

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
4 Complainant,)
vs.) HEARING NO. UR-930711
5 US ECOLOGY, INC.,) VOL. II
Respondent.) PPS. 26 - 66
6 -----)
WASHINGTON PUBLIC POWER)
7 SUPPLY SYSTEM,)
Complainant,)
vs.) HEARING NO. UR-930890
8 US ECOLOGY, INC.,)
9 Respondent.)
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11 A telephonic hearing in the above matter
12 was held on August 19, 1993 at 9:20 a.m., at 500 Union
13 Street, Suite 926, Seattle, Washington, before
14 Administrative Law Judge CHRISTINE CLISHE.

15 The parties were present as follows:

16

17 WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION STAFF, by ANNE EGELER, Assistant Attorney
18 General, 1300 South Evergreen Park Drive Southwest,
Olympia, Washington 98504.

19 US ECOLOGY, by JAMES VAN NOSTRAND, Attorney
at Law, 1800 One Bellevue Center, 411 - 108th Avenue
20 Northeast, Bellevue, Washington 98004.

21 PUBLIC SERVICE COMPANY OF COLORADO, by
SALIE O'MALLEY, Attorney at Law, 1225 - 17th Street,
22 Suite 2600, Denver, Colorado 80202 and MICHAEL W.
MAYBERRY, Attorney at Law, 926 - 24th Way Southwest,
23 Olympia, Washington 98502.

24

25 Lisa K. Nishikawa, CSR, RPR
Court Reporter

1 TELEDYNE WAH CHANG ALBANY, by RICHARD H.
2 WILLIAMS, Attorney at Law, 520 Southwest Yamhill
3 Street, Suite 800, Portland, Oregon 97204-1383.

4 PORTLAND GENERAL ELECTRIC, by J. JEFFREY
5 DUDLEY, Attorney at Law, 121 Southwest Salmon Street,
6 1WTC-13, Portland, Oregon 97204.

7 WASHINGTON PUBLIC POWER SUPPLY SYSTEM, by
8 MELVIN HATCHER, Attorney at Law, 3000 George
9 Washington Way, Richland, Washington 99352-0968.

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

2 JUDGE CLISHE: By teleconference this matter
3 concerns the consolidated cases Washington Utilities
4 and Transportation Commission versus US Ecology,
5 Incorporated, Docket Number UR-930711 and the
6 Washington Public Power Supply System versus US
7 Ecology, Docket Number UR-930890. Today is August 19,
8 1993. My name is Christine Clishe. I'm an
9 administrative law judge with the Office of
10 Administrative Hearings.

11 Three intervenors in Docket Number UR-930711
12 have filed motions to compel discovery. US Ecology has
13 responded to those motions and we have set this today
14 for oral argument on the motion. Now I think I will
15 have you for appearances state your name and your
16 client's name. I don't think we have to get business
17 addresses at this point, but just so there's a record of
18 all of you who will be participating today, and I think
19 we can start first with the company, please.

20 MR. VAN NOSTRAND: For the company, James
21 M. Van Nostrand.

22 JUDGE CLISHE: Thank you. And for the
23 Commission staff.

24 MS. EGELER: For the Commission staff, Anne

25 Egeler.

(COLLOQUY)

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1 JUDGE CLISHE: All right. And then the
2 intervenors, perhaps we can first do Portland General
3 Electric.

4 MR. DUDLEY: Yes, for Portland General
5 Electric this is Jay Dudley.

6 JUDGE CLISHE: Thank you. And for the
7 Washington Public Power Supply System.

8 MR. HATCHER: For the Supply System this is
9 Melvin Hatcher.

10 JUDGE CLISHE: All right. And for Teledyne
11 Wah Chang Albany.

12 MR. WILLIAMS: Yes. Richard Williams for
13 intervenor Teledyne Wah Chang Albany.

14 JUDGE CLISHE: Thank you. And for the
15 Public Service Company of Colorado, I think there are
16 two of you here. Perhaps we can start with you, Ms.
17 O'Malley.

18 MS. O'MALLEY: Sally O'Malley for Public
19 Service Company of Colorado.

20 JUDGE CLISHE: And then the local attorney,
21 Mr. Mayberry.

22 MR. MAYBERRY: Yes. Mr. Mayberry for the
23 Public Service Company of Colorado.

24 JUDGE CLISHE: Thank you. Mr. Paine who

25 represents Precision Castparts Corporation indicated

(COLLOQUY)

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1 that he did not plan to participate here this morning
2 so he is not with us.

3 All right. Are there any matters we should
4 cover before we get into the argument on the motion to
5 compel? All right. Then I think we can begin.

6 I think perhaps, Mr. Hatcher, I received
7 your motion to compel first and if you would like to
8 go ahead and state what you wish regarding your
9 motion, I think that would be fine. If you choose
10 to just supplement your written materials, that's fine
11 also. Would you indicate if you're doing that or
12 going ahead with all of the comments that you wish to
13 make.

14 MR. HATCHER: Thank you, your Honor. This
15 is Melvin Hatcher for intervenor Supply System. As we
16 noted in our motion to compel, the standard for
17 discovery in Commission proceedings is provided by WAC
18 480-09-480(5). Basically this states that the scope
19 of any request for data shall be for data relevant to
20 the issues identified in the notices of hearing or
21 orders in the adjudicated proceeding, not grounds for
22 objections that the information sought will be
23 inadmissible at the hearing if the information sought
24 appears reasonably calculated to lead to the discovery

25 of admissible evidence.

(COLLOQUY)

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1 Our position on behalf of the Supply System
2 is that the data requests that the company has
3 objected to are clearly directed toward an issue
4 placed in controversy by the company. I would point,
5 your Honor, to the company's prefiled testimony of
6 Barry Bede. The first reference would be on page 7,
7 lines 6 through 12, and particularly paren three of
8 that passage indicating Mr. Bede's testimony that the
9 Commission volume adjustment would not produce fair,
10 just, reasonable and sufficient rates.

