

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
4)
Complainant,)
5)
vs.)
6)
PACIFICORP, d/b/a)
7 PACIFIC LIGHT AND POWER,)
8)
Respondent.)

DOCKET NO. UE-991832
VOLUME 9
Pages 849 - 936

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A hearing in the above matter was held on
11 July 17, 2000, at 1:35 p.m., at 1300 South
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 before Administrative Law Judge DENNIS J. MOSS,
14 CHAIRWOMAN MARILYN SHOWALTER, COMMISSIONER RICHARD
15 HEMSTAD, COMMISSIONER WILLIAM R. GILLIS,
16

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The parties were present as follows:

18

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

21

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

23

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

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WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION, by ROBERT D. CEDARBAUM, Assistant Attorney
General, 1400 South Evergreen Park Drive Southwest,
Post Office Box 40128, Olympia, Washington 98504-0128.

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24 Kathryn T. Wilson, CCR

25 Court Reporter

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OFFERED/ADMITTED:

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

2 JUDGE MOSS: Let's go on the record. Good
3 afternoon, everyone. We are convened in the settlement
4 hearing proceeding in the matter styled Washington
5 Utilities and Transportation Commission V PacifiCorp,
6 d/b/a Pacific Power and Light, Docket Number UE-991832.
7 The parties have filed what I refer to in my thinking,
8 at least, is a comprehensive stipulation or settlement
9 agreement, and the purpose of our convening today is to
10 have a panel of witnesses and inquiries from the Bench,
11 probably statements by counsel as well.

12 The Commissioners are not all available until
13 2:30, about 50 minutes from now, so what we will do is
14 spend some time on the record here now taking care of
15 preliminary matters, including making sure our exhibit
16 list includes everything it needs to be included in the
17 records and take appearances, and then we will take a
18 brief recess until all the Commissioners are available
19 at 2:30, so let us begin then with appearances of
20 counsel, and why don't we just start with you,
21 Mr. Cromwell.

22 MR. CROMWELL: Robert Cromwell for Public
23 Counsel.

24 MR. VAN NOSTRAND: James M. Van Nostrand for
25 PacifiCorp.

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1 MS. DAVISON: Melinda Davison for ICNU.

2 MR. CEDARBAUM: Robert Cedarbaum for

3 Commission staff.

4 JUDGE MOSS: Do we have any other
5 appearances? I had indicated through the notice that
6 the teleconference bridge would be available for
7 monitoring purposes only, and it seems to be on. Is
8 there anybody on the teleconference bridge line?

9 Apparently not. Why don't we go ahead and have our
10 panel -- this is our panel, I take it, these five, so
11 why don't we go ahead and get the names on the record,
12 starting with you, Mr. Elgin.

13 MR. ELGIN: Kenneth L. Elgin, E-l-g-i-n, for
14 Commission staff.

15 MS. KELLY: Andrea Kelly, K-e-l-l-y, for
16 PacifiCorp.

17 MR. EBERDT: Charles Eberdt for the Energy
18 Project and Yakima OIC and Yakima Valley Farm Workers.

19 MS. DIXON: Danielle Dixon for the Northwest
20 Energy Coalition.

21 MR. LAZAR: Jim Lazar for Public Counsel.

22 JUDGE MOSS: Welcome to all of you. What I
23 propose to do then is take care of the swearing, and
24 we'll just swear you all in collectively, so if you
25 will please rise.

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1 (Witnesses sworn.)

2 JUDGE MOSS: As far as the record is
3 concerned, I think you all have the latest version of
4 the exhibit list, or you have had that available to
5 you. We do have the Bench requests, which I propose to
6 make exhibits, and I can give those numbers, but let me
7 ask for purposes of the record whether the parties have
8 any supplemental material. Let's go off the record for
9 a moment.

10 (Discussion off the record.)

11 JUDGE MOSS: I was asking if the parties have
12 any other material they wish to have made part of the
13 record. I had mentioned the Bench request will be made
14 exhibits, subject to any objection. Anything?

15 MR. CEDARBAUM: I think we probably assume
16 that the Stipulation itself would be made an exhibit,
17 which is sort of the customary practice.

18 JUDGE MOSS: That's right, and I was mentally
19 ahead of you but procedurally behind you. I have
20 already given it an exhibit number in my mind, so we
21 will take care of that formally. I seem to have even
22 added it to the exhibit list already. The
23 Comprehensive Stipulation, which was filed by the
24 parties June 20th, 2000, is Bench Exhibit No. 269, and
25 let's see, how many of those Bench exhibits were there?

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1 There are eight of those. We will begin those and just
2 go sequentially. The first one, which was Bench
3 Request No. 3, will be Exhibit 270, and that will carry
4 through 277. Any objection? Hearing none, those will
5 be made exhibits bearing the numbers as indicated.

6 MR. ELGIN: Your Honor, it would go through
7 Exhibit 278. There are actually nine of them.

8 JUDGE MOSS: So 278 will correspond with
9 Bench Request 11. 270 will correspond to Bench Request
10 3, and rest of us, even the mathematically challenged
11 will be able to figure that out, referring to myself.

12 Are there any preliminary matters that we can
13 take care of while we await the arrival of the
14 Commissioners?

15 MR. CEDARBAUM: Just to fill you in, the
16 parties met last Thursday to at least talk about how we
17 saw this going that would be most helpful to the
18 Commissioners, and I guess I drew the long or short
19 straw of being designated as our representative to
20 provide an opening statement rather than each counsel
21 doing that.

22 JUDGE MOSS: That's very efficient. I
23 appreciate that prior planning, so we will allow for
24 that when the Commissioners come on the Bench.
25 Anything else? All right. I apologize for the

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1 inconvenience, but we will stand in recess until 2:30.

2 (Recess.)

3 JUDGE MOSS: Let's go back on the record.

4 After our recess, we are ready to proceed. We've got
5 our witness panel sitting here ready across the front,
6 Mr. Elgin, Ms. Kelly, Mr. Eberdt, Ms. Dixon, and
7 Mr. Lazar, and these witnesses have been sworn, and we
8 have dispensed with our housekeeping matters. Our
9 exhibit list has now been supplemented by the admission
10 of the Bench request responses and what I've been
11 calling the Comprehensive Stipulation, which was the
12 one filed June 20th, and that's Exhibit 269, as I
13 recall.

14 The way I'd like to proceed this afternoon, I
15 have a few clarifying questions with respect to the
16 Bench requests, and we will take answers from whomever
17 is the appropriate person to give those. I will say
18 this, that although the Bench requests were directed to
19 the Company, as is common, others may wish to comment
20 in response, and they certainly may do so if they have
21 something supplemental to say.

22 Once we have completed the clarification on
23 those points, then I think what we will do, as we have
24 done in recent proceedings, is look at the Stipulation
25 itself, go through it page by page, have the

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1 Commissioners' questions to the panel and the
2 responses, of course, and then counsel may help us out
3 from time to time as well, and I left out one step.
4 Earlier, Mr. Cedarbaum indicated that he had drawn
5 either the long or the short straw, as we may yet see,
6 in terms of giving an opening statement on behalf of
7 all counsel since this is a joint stipulation. I think
8 it would probably be best to have your opening first
9 and then we will go into the clarifying questions.

10 MR. CEDARBAUM: Thank you, Your Honor. I
11 guess I will assume the safe assumption that the
12 Commissioners and you have read the Stipulation so I
13 don't inside to explain the details. We do have a
14 panel of witnesses, as you have indicated, and counsel
15 to answer questions on the details when we get to that.

16 What I would like to focus on by way of an
17 opening statement is the comprehensive nature that the
18 Stipulation has been presented to you, and by
19 comprehensive, I speak of that in two general terms.
20 The first is that it's comprehensive in the sense that
21 all parties have signed the Stipulation - Staff, Public
22 Counsel, the Company, ICNU, the Energy Project, and
23 Northwest Energy Coalition are all parties in this
24 case, and all parties have signed the Stipulation, so
25 you do have a broad base, a divergent set of viewpoints

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1 brought to bear in negotiating and drafting and
2 presenting the Stipulation. There are no outliers.
3 There are no separate agreements amongst less than all
4 the parties that have been presented to you today, so
5 this really is a comprehensive stipulation in terms of
6 the interests that have been brought to bear in
7 presenting it to you.

8 The second general meaning that I would like
9 to give to the word comprehensive is it's comprehensive
10 in the sense of the issues that have been included in
11 the Stipulation. This is a Stipulation of all the
12 issues that all of the parties have identified in the
13 case, and the comprehensive elements of it, the general
14 elements of it are that there is a five-year rate plan
15 with a post rate plan earnings review. There is an
16 agreement on how the Centralia gain should be treated
17 for rate-making purposes. There are agreements as to
18 rate design issues in the case. An agreement that the
19 service quality standards from the merger of last year
20 will continue through the rate plan period rather than
21 end according to the terms in the merger before the
22 rate plan period would expire. There is an agreement
23 as to how the Company will write down its investment in
24 the Trojan Nuclear Power Plant, and then importantly,
25 there is an agreement with respect to processes that

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1 will be used by the parties if the Commission accepts
2 the Stipulation to resolve issues that we couldn't
3 resolve in detail with respect to the specifics, but we
4 have set up a process on how we would get there, and
5 that would be issues with respect to the prudence
6 review, issues with respect to the system's benefit
7 charge, and issues with respect to low-income program
8 discounts, and there is also a provision and
9 stipulation that will deal with the BPA subscription
10 process.

11 So in those two respects, we feel we've
12 presented a comprehensive stipulation to you both with
13 respect to the interests that have been brought to bear
14 and the subject matters that are contained in the
15 Stipulation. I think all parties have come today to
16 present the Stipulation to you and believe that the
17 acceptance of the Stipulation is in the public interest
18 and will establish rates that are just, fair,
19 reasonable, and sufficient through the five-year rate
20 plan, and we are here to ask that you adopt it, and we
21 are here to answer any of your questions on the details
22 of the Stipulation as well, so with that, that
23 concludes my opening statement on the matter. If there
24 are any questions you have of me of what I said or any
25 details with respect to the Stipulation, panelists are

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1 here and so are counsel.

2 JUDGE MOSS: Any questions to counsel at this
3 juncture? We may reserve also, but there may be some
4 at this point.

5 CHAIRWOMAN SHOWALTER: I have a general
6 question, and I will just start it with you. It's the
7 question of what it means to approve a rate plan
8 without incorporating into it the prudence review of
9 prior acquisitions. I don't really understand how it
10 is that we get to a finding that this rate is fair,
11 just, and reasonable without having made those
12 determinations, and I wish you would elaborate a little
13 bit on why you think it's entirely proper for us to do
14 it and how it would work in the future.

15 MR. CEDARBAUM: It could be that each party
16 has their own position on that. I think from the
17 Staff's perspective, and Mr. Elgin may want to expound
18 on this, but from the Staff's perspective, Staff is
19 comfortable with the level of rate relief that has been
20 included in the rate plan of three percent, three
21 percent, one percent, and then zero percent and zero
22 percent for the five years, and that is really a
23 separate matter from the prudence review, and that
24 consistent with the Commission's precedent and practice
25 of analyzing prudence, the prudence of acquisitions in

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1 a general rate case, is that the rate case will come
2 after the five-year rate plan. That's the point in
3 time when the Commission would have that issue before,
4 and in the meantime, the parties will develop a report
5 that the Commission will have access to with respect to
6 the prudence.

7 CHAIRWOMAN SHOWALTER: Why is it appropriate
8 to carry the prudence issue beyond this rate case into
9 the next rate case when these acquisitions were made
10 some time ago? Why aren't we bringing things up to
11 date as of today in a rate?

