0010

 1 BEFORE THE WASHINGTON

 2 UTILITIES AND TRANSPORTATION COMMISSION

 3 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 4 In the Matter of )DOCKET NO. UE-170717

 )

 5 PACIFIC POWER & LIGHT )

 COMPANY, )

 6 )

 2016 Power Cost Adjustment )

 7 Mechanism Report. )

 8 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 9 SETTLEMENT HEARING, VOLUME II

10 Pages 10-45

11 CHAIRMAN DANNER, COMMISSIONERS ANN E. RENDAHL & JAY

 BALASBAS

12 ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

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13

14 June 19, 2018

15 8:45 a.m.

16

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25 \* \* \* \* \*

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 1 OLYMPIA, WASHINGTON; JUNE 19, 2018

 2 8:45 A.M.

 3 --o0o--

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

 5

 6 JUDGE KOPTA: Let's be on the record in

 7 Docket UE-170717 captioned In the Matter of Pacific

 8 Power & Light Company 2016 Power Cost Adjustment

 9 Mechanism.

10 We're here on Tuesday, June 19th, at 8:50 to

11 consider the settlement agreement that the parties have

12 adopted and proposed for the Commission to approve.

13 I'm Gregory J. Kopta, the administrative law

14 judge who is presiding in this docket. The

15 Commissioners will be joining us momentarily, but as a

16 preliminary matter, we wanted to take up the exhibits so

17 that we have a full evidentiary record.

18 We will wait to have appearances for counsel

19 and identification of the witnesses until the

20 Commissioners are here.

21 So at this point, we have an exhibit list,

22 and I will briefly recount the exhibits that are on this

23 list.

24 For the settling parties, Exhibits SP-1

25 through SP-3; for Pacific Power, the testimony and

0017

 1 exhibits of Mr. Wilding are MGW-1T through MGW-5; the

 2 testimony and exhibits of Mr. Thomas are RT-1CT and

 3 RT-2C; the exhibits of Mr. Ralston are DMR-1CT through

 4 DMR-9; for Commission Staff, Mr. Ball's testimony and

 5 exhibits are JLB-1CT through JLB-9C; for Boise White

 6 Paper, the testimony and exhibits of Mr. Mullins are

 7 BGM-1CT through BGM-15.

 8 Are there any objections to receiving these

 9 documents into the evidentiary record? Hearing none, I

10 admit them into the record, and they will form the

11 evidentiary record for this proceeding.

12 (Exhibits SP-1 through SP-3; MGW-1T through

13 MGW-5; RT-1CT and RT-2C; DMR-1CT through DMR-9; JLB-1CT

14 through JLB-9C; and BGM-1CT through BGM-15 admitted.)

15 JUDGE KOPTA: Just to confirm, are there any

16 other matters that we need to address before the

17 Commissioners join us? Hearing none, we'll be off the

18 record.

19 (A break was taken from

20 8:51 a.m. to 9:03 a.m.)

21 JUDGE KOPTA: We are back on the record.

22 The Commissioners have now joined me on the bench,

23 Chairman Danner, Commissioners Rendahl and Balasbas.

24 And we will now take appearances of counsel, beginning

25 with the Company.

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 1 MR. KUMAR: Thank you, Your Honor. On

 2 behalf of the Pacific Power & Light Company, my name is

 3 Ajay Kumar, and with me testifying on behalf of the

 4 Pacific Power & Light Company, I have Mike Wilding, who

 5 is our director of net power costs.

 6 JUDGE KOPTA: Thank you.

 7 And for Commission Staff?

 8 MS. CAMERON-RULKOWSKI: Jennifer

 9 Cameron-Rulkowski, Assistant Attorney General.

10 JUDGE KOPTA: And for AWEC?

11 MR. OSHIE: Your Honor, Patrick Oshie,

12 representing Boise White Paper, LLC, in this instance.

13 And also, although not present today, Tyler Pepple,

14 attorney of record.

15 JUDGE KOPTA: Okay. And for Public Counsel?

16 MS. GAFKEN: Good morning. Lisa Gafken,

17 Assistant Attorney General, appearing on behalf of

18 Public Counsel. And since we're taking no position on

19 the settlement, we are not presenting a witness today.

20 JUDGE KOPTA: All right. Thank you.

21 And I think that is all the parties. And

22 I'd like for each of the witnesses to identify

23 yourselves very briefly.