11 Again on page 9 of Mr. Bede's prefiled
12 testimony, lines 3 through 7, where Mr. Bede
13 identifies the inclusion of pre 1993 volumes in the
14 volume adjustment would reduce the base disposal rate
15 to about \$20 per cubic foot, which when combined with
16 the actual volumes being delivered to the site in '93
17 would produce revenues insufficient to recover the
18 cost of operating and maintaining the site. He goes
19 on to provide a simplistic analysis or calculation of
20 that.

21 And then finally on page 10, the carry-over
22 paragraph from page 9, lines 1 through 6, The company
23 would be bankrupt in a matter of days. The volume
24 adjustment would fail to achieve the statutorily

25 required purpose of providing a level of total

(COLLOQUY)

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1 revenues sufficient to recover the cost to operate and
2 maintain the site.

3 Now, the nature of the issue which US
4 Ecology has thus placed into controversy is of
5 constitutional proportions and simply cannot be
6 ignored. The information that the Supply System has
7 requested refers to the actual costs in '93, both
8 direct and indirect, of the US Ecology facility at
9 Richland as well as any cost or profit center
10 apportioning indirect costs to the Supply System.

11 We are looking for data concerning the
12 radioactive material to include both low level
13 radioactive waste, naturally occurring radioactive
14 material, and naturally occurring but accelerator
15 produced radioactive material at the site, all to the
16 point of identifying whether in fact the company's
17 assertions concerning profitability, bankruptcy,
18 confiscatory rates is or is not an accurate statement
19 to be made.

20 The company's response to our motion to
21 compel basically begged the question and encourages
22 the Commission to accept its unsupported assertion.
23 And I refer you to page 12 of US Ecology's response to
24 the motion to compel, lines 17 through 31.

25 JUDGE CLISHE: I'm sorry. Which page,

(COLLOQUY)

33

1 Mr. Hatcher?

2 MR. HATCHER: Page 12 of the motion to
3 compel, lines 17 through 31. Where the company states
4 that Mr. Bede's simple analysis uses only the
5 operating expenses at the site for '93 for ratemaking
6 purposes, not actual operating expenses. And then as
7 Mr. Bede's testimony illustrates, it is fairly easy to
8 show that the company will fall far short of covering
9 its Commission determined operating expenses during
10 the latter half of '93 without -- and I end my
11 paraphrase at that point. And the point I wish to
12 note there is that the company's assertions based on
13 conjecture and hypothecation toward an issue of
14 constitutional magnitude simply cannot go unchallenged.

15 A final point I would like to make is that I
16 believe the company has waived its objection to
17 providing information concerning naturally occurring
18 radioactive material to the Supply System. In a
19 response to the Supply System Data Request 1A by cover
20 letter dated August 11, '93, the company has indicated
21 that it has received in June of '93 \$3,745 from revenue
22 of disposing of naturally occurring radioactive material
23 waste.

24 I think the long and the short of the

25 matter with regard to the Supply System's motion to

(COLLOQUY)

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1 compel is that US Ecology has placed a significant
2 issue into controversy and by its failure to respond
3 to data requests which are designed to explore the
4 validity of those assertions attempts to shield its
5 assertions from challenge and contest. Left
6 unchallenged and left uncontested, these constitutional
7 assertions simply cannot be allowed to stand. That's
8 all I have, your Honor.

9 JUDGE CLISHE: All right. Thank you,
10 Mr. Hatcher. I think next we received a motion to
11 compel I believe from Teledyne Wah Chang Albany.
12 Mr. Williams, would you like to go ahead with your
13 comments regarding your motion to compel.

14 MR. WILLIAMS: Yes. This is Richard
15 Williams for Teledyne Wah Chang Albany. The data
16 requests of Wah Chang to which the company objected
17 are similar in nature to the Supply System requests
18 which Mr. Hatcher addressed. That is, they call for
19 information about actual operating results at the
20 Richland facility. Those requests are relevant for
21 the reasons Mr. Hatcher explained and as explained in
22 the motion to compel which I have filed on behalf of
23 Wah Chang last week. I have nothing to add to
24 Mr. Hatcher's comments and Wah Chang's motion.

25

JUDGE CLISHE: All right, thank you,

(COLLOQUY)

35

1 Mr. Williams. And next, all right, Mr. Dudley, would
2 you like to go ahead with your comments or any
3 argument on your motion to compel?

4 MR. DUDLEY: Yes, thank you. I don't know
5 that I can really improve on what's been said here by
6 Mr. Hatcher and Mr. Williams. The request made by
7 Portland General Electric for information on the
8 expense side of the ledger for US Ecology all to rebut
9 the statements that Mr. Hatcher has pointed out here,
10 and he's also properly pointed out the constitutional
11 dimension here because we just know if the company --
12 gets an adverse result they will be making an appeal
13 from the Commission's order claiming the rates are
14 confiscatory based on the evidence they are presenting
15 here, so either the -- I agree that the information
16 requested is relevant, we need to see the expense side
17 of the ledger to rebut the claims that they're losing
18 money, and unless that -- the alternative, I would
19 suggest, for not being forthcoming with this
20 information is to strike all the testimony that the
21 company has submitted on its behalf, containing the
22 statements that Mr. Hatcher has outlined. Thank you.
23 That's all I have.

24

JUDGE CLISHE: Thank you, Mr. Dudley.

25 Mr. Van Nostrand, would you like to respond to the

(COLLOQUY)

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1 motions to compel? I have your written response, of
2 course, and I'm sure they do also, but if you want to
3 either go over that again or add to what you have
4 submitted, that's fine.

5 MS. EGELER: Your Honor, before he does so
6 I have some comments to add on behalf of the Commission
7 staff. It might be best to take those now so Mr. Van
8 Nostrand will have an opportunity to respond to those
9 as well.