12 MR. CEDARBAUM: I don't know if Mr. Elgin has
13 anything to add to what I said.

14 CHAIRWOMAN SHOWALTER: We can wait until the
15 panel if you want. I thought I would begin with the
16 legal counsel.

17 MR. CEDARBAUM: I guess Staff's perspective
18 is that the rates in the rate plan established rates
19 that are just, fair, reasonable, and sufficient and
20 that you don't need at this point to get to the
21 prudence review in order to adopt the rate plan.

22 JUDGE MOSS: Perhaps we will restate that
23 question?

24 CHAIRWOMAN SHOWALTER: As things go on, I'll
25 be raising it again.

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1 JUDGE MOSS: Why don't we turn then to the
2 clarifying questions. Looking at the response to Bench
3 Request No. 3, what the Bench called for in this
4 request was a schedule identical to one that had been
5 presented through Mr. Griffith's testimony, which
6 showed in a very useful way the impact of the proposed
7 increases by the Company at the time of the as-file
8 case, and so this was to permit a comparison between
9 the settlement or the stipulation and what was as
10 filed.

11 Now, looking at the column on the left there
12 on the top table -- I think there are three tables, and
13 in the left most column where it shows the base rate, I
14 notice that for year one -- although, there is a three
15 percent increase, we are looking at increases here in
16 the range of 3.1 percent to 4.1 percent, and I'm
17 wondering, is that a result of the four-month deferral?
18 In other words, the proposal is that the rates actually
19 be implemented on September 1 but then not be charged
20 to customers until January 1, or is there some other
21 explanation why these percentages are all higher than
22 three percent.

23 MS. KELLY: That's the explanation. That
24 includes the impact of the deferral.

25 JUDGE MOSS: I also understand in response to

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1 another of the Bench requests that the \$4.25 base rate
2 that is stated to be effective, that will be effective
3 January 1, and that includes the four-month also.

4 MS. KELLY: That's correct.

5 JUDGE MOSS: The credit for Centralia and the
6 merger credit, which are indicated in that portion of
7 the table, I'm a little curious, those are not
8 reflected in the second table or the third table, and
9 maybe somebody can explain to me what's going on in
10 terms of that aspect of it. As I understand it, these
11 are to be separate credits as opposed to something
12 rolled in.

13 MS. KELLY: What we were trying to do here
14 for each of the years was to show the annual impact, so
15 once those credits go in place, they stay in place for
16 four years and five years, and so there wouldn't be an
17 incremental impact in the second year or the third
18 year. The next time there would be an impact from the
19 merger credit or the Centralia credit would be when
20 they went away.

21 JUDGE MOSS: With that answer in mind,
22 looking at the second table there, which is for the
23 year 2002, I notice again in the left-hand column that
24 although we are talking about a three percent across
25 the board increase for that year, the range here is 1.5

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1 percent to 2.1 percent. What accounts for that.

2 MS. KELLY: That is to reflect the fact that
3 the one percent deferral goes away, but a three-percent
4 increase to base rate occurs, but the net impact to
5 customers bill would be the two percent.

6 JUDGE MOSS: I understand. You have
7 confirmed that the merger credit -- as I recall, the
8 merger credit initiates January 1, 2001 and carries for
9 four years?

10 MS. KELLY: Yes.

11 JUDGE MOSS: And the Centralia credit
12 initiates -- will it also initiate on January 1, 2001.

13 MS. KELLY: Yes, that's the intention.

14 JUDGE MOSS: It would go through the rate
15 plan period of five years?

16 MS. KELLY: It would be designed to go
17 through the rate plan period but would terminate once
18 the full amount was returned to customers.

19 JUDGE MOSS: I notice that under the subtotal
20 and total columns in the second and third tables, there
21 is a single asterisk indicating a footnote, but I don't
22 see a corresponding footnote. Is there some other
23 reading I should be giving that?

24 MS. KELLY: No. I think that was
25 inadvertently left in from a different.

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1 JUDGE MOSS: I didn't have anything on four,
2 which was the question about the interplay between the
3 comprehensive settlement. That was a nine percent
4 increase, and the increase cumulatively is less than
5 nine percent, so that would not be triggered in any
6 event.

7 On Bench Request No. 5, I was asking for an
8 explanation of the 1.7-percent figure in terms of
9 explaining the merger credit, and the response does
10 explain that, and I think it's also picked up in the
11 response to No. 3 that we just discussed, but in the
12 response, you indicate how the estimate is derived, and
13 we look at the figure 171 million.

14 Now, if that figure is Washington retail
15 revenue excluding special contracts, it appears to have
16 come from the filing as opposed to a figure that was
17 generated from the settlement rates. Could you help me
18 out a little bit there?

19 MS. KELLY: That's correct. The 1.7 percent
20 is an estimate that was based on the present revenues.
21 Actually, if you divide that out, it ends up being
22 about 1.75 percent on present revenues, and it depends
23 on when you calculate the merger credit. If you
24 calculate it after an increase in rates occurred, it is
25 going to be a little bit lower, but it's the

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1 three-million-dollar amount that is the driver here and
2 that is the commitment, and that's the amount that will
3 be passed back to customers each year, so it's the
4 three million dollars that's the important piece.

5 JUDGE MOSS: When we say "a little bit," how
6 much of a little bit are we talking about? Are we
7 talking about changing 1.7 to 1.2 or talking about
8 changing it to 1.64?

9 MS. KELLY: It's more the latter than the
10 former. It's more magnitude to small.

11 MR. LAZAR: The only thing that we saw that
12 would change that by more than a rounding error or sort
13 of normal two-percent load growth is if Boise-Cascade
14 returns to regular tariff service. The
15 171-million-dollar Washington retail revenue does not
16 include Boise-Cascade special contract revenue. If
17 they came back onto regular tariff service, the 171
18 would go up significantly, and the three million
19 dollars would again get divided by a larger
20 denominator, and that might have an effect that's more
21 than just rounding.

22 JUDGE MOSS: When you say back to regular
23 service, you mean under a tariff as opposed to special
24 contract.

25 MR. LAZAR: Correct. They went on special

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1 contract and are not a part of the 171.

2 JUDGE MOSS: Thank you, Mr. Lazar. Looking
3 at the response to Bench Request No. 6, which has to do
4 with Section 11 of the Comprehensive Stipulation, which
5 I believe is referred to in the Stipulation as a
6 reopener, this is the provision that allows the Company
7 to make a general rate filing; although, this would be
8 in the nature of a filing for interim rates and would
9 be subject to that high standard, or as I read it, it
10 looks like a high standard.

11 Let me see if I can bring this down to common
12 speak and say this provision is in there basically to
13 provide for the circumstance of electric markets or
14 credit markets going haywire, creating a situation
15 where the Company can no longer function economically
16 or in a financial sound way would be a better way to
17 say it, I suppose.

18 MR. ELGIN: Yes. I would just clarify that.
19 It's not just the energy market. It's primarily that
20 the Company needs access to capital. It has a certain
21 public service obligation, and that it's earnings and
22 tests in order to access credit is such that without
23 interim rate relief, it can't access credit and that it
24 would have a material impact on the public future
25 service, so interim rates are traditionally filed in

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1 the contract of a general rate application, so we
2 analyze what is the emergent need for rate relief so
3 the company can maintain adequate and reliable service
4 to the public, and then we process the remainder of the
5 case. So it's a very strict standard in the context of
6 the company's ability to access capital and provide
7 reasonable service to the public.

8 JUDGE MOSS: So we would expect to see
9 experts from the capital market sector come to testify
10 that this company is not going to get any access to
11 credit under the current circumstances?

12 MR. ELGIN: You would see primarily the
13 company's chief financial officer presenting testimony
14 and exhibits showing that the company's coverages were
15 such that it would not be able to access and sell any
16 debt is the testimony and analysis you would see.

17 JUDGE MOSS: Let me round that question out
18 in this fashion, and I appreciate the answer. Let's
19 hypothesize a situation such as we experienced recently
20 in the Pacific Northwest where we have had some rather
21 significant spikes in the wholesale price of
22 electricity. Is that the kind of thing that would
23 trigger this, or is that conceivable?

24 MR. ELGIN: Probably not. If it would be
25 that that spike were to occur and it would be such that

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1 it was an extended period of time that we were
2 perceiving those kind of energy prices, and the company
3 had to access those markets on a regular basis for a
4 significant portion of its power supply, it might, but
5 I suspect for this particular company, it would not.

6 MR. LAZAR: This company is a net seller.
7 They kind of tends to win in that situation.

8 JUDGE MOSS: So its customers could then
9 expect electricity too cheap to meter.

10 MR. LAZAR: Not during the five years of the
11 rate stipulation. There is not a counterpart to this
12 reopener in the event of high earnings.

13 JUDGE MOSS: No. 7, I didn't have any
14 questions. That was the Bench request concerning the
15 transition period. The Bench was asking for some
16 further explanation of what the parties referred to
17 when they meant a significant transition for the
18 Company, one of the bases, one of the primary goals of
19 this settlement, and that was clarified in the
20 response.

21 In No. 8, the Bench asked for clarification
22 with respect to Section 6 of the Stipulation where only
23 PacifiCorp is allowed to take action in response to a
24 joint report that is contemplated with respect to
25 prudence, and the response is that yes, only PacifiCorp

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1 can take actions in response to such joint report, and
2 the answer goes on to explain that the Company may
3 choose to take action to address or mitigate the
4 identified issues in the event of an adverse finding on
5 the question of prudence, and the question that pops to
6 mind is such as what sort of actions might the Company
7 take in mitigation of an adverse prudence finding?

8 MS. KELLY: I think it's difficult to guess
9 on what might be the outcome of the finding, but there
10 may be ways -- if, for example, it were to renegotiate
11 funds for a contract, or if there were questions on the
12 prudence of a specific resource, maybe decide whether
13 or not to include that in rate base.

14 I think there are several ways to work
15 through this, and I think from the Company's
16 perspective, that's the appeal of having a prudence
17 review done and a process that's not, I guess, tied
18 specifically to a rate case. It provides the parties
19 an opportunity to share information in a collaborative
20 approach and then work together to develop
21 recommendations on which the Company can take action
22 before the next rate case, so it gives to us the
23 opportunity to do that.

24 JUDGE MOSS: This may be more a question for
25 the lawyers, but is there any interrelationship, any

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1 interplay between the Commission's prudence
2 determinations in connection with resource acquisitions
3 and the rules that govern transfers of property under
4 RCW 80.12?

5 MR. CEDARBAUM: I would think that if one of
6 the mitigation measures that the Company took would be
7 to sell investment, then that would have to come before
8 the Commission as a transfer of property application,
9 and I think that's not precluded by the Stipulation.
10 That would be utility property.

11 JUDGE MOSS: So it would be true regardless
12 of whether there had been a prudence determination?

13 MR. CEDARBAUM: I think so.

14 MR. ELGIN: Yes. If I could follow up with
15 that and answer it in the hypothetical. If you look
16 only Page 4 of the Comprehensive Stipulation in
17 Footnote 5, and let's say hypothetically there was an
18 issue related to the acquisition of Cholla, and the
19 Company decided that based on the report that was filed
20 that it's in the best interest of shareholders and
21 ratepayers to dispose of Cholla. Then under 80.12, the
22 Commission would have jurisdiction to evaluate the sale
23 of that property and the disposition of those assets,
24 and that's a separate application within the context of
25 that particular statute. It has no bearing on what

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1 rates might eventually come out of that and how that
2 might impact the rate plan under your consideration
3 this afternoon from the Stipulation.

4 JUDGE MOSS: There is a public interest
5 determination both in the context of transfer of
6 property and also in prudence review, isn't there?

