willing to withdraw its filing and refile  
8 that that would be the most appropriate means of  
9 addressing this. In the first alternative, what I  
10 would propose, knowing what little I know of the  
11 Commission's calendar simply from how it's reflected on  
12 my own, that the simplest way, if the Company were  
13 unwilling to withdraw but was willing to waive the  
14 suspension period, might be to swap out the evidentiary  
15 hearings with the cross-examination hearings and flow  
16 the rest of the case schedule off of that. If the  
17 Company is unwilling to agree to either of those  
18 proposals, then we would concur with counsel for Staff  
19 that the only appropriate remedy in this case is  
20 dismissal of the Company's filing.

21 JUDGE MOSS: You are thinking a three-month  
22 delay is required?

23 MR. CROMWELL: I don't think a three-month  
24 delay is required, Your Honor. I was simply looking at  
25 my calendar and the hearing schedules that Mr. ffitich

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1 and I have, which correspond to a good chunk of the  
2 Commission's calendars, and that seemed like the  
3 simplest way of dealing with it. In terms of the delay  
4 that would be appropriate for us to conduct discovery  
5 on this, probably six weeks at a minimum with a 10-day  
6 turnaround. As you know, our experts in this case are  
7 involved in a lot of our other cases that are still  
8 ongoing in front of the Commission. We'd need probably  
9 a week or two to get discovery together and out to the  
10 Company, a minimum of 10 days for them to get it back  
11 up to us, another week or two for us to chew through it  
12 and get cross prepared. I can't tell you that all of  
13 that would be necessary because we're shooting in the  
14 dark right now.

15 JUDGE MOSS: We won't be shooting in the dark  
16 in a moment. Mr. Cedarbaum, did you indicate that you  
17 had copies of these various things from the Company for  
18 the Bench?

19 MR. CEDARBAUM: Yes.

20 JUDGE MOSS: Could you provide me with a copy  
21 and please provide Mr. Damron as well. He's our  
22 accounting adviser in this case. Let's hear from you,  
23 Ms. Davison, if you have anything to say on this.

24 MS. DAVISON: Thank you, Your Honor. At the  
25 moment, I'm sort of stunned by all this. I was

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1 certainly aware that this issue was floating around by  
2 the courtesies of Mr. Cedarbaum. I am stunned that the  
3 Company did not contact all parties. I have some very  
4 very significant concerns about the process that has  
5 been followed by the Company. I do not believe that it  
6 is appropriate to be distributing information of this  
7 significance to select parties in this case. We are a  
8 party in this case. We are a very active party in this  
9 case. We have retained four separate technical  
10 consultants to represent and provide testimony in this  
11 case, and I think to basically leave us out of the  
12 e-mail correspondence is shocking, to say the least.

13 In terms of where we go from here, just  
14 perusing the information that has just been handed to  
15 me by Public Counsel, these numbers are significant.  
16 These are 19 adjustments. They cover a broad range of  
17 issues. The dollar amounts are, in several cases,  
18 millions of dollars. This is not a minor correction to  
19 mathematical errors. These are very significant  
20 adjustments that are being proposed, I assume, by the  
21 Company; although, it's not clear to me what the  
22 Company is proposing we do with this data that's been  
23 given to us.

24 I believe that given the significance of what  
25 has been proposed here that I don't see how this rate



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1 case can go forward as it has been filed. I believe as  
2 a matter of procedure this rate case has to be refiled,  
3 new tariffs have to be provided, and we start all over  
4 again. Hopefully, we can get some benefit from the  
5 extensive work that has already gone into this case,  
6 which is another issue altogether, but I just want to  
7 state my very strong reaction to this coming two days  
8 before cross-examination.

9 JUDGE MOSS: We'll get some clarification on  
10 this momentarily, but we will proceed as we are, and  
11 I'll hear from Ms. Dixon.

12 MS. DIXON: This is the first time I've seen  
13 any of these materials, and although our issues are  
14 certainly narrower in scope than those of Staff and  
15 Public Counsel and even ICNU, I do see at least one or  
16 two adjustments that may influence our  
17 cross-examination as well, so I guess I would sort of  
18 repeat what Melinda would say and just add a little  
19 concern that we weren't included in the messages that  
20 went around and a little surprised that this is coming  
21 so late in the process.

22 JUDGE MOSS: Mr. Eberdt, do you have anything  
23 to add?

24 MR. EBERDT: No, Judge, I really don't.

25 JUDGE MOSS: I believe that will bring us to

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1 the Company. Let's hear about these adjustments and  
2 their nature and what you have to say in response to  
3 the comments that have been made, Mr. Van Nostrand.