10 JUDGE CLISHE: All right. That's a good
11 idea. And that was Ms. Egeler speaking. All right,
12 why don't you go ahead then, Ms. Egeler, and then when
13 Mr. Van Nostrand does respond he will have heard
14 whatever the parties other than the parties that filed
15 the motion and will be able to do that. So I'll let
16 you address your -- or give your comments, Ms. Egeler,
17 and then I'll ask if Ms. O'Malley or Mr. Mayberry or
18 both have any comments. Why don't you go ahead,
19 please.

20 MS. EGELER: With respect to numbers for
21 the revenue and expenses during 1992, I would have
22 three comments to make. The first is that the staff
23 agrees with the point made by each of the generators,
24 that a one-year period was contemplated for

25 examination during the volume adjustment by both the
(COLLOQUY)

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1 company and by the parties and the Commission in the
2 1992 rate case, and I think that that continues to be
3 an appropriate time period.

4 Secondly, this is not a unique or new
5 situation. The Commission commonly addresses
6 situations involving water companies newly coming
7 under regulation. There have been on occasion cases
8 in which a water company filed for a rate increase
9 almost immediately after coming under regulation and
10 the Commission has examined a one-year test period and
11 looked at the company's revenue and expenses in order
12 to set the rates. In so doing, the Commission is
13 looking at revenues and expenses which were incurred
14 preregulation. This has to be done so that the
15 Commission can have a full year's period upon which to
16 make a rational decision regarding the ongoing rates
17 of the company under regulation. This is very similar
18 to this case. The Commission needs to have a full
19 year's data in order to make a rational decision. I
20 think that that precedent should be followed by the
21 Commission with respect to low level nuclear waste.

22 Finally, the Commission is also going to
23 have to look at preregulation expenses in the next
24 rate case in order to make the determination of

25 whether or not the inflation adjustment is working.

(COLLOQUY)

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1 As the Commission stated in the 1992 case order, it
2 will be examining the effects of inflation on the
3 company's expenses in order to determine if the GDP is
4 an appropriate indicator to use in the future. In
5 so doing it will have to look at the time period
6 between the test period in that case which was October
7 of '90 through September of '91 and that will include
8 a time period under which the company was not
9 regulated.

10 I think for each of those reasons, your
11 Honor, it is important to allow the generator to
12 discover data from the company regarding their expenses
13 and the revenues prereregulation. We need a full 12-month
14 test period here and the parties need to have all of the
15 information available in order to do so.

16 Finally, with respect to the NORM and NARM
17 questions which were posed to the company, I believe
18 that the generator should have an opportunity to
19 examine the expenses that were incurred with relation
20 to disposal of these types of waste so that they may
21 make a determination as to whether or not they believe
22 that those expenses should be excluded in this
23 proceeding.

24 JUDGE CLISHE: All right, thank you. Is

25 that the conclusion of your remarks, Ms. Egeler?

(COLLOQUY)

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1 MS. EGELER: Yes, your Honor.

2 JUDGE CLISHE: All right, thank you.

3 Ms. O'Malley or Mr. Mayberry, do either or both of you
4 wish to respond or wish to comment for your client?

5 Ms. O'Malley, do you wish to respond?

6 MS. O'MALLEY: This is Sally O'Malley from
7 the Public Service Company. We should have nothing
8 more to add. We would be in full agreement with both
9 the generators and the staff's position here but we
10 would have nothing more to add at this time.

11 JUDGE CLISHE: All right, thank you.

12 Mr. Mayberry, did you have anything you wanted to add?

13 I assume that your position would be the same as

14 Ms. O'Malley's.

15 MR. MAYBERRY: That's correct.

16 JUDGE CLISHE: Okay, thank you. All right.

17 I think at this point then, Mr. Van Nostrand, we'll
18 turn back to you and hear your comments regarding the
19 motions to compel.

20 MR. VAN NOSTRAND: Thank you, your Honor.

21 I guess at the outset I'm rather surprised to hear
22 Ms. Egeler refer to the need for a full 12-month test
23 period in this matter. As the company states in
24 response to the motions to compel, this is a limited

25 issue rate proceeding. I think it's apparently

(COLLOQUY)

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1 necessary to review the background of how this
2 proceeding came to be. The Legislature adopted in
3 Chapter 81.108 what was intended to be a streamlined
4 form of regulation. And after a major rate case rates
5 would be adjusted semiannually using automatic
6 adjustments, and the Commission itself used the term
7 "automatic adjustments" in its seventh supplemental
8 order in the 1992 rate case.

9 And as noted, we had our general rate case
10 in 1992, and over a ten-month long process which began
11 on about March and ended in December, we reviewed
12 extensively the company's operating expenses and
13 revenues, and the rate year in that proceeding was
14 calendar year 1993 which was the first year the rate
15 regulation would be in effect at the site.

16 Thus, the 1992 rate case determined
17 operating expenses for ratemaking purposes at the site
18 for 1993. Now in contrast, this proceeding is not a
19 general rate case. We're not looking at a 12-month
20 test period. Rather than a ten-month long general
21 rate case we have about six weeks to review this
22 information. Rather than a ten-day turnaround time
23 for data requests, we have a five-calendar-day
24 turnaround time.

25 We're not here to relitigate the company's
 (COLLOQUY)

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1 actual operating expenses or to look at whether NORM
2 waste or NARM waste were received at the site or
3 whether what the company's individual payments were to
4 affiliates or parents. Those were all considered in
5 the 1992 rate case. This is a limited implementation
6 proceeding to apply automatic adjustment mechanisms.

7 If I could quote from the Commission's
8 seventh supplemental order, page 25.

9 This proceeding is based on performing
10 mechanical calculations to effect rate adjustments.
11 The actual operating expenses are irrelevant. The
12 legislature determined that the operating expenses
13 was determined by the Commission in the general rate
14 case would escalate according to an inflation index.
15 The Commission in turn in the 1992 rate case
16 determined that that index was to be the GDP deflator.