7 MR. ELGIN: Yes. The public interest
8 standard, I think, is the primary factor in the
9 transfer of property application, but in the prudence
10 standard, it's my understanding of past Commission
11 decisions, both public interest and whether or not, as
12 we've tried to articulate on Page 5 is the Commission
13 standard that came out of the U-8354 in the
14 determination of the Skagit Hanford investment for
15 Puget Sound Power and Light, so it's a little broader
16 and more comprehensive. It's not really in the public
17 interest, but what specific standards and what specific
18 actions and information did the Company rely on to
19 acquire that particular resource.

20 CHAIRWOMAN SHOWALTER: As long as we are on
21 that footnote, it cites different facilities that have
22 been purchased or built over time, and then it says,
23 "They shall not be considered as part of the rate base
24 for Washington rate-making purposes until the prudence
25 has been evaluated in the next general rate case."

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1 Let's say 100 percent of their costs were
2 deemed to be prudent in the next general rate case.
3 Does that mean that all of those costs would then be
4 later loaded on into the rate base, meaning none of
5 those costs are recognized in this rate that we are
6 approving?

7 MR. ELGIN: No. I'm going to dissect your
8 question. First off is that what this language is
9 saying that the Commission, by accepting this
10 stipulation, has not made a determination under the
11 statute that provides for the Commission to make a rate
12 base finding and evaluation under 80.04.250 about what
13 is the proper rate base. In other words, we are saying
14 the Commission has not made a determination for these
15 specific facilities. That's not to say that imbedded
16 in these rates and in the Company's results of
17 operations that are in evidence in this record, the
18 Company has made specific proposals that these be, in
19 fact, included.

20 CHAIRWOMAN SHOWALTER: That's the nub of my
21 issue. How do we include these costs in a rate that we
22 approve without having found them to be prudent,
23 because if they are not prudent and to the extent they
24 are not prudent, it seems to me we can't say the rate
25 is fair, just, and reasonable.

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1 How do we know this rate is fair, just, and
2 reasonable until we've made that determination, if we
3 are including that in the rate base?

4 MR. ELGIN: I guess I would answer that in
5 two specific parts. First off is that you have some
6 evidence about the Company's acquisitions. The
7 Company's policy witness has testified in this
8 proceeding that he believes the Company has carried the
9 burden of proof with respect to those specific
10 resources and believes the Company has made a showing
11 that those facilities are in rate base and have made a
12 specific prudence finding.

13 What we are saying is that the Staff has
14 analyzed that information and analyzed that request,
15 and we are saying that to the extent that these rates
16 were approved, we think that there is reasonable basis
17 for going forward with these rates and having another
18 process within this next five-year period to gather all
19 the information that we need regarding the specific
20 finding, and then at year five, in 2005, we will bring
21 our investigation, our report back to the Commission
22 for final determination, so we are saying this is a
23 bridge, a five-year bridge on these specific resources
24 that the three, three, one, zero, zero rate plan will
25 provide reasonable rates based on how the Company is

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1 booking those costs. They are in the utilities plan
2 accounts. We are saying for this five-year period,
3 three, three, one, zero, zero, this five-year rate plan
4 provides adequate rates for the Company and provides
5 all the parties a sufficient window with which to
6 evaluate the prudence decision.

7 CHAIRWOMAN SHOWALTER: Does that mean this is
8 essentially an interim rate pending prudence
9 determinations later?

10 MR. ELGIN: I would say interim in the sense
11 that it's not subject to refund. When we have
12 traditionally used that word "interim rate," it means
13 that should the company not carry its burden that
14 somehow we can go back and refund the customers. It's
15 interim in the sense that through this five-year
16 period, this three, one, one rate plan will provide a
17 bridge until we make that specific finding, and the
18 Staff and all the parties believe that these are just,
19 fair, and reasonable and sufficient rates. So interim
20 in that sense, but not in the sense how this Commission
21 has traditionally viewed interim rates.

22 MR. LAZAR: This was an area that was of
23 particular concern to us. Public Counsel was sort of
24 the lead party in creating the prudence review
25 precedent with Puget back in the early '90's, and we

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1 were concerned about some of these new resources.

2 Without going into specifics on them, one
3 part of your question seemed to ask, if we are not
4 putting them in rate base now, does that mean we are
5 going to load them all in later, and the answer to that
6 is in Section 5 of the Stipulation, which is that the
7 depreciation rates for those plans are adopted as a
8 part of the Stipulation, and when we get five years
9 down the road and you make a determination on prudence,
10 a significant part of the cost of those plants will be
11 behind us.

12 Our feeling was that while we have some
13 questions about whether all those plants were cost
14 effective today, we think it's more likely that they
15 will be cost-effective from a 2005 looking forward
16 perspective because of the depreciation that's
17 occurred.

18 COMMISSIONER HEMSTAD: I find that answer
19 puzzling. Isn't our responsibility to not make an
20 after-the-fact determination, was the decision to
21 acquire the resource prudent, but was the decision of
22 the Company, its boards of directors, reasonable,
23 giving the Company some considerable latitude at the
24 time the decision was made. Why would we be better
25 able to make that decision five years hence than at the

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1 present time, unless we are looking after the fact?

2 MR. ELGIN: Can I make a shot at that? I
3 think why you are going to have a better decision is
4 because of the process the parties have agreed to find
5 out what was behind the decisions. One of the
6 struggles we have is just the nature of the rate case
7 process and the discovery and the whole litigation
8 surrounding the investigation, and so what we are
9 attempting to do by this section of the Comprehensive
10 Stipulation is to some extent recognize what the
11 Commission did in the Puget Sound Power and Light case
12 in 1992, and that is create a separate proceeding for
13 which prudence is evaluated.

14 COMMISSIONER HEMSTAD: We did that only
15 because the Company had not put on a case in the rate
16 case. I distinctly recall we said, We will give you
17 one last chance to put on the case, hence the separate
18 proceeding.

19 MR. ELGIN: Yes, sir. We are trying to give
20 the Company a process that's similar to what the
21 Commission gave in the 1992 case, and that is a process
22 outside of litigation where the parties have discovery.
23 The parties have an opportunity to sit down in a
24 nonadversarial manner and discuss the standard about
25 the board's decisions with respect to these resources

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1 and as well, to have some dialogue about that whole
2 issue of how much latitude, and then to have the
3 parties file a report with the Commission that would
4 provide the basis for, to get to your question, about
5 will we get a better decision in five years, and I
6 think we will because we will have a better process to
7 develop the information, and I think we will have a
8 better understanding of what the Company did and a
9 better understanding of how to apply that standard
10 given our history with this whole issue surrounding
11 prudence.

12 COMMISSIONER HEMSTAD: I realize this is a
13 settlement party to make whatever accommodations seem
14 appropriate, and so you may not want to answer this
15 question, but is it a practical problem that there
16 wasn't sufficient time within the rate case period to
17 do that evaluation?

18 MR. ELGIN: No. I think the question became
19 more in the context of two parties having different
20 perspective as to what the standard meant. It's not a
21 question of time. I think it's more of a question the
22 Company having one idea what this means, Staff having
23 one idea, Public Counsel having some idea, the
24 Industrial Customers of Northwest Utilities having some
25 idea, and then all of us bringing this disparate notion

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1 to the Commission and saying, This resource in and this
2 resource out, but what we felt was having this process
3 to evaluate the information would be a better process
4 and develop better information for the Commission and
5 have everybody more comfortable with the Company's
6 resource acquisitions and then making a recommendation
7 at some point in time which then really defines the
8 bounds about what available information was there and
9 then enabling the Company to take whatever action that
10 it deemed necessary based on those findings in the
11 report.

12 COMMISSIONER HEMSTAD: Just one last comment.
13 I find myself a bit uncomfortable with the reality of
14 that the Company hasn't been here for 14 years, and now
15 we are adding another five onto that. I don't know
16 when these particular resources were acquired, but that
17 means we are looking at a potential time frame of
18 almost two decades before, if any of these resources
19 were acquired early, before a determination has been
20 made of this prudence. At least where I come from,
21 that's a long time.

22 MR. ELGIN: It's a long time in any event.
23 It's already 15 years, and I think that's what this
24 stipulation recognizes. It's been 15 years. We could
25 have brought our positions in advocacy proceedings to

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1 the Commission and every party take their best shot
2 about these specific resources and what the standard
3 means, but we are thinking if we have a year for the
4 Staff, Company, Public Counsel, the Industrial
5 Customers to investigate, to have some opportunity to
6 further research the materials, to go back into the
7 records and develop a report that we are going to have
8 better information, and then yes, the decision is still
9 five years hence, but the information is better, and I
10 think the parties are better able to evaluate the
11 specific resource decisions in the context of this
12 prudency standard.

13 COMMISSIONER HEMSTAD: Then just one further
14 comment question. If we are to have that report and
15 therefore the position of the parties in another year,
16 the current rate case then is contemporaneous with that
17 report. Why wouldn't we take it up and deal with the
18 issue then rather than deferring it for another four
19 years before incorporating the results, whatever they
20 are, into the rates?

21 MR. ELGIN: It's a balance. What we are
22 looking at are these modest levels of rate increases in
23 light of the expected outcomes of what may or may not
24 come about as a result of a prudency determination and
25 a specific finding by the Commission in terms of

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1 whether or not this company was prudent or imprudent
2 with respect to any of these resources, and then what
3 is the effective remedy.

4 That is another question in and of itself.

5 Let's just say hypothetically that the Company was
6 found imprudent with respect to the Hermiston
7 acquisition. The process is not to disallow all the
8 costs. The process is to go back and reconstruct what
9 should have the Company done and what is fair to the
10 Company in light of the best resource alternative
11 that's available, and so what we've attempted to do is
12 try to balance those two decisions and come up with a
13 rate plan that we feel is reasonable that balances the
14 public's interest to pay fair rates and a process for
15 to us investigate what are those resource decisions,
16 and where and what Staff would do in the context of
17 that second question is that holds ratepayers harmless.

18 That's a very difficult proposition is to go
19 back and determine in 1992 what could have the Company
20 done absent the acquisition of Hermiston or Cholla or
21 Craig or Hayden or any of these. That's the real
22 difficult exercise in this whole -- it's not
23 necessarily just the prudence case, but it's also once
24 you make a finding of imprudence, what do you do and
25 what are the consequences to the utility and the

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1 ratepayers as a result of that.

2 CHAIRWOMAN SHOWALTER: Implicitly, aren't you
3 really saying it's pretty prudent? Why would you be
4 agreeing to this rate that does include these costs if
5 you didn't think it was roughly okay? Why isn't this
6 part of the settlement?

7 MR. ELGIN: What I think I'm saying is that
8 the three, three, one rate proposal may, in fact, take
9 into account that some of these acquisitions were
10 imprudent, and it does calculate to some extent what
11 may be the outcome of Staff saying, This is the
12 alternative and this is how you hold ratepayers
13 harmless.

14 CHAIRWOMAN SHOWALTER: So you are betting we
15 will find something to be imprudent or some portion
16 imprudent?

17 MR. ELGIN: No. I'm just saying that's what
18 the rate plan does is it balances those factors. Not
19 to say that the Staff at this point has made a finding
20 that one of these is imprudent. It balances those
21 diverse two factors about a finding of imprudence and
22 then holding ratepayers harmless.

23 CHAIRWOMAN SHOWALTER: I have three
24 questions. First, can you give me the dates of these
25 facilities when they were brought on line?

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1 MS. KELLY: For Cholla, that was 1990; for
2 Craig, that was 1992; for Hayden, that was also 1992;
3 for Hermiston, 1996; James River, 1996, and Foote
4 Creek, 1999.