24 MR. WILDING: Michael Wilding with

25 PacifiCorp.

0019

 1 MR. BALL: Jason Ball, Commission Staff.

 2 MR. MULLINS: And Brad Mullins, here for

 3 Boise White Paper, LLC.

 4 JUDGE KOPTA: And if you would stand,

 5 please, and raise your right hand.

 6 (Michael Wilding, Jason Ball, and Brad

 7 Mullins sworn.)

 8 JUDGE KOPTA: Thank you. You may be seated.

 9 All right. Mr. Kumar, you said you had

10 prepared an opening statement. Would you like to give

11 that?

12 MR. KUMAR: I think in the interest of just

13 moving this along, I don't think that's necessary, Your

14 Honor.

15 JUDGE KOPTA: All right. Then we will go to

16 questions from the bench of the witness panel.

17 Commissioner Rendahl, did you want to begin?

18 COMMISSIONER RENDAHL: Sure.

19 So this question has to do with the part of

20 the settlement on paragraphs 9 and 10 that relates to

21 the decision-making analysis, the documentation, and the

22 agreement about email retention. Paragraph 9 says --

23 begins by saying, (as read) Pacific Power agrees that if

24 an email that provides evidence of an action taken and a

25 record of decision-making analysis, in parens, as

0020

 1 described below, un-paren, does not exist elsewhere,

 2 then the email should be considered an official Company

 3 record.

 4 So in reading this, and reading the

 5 testimony, this question is for Mr. Wilding, how will

 6 Company officials know if a record doesn't exist such

 7 that they should consider an email an official Company

 8 record? What is the process for that?

 9 MR. WILDING: The first step of the process

10 will be for PacifiCorp to provide training at the level

11 where we will need to retain those emails if other

12 documentation does not exist. And so that will be the

13 first step, is to make sure executives are aware that

14 they need to retain those, and the default will need to

15 be that unless they are aware, explicitly aware, of

16 another document that has detailed a decision-making

17 process, that they will need to save those emails.

18 COMMISSIONER RENDAHL: Okay. Is there any

19 intent to amend the email retention policy referenced in

20 the settlement?

21 MR. WILDING: No.

22 COMMISSIONER RENDAHL: Okay. So I guess I

23 would ask, would it be a problem for the Company to

24 provide Staff with information about the training that

25 will be going on related to this?

0021

 1 MR. WILDING: No.

 2 COMMISSIONER RENDAHL: Okay. That might be

 3 something that would be very helpful.

 4 I don't know if anybody else has any

 5 questions on that? Okay.

 6 CHAIRMAN DANNER: No.

 7 COMMISSIONER RENDAHL: Okay. And then I

 8 just want to clarify, and this is for all the parties,

 9 that the parties' agreement on this topic doesn't

10 replace or limit the Commission's current prudent

11 standard in which the utility bears the burden to retain

12 contemporaneous documentation for the purpose of

13 demonstrating if an expense or purchase was prudent,

14 does it?

15 MR. WILDING: No. The Company still bears

16 the burden of showing prudence for our decisions.

17 MR. BALL: This is Jason with the Commission

18 Staff. The -- the -- the way we viewed it was the

19 exact -- the same. This does not serve as a replacement

20 of any standard or of -- of any rules that currently

21 exist. This is just about making sure that the Company

22 is aware of what the requirements are and that everyone

23 is operating off the same playbook.

24 MR. MULLINS: And this is Brad. I would

25 agree with Mr. Ball's statement, that it doesn't affect

0022

 1 the document retention policy.

 2 COMMISSIONER RENDAHL: Okay. And then did

 3 you want to...

 4 CHAIRMAN DANNER: No, go ahead.

 5 COMMISSIONER RENDAHL: And then about the

 6 next provision about the actions, updating the actions

 7 at the coal mine. Paragraph 11 of the settlement

 8 stipulation refers to updating the actions related to

 9 the mine and methods to prevent a recurrence. That

10 title I don't believe is confidential, even though I

11 have just stated it because it's in the -- it's in the

12 settlement, and it's also referenced in the confidential

13 Exhibit SP-2C, at pages 10 and 11.

14 So my question first to the Company is, has

15 the Company begun to implement those methods that are

16 referenced in that confidential document?