4 MR. VAN NOSTRAND: Thank you, Your Honor.  
5 Indeed, I guess the number, if you count them, add up  
6 to 19. The total revenue requirement impact is a  
7 reduction of about 700 thousand dollars. These are  
8 relatively minor in amount. It's interesting to hear  
9 the parties talk about the need for additional  
10 discovery on these items since in almost every case,  
11 the adjustment arose from the discovery process and  
12 represents, for all practical purposes, a compilation  
13 of responses to Company data requests where we have  
14 agreed and conceded to certain adjustments and certain  
15 corrections that needed to be made, and this is for the  
16 most part not new information which is being brought up  
17 for the first time this week.

18 Virtually 13 of the 19  
19 adjustments are just carry-fowards from comments that  
20 the Company made in response to Staff data requests  
21 where we agreed that certain corrections needed to be  
22 made, and the whole intent of offering it at this point  
23 was to make the hearings easier and not harder by  
24 conceding to certain adjustments rather than going  
25 through the process of admitting data requests and

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1 standing cross-examinations on the adjustments that we  
2 have readily conceded.

3           We thought it was a more honest way to  
4 proceed in not having to play games by having parties  
5 go through the process of pointing out errors and  
6 chasing our witnesses on whether or not certain  
7 adjustments would be made. The alternative for us  
8 would have been to go ahead and have our witnesses  
9 sponsor and defend the testimony as filed, deny the  
10 adjustments were necessary, force the parties to prove  
11 them on the record through cross-examination, and I  
12 guess if this type of request is granted, that's the  
13 sort of behavior that will be encouraged rather than a  
14 party coming forward and conceding and stipulating to  
15 certain adjustments, and if that's used as a means of  
16 forcing a delay in the proceedings, you will just go  
17 forward and defend the case and stand firm on  
18 adjustments that you would really rather go ahead and  
19 concede.

20           It's disappointing that what we thought was a  
21 cooperative effort -- and it's curious. The Company  
22 made many offers over the course of this week to walk  
23 the Staff witnesses through these adjustments and  
24 demonstrate to them how there really wasn't anything  
25 different than what they had already seen, and

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1 communications ceased. The Company's offers were not  
2 accepted in terms of being able to walk the Staff  
3 witnesses through the data requests that we provided  
4 Staff and illustrate where these adjustments came from,  
5 and communication ceased, and it was clear we were  
6 pursuing a litigation strategy and were going to use  
7 the Company's offer to concede these adjustments as a  
8 means of proposing delay in the case. Again, the scope  
9 of the adjustments is a 700-thousand-dollar reduction  
10 in the revenue requirement, and the notion that that  
11 would be used as a basis for getting this filing  
12 dismissed is extreme, and I'm not authorized on behalf  
13 of the Company to indicate whether we will dismiss the  
14 filing nor agree to an extension of the suspension  
15 period.

16 JUDGE MOSS: You mention that 13 of the 19  
17 were effectively concessions to adjustments that seemed  
18 indicated through the discovery process?

19 MR. VAN NOSTRAND: That's correct, Your  
20 Honor.

21 JUDGE MOSS: What about the remaining six?

22 MR. VAN NOSTRAND: Four of them come from the  
23 testimony on depreciation, for the most part. Another  
24 was the PacifiCorp interjurisdictional task force.  
25 There was adjustment proposed on a certain method which

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1 Staff did not agree to, so there was an adjustment that  
2 basically took out the modified accord approach and  
3 provided it with the original accord. A couple of  
4 adjustments are true-ups based on changes from other  
5 adjustment, cash working capital and the revised  
6 true-ups. Numbers 13 and 14 are true-ups that flow  
7 from other adjustments.

8 MR. CEDARBAUM: Just a few points: The first  
9 is, even if we accept the fact that some of these  
10 adjustments are to correct adjustments that the Company  
11 discovered through Staff data requests, I gave you an  
12 example before where Staff data request response, the  
13 Bench request response, and the revised adjustment  
14 numbers are different. There are discrepancies between  
15 all of these figures, so there is no basis upon which  
16 to rely on these adjustment numbers just because we are  
17 told they come from a Staff data request response.

18 Secondly, the Company's argument really is,  
19 We filed our direct case, and you should accept  
20 everything we've got there as the gospel, but by the  
21 way, we are now going to correct 19 adjustments, and  
22 you accept all of that as the gospel. We can't do  
23 that. We have to analyze this material, have discovery  
24 on it, decide if these corrections are correct. If  
25 there are other corrections that need to be made that

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1 flow from this, if there are other impacts that need to  
2 be made that flow from this, all of that has to happen  
3 to have valuable and credible analysis of this  
4 information, and the fact that even if Mr. Van Nostrand  
5 is right, the total impact is a 700-thousand-dollar  
6 revenue requirement impact, that's again accepting all  
7 these adjustments as being valid. We need to take a  
8 look at each one, its impact on revenue requirement,  
9 and maybe we will find additional mistakes; maybe we  
10 will find other things that need to be corrected, but  
11 we certainly can't accept this without any analysis at  
12 this point.