5 CHAIRWOMAN SHOWALTER: James River isn't
6 listed in this footnote. Does that mean anything?

7 MS. KELLY: Well, it's one of the smallest of
8 them, which may be part of the oversight.

9 CHAIRWOMAN SHOWALTER: The second question is
10 this generation one of today's ratepayers versus the
11 next year's or five years from now ratepayers, aren't
12 we saying that we are going to balance this sort of,
13 quote, on the backs of future ratepayers or the other
14 way? Either today's ratepayers may be paying too much
15 or too little, and we will figure it out and tell you
16 in five years, in which case it's some other ratepayers
17 who will make up the difference.

18 MS. KELLY: We wouldn't be doing anything to
19 catch up in the later years. The amortization that has
20 occurred over time would be reflected in the rate base
21 balances at the time that rates are set after the rate
22 plan period, so as Mr. Lazar was alluding to, there
23 would be a lower balance on each of those plants
24 because they would have amortized out. So we wouldn't
25 be going back and trying time to collect past costs

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1 from future generations.

2 CHAIRWOMAN SHOWALTER: I guess I'm saying if
3 we had as of today made a determination of prudence, or
4 at least made a settlement that included that issue in
5 it, compared to rolling that in five years from now,
6 couldn't there be a difference in terms of what today's
7 ratepayers would pay, unless the outcome turns out to
8 be exactly what rate we're approving today?

9 MS. KELLY: I guess I would respond to that
10 by looking at the three, three, one, zero, zero
11 reflects each party's opinion on what is included in
12 rates at this point, and so if you asked each party the
13 same question, while we didn't go down and break out
14 what is in rate base and what is not, each party got
15 there, and this essentially cuts the increase that the
16 Company requested in half.

17 CHAIRWOMAN SHOWALTER: The third question is,
18 your faith that the process you are setting up is
19 better than what's gone on in the past, and I'm not
20 sure what's been happening since '92, '96, or '99, but
21 I don't understand why the parties haven't been looking
22 at these issues to date. I know the Company has put in
23 a case, but part of a rate case is that it forces
24 issues and forces people to confront them. You are
25 saying you think we'll do better at prudence if we have

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1 another year to think about it, but the pressure seems
2 to be somewhat off, and in the meantime, life goes on.
3 The Company has issues. The Staff has other issues to
4 deal with. You will have lost the pressure, really,
5 that a rate case forces to resolve issues.

6 MS. KELLY: I think the way the process is
7 set up, giving us a year to do it doesn't mean it will
8 take a full year, but I think outside of a litigated
9 process, I believe there will be a freer flow of
10 information in that parties won't be reading the exact
11 words of a data request and responding to those exact
12 words. It will more of an interactive process so that
13 Public Counsel, Staff, ICNU, and the other parties get
14 the information they really need without litigation
15 getting in the way of that flow of information, and
16 that is what I see as the benefit.

17 We take this very seriously. It doesn't take
18 any pressure off the Company to demonstrate this,
19 because the report itself will be put together over the
20 next year, provided to the Commission, will form a
21 basis for our next rate case, and all of the discovery
22 and data and the information that is provided to the
23 parties through this informal process, we've agreed we
24 won't challenge the authenticity. We will allow it,
25 essentially, to go directly into the next rate case.

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1 I think in response to Commissioner Hemstad's
2 question of why can't we use it right away, from the
3 Company's perspective, that is essentially a one-item
4 rate case during the rate plan period, and we do have
5 some carve-outs, but from the Company's perspective,
6 looking at a three, three, one, zero, zero stream to
7 then have the results of a prudence process laid on top
8 of that, it's unlikely that there will be upside for
9 the Company in that, and yet, it could significantly
10 impact the economics of the earning plan for it. So
11 that's why from our perspective it's important that
12 this be done as an informal process, but that folks
13 recognize that we take this very seriously.

14 JUDGE MOSS: I think I just have one more
15 clarifying question and then we will get back to the
16 Stipulation, some parts of which we've covered already.

17 With respect to Beverage Request 11, that
18 Bench request concerns the question of which benchmarks
19 will be used to evaluate PacifiCorp's earnings during
20 the post rate plan earnings review in Section 3 of the
21 Comprehensive Settlement, and some specific examples
22 are given in the question, capital structure, cost of
23 capital elements, overall return. The answer does at
24 least pick up on the suggestion of a reasonable range
25 of return to the extent it responds that the Company's

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1 expectation as to earnings may be at the lower end of
2 some range of reasonableness during the early years and
3 perhaps at a higher end of that range during the later
4 years, so that explains the statement of why the
5 average earns over the rate year are expected to
6 reflect equity return and overall return. It will give
7 the Company the opportunity to earn reasonable return.

8 I wanted to ask, and frankly, the question is
9 contemplating, perhaps wishfully, something harder than
10 was given in the response, and I wonder if parties can
11 at least identify the anchors or end points of range of
12 reasonableness that we are talking about here.

13 MR. LAZAR: I don't think so. Part of this
14 settlement is there is no rate base. There is no rate
15 of return. There is no capital structure. If we had
16 gone one more step in the proceeding with all the
17 parties filing their testimony and Public Counsel had
18 come in with a 10 percent return on equity and a
19 40-percent equity capitalization ratio, and the Company
20 was at 11-and-a-quarter and 40 something, there would
21 be some anchor points, but I think that's one of the
22 things that we recognized we were giving up in this.

23 There is only one bit of evidence in the
24 record on rate of return and capital structure, which
25 those are when the semi-annual reports are filed, they

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1 are compared to the allowed rate of return, and I hope
2 that no one would think that the rate of return
3 approved in U-8602 is an appropriate anchor point today
4 or going forward, but that's the last approved rate of
5 return for this company.

6 JUDGE MOSS: That is one source of the
7 concern over this aspect of the proposed stipulation is
8 that, as you point out, Mr. Lazar, it is typically the
9 case that as Staff reviews the rates of the company and
10 examines them in terms of the question, are there
11 excessive earnings, it has to be excessive earnings
12 relative to what? Relative to something, and that is
13 typically the allowed rate of return or at least the
14 range of reasonableness to upper points and lower
15 points, and as you also point out, the last one we
16 have, the last Commission approved return components
17 and cost of money elements and capital structure and so
18 forth is now 14 going on 15 years old, so that's the
19 source of the concern, and if there is something
20 anybody else wants to offer, we would be happy to here
21 it.

22 MS. KELLY: I would just add that's always
23 something of a moving target because it generally
24 reflects the capital market of the time, so even if we
25 were to set a reasonable rate of return today, that may

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1 not be the reasonable rate of return five years from
2 now, and I think the Company has been operating under
3 the understanding that our last authorized rate of
4 return is not reflective of current market conditions,
5 and we would, in the context of this rate plan, be
6 looking at what are the capital markets at that time
7 and requesting cost of capital consistent with those
8 and comparing ourselves again cost of capital figures
9 that are more representative of what the capital
10 markets are at the time.

11 CHAIRWOMAN SHOWALTER: What time is this?

12 MS. KELLY: At the time of the post rate plan
13 earnings review.

14 JUDGE MOSS: Did you want to comment on that,
15 Mr. Elgin?

16 MR. ELGIN: I just want to emphasize the
17 point that Mr. Lazar mentions that the evidence that
18 you have in front of you is the Company's request for a
19 9.1 percent overall rate of return and an
20 11-and-a-quarter percent equity, which produced a
21 revenue deficiency with these kind of rate increases
22 that were part of its initial tariff filing, and what
23 we have attempted to do in this stipulation is to put
24 in a range of increases that the parties feel
25 comfortable with going forward. They are modest

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1 increases. They are designed to emulate kind of a
2 phase-in over some period of time. It's trying to
3 recognize that the impacts on the Company of its merger
4 with ScottishPower and what salutary effects may result
5 at year five when we would actually measure the
6 increases.

7 One of the things that this thing does is
8 that the Company has to make an affirmative showing in
9 year five that the three, three, one increases as a
10 result of this rate plan will prospectively result in
11 rates that are fair, just, and reasonable from that
12 point going forward. That's one of the benefits this
13 settlement provides is that at that point, we will then
14 make a measurement and make a finding about what is
15 fair rate of return at that point. What is a proper
16 test period, and what are all those things that go into
17 the traditional measuring process. So we've mitigated
18 the increases. We've provided a fairly stable, known
19 five-year rate level for the customers, and at the end
20 of that, we will measure and make sure that what the
21 parties have agreed to, it does, in fact, hold up to
22 that traditional standard of measuring the Company in
23 the context of rate of return and return on equity.

24 JUDGE MOSS: Just one more piece of this
25 question, I think, and that is this scenario: At the

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1 end of five years, instead of making a general rate
2 filing, the Company makes a filing to demonstrate that
3 its currently effective rates -- that is, rates that
4 would be approved under the Stipulation if it is
5 approved -- are reasonable. How will the Staff then be
6 in a position to carry its burden of proof if it
7 decides there is an overearning situation and wishes to
8 proceed with a complaint?

9 MR. ELGIN: We would do it precisely as we
10 have done it in the past. When the notice of hearing
11 initially goes out, one of the things that we would put
12 the Company on notice is that their existing rate
13 levels are an issue, so consistent with how we've done
14 past cases is when a company has made a general rate
15 filing and the Staff has some reason to believe that
16 rates should go down, we put the company on notice that
17 its existing rates are at issue, and the Staff may, in
18 fact, recommend reductions in the rates and general
19 overall revenues from the company, so at that point,
20 the company would be on notice and we would carry our
21 burden.

22 But this process contemplates the Company
23 coming in and making an affirmative showing. Once we
24 had that filing, then if we felt that the existing
25 rates were, in fact, excessive, we would put them on

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1 notice and carry our burden and put on our case to
2 recommend that rates should be lowered.

3 JUDGE MOSS: That takes care of the
4 clarifying questions with respect to the Bench request,
5 so I think the thing to do at this juncture would be to
6 turn to the Stipulation itself, and as we have done in
7 some prior proceedings, we will go through it a page at
8 a time, and as the various members of the Bench have
9 questions, they can raise those. Looking at Page 1,
10 then, and I guess we actually get into the Agreement
11 itself and its various terms beginning with Section 1
12 on Page 2, which describes the rate plan periods.

13 COMMISSIONER HEMSTAD: This comes up later,
14 but it's referenced in the third paragraph under
15 "Purpose", so I'll raise it now, where it says, "...
16 the Company will submit either a filing demonstrating
17 the reasonableness of the Company's then-existing rates
18 or a general rate filing." What does that mean?

19 MR. ELGIN: What it means is -- I don't know
20 if you've heard the phrase "a show-cause proceeding"
21 that some jurisdictions have, or a Commission can ask a
22 utility to show cause and come in and justify your
23 existing rates. That is what that language is
24 attempting. It's saying that for the purposes of this
25 settlement, the Company will come in and demonstrate

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1 the reasonableness of the rates at the end of the rate
2 plan period, and this gets to the question from Judge
3 Moss earlier about what would Staff do if we felt that
4 they were overearning, and that's what we tried to
5 anticipate here.

6 COMMISSIONER HEMSTAD: One way or the other,
7 the intention here is for a full-blown rate case after
8 the five years.

9 MR. ELGIN: That's correct.

10 CHAIRWOMAN SHOWALTER: We don't have show
11 cause in this state so that the Company's promise to
12 come in here and show us something -- what kind of
13 legal animal do we have in front of us? It seems there
14 is not much we can do about what they show us unless
15 the Commission files a complaint, in which case it has
16 the burden of proof.