17 MR. WILDING: Yes. And in Mr. Ralston's

18 testimony, rebuttal testimony, he did outline the

19 current status of those corrective actions. And the

20 plan is -- you know, some of those actions are ongoing

21 and will be implemented and ongoing from that point.

22 And most of those have been either implemented or

23 corrected, and we plan to -- to either have all of the

24 action items implemented or corrected and in place by

25 the time we file the first report or shortly after.

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 1 COMMISSIONER RENDAHL: Okay. So you'd agree

 2 that the settlement requires the Company to implement

 3 the actions that are in the method, not just to report

 4 any progress?

 5 MR. WILDING: Yes.

 6 COMMISSIONER RENDAHL: Okay. So when the

 7 Company provides its report to Staff, it will be

 8 providing documentation of its completion of those

 9 methods and those items?

10 MR. WILDING: Yes.

11 COMMISSIONER RENDAHL: Okay. And turning to

12 Staff and to Boise White Paper, what is your expectation

13 of what you'll receive in those reports?

14 MR. BALL: I'm not entirely sure because I

15 haven't seen them. What I would expect to see is

16 something that shows us that those actions have been

17 implemented, how they were implemented, and to the

18 extent that personnel have been trained on them. And if

19 we don't think that the Company in the report provides

20 enough information, we will talk to them and get more

21 information. But I anticipate that what they'll be

22 providing will be a pretty detailed showing of how and

23 why they implemented those actions.

24 MR. MULLINS: And, I guess, you know -- I

25 guess we didn't have any strong expectations on, you

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 1 know, what the form of the update be. You know, we

 2 would hope that, you know, rather than, you know -- for

 3 each item, rather than saying whether, you know, an item

 4 was implemented or not, for the Company to go into sort

 5 of greater detail and explain how they're implementing

 6 each -- each item. But, you know, other than that, we

 7 didn't have any strong expectations about the -- about

 8 the update process.

 9 COMMISSIONER RENDAHL: Okay. Thank you.

10 JUDGE KOPTA: I actually, before we go

11 farther, wanted to follow up a little bit on the

12 prudence.

13 Couple of questions. One is, there are

14 other aspects to this PCAM, Power Cost Adjustment

15 Mechanism, than the Joy Longwall. Are there any -- are

16 you requesting that the Commission make any finding in

17 terms of the prudence of other expenses, costs,

18 activities that the Company has undertaken that are part

19 of the PCAM?

20 Mr. Ball, I'll direct the question to you.

21 MR. BALL: The -- I believe I talked a

22 little bit about this on page 5 of my direct testimony,

23 starting at lines 15. The -- the Company's provided

24 enough documentation, and we reviewed it to support all

25 of the expenses and revenues that are included in the

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 1 PCAM, and you're right, there's quite an extensive list

 2 of them, except for the Joy Longwall. That's the only

 3 piece of this that Staff was concerned with. The rest

 4 of it we looked at, we didn't see any issues. It looked

 5 all pretty -- relatively standard.

 6 JUDGE KOPTA: So we're not -- the Commission

 7 would not be making any finding on prudence on any

 8 aspect of the PCAM as a result of this settlement if the

 9 Commission approves it, or is it?

10 MR. BALL: I -- I believe by approving the

11 deferral, it's approving the expenses and revenues that

12 are in that -- that are a part of that deferral. So

13 yes, I believe the Commission would be passing judgment

14 on the remaining level of expenses and revenues.

15 JUDGE KOPTA: But the Joy Longwall would be

16 excluded from that implicit finding that the other

17 activities were prudent?

18 MR. BALL: In the -- in the settlement

19 stipulation, no. The settlement stipulation does not

20 call out the Joy Longwall as an imprudent action. It

21 just agrees to a $3.5 million black box number. So no,

22 the Commission, in approving the settlement, would not

23 be -- would not be issuing a determination of

24 imprudence. It would just be approving a settlement

25 agreement around the nature of the deferral mechanism

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 1 for this year.

 2 JUDGE KOPTA: Okay. And I'm just trying to

 3 make sure that I understand what the Commission would be

 4 doing if it approves the settlement stipulation. But

 5 there are other actions, other expenses that the Company

 6 has undertaken in the PCAM that because there are no

 7 issues, they're implicitly agreeing that they were

 8 prudent, but with the Joy Longwall, that wouldn't be

 9 included in that. We would be making no determination

10 on prudence one way or the other with respect to those

11 costs and expenses?