13           The final point is, nobody is here trying to  
14 discourage companies or PacifiCorp from making  
15 corrections to its case. Our point is you have to do  
16 it on a timely basis, not the day before a hearing when  
17 only one party or maybe two parties out of the bunch  
18 get it, and the Commission doesn't get it at all. Some  
19 of these adjustments -- again, just taking the sheet  
20 that I gave you -- were prompted by Staff data requests  
21 that were issued a long time ago. I don't have the  
22 exact dates, but just judging from the numbers, they  
23 must have been. Errors identified in Utah. That  
24 couldn't have just happened yesterday. We are not  
25 saying don't correct your case. We are saying do it on

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1 a timely basis, but if you are not going to, let's be  
2 fair to everybody else, and that requires either  
3 withdrawing and starting again, delaying the case, and  
4 if that requires a delay in the suspension period, so  
5 be it, and if that's not going to happen, we dismiss  
6 it, because that's the only way we can be fair to  
7 everybody.

8 JUDGE MOSS: Those are three fairly drastic  
9 alternatives; particularly given the difficult  
10 schedules under which the commissioners are working  
11 this particular year, and we are going to have to go  
12 into this in somewhat more detail before we can decide  
13 what, if anything, needs to be done.

14 I am curious about a comment that  
15 Mr. Van Nostrand made that the Company had made offers  
16 to, as he put it, "walk Staff through these  
17 adjustments" and that those offers apparently were --  
18 perhaps I should characterize it as declined by silence  
19 or no response. What's the story on that?

20 MR. CEDARBAUM: I would have to ask Staff  
21 about that. I'm not aware of whether those  
22 conversations happened or the substance of them. If  
23 you want me to take a break and find that out, I can.

24 JUDGE MOSS: We may take a break in a minute  
25 to allow the opportunity for discussion. What does

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1 appear to be the case is I think there is a problem  
2 here, and I think it's a problem of communication, and  
3 I think we are going to need to explore that and find  
4 out more about that. To the extent these adjustments  
5 are essentially concessions to Staff's analysis of the  
6 case, it's hard for me to see how Staff is prejudiced  
7 by that, but it's a little hard to understand sitting  
8 up here without having had an opportunity to examine  
9 all this stuff in detail, or probably couldn't  
10 understand it if I did in this abstract way it's  
11 presented. It seems to me that would have a tendency  
12 to eliminate some of your cross-examination and not  
13 make it more difficult for you if 13 of the 19  
14 adjustments are simply concessions to Staff's position.

15 MS. RENDAHL: Your Honor, if I may, while  
16 Staff understands what the Company is trying to do and  
17 trying to eliminate cross-examination, at this point,  
18 in order to get everything prepared for this prehearing  
19 conference, to identify cross exhibits and prepare for  
20 the case on Monday, Staff, at the time we received  
21 notification of the corrections, was well on its way to  
22 preparing cross on this witness, and there is just not  
23 time, even with the offer to make these corrections,  
24 given -- we require time to evaluate whether these  
25 corrections, in fact, do make the corrections that we



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1 would have asked questions about on cross, and to the  
2 extent that it would eliminate cross, we don't know  
3 yet.

4 We are in an awkward position here, we  
5 understand, because it does offer to make corrections  
6 that may eliminate cross, but it may, in fact, extend  
7 cross time to evaluate, in fact, what they've  
8 submitted, so I'm not sure it's as simple as that.

9 MR. CEDARBAUM: Your Honor, I have an answer  
10 to your question before about these communications.  
11 Just in the back of the room, I asked Staff about that.  
12 My understanding is that there were some voice mail  
13 left by the Company with Staff accountant saying that  
14 these materials would be provided and that then the  
15 Company would be available to walk through these  
16 things, but the materials at that time had not been  
17 provided, so we were waiting to be provided these  
18 materials, but that only happened yesterday, and the  
19 only specific area I know of that the Company made an  
20 offer to walk through the adjustment was dealt with the  
21 depreciation issue.

22 JUDGE MOSS: Let me turn back to you for a  
23 minute, Mr. Van Nostrand, and ask you, does the  
24 Company -- I would assume that you probably came  
25 prepared today with errata sheets, for lack of a better

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1 term, to correct the exhibits. Is that a correct  
2 assumption on my part?

3 MR. VAN NOSTRAND: We ran the revenue  
4 requirement figures in order to show the total impact  
5 on the revenue requirement, the 700-thousand-dollar  
6 figure. We're not actually proposing to change the  
7 testimony. It's just rather than have a witness defend  
8 testimony which the witness feels he can't defend, we  
9 are agreeing that certainly adjustments would be  
10 appropriate.