17 The issue in this proceeding is limited to
18 whether or not the company applied the correct index
19 and whether it applied the index in the manner
20 prescribed in the Commission's order. It doesn't
21 matter what the actual operating expenses are. We're
22 not going to relitigate in six weeks what we spent ten
23 months doing in 1992, and that's determining
24 operating expenses for ratemaking purposes for 1993.

25

As Ms. Egeler noted sometime between April

(COLLOQUY)

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1 of 1994 and May 1995 the company is required to file
2 another general rate case, and then we'll look at
3 actual operating expenses, and then we'll consider
4 whether the inflation adjustment is performing it's
5 intended function by escalating actual operating
6 expenses in a rational manner.

7 As to the issue of NORM and NARM waste, the
8 Commission in the 1992 rate case during the entire
9 ten-month long process did not consider the issue of
10 NORM waste, and I don't believe the term "NARM,"
11 naturally accelerator produced radioactive material,
12 was even mentioned throughout the thousand-page record
13 in that proceeding. And I find it incredible, I can
14 not think of any information that is less relevant at
15 this proceeding than fictional waste streams which
16 aren't even subject to regulation by the Commission
17 and which were not even considered during the
18 ten-month long general rate proceeding.

19 As far as the suggestion that the company
20 has waived its objection by providing information
21 regarding NORM waste, we certainly don't deny that the
22 information provided includes a reference to that.
23 With the short turnaround time that we have to respond
24 to data requests we don't have time to recreate

25 documents which exclude information that we would

(COLLOQUY)

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1 rather not provide, so I don't deny that there in
2 terms of whether the objection is preserved we do
3 preserve the objection that that information is not in
4 the least relevant to this proceeding, and we therefore
5 preserve our objection with respect to that material.

6 That concludes my remarks, your Honor.

7 JUDGE CLISHE: All right. Thank you. Is
8 there any brief rebuttal comment from any of the
9 parties, intervenors, or the staff?

10 MR. HATCHER: Your Honor, this is Melvin
11 Hatcher with the Supply System.

12 JUDGE CLISHE: Yes. Go ahead, Mr. Hatcher.

13 MR. HATCHER: Again I just must emphasize
14 that we must be permitted an opportunity to respond to
15 issues which the company has placed into controversy,
16 especially when those issues rise to the level of
17 constitutional magnitude. In terms of if the -- if
18 you believe that our motion to compel should be
19 granted, your Honor, we would like to request that US
20 Ecology be required to provide the information in
21 response to the data request by August 23, which is
22 this coming Monday, and we would also like to request
23 an extension of the due date for our submission of the
24 prefiled testimony to August 27, but other than that

25 we would request that the schedule remain unchanged.

(COLLOQUY)

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1 So the company's rebuttal would still -- or I guess
2 all rebuttal would still be due on September 3. Thank
3 you.

4 JUDGE CLISHE: All right, thank you. Do
5 any of the other intervenors or the staff have any
6 response regarding the company's remarks?

7 MR. WILLIAMS: This is Richard Williams,
8 your Honor. I would like to briefly respond. I agree
9 that this proceeding should be brief and automatic,
10 but US Ecology has made it not brief and not
11 automatic. I find it ironic that Mr. Van Nostrand
12 relies on that line of argument. There is in place a
13 legal standard for making the adjustment. US Ecology
14 has not followed that standard. One of its reasons
15 for not following it is its claim that doing so will
16 bankrupt the company. We are entitled to probe the
17 factual basis for that bald assertion.

18 If the company is willing to follow the
19 Commission's order in making this adjustment, then
20 certainly Wah Chang would drop its request for
21 information, but the company has not followed the
22 adjustment the Commission ordered. It is proposing a
23 different mechanism to make the adjustment, and it is
24 entirely appropriate for the generators to be able to

25 test the assertion that the company makes as to why it

(COLLOQUY)

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1 should not be required to follow the order.

2 MR. DUDLEY: This is Jay Dudley. I also
3 agree with what both Mr. Hatcher and Mr. Williams
4 said, and I would just point out to the judge, in all
5 of Mr. Van Nostrand's defense he never once mentioned
6 the very issue, the heart of the issue is what they've
7 put in issue about the claim of bankruptcy and the
8 claim of not meeting their operating expenses, so I
9 think that glaring omission just reveals the weakness
10 in their position in failing to provide this
11 information.

12 JUDGE CLISHE: All right, thank you,
13 Mr. Dudley.

14 MR. VAN NOSTRAND: Your Honor, may I
15 respond?

16 JUDGE CLISHE: Let me see if anyone else,
17 Mr. Van Nostrand, wishes to comment and then you can
18 respond to these various rebuttal statements.
19 Ms. Egeler, do you have anything that you want to
20 respond to?

21 MS. EGELER: Yes. Very briefly, your
22 Honor, I would concur very strongly with Mr. Williams'
23 comments that this should be a simple proceeding.
24 It is the company, however, which has opened the door

25 quite widely to additional issues that should not be

(COLLOQUY)

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1 a problem in this adjustment proceeding. Once the
2 company opens the door to consideration of whether or
3 not they are going to raise sufficient revenue, that
4 forces us all and the Commission to examine the
5 expense side of the line. If they want to withdraw
6 that testimony, then we could proceed in a simple
7 manner. As long as that assertion, however, is
8 outstanding, the parties have an obligation to explore
9 and to address it.

10 JUDGE CLISHE: All right, thank you.

11 Mr. Van Nostrand, would you like to go ahead with your
12 comments.

13 MR. VAN NOSTRAND: Yes, thank you, your
14 Honor. First, as far as whether or not the company
15 has failed to comply, we believe we have complied
16 generally with the volume adjustment as we proposed,
17 as was proposed in the 1992 rate case. As Mr. Bede's
18 testimony suggests, as soon as there are 12 months of
19 full operating data from a rate regulated cite we
20 believe a 12-month rolling average should be used
21 for setting a volume adjustment, but until that full
22 12-month volume is available, it is simply not
23 appropriate.