12 MR. BALL: Correct. That's the way I

13 interpret the settlement. We're not -- we're not

14 passing judgment on the prudence of these actions

15 anymore. We're just agreeing to a number.

16 JUDGE KOPTA: And, Mr. Wilding, is that your

17 understanding as well?

18 MR. WILDING: Yes. I would agree that there

19 would be no prudence determination made for the cost

20 associated with the Joy Longwall.

21 JUDGE KOPTA: Mr. Mullins?

22 MR. MULLINS: I think for the non-Joy

23 Longwall costs, because the Commission would be

24 approving balance, it would be implicitly making a

25 prudence finding on the remainder of cost. With respect

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 1 to the Joy Longwall stipulation, did not specifically

 2 call out the Joy Longwall as leading to the black box

 3 $3.5 million adjustment, but, you know, the amount was

 4 reached in a -- in a settlement where the primary issue

 5 was -- was the Joy Longwall.

 6 And so, you know, from that perspective,

 7 it's maybe just a matter of semantics whether the

 8 Commission might, you know, explicitly say that the Joy

 9 Longwall costs are imprudent or accept the stipulation

10 with the black box adjustment for those costs.

11 JUDGE KOPTA: Okay. Thank you. I think

12 that clarifies things.

13 Mr. Chairman?

14 CHAIRMAN DANNER: Yeah. So let me follow up

15 on that.

16 I mean, you know, we always have this

17 problem with black box settlements because we don't know

18 what's in the black box.

19 But, Mr. Ball, in your initial testimony,

20 you recommended removing 11.2 million from the actual

21 cost, the power costs that were associated with the 2016

22 PCAM deferral period, and that was based on -- well, you

23 know what they were based on. The number you arrived at

24 is 3.5. I'm -- I'm -- that to me, that's quite a jump,

25 and I didn't see any -- I wasn't sure what the

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 1 weaknesses were in your argument that got you from one

 2 number to another.

 3 And I'm trying to get a handle on that, and

 4 I was wondering if you could, without revealing

 5 confidential information, just give me an idea of -- of

 6 what -- what changed, what are the considerations that

 7 I'm not seeing here.

 8 MR. BALL: Sure. So the -- the way I

 9 calculated my number in my direct testimony was two

10 aspects. The first was the costs of recovery and

11 abandonment, and the second piece was the lost -- or the

12 change in power production expenses as a result of

13 fallout from Joy Longwall. So there's those two pieces.

14 The problem with the latter is that it's

15 basically a but for analysis that's pretty hard to do.

16 And so what I -- what I did in my testimony was, I tried

17 to find a reasonable outcome that approximated what I

18 think would have happened had Joy Longwall incident not

19 occurred.

20 But when it came to settlement discussions,

21 what I was primarily interested in and what I think --

22 what I think the parties were primarily interested in

23 was not being punitive to the Company, but rather trying

24 to come up with a way to make sure that this doesn't

25 happen again.

0029

 1 The lost power production expenses, I think

 2 that there -- my testimony -- I support my testimony. I

 3 think that it was valid. I think that there were

 4 expenses that should -- that probably would not have

 5 been there, but I think the Company filed rebuttal, and

 6 in that rebuttal, they pointed out some of the problems

 7 with trying to make that logical leap. And they

 8 provided some good counterexamples of why it's really

 9 difficult to go back in time and understand exactly what

10 would have changed if the operation were mined for an

11 entire year.

12 So I -- when I went to the settlement at the

13 beginning, in my mind, it was not about, oh, I need to

14 get half of what I asked for in my testimony. I was

15 there trying to figure out what is the best solution for

16 ratepayers, for the Company, and for the public at

17 large.

18 CHAIRMAN DANNER: And so when you say you

19 don't want to be punitive to the Company, obviously you

20 know the other side of the coin is you might be being

21 punitive to the -- to the ratepayers. But you feel that

22 at this point, this is -- this is a fair outcome and

23 that the ratepayers are not holding the bag for

24 something that they shouldn't be?