11 JUDGE MOSS: So there is no intention on the  
12 Company's part to actually change any exhibit or  
13 testimony today?

14 MR. VAN NOSTRAND: No, there is not.

15 JUDGE MOSS: I believe Ms. Davison has a  
16 point she wishes to make.

17 MS. DAVISON: The point I would like to make  
18 with regard to these adjustments is that while it's not  
19 entirely obvious to me in reading the chart that  
20 perhaps it results in an overall revenue requirement  
21 reduction of 770 thousand dollars, if you look at the  
22 chart, you will see that some of these adjustments  
23 result in upward adjustments, so apparently, to get to  
24 the 770-thousand-dollar figure, you have to add and  
25 subtract, and I certainly believe that to characterize

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1 all of these adjustments as downward adjustments, at  
2 least in my reading of this chart, suggests that that's  
3 not correct.

4 JUDGE MOSS: Mr. Cedarbaum.

5 MR. CEDARBAUM: I'm sorry I interrupted  
6 before. I just wanted to add to what Ms. Rendahl said,  
7 and I'm sorry if I repeat it because I was just  
8 discussing with Staff. You asked what is Staff's  
9 problem with this if the Company is only conceding  
10 issues to Staff. While I agree that's an important  
11 point, I think the bigger point that we are trying to  
12 make is we need the time to be able to determine if  
13 that has, in fact, happened.

14 We don't know just looking at the spreadsheet  
15 and the information we've been given that these numbers  
16 are correct, and there are discrepancies, as I  
17 indicated, between information we've received in data  
18 request responses and information we received  
19 yesterday, so we have no basis on which to agree with  
20 the Company that all they've done is accurately and  
21 completely corrected errors that Staff found or that  
22 were found in a case of another jurisdiction, and to go  
23 forward with cross-examination next week without the  
24 opportunity to do that we think is prejudicial to us  
25 and probably more prejudicial to others, but that can

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1 be fixed in the ways that I suggested before.

2 JUDGE MOSS: Go ahead.

3 MR. CROMWELL: Your Honor, a couple of  
4 points: One, Mr. Van Nostrand said the Company made an  
5 offer to Staff to walk them through it. I'd note for  
6 the record that he never called me, never called my  
7 experts. Apparently, if Ms. Dixon just found out about  
8 this today and Mr. Eberdt just found out about it over  
9 the bridge line, I'm assuming -- they can correct me if  
10 I'm wrong -- that that offer was never made to them or  
11 their experts.

12 I just wanted to note that we remain  
13 prejudiced by this. Maybe Mr. Van Nostrand is correct.  
14 This is a 700 thousand adjustment down and it all just  
15 flows to the Staff's case. It doesn't mean it flows to  
16 ours. I just don't know. We've spent all our time  
17 getting the boxes you see behind me ready to deal with  
18 today and getting questions together for cross. I  
19 don't see how you cure that prejudice unless we have  
20 the opportunity to prepare for cross adequately.

21 The fact remains, and I'll admit I'm new to  
22 this forum, Your Honor, but that's not how I learned to  
23 practice law, and I don't know what else to say, other  
24 than as things stand, we are not prepared adequately  
25 for cross-examination beginning Monday based upon the

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1 actions of the Company.

2 JUDGE MOSS: Is Larsen the only witness  
3 potentially affected?

4 MR. CEDARBAUM: No. There is the  
5 supplemental testimony of Mr. Peterson, which itself  
6 only shows an increase in depreciation expense without  
7 the underlying depreciation rates. We don't know  
8 anything. There is no evidence from the record on  
9 that.

10 JUDGE MOSS: That's not a new problem though.  
11 To the extent it's a problem at all, you had Peterson's  
12 testimony for awhile.

13 MR. CEDARBAUM: No. I don't know if the  
14 adjustments shown that we were given yesterday are  
15 correct, and if they are not correct or are correct how  
16 that might affect Mr. Peterson's testimony. The other  
17 issue would be cost of service for Mr. Taylor. If the  
18 Company's revenue requirement is different, you would  
19 normally crank that through the cost of service study  
20 and come up with different results, and to the extent  
21 those results are different, you might have different  
22 recommendations on rate spread and rate design.  
23 Obviously from the Company, they are not even planning  
24 on revising Mr. Larsen's exhibit, but from everybody  
25 else's perspective, those are issues.

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1 JUDGE MOSS: So we've got three witnesses it  
2 appears, Larsen, Taylor, and Peterson, who you would  
3 feel unprepared to cross-examine on the basis of these  
4 adjustments.