24 And as to the question of whether or not we

25 have raised the issue by reference to actual operating

(COLLOQUY)

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1 expenses, Mr. Bede's testimony does nothing but rely
2 on the operating expenses that were determined by the
3 Commission in the 1992 rate case. And the simple test
4 which he performed is to measure the revenues received
5 at the site against the Commission-determined
6 operating expenses which were derived after a 10-month
7 long rate case process in 1992.

8 We are not using actual operating expenses.
9 Mr. Bede's testimony makes no reference whatsoever
10 to actual operating expenses. As far as I know, they
11 could be running higher than the Commission-determined
12 operating expenses. As we noted in our response to
13 the motions, the company's original proposal was to
14 have about \$4.2 million of operating expenses for the
15 rate year which was reduced by the Commission to about
16 three and a half million. So the Commission-
17 determined operating expenses are about \$700,000 lower
18 than what the company projected its actuals would be.

19 But we're not getting into the issue of
20 actual operating expenses. Mr. Bede's testimony
21 refers strictly to the Commission-determined operating
22 expenses, and just by including that rather simple
23 analysis to test the reasonableness of the result
24 which would be produced by the volume adjustment does

25 not open the door to wholesale reexamination, a full

(COLLOQUY)

48

1 blown examination of actual operating expenses. I
2 think it just throws into question whether or not it
3 produces a reasonable result when actual volumes
4 during 1993 are running about one-third less than what
5 the Commission projected, is that a reasonable result
6 that rates would be lowered by one-third? Is that
7 the way the volume adjustment is intended to operate?
8 That's the only question which Mr. Bede's testimony
9 puts at issue. It does not bring into issue actual
10 operating expenses.

11 And as far as Mr. Hatcher's suggestion that
12 the prefiled filing date be extended, the company
13 would have no objection to extending it to the 27th so
14 long as there is a similar extension for all other
15 days scheduled on this time line. The notion that the
16 company would have a week to put together rebuttal
17 testimony is unreasonable. If you want to slip it
18 to the 27th, that's fine. Let's slip the remaining
19 schedule a week as well.

20 JUDGE CLISHE: All right. Does that
21 conclude your remarks, Mr. Van Nostrand?

22 MR. VAN NOSTRAND: Yes, your Honor.

23 JUDGE CLISHE: All right, thank you. It
24 appears to me from the prefiled testimony of Mr. Bede

25 that there are some clearly some broad comments which

(COLLOQUY)

49

1 I believe Ms. Egeler indicated it was the duty of the
2 intervenors and the Commission staff representative to
3 ask for information to look into those very broad
4 statements. I believe that the -- even though the
5 proceeding for a semiannual rate adjustment was to be
6 a fairly brief and automatic proceeding, some of the
7 prefiled testimony and also the information regarding
8 the treatment of Ft. St. Vrain as extraordinary volume
9 does bring a great deal more into the proceeding than
10 might have been originally expected. I understand
11 that there's a Superior Court proceeding regarding the
12 Commission's order last year, however, I think the
13 Commission's order was clear regarding how the Ft. St.
14 Vrain waste was to be treated.

15 And I believe that the motions to compel
16 filed by the three intervenors are well taken. I
17 think there are two choices here. One, of course, is
18 to strike the testimony of Mr. Bede regarding the
19 statements. I think Mr. Hatcher had outlined those as
20 far as page and line. If the other two parties filing
21 these motions ot compel wish to indicate whether those
22 also are the ones that they would wish to be stricken,
23 since the company has not provided the data which was
24 requested.

25 The other route that we could take would be

(COLLOQUY)

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1 to grant the motion and provide time for the parties
2 to -- for the company to provide the material and then
3 for all parties to prefile their responses and their
4 testimony. One of the difficulties we have in this
5 case, of course, is that the hearing dates -- the
6 hearing date of September 16 has been chosen as the
7 possible time that the commissioners are available.
8 I'm sure that all of you understand that their
9 schedules are busy, they have many other hearings that
10 they're sitting on as well as their other duties, so
11 that date I think cannot be adjusted.

12 If the motions to compel are granted I
13 would expect that the date for the company to provide
14 this information to the intervenors would be Monday,
15 August 23, with filing of the staff's and intervenors'
16 testimony on August 27. That would mean that the
17 company has not as much time to respond to that
18 testimony as we had originally planned in the schedule
19 that we set for this matter. However, because the
20 company is the party which held up the responses to
21 data requests, I would certainly expect that the
22 company would need to stay with the original prefiling
23 of rebuttal on September 3.

24 Now, I don't know if -- maybe this is

25 stickier poison, but I don't know if you have a

(COLLOQUY)

51

1 preference regarding whether the testimony and
2 information from Mr. Bede should be stricken or
3 whether the -- and the motion denied, or whether the
4 motion should be granted and the company should
5 provide the data as requested on or by August 23.
6 Do you have any preference, Mr. Van Nostrand?

7 MR. VAN NOSTRAND: If I could have what the
8 portions to be stricken would be recited again.

9 MR. HATCHER: Your Honor, this is Melvin
10 Hatcher. I apologize for interrupting. I recognize
11 that we are on a telephonic conference call. There
12 are three specific sections that I referenced in oral
13 argument indicating concerns specifically raised by
14 Mr. Bede's testimony. In briefly reviewing during the
15 course of your immediate conversation, in addition to
16 those three sections I would suggest one of two
17 alternatives, one, that you give us an opportunity to
18 caucus to review Mr. Bede's testimony so that we can
19 thoroughly and concisely present to you the
20 objectionable portions.

21 Alternatively, I would suggest that in
22 addition to those three sections that I mentioned,
23 that I can reference again, I would also indicate that
24 the entire Q and A on page 9 should be deleted in

25 addition to the other sections that I mentioned.