25 MR. BALL: Yes. I think that this -- that

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 1 the black box settlement results in a number that holds

 2 them harmless for an asset that -- that became

 3 inoperable, and I think that it holds them harmless, and

 4 it puts the Company on notice for what we expect going

 5 forward about document retention, and it puts them on

 6 the hook for making sure that they implement new best

 7 practices that prevent this from reoccurring.

 8 MR. KUMAR: Your Honor, before we go down

 9 too far on this path, I would like to just express some

10 concern about attempting to sort of pull apart the black

11 box settlement.

12 I think that's sort of the -- to reflect

13 back on, I think, some of the comments that Mr. Mullins

14 has made, I think the prudence or imprudence of the Joy

15 Longwall, the fact that it's -- it's sort of not making

16 a determination on that, it's sort of an essential piece

17 of the settlement. And so I think that should be

18 reflected in the record and --

19 CHAIRMAN DANNER: So I understand,

20 Mr. Kumar. I -- my concern is when it's a black box,

21 it's basically telling us -- I mean, our -- our options

22 are to say yes or no. And the more I can tease this

23 out, the more it might come to an outcome that I'm

24 satisfied with. And so I'm trying to figure out how --

25 you know, how far I can go in this questioning because

0031

 1 it is a long way from 11.2 to 3.5.

 2 MR. KUMAR: Of course, Your Honor, and I

 3 would never seek to deny any information that the

 4 Commission needs to make a determination, but I just --

 5 I would like to express some concern about going too far

 6 down that path, and I would also like to express some

 7 concerns about Mr. Mullins' earlier answer on the

 8 prudence of the Longwall.

 9 CHAIRMAN DANNER: All right.

10 MR. MULLINS: So can I potentially jump in

11 on the last question of how -- kind of how the

12 3.5 million relates to the overall cost of the Longwall

13 failure? I think it's important if that's okay.

14 CHAIRMAN DANNER: Yeah --

15 MR. KUMAR: Your Honor, I would actually

16 very much hesitate to go down this path. I think that,

17 you know, to the extent that we might be getting into

18 sort of the realm of confidential settlement discussions

19 if we go too far down this path.

20 MR. MULLINS: So I can provide Boise's

21 perspective. You know, I couldn't speak for the

22 Company, but...

23 CHAIRMAN DANNER: So is your -- your concern

24 is not so much with confidential information as it is

25 with disclosing what went on in settlement discussions?

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 1 MR. KUMAR: Yes.

 2 CHAIRMAN DANNER: It's not -- it's the --

 3 well --

 4 MR. KUMAR: I think it's also -- there's a

 5 larger issue, and I think the Company has serious

 6 concerns about a larger determination on the prudence of

 7 the Joy Longwall. I think one of the essential rules of

 8 the settlement is that we don't come to -- that we

 9 recommend the Commission will come to a determination on

10 the prudent rule of the Joy Longwall. And so I think

11 that's -- to go too far down that path would raise some

12 deep concerns with the Company.

13 CHAIRMAN DANNER: So am I left in a position

14 of having to make a data-free decision here?

15 MR. KUMAR: I wouldn't put you in that

16 position, Chairman, but I think --

17 CHAIRMAN DANNER: I think you are.

18 MR. KUMAR: No, I think there are -- I think

19 there are ways, certain -- we can -- I think the -- the

20 adjustment and to get into sort of why the adjustment

21 was made presents sort of some difficulties; however, if

22 we can talk about how the -- the adjustment is

23 reasonable and an interest of the consumer, there is

24 some areas there that may not present as much difficulty

25 in my view.

0033

 1 CHAIRMAN DANNER: Are there some questions

 2 maybe you'd like to ask your witness that could bring

 3 these out in a way that wouldn't violate what you think

 4 is confidential information?

 5 MR. KUMAR: You know, I would always defer

 6 to the Commission. If -- if you'd like me to do that, I

 7 could, but I would always defer to -- I think your

 8 concerns are, of course, the foremost concern.

 9 CHAIRMAN DANNER: Yeah. So basically, I've

10 got a black box here, and I'm trying to get just a

11 general idea what's in the black box so that I can

12 decide whether this is in the public interest or not.

13 And I -- you know, really I understand that this is a

14 settlement. I understand that compromises were made. I

15 wasn't in on those settlement discussions, so I'm simply

16 being asked to approve them.