5 MR. CEDARBAUM: Yes. From Staff's  
6 perspective -- and I don't want to blindside the other  
7 parties on this. Our proposal for a delay in the  
8 schedule may not involve delaying all witnesses. Staff  
9 could be prepared to go to cross on some witnesses next  
10 week, but that's just us, and we think that you have to  
11 take into account everybody's interest in this case.

12 JUDGE MOSS: I certainly do have to take  
13 everybody's interest into account, including the  
14 interests of the Bench and the Commission's  
15 administrative needs, so I'm trying to balance quite a  
16 few factors here.

17 MR. CEDARBAUM: I can appreciate that.

18 JUDGE MOSS: Let me ask the other parties --  
19 and it's fairly obvious where I'm going with the  
20 question. Larsen, Taylor and Peterson, are there other  
21 witnesses potentially affected in your view?

22 MR. CROMWELL: Respectfully, Your Honor, I  
23 don't know, and I can't know until my expert has had  
24 time to chew through this.

25 MS. DAVISON: Thank you, Your Honor. Just to

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1 add to the pleasantness of the afternoon, I have  
2 another that should be addressed at this point in time.  
3 I was sort of holding it in reserve, and I thought it  
4 would perhaps become a moot issue. We have had some  
5 difficulties in getting responses to data requests from  
6 the Company, and we had a set of data requests that the  
7 responses were due, in my calculation, yesterday, but  
8 by the Company's calculation, they are due today.

9 Mr. Van Nostrand and myself have had some  
10 correspondence, and two days ago I sent a letter to  
11 Mr. Van Nostrand asking that I receive the responses to  
12 the data requests this morning so I would have the  
13 ability to quickly go through them and mark them as  
14 cross-examination exhibits, if need be. I'm bringing  
15 this to your attention because I did not receive copies  
16 of any documents that are at all in response to our  
17 data requests, and those data requests all go to  
18 Mr. Widmer, and I'm very disappointed that the Company  
19 did not respond to my letter if their intent was not to  
20 provide me with the documents this morning.

21 MR. CROMWELL: Respectfully, Your Honor, if I  
22 could interject. I have a discovery dispute issue  
23 also, and I'll raise that at your convenience.

24 JUDGE MOSS: All sorts of fun today.

25 MR. VAN NOSTRAND: May I have a chance to

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1 respond to Ms. Davison, Your Honor?

2 JUDGE MOSS: You may go ahead.

3 MR. VAN NOSTRAND: As my e-mail to

4 Ms. Davison indicated, she sent to us by fax on April  
5 10th her second set of data requests, and whether or  
6 not we're saying the case has been on file for five  
7 months, on April 10th, we received their second set of  
8 data requests with the requested response date of the  
9 19th, which was only seven days after receipt. Two  
10 days later we received another set of data requests on  
11 April 12th with the requested return date on the 21st.  
12 I indicated that the Company would comply within the  
13 10-working-day turnaround time prescribed in the  
14 Commission's rule in as much as no other arrangements  
15 had been made to accelerate the response time, and  
16 moreover, that at the prehearing conference in which  
17 all parties were represented and all parties agreed, we  
18 agreed to have a moratorium on responses during the  
19 hearing so that our witnesses and rate case team would  
20 not be preparing data request responses while at the  
21 same time preparing the testimony.

22 I therefore indicated to Mr. Davison that her  
23 April 10th set of data requests would be provided the  
24 first day after the hearings in as much as that's what  
25 the rule provides and what we all agreed to at the



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1 prehearing conference, and the April 12th set of data  
2 requests would be provided three days after the hearing  
3 in as much as that's what the time lines provided.

4           This case has been on file for five months.  
5 If you err and don't get your data requests in on time  
6 when our people are busy responding to 650 in this  
7 proceeding, it gets a little busy at the end, and we  
8 frankly can't get to them all, and that's why we  
9 prescribed moratoriums, and that's why we agreed to  
10 abide by a 10-day turnaround time. If you can't count  
11 the days on the calendar and you miss, then we do what  
12 we can, but ICNU asked for 404 copies of data requests,  
13 by going to our discovery room down in Portland. We  
14 provided 396 of those responses 10 days earlier than we  
15 required, and we think we've done a good job of  
16 responding to ICNU's data request.

17           Public Counsel, by our count, has 119 data  
18 requests, all of which were provided on time, and Staff  
19 itself has 450 data requests responded to, most of  
20 which were on time, 60 of which were early, and some,  
21 admittedly, were late, but it's been a tremendous  
22 amount of discovery which has gone on. I think we  
23 overall have done a very good job of complying.

24           JUDGE MOSS: Thank you. I think I have some  
25 sense of the dimensions of the problem, at least, and I

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1 think what we are going to do is two things: One, I'm  
2 going to ask you, Mr. Van Nostrand, did you have an  
3 opportunity to complete the list of witnesses that I  
4 handed you before we began?

