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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 WASHINGTON UTILITIES AND)
4 TRANSPORTATION COMMISSION,)
5 Complainant,)
6 vs.)Docket No.UE-032065
7)
8 PACIFICORP d/b/a/ PACIFIC)Volume IV
9 POWER & LIGHT COMPANY,)Pages 299 to 525
10)
11 Respondent.)

12 A hearing in the above matter was held on
13 September 10, 2004, at 9:30 a.m., at 1300 South
14 Evergreen Park Drive Southwest, Room 206, Olympia,
15 Washington, before ADMINISTRATIVE LAW JUDGE DENNIS MOSS
16 and CHAIRWOMAN MARILYN SHOWALTER and COMMISSIONER
17 RICHARD HEMSTAD, and COMMISSIONER PATRICK OSHIE.

18 The parties were present as follows:

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Court Reporter

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PROCEEDINGS

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JUDGE MOSS: Let's be on the record. Good morning everyone. I trust you all rested well.

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We are beginning this morning with our panel of witnesses who are sponsoring the proposed settlement among Pacificorp, Staff, and the NRDC. We have had some discussion off the record concerning the manner in which we will proceed, and the most efficient thing appears to be that Ms. Smith will put on the panel; that is to say, introduce the panel for the record.

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We have worked out that we can stipulate in most of the exhibits, but Staff has some reservations concerning a few of the cross-examination exhibits identified for Mr. Braden. And so we will take up any objections as to those exhibits at the beginning before we have our testimony, and resolve though issues, and then we will proceed to have examination.

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Now, by prior agreement, and I think this arrangement was made during a prehearing conference, but in any event, we did previously agree that while we had these witnesses present and sworn, we would conduct whatever cross-examination

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1 is to be conducted concerning either their
2 settlement testimony or their individual prefiled
3 testimonies and exhibits. So that is basically how
4 we will proceed.

5 And I assume ICNU has cross for the panel
6 and some of the witnesses individually?

7 MS. DAVISON: Yes, we do, Your Honor.

8 JUDGE MOSS: And Mr. Cromwell?

9 MR. CROMWELL: Yes, Your Honor.

10 JUDGE MOSS: I assume nobody else does?
11 And the bridgeline is on. Is there anybody that
12 needs to make an appearance today by the
13 bridgeline?

14 (No response.)

15 JUDGE MOSS: And I think everyone present
16 has made their appearance, so we don't need to go
17 through that. All right.

18 Well, with that said, if there's -- unless
19 there's something preliminary, let me --

20 MR. VAN NOSTRAND: Your Honor, I
21 understood from when we had this discussion last
22 week that we would have the panel just sponsor the
23 panel testimony and supporting exhibits, and to the
24 extent there was cross of the individual prefiled
25 testimony of Mr. Braden and Mr. Schooley and

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1 Mr. Widmer and Ms. Kelly, that would be done
2 individually and not as part of the panel since we
3 have several hours of cross scheduled for those.

4 JUDGE MOSS: We're going to do it at the
5 same point in time. As soon as we finish the panel
6 testimony, we will go to the individual witnesses,
7 right. That's what I meant. I was not clear.

8 MR. VAN NOSTRAND: I thought you were
9 going to do it as part of the panel.

10 JUDGE MOSS: We're not going to call the
11 witnesses individually. We will do it while we
12 have them here. And if we need to make
13 rearrangements on seating, we can do that. Just
14 let me know.

15 Let me swear the panelists. Please, all
16 rise and raise your right hands.

17

18 ANDREA KELLY,

19 MARK WIDMER,

20 CHRISTY OMOHUNDRO,

21 ROGER BRADEN,

22 TOM SCHOOLEY,

23 having been first duly sworn, were examined and
24 testified as follows:

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1 JUDGE MOSS: Thank you. Please be seated.
2 Ms. Smith, proceed.