17 And, again, as I said, you know, it's a long

18 way from 11.2 to 3.5. I'm trying to get some idea of

19 the comfort folks have with going from one to the other

20 so that I can share that comfort.

21 So I'm trying to figure out what questions I

22 can ask that don't run afoul of your concerns. So if

23 you -- if you thought there was a line of questioning

24 that -- that you present to Mr. Wilding, then maybe, you

25 know, help -- help me out here.

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 1 MR. KUMAR: I think I wouldn't want to

 2 presume to ask questions for the Commissioners. And so

 3 I think maybe sort of a reasonable approach might be,

 4 there was some earlier questions of Mr. Mullins where he

 5 made some comments about the sort of the prudence of the

 6 Longwall issue that maybe if we were to strike those

 7 comments from the record. I think Mr. Ball and

 8 Mr. Wilding, I think, were careful enough in their, sort

 9 of, answers to sort of allow the line of questioning to

10 proceed.

11 CHAIRMAN DANNER: So if we simply went into

12 confidential session here, would you be okay with those

13 conversations going forward or do you think that that's

14 violating the spirit of the settlement discussions?

15 MR. KUMAR: I apologize, Your Honor. I

16 don't think the confidential nature of the session

17 would -- is sort of the issue. It's attempting to --

18 some parts of the -- of the foundations of the

19 settlement itself.

20 So I think -- that that's why I think I'd

21 suggest that maybe a simpler solution would be if we

22 were to sort of look at maybe striking a certain portion

23 of Mr. Mullins' testimony on sort of the prudence or

24 imprudence of the Longwall issue, that might be more

25 appropriate than moving to a confidential session. And

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 1 I think that way we can also sort of maybe proceed down

 2 your line of questioning on sort of the --

 3 CHAIRMAN DANNER: Well, Judge, I mean, I

 4 consider that a motion for -- to strike testimony, I

 5 leave that to you.

 6 JUDGE KOPTA: Yeah. I have a concern with

 7 that because the settlement agreement itself does not

 8 discuss what the disposition of the Joy Longwall is. I

 9 don't even think that it's -- other than the background,

10 it's even mentioned. Certainly not in the -- not in the

11 agreement section. So I think it's appropriate.

12 That's why I asked the questions that I did

13 in terms of what the expectations of the parties is

14 because 3.5 million doesn't -- isn't specific to

15 anything. It's just that's the number, and there are a

16 lot of things that go into the PCAM. So I think trying

17 to understand exactly what the Commission is going to be

18 doing if it approves the settlement is appropriate.

19 So to the extent that you are making a

20 motion to strike that portion of the testimony, I'm

21 going to deny it. But we will take your comments under

22 advisement in terms of what the meaning of that is. And

23 if you have concerns with additional questions that the

24 Chairman is asking, then certainly raise them at the

25 time that he asks those questions.

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 1 But as he suggests, it is something that

 2 we're trying to understand, and I believe the narrative

 3 has three different statements from the parties as to

 4 why they think this settlement is in the public interest

 5 and consistent with applicable law. And I think asking

 6 each of them to amplify on those is an appropriate line

 7 of questioning.

 8 MR. KUMAR: Thank you, Your Honor. I

 9 would -- I will try not to say anything more.

10 CHAIRMAN DANNER: I'm trying to keep it

11 short, too, actually.

12 MR. KUMAR: I think I've -- I think I've

13 expressed my concerns adequately, and I -- I think I --

14 I'll -- I'll -- back to the Commissioners.

15 CHAIRMAN DANNER: All right. Well, I have

16 one more question for Mr. Ball. And now, Mr. Mullins

17 did offer to elucidate a little bit if you think you can

18 do so --

19 MR. MULLINS: If I could very quickly. I

20 mean, we're actually here in good faith to support the

21 stipulation so -- and what I was trying to do is provide

22 the Commission kind of with the -- with the bookends as

23 far as the case was involved, because in the past, I

24 found that helps Commissions to get comfortable with

25 black box adjustments.

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 1 And so, you know, in my testimony, you know,

 2 I had recommended a $9.8 million adjustment, and that

 3 was really broken into two components. There was the

 4 direct costs, which were known costs. They weren't

 5 disputed by anyone. And then there was the direct cost

 6 [sic], and those were sort of softer costs. And the

 7 direct costs were about $4.5 million, and as you flow

 8 those through the PCAM, the impact is around

 9 $3.5 million.