5 MR. VAN NOSTRAND: Yes, I did.

6 JUDGE MOSS: Could you hand that up to the  
7 Bench? This is simply a list that would indicate the  
8 order in which the Company intends to present its  
9 witnesses, and one of our jobs today is to organize our  
10 materials. Presently, I'm going to use this list and  
11 distribute it to the parties for other purposes, if it  
12 appears we are going to go forward at this time, which  
13 is a decision that remains to be made, but for the time  
14 being, at least, so I don't waste too much more of  
15 these good folks time up here, I'm going to leave this  
16 up here and let them at least get these notebooks  
17 organized in the appropriate order while we take a very  
18 brief recess, say, something in the order of seven  
19 minutes, during which time I'm going to do a little  
20 conferring and deliberation before we take this any  
21 further, so we are off the record.

22 (Recess.)

23 JUDGE MOSS: We're back on the record. I've  
24 had an opportunity to confer with the team that is  
25 assisting in this case and also to deliberate myself on

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1 how I think this conundrum should be resolved, and what  
2 I have decided we should do is as follows: I think  
3 that on Monday, we will take a holiday from the hearing  
4 schedule, and on that date, the parties will be  
5 required to convene in this place, which is reserved  
6 for that date, and see if there is something they can  
7 do in terms of -- I would think of it in terms of a  
8 clarification session, if you will. I will expect the  
9 various witnesses to be present whose testimony is  
10 affected by this.

11 Basically what we are talking about, as I  
12 understand it, the Company is not proposing to revise  
13 its case, but only is proposing to revise certain of  
14 the evidence that it hopes will support that case  
15 ultimately as we bring this proceeding to a conclusion  
16 some months from now, so I think we will provide that  
17 opportunity on Monday. I think that I would like to  
18 come in at the end of that session, and this will be  
19 off the record, but I will come in and sort of get a  
20 progress report, if you will, informally to see how  
21 things stand.

22 I'm hoping that much of the problem that the  
23 parties have identified as potential problems today --  
24 and admittedly, the timing here is not good. I'm  
25 unhappy about the way that has unfolded, just as some

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1 of the parties are unhappy about the way that unfolded,  
2 but that is the way it is, and I think we must make  
3 every effort to work with that and work with our  
4 existing schedule to the extent we can to remedy the  
5 timing issue. The parties admittedly have not had an  
6 opportunity to review this material in any detail and  
7 even resolve in their own minds how big a problem, if  
8 any, actually has developed for them in the development  
9 of their planned cross-examination for the various  
10 witnesses, so I think the opportunity that I'm  
11 providing on Monday will at least be the opportunity  
12 during which that can be clarified. There may be some  
13 time this afternoon even after we finish marking our  
14 exhibits when some of this can be resolved. Again, I  
15 think there have been some communications problems,  
16 perhaps, from both sides. There is a timing problem  
17 here, but perhaps this is a good way to resolve it.

18           Beyond Monday, on Tuesday, I want to begin  
19 Tuesday morning with cross-examination of witnesses.  
20 To the extent that proceeds and we discover that it is  
21 so problematic that we are wasting hearing time, I will  
22 be mindful of the problems that have been identified  
23 today and the source of those problems, and if I'm  
24 convinced there is a need for it, we will simply  
25 release the witness from the stand subject to recall,

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1 and that witness will be recalled at a later date after  
2 the various parties have had an adequate opportunity to  
3 analyze the material and prepare the additional  
4 cross-examination that appears to be necessary in the  
5 circumstances. This way, we will not waste the  
6 commissioner's time that has been reserved next week  
7 for this process nor will we waste anyone else's time  
8 that has been scheduled for this hearing process next  
9 week.

10 If we find after two or three days that we  
11 have accomplished all that we can usefully accomplish  
12 at this stage, then certainly we will recess at that  
13 time, and we may establish some interim hearing dates,  
14 as necessary, to allow for the thorough development of  
15 a record. The Bench's interest, of course, is in  
16 having an accurate and complete record upon which  
17 decisions can be made. The parties' interest is, I  
18 hope, the same, to develop that record, and I want to  
19 provide every opportunity for that to occur, but I also  
20 want to do that in a fashion that is consistent with  
21 the Commission's administrative needs. I believe this  
22 will promote that goal, if not accomplish it entirely,  
23 and we will proceed one step at a time as we need to.

24 With that said, I do have a list of the  
25 witnesses in the order the Company intends to present

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1 them, and I'm going to distribute that here to you all  
2 and ask for your cross-examination estimates. Keep in  
3 mind that the Company is not revising its case, so your  
4 cross-examination may be a little more expansive or  
5 less expansive knowing that, but we'll get those  
6 estimates quickly, and then we'll go off the record and  
7 get these exhibits organized and then we will mark them  
8 and I'll go back on the record and put that matter into  
9 the transcript in a summary fashion, which will save a  
10 lot of time and save Ms. Wilson having to sit here and  
11 type all those boring numbers. Ms. Dixon, did you have  
12 something?