17 MR. ELGIN: In that hypothetical, then you
18 also have the remedy of the Company violating the
19 Commission order.

20 CHAIRWOMAN SHOWALTER: What do you mean?

21 MR. ELGIN: There are specific sanctions in
22 the statute for the Commission to take with respect to
23 a company violating one of the Commission's orders.

24 CHAIRWOMAN SHOWALTER: Suppose they come and
25 say, We think our current rate is reasonable. We're

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1 complying with the order. We think it's reasonable
2 because of ABC.

3 But if we don't think it's reasonable, then
4 it seems to me the burden is actually on the
5 Commission, not the Company.

6 MR. ELGIN: No, ma'am. I don't believe
7 that's correct. I believe that the Company has, in the
8 basis of this, a responsibility to justify its existing
9 rates, to file the results of operations and evidence
10 supporting existing rates. The Staff and the parties
11 will do that traditional investigation, develop its own
12 case, and if it in fact determines that rates should go
13 down, we will make that recommendation in the context
14 of the Staff and Intervenors' direct cases, and the
15 Company then has the opportunity for rebuttal to prove
16 that what it has failed is, in fact, the right thing.

17 CHAIRWOMAN SHOWALTER: Are you saying that
18 these words right here, "... filing demonstrating the
19 reasonableness of the Company's then-existing rates..."
20 that this itself creates the obligation and the burden?

21 MR. ELGIN: Yes.

22 COMMISSIONER GILLIS: What I'd like to know
23 is why do you want to go there? Why not a general rate
24 case filing?

25 MR. ELGIN: I think that that's what this, in

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1 effect, does.

2 COMMISSIONER GILLIS: So why not just say it?

3 MR. VAN NOSTRAND: I think the feeling was
4 the Company might not be able to justify a rate
5 increase. They make just come in and show their
6 existing rates are reasonable, but the intent is that
7 the Company has the burden of proof. The advantage is
8 that the Commission doesn't have to call the Company in
9 and then the Commission bears the burden. The Company
10 will make a filing, and it bears the burden of either
11 showing that its existing rates are reasonable, or if
12 it asks for increases, to carry the burden, but the
13 Company is here and has the burden.

14 CHAIRWOMAN SHOWALTER: It seems to me if you
15 filed for a rate, not a rate increase, but just filed
16 for a rate, which happened to be the same, then maybe
17 the burden would be on you, but to me, what these words
18 say is, you will file something that demonstrates the
19 reasonableness. These words themselves, I don't think,
20 says anything about the burden of proof.

21 COMMISSIONER HEMSTAD: I think I disagree
22 with that. I think I now understand the difference and
23 the reason. Able to file demonstrating the
24 reasonableness of rates. It certainly carries the
25 point that the burden is on the Company to demonstrate

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1 that its rates in effect at the time are reasonable.

2 MR. ELGIN: That's correct.

3 MR. VAN NOSTRAND: We were probably picking
4 up on this notion of show cause from other
5 jurisdictions, even though we don't have it here, but
6 it's the same notion. The Company has the burden of
7 demonstrating its rates, but the understanding of
8 everyone in the negotiations, we are clarifying it here
9 is that the Company has the burden.

10 MR. LAZAR: The only way you could make this
11 stronger in that regard that occurs to me is that you
12 could make the rates that are in here, the three,
13 three, and one, interim with an expiration date in five
14 years, and then if the Company doesn't make a rate
15 filing that demonstrates something, the rates would
16 revert to the now current tariff rates. That wasn't
17 the intent of the group; that there would be a filing
18 that would either -- and I view one as demonstrating
19 the reasonableness of rates as a little thinner than
20 the rate case that seeks to defend a rate increase, but
21 the burden would be the same.

22 MS. KELLY: I think with all due to respect
23 to Mr. Lazar, that was discussed in settlement and was
24 not part of the agreement that was reached. I think
25 it's clear that the Company -- and we are willing to

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1 clarify on record the Company bears the burden of proof
2 on either of these filings, and that's certainly our
3 intent, and I suspect that the beast that we file at
4 that time will look very much the same, whether it's a
5 general rate case or a demonstration of the
6 reasonableness of the earnings.

7 JUDGE MOSS: At that point in time, this
8 filing would include the prior determinations or
9 report, at least, with respect to prudence, so this is,
10 in a sense, a reality check.

11 MS. KELLY: Correct.

12 JUDGE MOSS: It's like, we are taking our
13 best shot looking forward and thinking that we've taken
14 into account the likelihood that some costs may be
15 found imprudent but most will be found prudent, and
16 now, we are going to look back and see how good our
17 guess was.

18 MS. KELLY: It's also a time when the
19 transition plan will have been fully implemented, and
20 so the result of that will be reflected in test year
21 operations and that will help to make sure that costs
22 and benefits match and we are not arguing over known
23 and measurable changes; in fact, the transition plan
24 will be implemented at that time.

25 JUDGE MOSS: It will more known than

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1 speculative. Anything else with respect to the
2 material on Page 2 of the Stipulation?

3 CHAIRWOMAN SHOWALTER: It might be better to
4 raise it later, but just a footnote to what is or isn't
5 included in rate, and you give the example of system
6 benefit charge, and I think it was Bench Request No. 4,
7 but does it mean that if later we determine a system
8 benefit charge of one-half percent or six percent --
9 anything within a range of zero to six percent --
10 doesn't the fact the rate that is paid? Is that what
11 that means?

12 MS. KELLY: The implementation of the system
13 benefit charge would be incremental to the three,
14 three, one, zero, zero, so it would have an impact on
15 customer's bills. I think the question we are getting
16 at in Bench Request No. 4 is would there be some
17 trigger where it would be carried over into later
18 years.

19 CHAIRWOMAN SHOWALTER: So it is separate and
20 it's a separate surcharge.

21 MS. KELLY: Yes.

22 CHAIRWOMAN SHOWALTER: And it's only if it
23 exceeds six percent, what's above the six percent would
24 go potentially in the rate base?

25 MS. KELLY: That somehow that would be

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1 deferred until another year; although, I have to say
2 the parties don't expect that that first year will see
3 a six percent system benefit charge.

4 JUDGE MOSS: Some things being less
5 speculative than others. Anything else with respect to
6 Page 2 material? Let's look at Page 3.

7 COMMISSIONER GILLIS: I have a question on
8 Page 3. I'm somewhat concerned about line item, at
9 least our experience of the telecommunications
10 consumers is that they aren't always happy with a lot
11 of line items, and maybe it's a question for Mr. Lazar,
12 but what is the usefulness of putting on a monthly bill
13 a separate credit labeled "merger benefits and merger
14 savings," and likewise for Centralia?

15 MR. LAZAR: We didn't seek these to be
16 separate. The merger credit was established separate
17 from the merger proceeding. The Centralia credit was
18 established as separate because it's a specific amount
19 of money to be refunded, and if we get to December
20 13th, 2005, and it's done, then it would expire on
21 December 13th. That was a way to make sure that a
22 specific amount of money was flowed through and that
23 wasn't a component. Neither of these is a component of
24 permanent rates because there is a specific amount of
25 money to be flowed through it.

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1 COMMISSIONER GILLIS: What is the purpose of
2 putting it on the bill?

3 MR. LAZAR: I think I'd have to ask Ken and
4 Andrea to speak to that. It wasn't an issue for us.

5 MS. KELLY: I think from the company's
6 perspective, I think we found that it provides
7 information to customers. It's traditionally what
8 we've done in the other states. The merger credit has
9 started up in some of the other states. The Centralia
10 credit is going to be reflected in some of the other
11 states, so it's a way to explain to customers the sort
12 of a one-off in that this isn't part of the revenue
13 requirement calculation. It's similar to a system
14 benefit charge in that it's there for a finite period
15 of time, as Mr. Lazar said. This is a means to reflect
16 it to customers and to give them information. Frankly,
17 we didn't have our heart set on a line item; although,
18 I think it's important not to wrap it, necessarily,
19 into base rates to let customers know that there is a
20 time when that credit would go away.

21 COMMISSIONER GILLIS: That's a potentially
22 different issue of whether it should be on the bill on
23 a monthly basis or simply inform customers of the
24 intent and what it is. I'm just reflecting on what
25 we've learned in telecom is that consumers are very

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1 confused by various line items, and within this
2 agreement alone, there is a potential of four new line
3 items. There is two potential credits and a potential
4 system benefit charge and a potential of a low-income
5 charge that could end up as a line item on the bill,
6 and just what I've experienced in a different industry,
7 that concerns me.

8 MR. ELGIN: One of the things to consider is
9 some of the prior experiences we had with respect to
10 other utilities that had these deferrals and things
11 that go back to customers is particularly when they are
12 credits, it helps to make sure the customers understand
13 the rates when those credits expire. If you build it
14 into rates, you've built in rate increases once the
15 credit has expired, so it's better that consumers
16 appear to respond better to that.

17 In the Puget case when the program was
18 unwound and some of these credits went away and
19 deferrals went away, the rates were going all over the
20 place, and I think particularly with credits -- and
21 Centralia and merger credit are one specifically where
22 we've had special treatment of those items -- I think
23 it's fair to put those on the bills. I share your
24 concern about the telephone industry, but I'm thinking
25 that we'll be mindful of that, particularly when it

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1 comes to SBC and some of the other things that we will
2 be bringing in for consideration.

3 JUDGE MOSS: Any more questions with respect
4 to the material on Page 3? And that carries over onto
5 Page 4, and we have had some discussion of the prudence
6 issue already. Page 5 then. Page 6?

7 COMMISSIONER HEMSTAD: I'm looking at
8 Paragraph 9. It's talking about changes that can be
9 made. As it says, "... tariff or rate changes for the
10 following purposes:" and then under F, it says, "New
11 service offerings; pursuing special contracts tailored
12 to meet individual customer needs..." How is that
13 applicable to the question of a tariff or rate changes?

14 MR. ELGIN: Hypothetically, let's say
15 something is going on in the commercial sector with
16 respect to the Company's rates, and there is a
17 potential for some kind of bypass or some kind of new
18 service offering that the Company needs to respond and
19 it needs to change its rates or have a special contract
20 to deal with that circumstance. What we are saying is
21 that doesn't constitute a rate change, but it's a
22 tariff change in that the rate plan would allow the
23 Company to file.

24 Another example is the Boise Cascade
25 circumstance. This special contract does expire, and

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1 it may best well be that the Company needs to file a
2 new tariff or new special contract to keep that
3 customer. So what we are trying to say is those kinds
4 of filings are appropriate for the utility to make in
5 the pendency of this five-year rate plan.

6 JUDGE MOSS: That almost seems to contemplate
7 as a foregone conclusion that were the Company to be
8 faced with market conditions that required it to
9 renegotiate its special contracts to lower prices to
10 the industrial customer group that there would be no
11 impact on the residential customers, for example.

12 MR. ELGIN: Yes, that's correct.

13 COMMISSIONER HEMSTAD: Why wouldn't it be the
14 other way around, make tariff changes to raise tariffs
15 for residential customers because of special contract
16 following the industrial customers?

17 MR. ELGIN: I think what Section E is it's
18 revenue neutral; that there may be a circumstance that
19 a tariff fixed within the class or a rate design fixed
20 within the class, as long as it were revenue neutral,
21 may accommodate the need, and that's well and done, but
22 to the extent that a tariff or a special contract would
23 lower the rate for an industrial customer but then the
24 offsetting losses in revenue and contribution margins
25 would be captured by other classes that the rate plan

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1 fixes the level of rates for all other classes of
2 customers.