10 So, you know, if you were to consider the

11 overall package and, you know, what parties are giving

12 up and, you know, what other parties are gaining, that's

13 sort of, you know, a rough -- rough way to -- those are

14 sort of the benchmarks or the goalposts for what we were

15 looking at when we entered into the settlement.

16 JUDGE KOPTA: And I'm going to ask, is

17 that -- one of those numbers confidential or not?

18 MR. MULLINS: They were in the public

19 testimony so...

20 JUDGE KOPTA: Okay. I just wanted to make

21 sure whenever we're talking about numbers, anything

22 other than 3.5 and 11.2 or 9.6. Okay.

23 MR. KUMAR: I think our concerns were other

24 than confidentiality with regards to those numbers.

25 JUDGE KOPTA: Okay. Well, and this is -- we

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 1 understand that Mr. Mullins is simply saying what was

 2 going on in Boise White Paper's mind and not necessarily

 3 what was agreed to in the settlement.

 4 MR. KUMAR: Thank you, Your Honor.

 5 CHAIRMAN DANNER: And, again, Mr. Ball, a

 6 question for you, just having to do with the Oregon

 7 proceeding, do you feel that what you've come up with

 8 here is consistent with that or is it -- I mean, you

 9 didn't change your view of you -- the Oregon proceeding,

10 just the -- maybe you could explain for me how you

11 factor that into your final recommendation on the

12 settlement.

13 MR. BALL: Certainly. Well, the Oregon

14 proceeding was a little bit different because from my

15 understanding of it, this -- the deferral, the total

16 amount, didn't get outside of their deadband.

17 And so the result was that they didn't

18 actually have to have a proceeding on it. They had, I

19 believe, at least one round of testimony between the

20 parties discussing it, and I read the nonconfidential

21 versions of it, which I found illuminating. But the

22 ultimate result of that was that they just -- they

23 didn't have to do anything because it didn't -- there

24 was no deferral needed. So that one didn't really

25 impact my position.

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 1 The other states also, there's either been

 2 the settlement -- I believe now they've all been

 3 settled. But at the time I wrote my direct testimony, I

 4 believe that they were not all finished yet. And what

 5 was interesting about it was just seeing the way that

 6 they -- they had looked at it. Each state kind of

 7 looked at it and analyzed it a different way.

 8 And from my perspective, what I was really

 9 interested in, when I filed my direct testimony, was

10 understanding what that first effect was, what the cost

11 of recovery and abandonment were, and then understanding

12 what the second order effects were.

13 When I went into the settlement

14 negotiations, what I was interested in was how do we

15 make sure this doesn't happen in the future and how do

16 we make sure the ratepayers are held harmless. Those

17 were my goals, and those, I think, are the most

18 important. I think they do get reflected in the

19 settlement stipulation under the outcome of the

20 stipulation.

21 CHAIRMAN DANNER: Okay. All right. That's

22 all I have. Thank you.

23 JUDGE KOPTA: Anything further from the

24 bench?

25 Okay. Counsel, do you have any questions

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 1 that you have of the panel to clarify any of the

 2 questions that came from the bench?

 3 MS. CAMERON-RULKOWSKI: Not from Staff.

 4 Thank you.

 5 MR. OSHIE: No questions from Boise White

 6 Paper.

 7 MS. GAFKEN: Public Counsel has no

 8 questions.

 9 MR. KUMAR: Your Honor, I think I might have

10 one or two if you'll allow.

11 JUDGE KOPTA: Go ahead.

12 MR. KUMAR: And it's specifically for

13 Mr. Wilding.

14 COMMISSIONER RENDAHL: And if you could make

15 sure your microphone is on. It's not very loud, so I

16 don't know if it's...

17 CHAIRMAN DANNER: I think it's on. I think

18 you just need to move it closer.

19 MR. KUMAR: Mr. Wilding, what's your

20 understanding of the stipulation with regards to the

21 prudence of the -- the Joy Longwall?

22 MR. WILDING: The stipulation, obviously in

23 this case, there was one single issue, the Joy Longwall,

24 and both the direct cost and potential indirect cost

25 associated with that. As, you know, I think has been

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 1 well established in the record, there was a divergence

 2 of opinions on that. The Company defended our -- its

 3 actions and the prudence of its actions, and other

 4 parties obviously felt that the Joy Longwall and the

 5 abandonment and recovery efforts were -- were imprudent.