13 MS. DIXON: I just wanted to notify the Bench  
14 that I will be unable to come on Monday. I had already  
15 known that we have a commitment to appear in another  
16 prehearing conference in a separate forum on Monday, so  
17 I realized I was not going to be able to ask questions  
18 of the Company's witnesses that will be appearing on  
19 Monday and had planned for that. I'm assuming I will  
20 be able to check in with Public Counsel at the end of  
21 the day Monday to find out what the next steps are, but  
22 I just wanted to at least let you know, and I'll  
23 certainly check with folks at the Coalition and see if  
24 anybody else is available, but I'm guessing they are  
25 not at this short notice.

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1 JUDGE MOSS: And your client's interest might  
2 tend to be somewhat more focused than some of these  
3 other parties, and you may wish to touch base with  
4 Mr. Van Nostrand before you all leave this afternoon  
5 and see if there is a couple of points you want to  
6 cover and take care of it that way.

7 MR. CEDARBAUM: Can I ask a couple of  
8 clarifying questions? On Monday, is there a time when  
9 you want us to come find you?

10 JUDGE MOSS: Let's set a time. When is a  
11 good time for the parties? I'll be agreeable to  
12 listening to you on that. We normally start our  
13 hearings at 9:30 in the morning.

14 MR. CEDARBAUM: Maybe what we can do is check  
15 in with you before lunch to see if maybe we are done by  
16 then and if not, maybe we can say three o'clock.

17 JUDGE MOSS: I think you may need to confer  
18 with your staff. Ms. Dixon?

19 MS. DIXON: The notice we received said the  
20 hearing would originally start at 1:30 on Monday. I'm  
21 not sure if that had to do with room constraints at all  
22 or commissioner constraints.

23 JUDGE MOSS: No. That was commissioner  
24 constraints. The room is available, and I suggested  
25 9:30 because that's the customary hour we begin our

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1 hearings, but you all could begin earlier, if you  
2 choose to do so, or later.

3 MR. CEDARBAUM: I guess we can figure that  
4 out informally. I just wanted to make sure we  
5 coordinated with you.

6 JUDGE MOSS: I want you to start in the  
7 morning, and I think it's a good suggestion you make  
8 that I will get a progress report at the noon hour and  
9 then another progress report later in the day, and I  
10 will be here. Obviously, I was planning to be here  
11 that day, so I will be available, literally, on a  
12 moment's notice.

13 MR. CEDARBAUM: We'll touch base with you  
14 right before noon on Monday and then we can figure out  
15 the rest of the day from there.

16 JUDGE MOSS: Does that work for you, 9:30?

17 MR. VAN NOSTRAND: We need to check because  
18 Mr. Larsen is the key person for these discussions and  
19 he's coming from Salt Lake City Monday morning and  
20 wouldn't get here until mid morning. We are checking  
21 with him now to see how soon he could get here.

22 JUDGE MOSS: There might be some other work  
23 that could be accomplished during the earlier hour as  
24 well. We can return to this subject presently. I  
25 really want to get on at this point to getting these



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1 exhibits marked because we've got people sitting up  
2 here who are being taken from important work to  
3 accomplish this task, and I'd really like to let them  
4 get back to their other work.

5 MR. CEDARBAUM: I appreciate that, but can I  
6 make my second clarifying point? You had indicated  
7 that this process that we are going to enter into on  
8 Monday might lead to, depending on how things go, lead  
9 to other hearing sessions, and I just wanted to T up  
10 the issue that if that happens, or maybe even if it  
11 doesn't happen, that we may be proposing delays in  
12 pre-filing dates as well. Right now, Staff and  
13 Intervenor are to file June 12th. We may find we need  
14 more time to incorporate all this new information into  
15 our direct case. We'll cross that bridge when we get  
16 to it, but I at least wanted to advise you of that  
17 possibility.

18 JUDGE MOSS: Let's do take it one step at a  
19 time. I will say in response to that that I want to  
20 encourage the parties to work in good faith and to  
21 conscientiously keep this procedural schedule on track.  
22 Scheduling is a difficult matter, and once we get one  
23 of these things set and we reserve everybody's time, it  
24 frankly creates a great deal of difficulty to change  
25 it. So I want everyone to proceed with that thought in

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1 mind, but I do appreciate the suggestion you make, and  
2 we'll take it as we need to.

3 MR. CEDARBAUM: My suggestion was only to  
4 change the prefiling date for Staff, Public Counsel,  
5 Intervenors. That was it.