3 MR. LAZAR: This was an issue of great
4 concern to us. The language that is in E dealing with
5 intraclass rate design, very specifically, is not
6 allowing interclass rate rebalancing, and the special
7 contract language or individual customer needs in
8 Section F, I guess the comparison I would make would be
9 to Puget's Schedule 48 where the Commission approved a
10 special tariff or which a small number of customers
11 were eligible at the time it was approved, we believe
12 that it would lead to substantial attrition and revenue
13 to Puget. It hasn't quite worked out the way we'd all
14 expected in the last few months, but that was our
15 expectation at the time, and the Commission order very
16 explicitly said, We are going to approve this tariff,
17 but there is not going to be any cost shifting to other
18 classes as a result of it.

19 The E and F, we think, were constructed to
20 give some flexibility for the Company to address
21 individual customer or group customer situations as
22 they come up, but not to have those slop over across
23 classes.

24 COMMISSIONER HEMSTAD: So as I understand it,
25 E and F read together mean that there can be cost

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1 shifts within classes but not between classes.

2 MR. LAZAR: Correct. I guess I'd like to
3 here Andrea interpret it as well.

4 MS. KELLY: The only thing I'm concerned
5 about in making that blanket statement is the we don't
6 want to prejudge what happens in the low-income
7 assistance program filing, so I think the way that -- I
8 guess I would say with the exception of that, that is
9 the intention is that in the special contracts and all
10 of those to the extent that there are filings, revenue
11 neutral filings, there will be are intraclass, and we
12 won't be shifting between classes.

13 MR. LAZAR: Section B anticipates the
14 possibility that there will be a system benefit charge
15 filing that would increase the rates for some or all
16 classes, depending on how its structured.
17 C anticipates that the possibility of a low-income
18 assistance program filing that would cause rates for
19 non low-income customers to increase to cover some or
20 all of the assistance that's provided through that
21 rate, and that would cause changes to the three, three,
22 one results.

23 I expect that the system benefit charge is
24 going to be pretty uniform across classes, and the
25 low-income impact is going to be modest when it gets

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1 spread out across a large group of customers. It's not
2 going to be a very significant number. I expect it to
3 be a number. I don't expect it to be a big one.

4 JUDGE MOSS: Your last comment that it might
5 affect the three, three, one, or some have referred to
6 it the three, three, one, zero, zero rate plan, puzzles
7 me a little bit. Is the contemplation then that with
8 the advent of a low-income program -- and this is just
9 a scenario, a hypothetical, if you will. Let's say
10 such a plan allows certain customers to pay a \$4 base
11 rate instead of a 4.5 base rates. A revenue neutral
12 filing of that nature would take that 25 cents,
13 multiply it by the low-income customers that are
14 receiving that benefit and then spread those dollars to
15 others, intraclass or interclass. That would be
16 revenue neutral, wouldn't it? It wouldn't change the
17 three, three, one, would it? It would just change the
18 figures that we see reflected in response to Bench
19 Request 3.

20 MR. LAZAR: I think it would change the
21 three, three, one. To pick an easy numerical example.
22 A 1.7-million-dollar low-income discount would be one
23 percent of Company revenues, and that might be spread
24 as a one-percent increase to all other customers,
25 okay? --

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1 MS. KELLY: So it impacts the rate spread of
2 the three percent, not the overall amount.

3 JUDGE MOSS: That was my point. It affects
4 the allocation but not the amount.

5 MS. KELLY: Yes.

6 MR. LAZAR: Correct. It would mean that
7 low-income customers would see one percent more, and
8 low-income customers would see whatever 1.7 million
9 dollars works out to less.

10 Come from the Company's gross revenue
11 perspective, if all of the concession to low-income
12 customers was recovered from other customers, it would
13 make no difference. If, however, some of the
14 low-income assistance, and one of the programs that one
15 of the utilities in the states does this, is designed
16 to reduce the level of uncollectibles. Some of this
17 money can come out of a reduction on collectibles; that
18 we don't have to raise rates to everybody else to
19 recover the money that's no longer uncollectible. It
20 might be the 1.7 million, maybe 1.5 million, gets
21 spread across the classes, and 200,000 is reduction in
22 expected levels of uncollectibles.

23 So it's actually still from the Company's
24 perspective three, three, one because there is built
25 into the Company's filing and built into history a

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1 level of uncollectibles, but if that's going to go
2 down, the net revenues collected by the Company
3 changes, but the rates don't reflect as high a
4 percentage increase. It would be slightly lower rates
5 to which a slightly lower level of uncollectibles would
6 be expected to occur.

7 MS. KELLY: I think probably what we are
8 seeing is that people have different approaches to the
9 low-income assistance programs and different ideas in
10 their minds, which we will be working out over time. I
11 think it's important to make clear from the Company's
12 perspective that we agree to this plan expecting a
13 three, three, one, zero, zero, and that the low-income
14 assistance program would not impact that, so that's
15 where we are coming from in the design of this, and
16 again, that's part of the process and part of what the
17 Commission will be deliberating when the low-income
18 filing is made.

19 MR. ELGIN: If I could add, you are correct.
20 If you turn to Exhibit 270, it's response to Bench
21 request No. 3, unfortunately, the year 2001 spreadsheet
22 that's at the top of the page makes it look like low
23 income is in addition to system revenues, which it is
24 not. It's a separate distinct filing that will be
25 evaluated in the context of the overall revenues that

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1 the Company is realizing in implementing the rate plan.
2 So you are correct in that it does affect the spread,
3 but it doesn't affect the total revenue the Company
4 would collect from this settlement proposal.

5 JUDGE MOSS: So in terms of implementing such
6 a program, what we might expect to see is something
7 that would essentially amend the rate spread aspect of
8 this overall package, including the two stipulations.

9 MR. ELGIN: Right. So hypothetically, these
10 base rates in the first column might change to reflect
11 whatever the level of low-income assistance that the
12 Commission would deem reasonable perspectivevely.

13 JUDGE MOSS: Or it might be necessary to
14 segment the residential class and the low income and
15 non low income where some would be experiencing 4.3 and
16 some would be experiencing 3.7.

17 MR. ELGIN: That would be one way to do it as
18 well, yes.

19 JUDGE MOSS: I think we were on Page 6, and
20 carrying over to Page 7 then. Any more questions on
21 these areas? I do have another question on 11, the way
22 it's phrased, I guess. A general rate case filing
23 would be made under the interim rate standard. Now, as
24 Mr. Elgin discussed earlier, typically, interim rates
25 are part of a general rate case filing where the

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1 company asks for immediate implementation on an interim
2 basis pending review and determination of a final rate.
3 It is not unknown for a regulatory Commission to
4 approve interim rates subject to refund, and there is a
5 significant body of law that validates that process.

6 Is that the process that's contemplated here,
7 or is this contemplating another circumstance? Let me
8 rephrase the question. If the circumstances that
9 trigger Section 11 were to eventuate, is it the
10 contemplation of the parties that that would result in
11 a filing that would include both a request for interim,
12 that is to say, essentially, temporary rate relief, and
13 a permanent rate increase on a prospective basis?

14 MR. ELGIN: Yes. That's what Staff
15 contemplates.

16 JUDGE MOSS: Anything else on Page 7 from the
17 Bench? Page 8?

18 CHAIRWOMAN SHOWALTER: I have a question as
19 to what, on No. 13, what are Schedule 300 charges?
20 What is their magnitude?

21 MS. KELLY: Miscellaneous charges that
22 include reconnection charges and tampering charges.
23 What we would be doing -- I can give you the list --
24 meter test charges, service call charges, contract
25 administration credits and things like that. So they

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1 are miscellaneous charges that are charged to a
2 customer when they ask for a specific service that
3 incurs additional costs, and what the Company would be
4 doing is filing those with the Commission to change
5 those over time. The rate plan allows for that, but,
6 of course, they would subject to the same reviews of
7 any tariff filing, and this is not intended to prejudge
8 it or bind any of the parties on the positions that
9 they would be taking.

10 JUDGE MOSS: Just a follow-up on that point,
11 as I recall the original filing in this proceeding,
12 there was some testimony to the effect that the
13 Schedule 300 charges, even as proposed by the Company,
14 would still not recover the full cost of those various
15 miscellaneous charges, such as reconnection, and I
16 would presume from that then that the additional costs
17 are somehow rolled into general rates so that the
18 Company is not in an under-recovery situation. By
19 doing this as an independent filing, is it the
20 intention that the Company will take fully into account
21 the, I'll call it subsidy for lack of a better word,
22 that is implicit in what I just described?

23 MS. KELLY: I'm not the expert on these
24 Schedule 300 charges, but my understanding is that
25 while there may be some cost of those included in the

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1 revenue requirements on a baseline level, for the most
2 part, the costs are driven by how often the service is
3 required, so it's very difficult to estimate what the
4 costs would be and then include them in the revenue
5 requirement, so my understanding is that not very much
6 of these costs have been included in our revenue
7 requirement because it's difficult to estimate what
8 they might be, and that's why we are trying to get them
9 closer.

10 What I can say is that we would be able to
11 address that concern at the time of the filing and make
12 sure that you are talking to the experts about it, and
13 they can address those questions as they come up.

14 JUDGE MOSS: I would just be concerned there
15 is probably a fair amount of general administrative
16 expenses not recovered in this fashion, and that would
17 be a concern. Anything else on Page 8? Page 9?

18 CHAIRWOMAN SHOWALTER: I don't have a
19 question on Page 9, but I have a question back on the
20 prudence issues and what it means for the management of
21 the business and the agency. If it seems inherently
22 difficult to address prudence in a rate proceeding and
23 we approve this settlement, with the approval of
24 addressing prudence after a rate case instead of before
25 or during, what do you think it will mean for how

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1 prudency is addressed in other settings?

2 It would seem to me it would be better to
3 address prudency before the rate case even comes up,
4 but at least at the rate case if it hasn't come up, but
5 if it's too difficult to do in a rate case, then it
6 seems like the result is we push that issue ahead or
7 beyond the rate case, in which case the rate case
8 really isn't the closure or tying up of issues that I
9 would have thought it would be. Maybe it just doesn't
10 have to be. It becomes more like an interim rate,
11 which I use that word advisedly since I think interim
12 rate has other requirements, but maybe that's a good
13 idea that an interim rate has other requirements.

14 MR. ELGIN: I think that's what this
15 settlement embodies is a five-year transition period of
16 some interim level of rates that all the parties are
17 comfortable with. Ostensibly, you have before you in
18 direct testimony and exhibits a request for 25 million
19 dollars in general revenues over a two-year period, and
20 what we've tried to do is evaluate that and then
21 provide some level of rate relief that the Staff feels
22 comfortable with.

23 Regarding the idea of -- I don't mean to say
24 that the prudence process is too difficult, that we
25 can't do it. We can do it, but it just seems that once

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1 we head down that road, positions get very intractable.
2 Information doesn't flow. It's difficult in the sense
3 that it's just an awful process. I've been through
4 one, and I know, telling you from personal experience,
5 it's not fun, and it's not a rewarding use of
6 professional expertise, because people think and bring
7 different perspectives, and the idea is to try
8 something new.

9 CHAIRWOMAN SHOWALTER: This is not just this
10 company and these parties. As is obvious from looking
11 at the Agreement, what we say today is used by others
12 later, and I guess the question I'm posing --

13 MR. ELGIN: I don't believe it is.

14 CHAIRWOMAN SHOWALTER: I think we would be
15 saying, fine, it's okay not to address the prudence of
16 six facilities that have been purchased beginning in
17 1992. That's okay, we'll set a rate, and we'll get to
18 this other stuff later.