(COLLOQUY)

52

1 Thank you.

2 JUDGE CLISHE: All right. I'm more than
3 willing to give the intervenors or the parties who
4 filed motions to compel the rest of the day or until
5 midafternoon or whatever to determine and then fax in
6 to me with the portions of the testimony and so forth
7 which you feel would be -- should be stricken because
8 of the company's failure to respond to the data
9 request. If you want to discuss that among yourselves
10 or however you wish to do it, that would be fine.
11 Then I would expect that you could fax to me, to
12 Mr. Van Nostrand, and to the other parties the pages,
13 or however you wish to do it, of Mr. Bede's testimony
14 that you feel cannot be let stand because of the
15 company's failure to provide the data. Is that a
16 reasonable way to look at this?

17 MR. HATCHER: This is Melvin Hatcher, your
18 Honor. I believe that's very reasonable.

19 JUDGE CLISHE: Okay. I might note in
20 response to your question, Mr. Van Nostrand, according
21 to what I have marked here it's my understanding, and
22 Mr. Hatcher can indicate if this is not so, that the
23 portions he had mentioned are on page 7, lines 6
24 through 12, and on page 9, the entire answer which

25 goes over to the end of line 6 on page 10.

(COLLOQUY)

53

1 Now, I think, Mr. Hatcher, that is all I
2 have marked. Did you have another portion that you
3 had indicated that I didn't include here?

4 MR. HATCHER: This is Melvin Hatcher, your
5 Honor. No, I did not. I think you accurately
6 captured my notations.

7 JUDGE CLISHE: All right. And I'm not sure
8 if the other parties who filed these motions have --
9 would like to consider what other lines or pages or
10 whatever they may wish to have stricken since I don't
11 think they commented on that. Mr. Van Nostrand, do
12 you have anything else that you wanted to find out
13 from the parties? I think if necessary we can have
14 them fax in copies of pages that they wish with the
15 indication of which testimony they feel should be
16 stricken.

17 MR. VAN NOSTRAND: I have to discuss this
18 with my client. I would like to have some idea of
19 what it is the pages that we're talking about in order
20 to be able to meaningfully discuss this with my client,
21 and I guess I'm hearing that if the door is wide open
22 now we're probably going to have a whole lot more pages
23 asserted, and I don't feel I can meaningfully discuss it
24 with my client until late this afternoon whenever we're

25 apprised of what this information is.

(COLLOQUY)

54

1 JUDGE CLISHE: All right. Let me inquire.
2 Mr. Dudley, do you know which other -- well, let me
3 ask a different way. Do you agree that the portions
4 that Mr. Hatcher had indicated are the portions or
5 only the portions of the testimony that you would wish
6 stricken if we determine that's what's going to
7 happen, or are there other pages or lines?

8 MR. DUDLEY: I agree with that as a
9 minimum. There may be other sections. I was
10 reviewing the testimony very quickly here as we were
11 speaking. Certainly the ones that were pointed out
12 and possibly a couple of others, and it might be
13 fruitful to caucus to try to -- I would recommend a
14 caucus among the intervenor group to try to reach
15 closure on the ones we would propose being stricken
16 and then -- and if that's the path that Mr. Van
17 Nostrand wants, is that perhaps we could fax that to
18 him for his consideration, and if he objects, if he
19 thinks we're being overinclusive, maybe we ought to
20 schedule a time later today to revisit this matter
21 with your Honor on this.

22 JUDGE CLISHE: All right. I think that
23 might be a reasonable thing to do because obviously I
24 want to give the company an opportunity. We don't

25 want to end up with something that has no testimony, I

(COLLOQUY)

55

1 guess. What kind of a time period do you think the
2 intervenors would need to determine which pages or
3 lines you would like to see deleted? Do you think
4 1:00 this afternoon is enough time or would you prefer
5 2:00? What's a reasonable time?

6 MR. HATCHER: Your Honor, this is Melvin
7 Hatcher. I would think that would be a requirement
8 and I believe an appropriate requirement to
9 communicate with Mr. Van Nostrand and give him an
10 opportunity to respond back to any concerns that we
11 may have, and in an effort to consensually resolve
12 this matter that 2:00 would be -- the 2:00, 2:30 time
13 frame would be more appropriate than 1:00.

14 JUDGE CLISHE: All right, thank you.
15 Mr. Van Nostrand, do you have any idea when your
16 client may be available to discuss it, how late this
17 afternoon?

18 MR. VAN NOSTRAND: My client is in Houston,
19 so anything after 3:00 is not realistic.

20 JUDGE CLISHE: Oh, yes. Time changes.
21 Okay. Do you suppose that by oh, 3:30 or 4:00, it
22 might be reasonable for us to schedule another portion
23 of this hearing on the motion and have the Scan
24 operator connect all of us at that time? Is that

25 reasonable?

(COLLOQUY)

56

1 MR. VAN NOSTRAND: I would rather have
2 3:00.

3 JUDGE CLISHE: Is that Mr. Van Nostrand?

4 MR. VAN NOSTRAND: Yes.

5 JUDGE CLISHE: So you think it would be
6 reasonable to get connected again at 3:00 and then you
7 could comment or the intervenors could comment with
8 the staff? Does that sound possible for everyone?

9 MR. HATCHER: This is Melvin Hatcher, and
10 certainly speaking for myself, I think 3:00 is a
11 doable time and we are available at that time.

12 JUDGE CLISHE: All right. And, Ms. O'Malley,
13 you are the only one, I think, who is in a different
14 time zone. Is that possible for you?

15 MS. O'MALLEY: Yes. 4:00 it would be in
16 Colorado and that would be fine for me.

17 JUDGE CLISHE: Okay. I think what we can
18 do then is recess this matter this morning. I will
19 have the Scan operator connect everybody up at 3:00 or
20 as soon thereafter as she can get everybody on and
21 hopefully at that time the parties may have some kind
22 of agreement or we can hear comments regarding the
23 pages to be deleted or the lines to be deleted, and
24 perhaps, Mr. Hatcher, I can give you the responsibility

25 of faxing to me also which pages showing whatever

(COLLOQUY)

57

1 decisions you're planning to suggest or all of the
2 intervenors have agreed on. Is that possible?

