

Docket No. UE-170717 - Vol. II

In the Matter of: Pacific Power & Light Company

June 19, 2018



206.287.9066 | 800.846.6989

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

www.buellrealtime.com

email: info@buellrealtime.com



BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of) DOCKET NO. UE-170717
)
 PACIFIC POWER & LIGHT)
 COMPANY,)
)
 2016 Power Cost Adjustment)
 Mechanism Report.)

SETTLEMENT HEARING, VOLUME II

Pages 10-45

CHAIRMAN DANNER, COMMISSIONERS ANN E. RENDAHL & JAY
BALASBAS
ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

June 19, 2018

8:45 a.m.

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest
Olympia, Washington 98504

REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

Buell Realtime Reporting, LLC
1325 Fourth Avenue
Suite 1840
Seattle, Washington 98101
(206) 287-9066 | Seattle
(360) 534-9066 | Olympia
(800) 846-6989 | National

www.buellrealtime.com

1 A P P E A R A N C E S

2 COMMISSIONERS:

3 DAVID DANNER
4 ANN RENDAHL
5 JAY BALASBAS
6 Washington Utilities and
7 Transportation Commission
8 1300 South Evergreen Park Drive SW
9 Olympia, Washington 98504
10 (360) 664-1160

11 ADMINISTRATIVE LAW JUDGE:

12 GREGORY J. KOPTA
13 Washington Utilities and
14 Transportation Commission
15 1300 South Evergreen Park Drive SW
16 Olympia, Washington 98504
17 (360) 664-1160

18 FOR COMMISSION STAFF:

19 JENNIFER CAMERON-RULKOWSKI
20 Assistant Attorney General
21 P.O. Box 40128
22 Olympia, Washington 98504
23 (360) 664-1186
24 jcameron@utc.wa.gov

25 FOR PACIFIC POWER:

AJAY KUMAR
Pacific Power & Light Company
825 NE Multnomah Street
Suite 1800
Portland, Oregon 97232
(503) 813-5161
ajay.kumar@pacificcorp.com

1 A P P E A R A N C E S (Cont.)

2
3 FOR BOISE WHITE PAPER:

4 PATRICK J. OSHIE
5 Davison Van Cleve, PC
6 750 SW Harbor Way
7 Portland, Oregon 97204
8 (503) 241-7242
9 pjo@dvclaw.com

10 FOR PUBLIC COUNSEL:

11 LISA GAFKEN
12 Assistant Attorney General
13 Office of the Attorney General
14 800 - 5th Avenue, Suite 2000
15 Seattle, Washington 98104
16 (206) 464-6595
17 lisa.gafken@atg.wa.gov

18 ALSO PRESENT:

19 MICHAEL WILDING
20 BRADLEY MULLINS
21 JASON BALL

22 * * * * *

23
24
25

EXHIBIT INDEX		
EXHIBITS FOR ADMISSION	PAGE	
1 SP-1 Settlement Stipulation	18	
2 SP-2C Attachment A to Settlement Stip. (Confidential)	18	
3 SP-3 Joint Narrative in Support of Settlement Stipulation	18	
4 MGW-1T Direct Testimony of Michael G. Wilding	18	
5 MGW-2 2016 PCAM Deferral Calculation	18	
6 MGW-3 Depiction of Joy Longwall Mining Conditions	18	
7 MGS-4CT Rebuttal Testimony of Michael G. Wilding (Confidential)	18	
8 MGW-5 PacifiCorp Records Management Guide: Email	18	
9 RT-1CT Rebuttal Testimony of Rob Thomas (Confidential)	18	
10 RT-2C Golder Engineering Review (Confidential)	18	
11 DMR-1CT Rebuttal Testimony of Dana M. Ralston (Confidential)	18	
12 DMR-2C 14th Right Longwall Panel Report (Confidential)	18	
13 DMR-3C Bridger Coal D41 Thickness (Confidential)	18	
14 DMR-4C BCC Structural Rolls (Confidential)	18	
15 DMR-5 Example of Structural Roll	18	
16 DMR-6C Joy Longwall Recovery Chronology (Confidential)	18	
17		
18		
19		
20		
21		
22		
23		
24		
25		

EXHIBIT INDEX (Cont.)		
EXHIBITS FOR ADMISSION	PAGE	
1		
2		
3	DMR-7C MSHA 103(k) Control Order (Confidential)	18
4		
5	DMR-8C Staff Response to Pacific Power DRs (Confidential)	18
6	DMR-9 Boise White Paper Responses to Pacific Power DRs (Confidential)	18
7		
8	JLB-1CT Testimony of Jason Ball (Confidential)	18
9	JLB-2C Timeline of Events (Confidential)	18
10	JLB-3C Company Response to Informal UTC Staff Data Request No. 3, Final Report of Investigation (Confidential)	18
11		
12	JLB-3C.a Supplement to Exh. JLB-3C providing legible copy of diagram on page 18 (Confidential)	18
13		
14	JLB-4 Company Response to UTC Staff Data Request No. 1	18
15	JLB-5C Company Response to Informal UTC Staff Data Request Nos. 4 and 5, UTC Staff Data Request No. 2 and Confidential Attachment (Confidential)	18
16		
17	JLB-6C Staff Proposed Net Power Cost Deferral (Confidential)	18
18		
19	JLB-7C Graphical Illustration of Joy Longwall System (Confidential)	18
20		
21	JLB-8C Confidential Testimony of Cindy A. Crane in Docket UE-140762 (Confidential)	18
22		
23	JLB-9C Attachment to Company Confidential Response to UTC Staff Data Request No. 10 (Confidential)	18
24		
25		

EXHIBIT INDEX (Cont.)		
EXHIBITS FOR ADMISSION		PAGE
1		
2		
3	BGM-1CT Response Testimony of Bradley G. Mullins (Confidential)	18
4		
5	BGM-2 Regulatory Appearances of Bradley G. Mullins	18
6	BGM-3C PCAM Balance Calculations (Confidential)	18
7		
8	BGM-4 Responses to Data Requests	18
9	BGM-5C Joy Longwall Justification Memo (Confidential)	18
10	BGM-6C Internal Joy Longwall Root Cause Analysis (Confidential)	18
11		
12	BGM-7C Geologic Report of the 14th Longwall Panel (Confidential)	18
13	BGM-8C Mine Health and Safety Administration Field Investigation (Confidential)	18
14		
15	BGM-9C External Review of Recovery Efforts (Confidential)	18
16	BGM-10 Department of Energy Overview of Longwall Mining	18
17		
18	BGM-11C Email from Joy Global (Confidential)	18
19	BGM-12C Longwall Foreman Reports (November 2015-January 2016) (Confidential)	18
20	BGM-13C New Longwall Standards Following Joy Longwall Failure (Confidential)	18
21		
22	BGM-14C 14th Right Face Profiles (September 2015-january 2016) (Confidential)	18
23	BGM-15 Geology, Ground Control, and Mine Planning at Bowie Resources, Paonia, CO	18
24		
25	* * * * *	

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

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.

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.

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

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?

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

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.

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

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

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

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

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

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.

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

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

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?

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.

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.

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

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.

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.

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

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.

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

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

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.

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

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.

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.)

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.



Tayler Garlinghouse

Tayler Garlinghouse, CCR 3358

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25