19 If that's what we are doing, and I think it
20 is what we would be doing, what message does that send
21 to people, and is there anything wrong with a practice
22 like that? Companies buy things. They put them on
23 line. We don't have to worry about this until after
24 the next rate case because it's too tough. We know we
25 can kind of agree on an interim rate or agree on a

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1 rate, and we'll get to this other stuff later. Is that
2 a problem? It seems like a problem, but maybe it's not
3 a problem.

4 MR. VAN NOSTRAND: I guess I don't see this
5 as being a statement that we can't do prudency reviews
6 in a general rate case. I think it's a recognition
7 that we were going to examine the prudence of these
8 resource in this case. It was a big issue, but we are
9 not able to resolve it. I think it still stands for
10 the proposition that prudence reviews are done in
11 general rate cases and can still be done in general
12 rate cases, but as part of this settlement, we did not
13 reach an agreement on that issue, and we held it
14 forward and developed a process so that we can do the
15 process that we can do the process that would preserve
16 it until the general rate case. I think it's a
17 recognition that it probably belongs in this case, and
18 we didn't resolve it in this case, but not for the
19 general proposition we can't do prudence reviews in
20 general rate cases.

21 MR. LAZAR: This is one of many awkward
22 issues that has finessed in this settlement, and that's
23 the nature of settlements is you finesse awkward
24 issues, and we were --

25 CHAIRWOMAN SHOWALTER: But usually you

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1 finesse them and reach closure on them. It's not
2 really a global settlement as you suggested, because
3 the issues here aren't really resolved. You've
4 resolved some of the issues and you've punted on
5 others, in fact, some fairly significant ones.

6 When something is finessed, it's settled
7 without a clear articulation of where the parties
8 stand, that's one thing. Finesse meaning we didn't
9 really resolve it is a different kind of finessing.

10 MR. LAZAR: I agree. We were prepared to
11 address prudence in this case; however, we were
12 handicapped by the fact that the Company didn't file an
13 initial case with all the data in it demonstrating
14 their burden of proof on prudence, so we were kind of
15 starting from nowhere. You were going to get a very
16 crude record from Public Counsel on the prudence issue.

17 With this process, we will have instead of a
18 crude record in this proceeding, we will have an
19 elegant piece of shelf art that will sit quietly for
20 four years and perhaps be used at the end of that
21 periods by your successors or you, if you are
22 unfortunate enough to sit there forever. But we will
23 have a much more complete record because -- we had a
24 lot of issues to look at in this case, and it was a
25 finite amount of time that we could devote to any of

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1 them, and this was one that we had very little time to
2 dedicate to, and we didn't have much in the record to
3 start with, so we are really starting from scratch.

4 I think we will have a much better analysis
5 through this process than we would have had we filed on
6 the schedule we were directed to file on, but we won't
7 have closure, as you indicate, until there is a
8 decision.

9 MR. CROMWELL: Chairwoman Showalter, I wasn't
10 sure if I heard if you were concerned about the
11 precedential value of an order of the Commission for
12 other companies or other cases separate from the
13 process you contemplate?

14 CHAIRWOMAN SHOWALTER: By precedent, I mean
15 parties look at what we do and what we approve. I
16 don't mean to say an approval of a settlement has
17 necessarily legal precedence, but I think it does have
18 a practice type of precedence, as you have just cited
19 the earlier case of Puget where something was kicked
20 beyond the rate case, so that probably is the signal
21 that you took to say, Well, this is an idea we can do,
22 and this would be yet another instance, I guess, of
23 that.

24 I'm not certain there is a problem with such
25 a practice. It seems odd to me to buy something in

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1 1992 and have it incorporated into rates in a general
2 way and not really resolve until 2006, 16 or 17 at the
3 earlier.

4 MR. CEDARBAUM: I just wanted to echo the
5 comments that Mr. Elgin and others have made that I
6 don't think that we've punted, necessarily, on these
7 issues by just setting up a process. I think what
8 we've done is established processes that will be
9 meaningful; that the result will be a collaboration of
10 all these parties and all the interests that are around
11 the table with respect to -- prudence drawing the most
12 attention, but also the system benefit charge and low
13 income, and those will be valuable processes. They
14 won't be useless. I think we will have a result that's
15 very beneficial to the parties, Commission, and
16 ratepayers. I don't think just setting up a process is
17 necessarily a bad thing if the process is one that the
18 end product is something that is valuable to the
19 players and results in a product that is useful and
20 beneficial.

21 MS. KELLY: I think from the Company's
22 perspective is we look at this process as a way to
23 evaluate future acquisitions to the extent there are
24 future acquisitions, and that in a way of essentially
25 making it so that in future rate cases, the Company's

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1 direct case includes the information that parties need,
2 so I guess on some level a learning process of what is
3 the exact information that will be helpful in Staff and
4 Public Counsel and others making their recommendations
5 on this, and then we would be able to use that going
6 forward in our next rate cases to insure that that
7 standard is met in those cases. So I think it also has
8 some future value in the way the Company would come
9 before the Commission in future cases.

10 MS. DIXON: I know the focus has been more on
11 the prudence process, but certainly Mr. Cedarbaum also
12 mentioned the SBC and the low-income assistance.

13 Our preference would have been to address
14 those in detail in the Stipulation, but absent that,
15 our expectation is to move forward with processes on
16 both of those that will be meaningful, where parties
17 will be discussing and negotiating in good faith and
18 where we can bring forward something that the
19 Commission will be comfortable approving and that
20 implementation will occur.

21 COMMISSIONER HEMSTAD: I'd just make a
22 general comment on prudence. We are in this problem,
23 at least in part, because it's been 14 years since the
24 Company has been here, and that's a continuing problem.
25 I think it needs to be better addressed. It's a real

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1 problem with prudence because again, our responsibility
2 to put ourselves into the environment at the time that
3 the Company made the decision, the longer the period of
4 time that goes by, people retire, die. Nobody
5 remembers anymore. If records aren't meticulously
6 kept, even when this comes back, there is a good chance
7 you will have an entirely new Commission who will be
8 addressing this issue. Time in this environment is not
9 a friend.

10 MR. CROMWELL: If I may, Commissioner, that
11 was very well contemplated by all the parties during
12 this process, and part of the idea of putting the
13 prudence process together was that we could develop a
14 better record than we might otherwise be able to do in
15 a more workshop -- if I can use the term loosely, a
16 workshop style process as opposed to a litigated case
17 which we were proceeding under at the time this
18 settlement was reached, and I think it's directly the
19 concern that you have just expressed; that we are
20 trying to respond to a process that was created in the
21 Stipulation.

22 MR. LAZAR: I'm not sure that you or your
23 successor Commissioners will want to impose the
24 standard that you just identified; that is, putting
25 yourself in the place of the Company at the time the

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1 decision was made when these come forward for review.

2 CHAIRWOMAN SHOWALTER: Isn't that what's
3 required by the Stipulation? Among other things, we
4 are binding ourselves to some old orders on this. Page
5 5.

6 MR. LAZAR: It binds to a process of
7 examining prudence. It doesn't bind to the standard
8 that this Commission has imposed, for example, in the
9 Puget case, imposed in 1983 in the Kettle Falls case,
10 so what should management have done when they did it?
11 I just want to give an example here.

12 CHAIRWOMAN SHOWALTER: I want to be sure,
13 because it seems to me that the parties have agreed on
14 a standard that the Commission previously approved this
15 standard or articulated this standard, but we are
16 saying -- It says, "The standard applied by the
17 Commission to measure prudence are generally as
18 follows: What would a reasonable board of directors
19 and company management have decided given what they
20 know or reasonably should have known to be true at the
21 time they made a decision." I heard you to be saying
22 maybe we weren't buying this standard.

23 MR. LAZAR: I was trying to get to a simple
24 numerical example, maybe I'm wrong. Let's take the
25 Cholla plant, for example, in 1990, and let's say we

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1 finds as a result of this prudence review it was a bad
2 deal. Too much was paid for it. In the first 10 years
3 of its life it was way above market, and then for the
4 next 10 years of its life, it was about at market, and
5 for the last 10 years of its life, it was below market,
6 and from 1990 to 2000, the Company absorbed that into
7 the system without a rate case, and we never paid a
8 rate increase to pay for this thing during its
9 expensive years, and then for the next five years when
10 it's about at market, we are paying a pretty modest
11 rate increase, and when we look at it in 2005, that
12 standard may well say, This thing wasn't a very good
13 deal from a 1990 perspective, but it's a darn good deal
14 from a 2005 perspective.

15 It's hard for me to imagine that a future
16 Commission won't consider that possibility should it be
17 before them. I just can't imagine somebody looking at
18 something that's a great deal going forward, and
19 saying, it's a great deal going forward, but because in
20 1990, it was a bad deal, somehow we need to --

21 CHAIRWOMAN SHOWALTER: What about the reverse
22 situation? Supposing something appears to be a pretty
23 good deal when it's undertaken, and suddenly, the whole
24 market changes or whatever, but this thing is a dog,
25 and the Company is saying, But, but, we didn't know

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1 this when we went into it. Maybe you did, maybe you
2 didn't, but this thing, we don't want to stick the
3 ratepayers with it.

4 COMMISSIONER HEMSTAD: I agree with that
5 comment. I don't see how the Commission can do other
6 than to look at the situation at the time to do other
7 than that. It is precisely the after-the-fact Monday
8 morning quarterbacking, which I recall we were accused
9 of doing even at the time of the Puget environment,
10 incorrectly, but in any event, I think there would be a
11 due process issue if we were to start making evaluative
12 choices long after the fact based upon the evidence at
13 the time. That wouldn't be fair to the Company. It
14 would be unfair to somebody.

15 MR. ELGIN: I guess I wanted to do reiterate
16 too. The prudence test and standard itself really is a
17 two-process kind of application. One, the question is,
18 in fact, was the Company prudent with respect to the
19 acquisition of a resource, and then if it wasn't, then
20 the second part of the exercise becomes, and this is
21 very difficult, is how do you hold ratepayers harmless?

22 The last time this issue was before the
23 Commission, the range of dollar estimates was 100
24 million to 500 million dollars net present value.
25 That's a huge range, and what this process is going to

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1 attempt to accomplish is first off, get better
2 information than we have now in the context of what did
3 the Company do with respect to these resources at these
4 various points in time, and then if it turns out that
5 the Staff or Public counsel or any other party have an
6 issue with a specific resource to begin to answer that
7 more difficult question is to what is the right action
8 with respect to holding the ratepayers harmless for
9 those decisions.

10 What we think we've crafted here is a
11 balanced rate plan over a five-year period that enables
12 the Company to understand Staff and Public Counsel's
13 and other parties' perspective as to what's the
14 standard, and then to the extent that we had issues,
15 then let's give the Company some opportunity to
16 mitigate those issues, and hopefully, we can get to
17 resolution of what might be some appropriate mitigation
18 and let the Company take those actions, and what we
19 think we have crafted here before you is a balanced
20 process, because quite frankly, Mr. Lazar has already
21 alluded to you that the Staff and Public Counsel had
22 issues with respect to the direct case, so the
23 alternative that we saw was Staff coming in and saying,
24 These costs need to be rejected or we need some other
25 kind of process, and the Commission's precedent was to

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1 give us another year and another year's time to
2 evaluate the information, so let's try something
3 different with respect to how we get the information
4 and how we evaluate those resource decisions, and then
5 how do we evaluate what might be proper mitigation.

6 CHAIRWOMAN SHOWALTER: Why do you think the
7 process that you are anticipating will be less
8 adversarial than a rate case? What's different about
9 it? It seems to be the most difficult issues and
10 contested issues that will result in potentially a
11 large difference.