6 JUDGE MOSS: But that suggestion is  
7 premature, isn't it?

8 MR. CEDARBAUM: Yes. It's premature in the  
9 sense it may not be necessary, but I wasn't talking  
10 about a delay in the schedule other than that.

11 JUDGE MOSS: My experience tells me that one  
12 delay tends to lead to another, so let's try to avoid  
13 it if at all possible and proceed with that good  
14 thought.

15 MR. CROMWELL: With that regard, and to put  
16 this issue to rest, I would like to make an offer of  
17 proof of the handout that Mr. Cedarbaum passed out.

18 JUDGE MOSS: An offer of proof?

19 MR. CROMWELL: Just to get his handout into  
20 the record formally.

21 JUDGE MOSS: I don't want to receive that  
22 into the record. I don't see that it advances the  
23 record in one way or another. If some of this material  
24 has some usefulness as evidence, then you can offer it  
25 at the appropriate time. This is not the time. We are

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1 not receiving evidence today.

2 MR. CROMWELL: I know, Your Honor. I was  
3 simply making an offer of proof for appellate purposes.

4 JUDGE MOSS: I'm not going to accept this  
5 into the record. I don't think it's appropriate. I  
6 don't think it falls within the constraints of what an  
7 offer of proof is intended for.

8 MR. CROMWELL: Thank you.

9 JUDGE MOSS: You can revisit that with me  
10 later if you want. Cite me the legal authority that  
11 suggests to the contrary, and I may change my mind, but  
12 sitting right here today, I don't think that's  
13 appropriate.

14 One more quick comment. I'm serious about  
15 this. I want to get on with our business.

16 MS. DAVISON: I appreciate that, Your Honor,  
17 and my comment will be very brief. I understand the  
18 scheduling constraints that you have and what you are  
19 trying to accomplish. I just want to note for the  
20 record that the document, which is a fairly extensive  
21 document with a lot of numbers, was just given to me  
22 today. I am not competent to analyze this document and  
23 be prepared to ask intelligent questions about it on  
24 Monday. I have to send that to my experts and ask them  
25 to review it over a Easter holiday weekend. I will do

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1 that, but I'm very pained by this schedule.

2 JUDGE MOSS: You might want to get one of  
3 your experts out here on Monday.

4 MS. DAVISON: That's my other problem. I  
5 will do that.

6 MR. VAN NOSTRAND: If I could note for the  
7 record, the document was e-mailed to Ms. Davison  
8 yesterday morning.

9 MS. DAVISON: That is not correct,  
10 Mr. Van Nostrand --

11 JUDGE MOSS: Let's stop that. I don't like  
12 bickering. You all know that, and I don't want to hear  
13 any more of it. We're going to go off the record and  
14 take up the matter of getting these exhibits organized  
15 and marked.

16 (Recess.)

17 JUDGE MOSS: We're back on the record after  
18 an extended time off the record to prepare our  
19 cross-examination exhibit list and take care of various  
20 matters. We did, while we were off the record,  
21 organize and mark all the exhibits. I'm not going to  
22 recite the numbers into the record at this time. The  
23 Bench will prepare an exhibit list and revise that list  
24 periodically throughout the hearing and at the  
25 conclusion of the hearing will provide a final exhibit

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1 list for use of all the parties and to be part of the  
2 permanent record, and that list will determine the  
3 numbers of exhibits as they are offered and ruled on  
4 during the course of the hearing.

5       Is there any other business we need to take  
6 up today? There is one further thing I need to  
7 mention. I did, during the off-the-record session --  
8 the Bench's accounting advisor requested that certain  
9 information be provided by the Company in connection  
10 with the revisions that we discussed at the beginning  
11 of today, and so that lead to Bench Request No. 2,  
12 which I served on the Company by hand and have provided  
13 to all the parties in the proceeding today. We  
14 prepared that in some haste and did not include in it a  
15 response date. I have requested the Company to respond  
16 on Monday, and they have indicated that they will make  
17 every effort to do so but will report back to me if for  
18 some reason that proves to be impossible.

19       The parties will get together on Monday and  
20 conduct the sort of clarification session that we  
21 discussed earlier, and then we will commence our  
22 evidentiary hearing proceeding with cross-examination  
23 of Mr. Dalley to begin at 9:30 a.m. on Tuesday, April  
24 25th, and there being no further business for us to  
25 conduct this afternoon, I appreciate you all

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1 participating here in helping us get ready for a more  
2 efficient hearing process, and we'll look forward to  
3 kicking that off on Tuesday, and I will talk with you  
4 on Monday during the course of the day as we previously  
5 discussed. Thank you very much. We're off the record.

6 (Prehearing conference concluded at 4:00 p.m.)

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