3 MR. HATCHER: This is Melvin Hatcher, your
4 Honor, and it is. I need guidance from you. Are you
5 asking that once the intervenors have reached
6 consensus among themselves to fax something to you
7 with or without regard to whether Mr. Van Nostrand
8 also has consented to those deletions?

9 JUDGE CLISHE: Well, I guess that's a good
10 question. If it appears that the parties somehow have
11 settled this question regarding the motions to compel
12 and you all and Mr. Van Nostrand are in agreement and
13 can sort of take care of this among yourselves, that's
14 fine. And then I think probably I wouldn't need to
15 have you submitting pages except after you all have
16 agreed and send me with the -- send me pages from Mr.
17 Bede's testimony as you all have agreed. If there's
18 not agreement, of course then it probably would be
19 helpful to me to see just before the rescheduling of
20 this matter what it is there may be some disputes on.
21 I don't know if that makes it clearer or not clearer.

22 MR. HATCHER: This is Melvin Hatcher, your
23 Honor. what we will do then is attempt to reach an
24 agreement and if we do in fact reach an agreement, we

25 will fax to you those portions of the testimony which

(COLLOQUY)

58

1 the parties have agreed to have stricken from the
2 record. Alternatively, if we fail to reach agreement,
3 then prior to the 3:00 teleconference call this
4 afternoon we will fax what we, the intervenor group,
5 would desire to have stricken from the record, and I
6 presume then that Mr. Van Nostrand would fax also to
7 your Honor those portions that he either is willing to
8 live with or those that he believes should not be
9 excluded.

10 JUDGE CLISHE: Okay. Does that sound
11 workable, Mr. Van Nostrand?

12 MR. VAN NOSTRAND: Sure.

13 JUDGE CLISHE: And, Ms. Egeler, I don't
14 know if you are -- if you would be participating with
15 the intervenors in any discussion of which pages or if
16 you plan to just make your own notations or if you
17 don't plan to do any of that. I would just ask that
18 -- Mr. Hatcher has stated that if there is not going
19 to be an agreement let me at least have a look at what
20 you're doing before 3:00 so that I can look it over
21 and be able to ask questions based on that, if there
22 are any. All right. Is there anything else that we
23 need to cover at this time before we reconvene at
24 3:00?

25 MS. O'MALLEY: Your Honor, this is Sally
(COLLOQUY)

59

1 O'Malley.

2 JUDGE CLISHE: Yes.

3 MS. O'MALLEY: There may be an issue that
4 we may need to discuss later, although I think the
5 intervenors can talk about it earlier than that, but
6 with respect to testimony that may be stricken from
7 Mr. Bede's testimony, it may influence the testimony
8 that we file and therefore we may need a day or so to
9 revise that testimony, if necessary, because I know
10 our testimony will be to some extent responsive to
11 Mr. Bede's testimony.

12 JUDGE CLISHE: All right. If you think
13 that may be necessary, would you remind me of this
14 at 3:00 and then we'll look at whether or not you will
15 need an extra day or so to prefile your testimony.

16 MS. O'MALLEY: Yes.

17 JUDGE CLISHE: Anything else that we need
18 to cover before the operator gets us back together at
19 3:00?

20 MR. DUDLEY: Your Honor, if I might, if I
21 could just take a minute of time here to schedule a
22 second call with the intervenors.

23 JUDGE CLISHE: Is this Mr Dudley?

24 MR. DUDLEY: It is, yes.

25 JUDGE CLISHE: Thank you.

(COLLOQUY)

60

1 MR. DUDLEY: I would propose if it meet
2 your schedules I would like to try to call you back in
3 ten minutes after we disconnect here. That would be
4 Mel, Rich, Sally, and Mike.

5 MS. O'MALLEY: Okay.

6 MR. MAYBERRY: That's fine. This is Mike.
7 That's fine.

8 MR. DUDLEY: Okay.

9 JUDGE CLISHE: Okay. All right. Anything
10 else today?

11 MR. VAN NOSTRAND: Your Honor, if I could
12 clarify, would it be necessary for me to file
13 something with the Commission this afternoon in order
14 to appeal the ruling to the full Commission on Monday?

15 JUDGE CLISHE: Here's what we can do,
16 Mr. Van Nostrand. The procedure is that I will give
17 my ruling orally here and then a party who wishes to
18 appeal from that can indicate orally at the end of
19 the motion hearing, and then the commissioners will --
20 or the regulatory affairs will put in motion the
21 scheduling of an appeal for my ruling with the
22 commissioners, which, as I said, will be on Monday,
23 although I believe that regulatory affairs was
24 checking the commissioners' times to see which times

25 are possible on Monday, so I think you don't need to

(COLLOQUY)

61

1 file anything in order to get this matter before the
2 commissioners, and I think it would be reasonable for
3 you to not have to file anything in writing, although
4 if you have something of any extended length, you may
5 want to put something in writing and fax it over to
6 them tomorrow.

7 I think it would be helpful if they could
8 look at all -- not anything that I have, because
9 that would be used if the party appeals my ruling. I
10 will be preparing a packet for the commissioners which
11 includes US Ecology's filing on this semiannual rate
12 adjustment, things such as the Commission's final
13 order last year, the motion, your response, probably a
14 copy of Mr. Bede's testimony, and I'll see if there
15 may be other things that I'll prepare to send over to
16 them so that they can look at it tomorrow or over the
17 weekend or whatever.

18 MR. VAN NOSTRAND: Okay.

19 MR. MAYBERRY: Your Honor, this is Mike
20 Mayberry. I may be at a different phone number at
21 3:00. Who do I call and leave that phone number with?