12 MR. ELGIN: Because anything has to be better
13 than the process we went through in the Puget case.

14 CHAIRWOMAN SHOWALTER: You may laugh, but I'm
15 serious. What is the process? Things can be worse.

16 MR. ELGIN: I'm just telling you from my
17 perspective that in terms of discovery and sitting down
18 with the Company and trying to get a dialogue going,
19 when you are in a position where the Company has been
20 told that there is questions regarding the prudence of
21 acquisition adjustment, the fences go up.

22 CHAIRWOMAN SHOWALTER: That may be. Why is
23 this going to be different?

24 MR. ELGIN: Well, I guess we've taken the
25 Company's good faith representations that it will, in

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1 fact, be different, and they will work with Staff and
2 the parties to provide the information we need, and we
3 accepted that. We think there is a better process, and
4 we are going to take a shot at it. My gut reaction is
5 that it's got to be better than what we went through
6 with Puget, went through twice.

7 MR. LAZAR: From my perspective, even if it's
8 not better than what we went through with Puget, and it
9 conceivably might not be, it's better than what we
10 would have brought you as a record in this proceeding,
11 for the same reason that the Puget proceeding was
12 created, which is there was nothing on the table up
13 front, and we kind of came in with a chain saw and a
14 meat ax trying to get at some information, and in the
15 short time frame of this proceeding with all the other
16 issues on rate base and rate of return and operating
17 expenses and cost allocation and rate design, no, it's
18 not a lot of time to get at some pretty thorny issues.
19 From our perspective, we can be more tenacious but also
20 be a bit more civil to the Company about how we go
21 after information in this kind of a process.

22 JUDGE MOSS: I wanted to follow up on this
23 because I have written down the same question. What is
24 the basis for all the optimism I'm hearing expressed
25 about how this is going to be a process that's going to

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1 produce more open, warm, and fuzzy exchange of
2 information than what is typically experienced?

3 In the rate case context, there is at least
4 the leverage of the other elements of the rate case.
5 Here, you are going to have a prudence review
6 undertaken in isolation, and if the Company decides it
7 wants to be intransigent, what level of assurance and
8 what enforceable assurances do the parties have that
9 they will be able to extract the necessary information
10 to develop this record that you anticipate, Mr. Lazar?

11 MR. ELGIN: I'll answer that question. Let's
12 say the company is intractable. Then the report from
13 Staff will say, The Company has failed to demonstrate
14 its burden, and what we will be doing is making an
15 effort to hold ratepayers harmless. So the state of
16 record will be, in fact, that, at the end of the
17 five-year rate plan; that the Company was intractable.
18 There has not been a showing of prudence, and our
19 effort will now be focused to hold ratepayers harmless,
20 and the result of that case will not be a second chance
21 for the Company but, in fact, a finding of imprudence
22 and what is the proper remedy.

23 So we are not going to be messing around and
24 beating around the bush. I don't mean to think this is
25 going to be warm and fuzzy, but I hope it's better than

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1 the process we had with the prudence case. The fact we
2 do get the information so we can come forward with a
3 recommendation saying that, Yes, the Company has made
4 an affirmative showing, and these resources do belong
5 in the rate base, and there are no adjustments for
6 rate-making purposes.

7 CHAIRWOMAN SHOWALTER: What if they are not
8 intractable but are cooperative and provide information
9 and the parties simply disagree on the information,
10 which seems to be a fairly logical possibility.

11 MR. ELGIN: Then we are at the same position.
12 We are still disagreeing with the Company, and our
13 efforts will now be focused on developing what
14 information at this point to hold ratepayers harmless
15 for some future rate case. But we've at least made
16 another shot in a process outside of litigation to get
17 to the information, and I think that's a better
18 process. Give it a shot. It's a risk; I agree, but I
19 think it's worthwhile, based on my prior experience
20 with these kinds of thorny issues.

21 MR. CEDARBAUM: If I could just add to that,
22 part of the stipulation on the joint report does allow
23 for any party to include their own separate statement
24 on one or more resources, so by "joint report," we are
25 not necessarily meaning a consensus report. We mean a

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1 report that shows you all the contested issues with
2 respect to one or more resources.

3 JUDGE MOSS: In the meantime, to reiterate a
4 point that was perhaps made earlier on, Staff for its
5 part of it believes that the three, three, one, zero,
6 zero plan for rate increases adequately takes into
7 account the risk that some of these costs ultimately
8 will be found to be imprudent.

9 MR. ELGIN: That might be found imprudent,
10 that is correct, not it could be.

11 JUDGE MOSS: Right. That's why I used the
12 word risk. I had another question that occurred to me
13 earlier. Under the statutes that govern the
14 Commission's determination of general rate cases, it's
15 really necessary to make two findings. One is that the
16 existing rates that are proposed to be changed are no
17 longer just, reasonable, or compensatory, and the other
18 finding is that the rates proposed to be implemented
19 are just, reasonable, and compensatory.

20 Is Staff satisfied on the basis of its review
21 of the rate filing, which included cross-examination of
22 the Company's witnesses during an earlier phase of this
23 case, that the existing rates, indeed, are not just,
24 reasonable, and compensatory?

25 MR. ELGIN: That's correct.

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1 JUDGE MOSS: Are there other questions from
2 the Bench? I think we've actually gone through the
3 Stipulation page by page, and we've also then returned
4 to some general questions and concerns in the area of
5 prudence. I think I have exhausted my questions and
6 wondered if the Bench has any others. I suppose I feel
7 momentarily awkward when Commissioner Gillis is absent
8 and I'm about to close this thing up. Go ahead,
9 Ms. Davison.

10 MS. DAVISON: I have been sorts of
11 uncharacteristically quiet through this process, and I
12 wanted to add a couple comment about why ICNU supports
13 this stipulation. First, I would like to thank the
14 Bench and the Commissioners for some very good, tough
15 questions. These records are exceedingly important for
16 the reasons that have been talked about this afternoon,
17 and as someone who has relied on records in previous
18 proceedings of this nature, I can tell you they become
19 very important in years, two, three, four, and five, so
20 I very much appreciate the good dialogue this
21 afternoon.

22 I think that some of the more difficult
23 questions perhaps have been hard to answer by virtue of
24 the fact that this is a settlement, and I think that if
25 you were able to be the mouse in the room or listen to

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1 the conversation that took place in the context of
2 settlement, you would hear that there were,
3 particularly on the prudence issues, there were
4 positions that said, This number should be zero, and
5 other positions that said, We have made our case and
6 the number should be what it is, and in the context of
7 that give and take, that was an issue that we simply
8 could not come up with a number that we thought was
9 acceptable in the time frame that was imposed here on
10 the settlement process, or at least the time frame we
11 felt the pressure with the schedule that was in place.

12 One point I would like to say is I'm not
13 comfortable with any kind of representation -- not
14 necessarily that there is, but I certainly would want
15 the record to be clear from ICNU's perspective that we
16 do believe that prudence review should happen generally
17 in a rate case, or it should happen separately with a
18 separate filing by the Company. We do not want this,
19 if this is approved, to be any kind of representation
20 that prudence review should be dealt with in some
21 special manner, and I think that there are very
22 important questions, particularly in these current
23 times with power costs what they are. They are
24 important to evaluate these issues.

25 So we are comfortable with the process that

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1 has been laid out. Whether it is one that is amicable
2 or not, we think that it is critical to get this
3 information and to evaluate it, and we were comfortable
4 signing onto this issue because there is nothing in
5 this settlement that predetermines the outcome with
6 regard to the prudence of these resources that have not
7 been reviewed by this Commission. That was an
8 important element for us. I understand it does raise
9 some procedural issues and some other discomfort, but
10 that was sort of the other side to that.

11 Some other issues I want to quickly bring to
12 your attention -- I know it's getting late -- that were
13 important to us in terms of evaluating this that we
14 haven't talked about is that the Company cannot come in
15 during this five-year period and make a filing to
16 recover additional moneys, let's say, for the
17 increasing power costs that is quite the talk right
18 now, so that gives the customers in the State of
19 Washington a five-year period of rate certainty and I
20 think security in a very volatile market at the moment.

21 Then the last thing that we also talked about
22 this afternoon that was very important to us, and it's
23 certainly a point that we don't necessarily see
24 eye-to-eye with the Company on is the transition plan.
25 We think that is a very important document. We think,

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1 if implemented as described, it will fundamentally
2 change this company, and the provision that we talked
3 about earlier at the beginning of the Stipulation that
4 mandates that the Company come in and make a filing,
5 whatever that filing is, and it's our interpretation
6 that it will be a general rate case filing, I cannot as
7 a practical matter imagine the Company going through
8 the effort of filing a general rate case without the
9 number changing. It's hard to imagine it will be
10 status quo. In fact, I don't believe it can be status
11 quo if this transition plan is implemented, and it's
12 very important to us that there be that definitive
13 requirement because we think that if these savings are
14 achieved, we want there to be a certain mechanism to
15 pass that through to customers. Thank you.

16 JUDGE MOSS: I gather from your comments that
17 your client, at least, might prefer a statement in any
18 Commission order approving this stipulation; that the
19 deferral of the prudence matter is not something
20 generally favored.

21 MS. DAVISON: I think that's probably right,
22 yes.

23 MR. CROMWELL: I would concur with the
24 comments that Ms. Davison made. I also just wanted to
25 emphasize to the Commission that this settlement was a

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1 package that was put together during an occasionally
2 painful process, and as with all things, there is give
3 and take, and I also in that context want to emphasize
4 that the prudence process is one of three, including
5 the low income and the systems benefit process, and
6 those three processes were integral to our willingness
7 to accept this settlement. We expect those to be
8 fruitful processes. As we've described here discussing
9 prudence, I think the same commitment is there in terms
10 of low income as well as the systems benefit charge.

11 I think that it's important in looking at
12 this settlement or this stipulation that was entered,
13 in looking at it as a whole and as was alluded to
14 earlier, there is rate certainty to be gained. The
15 residential customers who are this Thursday going to be
16 asking us, What does this do for me? What is going to
17 happen to my rates? That is what I'm anticipating we
18 will be facing very shortly from the public, and
19 unfortunately because we have those processes ongoing,
20 we won't have the certainty that folks are going to
21 want on Thursday, but we have a system, I think, in
22 place that would provide that, and again, maybe
23 stepping back or going up and looking at this in the
24 larger arena, as Commissioner Hemstad alluded to
25 earlier, it's been a long time since this company has

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1 been before the Commission. If this stipulation is
2 accepted by the Commission, it will be awhile before
3 they are all before you again, but the flip side of
4 that coin is that there will have been a seven-percent
5 rate increase, give or take, over about a 19-year
6 period, and that's not bad.

7 JUDGE MOSS: Anything else from the Bench?
8 If there is not, then I'm not going to bring the
9 proceedings to a close, but I'm going to suggest that
10 the Commissioners may wish to retire at this time and
11 allow us to close this up in an orderly fashion without
12 the need of them being here, and then we will get our
13 record complete and move on.

14 (Pause in the proceedings.)

15 I really don't think we have much in the way
16 of other business to conduct, having had the
17 opportunity at the outset to take up that question, but
18 I will offer the opportunity at this point in the
19 proceeding to ask counsel if there are any other
20 matters we need to take up in proceeding before the
21 Commissioners retire to deliberate and make a
22 determination with regard to the proposal that they
23 approve this second stipulation taken together with the
24 first as a comprehensive resolution of the issues in
25 the case.

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1 Apparently there is not any further business
2 that we need to take up in that regard, and I would
3 like to express the Bench's appreciation for the
4 participation by the witnesses today. Thank you all
5 very much for your very good answers to the sometimes
6 tough questions, and also to counsel. With that, we
7 will bring our proceedings for today to a close.

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(Hearing concluded at 4:30 p.m.)

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