 6 The stipulation strikes a good balance

 7 between all parties and shows that a reasonable result

 8 can be achieved when the parties work together, and that

 9 dollar amount is a black box amount and, you know, each

10 party will see value differently in that settlement.

11 But I think in the end, it struck a good balance and is

12 in the public interest.

13 MR. KUMAR: Could you reflect briefly on the

14 appropriateness of the adjustment that resulted from the

15 settlement?

16 MR. WILDING: Yes. Again, I think the

17 settlement is in the interest of customers. Again, you

18 know, each -- each party is going to see value

19 differently in that as it is a black box settlement

20 and -- but, again, I think it's a reasonable settlement

21 and in the interest -- and in the public interest.

22 MR. KUMAR: And could you provide sort of a

23 brief overview of what has occurred in the other states

24 with regard to the prudence of the Joy Longwall and how

25 other Commissions may have solved this issue.

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 1 MR. WILDING: Yes, I can. So PacifiCorp for

 2 Pacific Power, we operate in six states as you know.

 3 This is the fifth state where this issue has been --

 4 been brought up in a PCAM type of -- of mechanism. The

 5 first state was Idaho where no adjustments were made to

 6 our net power cost, and the Commission allowed the

 7 recovery of the Joy Longwall associated cost.

 8 The next state was -- was Wyoming. We had

 9 very similar proposals by parties. In that proceeding,

10 as we do in this proceeding, that -- that proceeding

11 ended up being settled. In my testimony, I outline it.

12 I think it is 1.25 million in Wyoming.

13 The next was -- sorry, I'm just going to

14 turn to this so I don't give you -- the next proceeding

15 was in Utah, which is our largest state in which we

16 operate. Again, some of the costs associated with the

17 Joy Longwall were called into question; however, only

18 direct costs were called into question in Utah, and no

19 adjustment was proposed for indirect cost. And we were

20 able to settle -- settle that EPA for a $2.8 billion

21 adjustment.

22 And -- and then in the Oregon PCAM, as

23 Mr. Ball pointed out, we did not exceed the deadbands in

24 the Oregon PCAM and so -- for the earnings test, and so

25 no adjustment was made in the Oregon PCAM, but we did

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 1 come to a settlement where the Commission would make no

 2 determination on the cost associated with the Joy

 3 Longwall.

 4 And then the last state -- and so then here

 5 we are in Washington, and then the sixth state is the

 6 California energy cost adjustment mechanism -- or the

 7 ECAC, sorry, the Energy Cost Adjustment Clause, and that

 8 has yet to be litigated, and it is not unusual for the

 9 California ORA, Office of Ratepayer Advocates, to wait

10 and audit multiple years at once.

11 And so we're in one of those periods where

12 they -- they haven't audited that -- that ECAC for --

13 for a while, and sometime in the future, they'll come in

14 and audit multiple years at -- at one time. So in five

15 of the six -- or four of the six states, we've -- we've

16 settled this issue. This is the fifth state and

17 California is outstanding.

18 MR. KUMAR: Mr. Wilding, would it be fair to

19 say, then, that all the states Commissions that have

20 ruled on this issue not have made a determination of the

21 prudence of the Joy Longwall?

22 MR. WILDING: Yes, that would be a fair

23 statement.

24 MR. KUMAR: I have no further questions,

25 Your Honor.

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 1 JUDGE KOPTA: All right. Thank you.

 2 Anything further from the bench? Parties?

 3 Doesn't sound like it.

 4 Thank you all for your testimony.

 5 Appreciate your coming in and being here today, and

 6 counsel as well. We will take the matter under

 7 advisement and issue an order in due course. And with

 8 that, we are adjourned.

 9 (Adjourned at 9:40 a.m.)

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 1 C E R T I F I C A T E

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 3 STATE OF WASHINGTON

 4 COUNTY OF THURSTON

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 6 I, Tayler Garlinghouse, a Certified Shorthand

 7 Reporter in and for the State of Washington, do hereby

 8 certify that the foregoing transcript is true and

 9 accurate to the best of my knowledge, skill and ability.

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13 Tayler Garlinghouse, CCR 3358

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