22 JUDGE CLISHE: Why don't you call and leave
23 a message with Chris Dodge and the phone number is
24 753-6403. If any of you will be at different

25 telephone numbers than what we used this morning,

(COLLOQUY)

62

1 would you please sometime before 3:00, maybe by 2:00
2 if you can, call and indicate that you're changing
3 your phone number and then we can let the Scan
4 operator know so she can connect you.

5 MR. MAYBERRY: All right, thank you.

6 JUDGE CLISHE: Thank you very much.

7 Anything else before we recess at this time? All
8 right, thank you, and I'll talk to you again at 3:00.

9 (Recess taken at 10:11 a.m.)

10 JUDGE CLISHE: Let's be on the record.

11 This is a continuation of the motion hearing regarding
12 US Ecology. We began this morning and then recessed
13 until the present which is shortly after 3:00 p.m. I
14 had received in the meantime from Mr. Hatcher a letter
15 and pages 7, 9, 10, 11, and 12 of Mr. Bede's testimony
16 with some excisions from that testimony, some
17 line-outs of particular words or phrases and so forth,
18 and it's my understanding that the prefiled testimony
19 with portions lined out is an agreement between Mr.
20 Van Nostrand who represents the company, Ms. Egeler,
21 and the counsel for the intervenors.

22 I think I'll go through and see if this is
23 what each of you understand. And it's also my
24 understanding that each of you have received a fax

25 from Mr. Hatcher showing these deletions and

(COLLOQUY)

63

1 line-outs. Mr. Van Nostrand, is that your agreement
2 for your company?

3 MR. VAN NOSTRAND: Yes, it is, your Honor.

4 JUDGE CLISHE: And Ms. Egeler?

5 MS. EGELER: Yes, your Honor.

6 JUDGE CLISHE: And Mr. Dudley?

7 MR. DUDLEY: Yes, your Honor.

8 JUDGE CLISHE: Okay. And Mr. Hatcher?

9 MR. HATCHER: Yes.

10 JUDGE CLISHE: And Ms. O'Malley?

11 MS. O'MALLEY: Yes.

12 JUDGE CLISHE: And Mr. Williams?

13 MR. WILLIAMS: Yes.

14 JUDGE CLISHE: Okay. So it's my
15 understanding the parties have agreed to this. And
16 I also discussed with the parties the remaining
17 schedule for prefiling and discovery, and in order to
18 accommodate the short time here, the intervenors and
19 staff may have an extension until August 24, which is
20 Tuesday, to prefile their testimony. The company may
21 have an extension from September 3 through September 8
22 to prefile its rebuttal. The parties indicated that
23 -- some concerns that if there's anything in the
24 company's rebuttal testimony regarding -- or requiring

25 some kind of data request that we're going to be on a

(COLLOQUY)

64

1 very short time line before the hearing, but it's my
2 understanding that the parties seem to be in a spirit
3 of cooperation, and I guess if there's any problem
4 regarding data requests we'll deal with them at the
5 time that that occurs, but I expect that with the
6 parties' accommodations and so forth there will not be
7 any problems.

8 It's also my understanding that no one of
9 the parties will be appealing my ruling to the
10 commissioners which will be -- and my ruling will be
11 to deny the motions to compel discovery and to exclude
12 from Mr. Bede's prefiled testimony the portions as set
13 forth in the letter and attachments to Mr. Hatcher's
14 letter of August 19, 1993. Is there any objection to
15 that procedure?

16 MR. HATCHER: Your Honor, this is Melvin
17 Hatcher. I have no objection to the procedure. Is it
18 my understanding that the company will be filing a
19 revised prefiled testimony of Mr. Bede demonstrating
20 these agreed-upon changes?

21 JUDGE CLISHE: Mr. Van Nostrand, would you
22 like to respond to that?

23 MR. VAN NOSTRAND: Well, yes, we can,
24 otherwise I thought when Mr. Bede takes the stand that

25 we would go through what the portions that have been

(COLLOQUY)

65

1 stricken, but we could generate another draft as
2 well -- or generate another copy of prefiled testimony
3 if that's everyone's wish.

4 JUDGE CLISHE: And the other alternative,
5 which may be easier, is for Mr. Van Nostrand to just
6 submit pages 7 through 13 with the portions deleted as
7 the parties have agreed, and that way those can just
8 be replaced in what's been filed. I imagine the
9 number of pages is going to shorten up because of the
10 deletion of at least one full page. So is that
11 possible, Mr. Van Nostrand, to just do pages 7 till
12 the end of the testimony with the portions that were
13 deleted?

14 MR. VAN NOSTRAND: Certainly.

15 JUDGE CLISHE: Okay. That might be easier
16 and then we can just replace the last two pages. Is
17 there any problem with that that anyone has?

18 MR. HATCHER: This is Melvin Hatcher. I
19 have no problem.

20 JUDGE CLISHE: All right. Is there
21 anything else we need to discuss today regarding the
22 upcoming hearing and the discovery process?

23 MR. DUDLEY: Your Honor, Jay Dudley here.
24 Just a procedural matter. Is it your custom to

25 reflect a ruling like this in a short memo to all

(COLLOQUY)

66

1 parties, and I'm thinking particularly of the revised
2 schedule for the submission of the testimony, or is it
3 just satisfactory just to leave it on the transcript
4 as it is now?

5 JUDGE CLISHE: I certainly could do either
6 one. I guess it would be preferable as far as I'm
7 concerned to have this in the transcript so that it's
8 clear what the understanding was. If anyone feels
9 that there's a necessity for some letter or memo from
10 me setting out the dates of the agreed changes in the
11 prefiling, that will be fine too. Does anyone feel
12 like they would prefer that? No one? Okay.

13 MR. DUDLEY: No. I just wanted to know
14 what the expectation would be on that point, that's
15 all.

16 JUDGE CLISHE: Okay. All right. Anything
17 else today? Nothing? All right. Then the next time
18 we convene it will be for the hearing on September 16.
19 Thank you.

20 (Adjourned at 3:28 p.m.)

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