3 MS. SMITH: Thank you, Your Honor. This
4 is Shannon Smith, Assistant Attorney General, and I
5 am here on behalf of Commission Staff. I would
6 like to present the panel witnesses this morning,
7 and I am going to allow each witness to introduce
8 himself or herself, followed by a brief statement
9 of where that witness works, what party that
10 witness is appearing for, and a brief statement of
11 his or her qualifications or job duties.

12 I would like to start at the far end from
13 me with Ms. Kelly.

14 MS. KELLY: Thank you.

15 JUDGE MOSS: And I will ask you to pull
16 your microphones up, and you will have to share and
17 move them around some, but we have to pick up the
18 voices.

19 MS. KELLY: My name is Andrea Kelly -- my
20 name is Andrea Kelly, and I am employed by
21 Pacificorp as a managing director of Strategic
22 Projects.

23 MR. WIDMER: My name is Mark Widmer, and I
24 am a manager in the Regulations Department for
25 Pacificorp.

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1 MS. OMOHUNDRA: My name is Christy
2 Omohundro. I'm managing director for Regulatory
3 Policy for Pacificorp responsible for regulatory
4 matters in the states of Oregon, Washington, and
5 California.

6 MR. BRADEN: Roger Braden. I'm assistant
7 director of energy for the Utilities Commission
8 Staff.

9 MR. SCHOOLEY: I'm Tom Schooley. I am a
10 regulatory analyst for Commission Staff.

11 MS. STEWARD: And I am Joelle Steward,
12 energy analyst with Commission Staff.

13 MS. SMITH: I would move the admission of
14 the joint testimony, and the exhibits thereto,
15 which are marked in this proceeding as Exhibits 1
16 through, I believe --

17 JUDGE MOSS: I have 1 through 7.

18 MS. SMITH: 1 through 7, Your Honor.
19 Thank you.

20 (EXHIBITS 1 to 7 OFFERED.)

21 JUDGE MOSS: Any objection?

22 (No response.)

23 JUDGE MOSS: Those will be admitted.

24 (EXHIBITS 1 to 7 ADMITTED.)

25 JUDGE MOSS: There's no objection, is

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1 there, to the cross-examination exhibits identified
2 for the panel?

3 MS. SMITH: Your Honor, Commission Staff
4 objects to those identified for panelist Roger
5 Braden, and those would be Exhibit 567, 568, 569,
6 570, and 571. Those documents appear to be Staff
7 reports from the Oregon Public Utilities
8 Commission.

9 We are concerned about their relevance in
10 this docket, and whether or not the witness for
11 whom these are identified as cross exhibits would
12 have any knowledge, or be able to offer any
13 testimony with respect to them.

14 So I guess our objection is to foundation
15 and to relevancy.

16 JUDGE MOSS: Okay. This is 567 through
17 571?

18 MS. SMITH: Yes, Your Honor, that's
19 correct.

20 JUDGE MOSS: Let us have a minute to get
21 those in front of us. All right. These are all
22 OIC exhibits. Your objection is foundation and
23 relevance.

24 These appear to be, glancing at them,
25 appear to be products of the Public Utility

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1 Commission of Oregon Staff.

2 So why don't you tell us about these
3 documents, Ms. Davison, and what their relevance is
4 here.

5 MS. DAVISON: Thank you, Your Honor. The
6 purpose of these exhibits is to -- and, oh, well, I
7 guess -- actually, why don't I back up and tell you
8 why I provided them as a cross-examination exhibit
9 in advance.

10 I thought I was going to ask several
11 questions of Mr. Braden of these reports, and I
12 thought it would be much nicer to include them as a
13 cross-exhibit so he could see them in advance,
14 rather than blindside him with them.

15 I obviously could ask the questions
16 without them being admitted in the record, but I
17 thought it would be a nicer way to proceed, to give
18 him an advance copy of them so he could read them.

19 Essentially the State of Oregon for
20 Pacificorp had a decoupling mechanism that was
21 advocated by NRDC. That was a four-year decoupling
22 mechanism. And if you review the Staff reports,
23 you will see that during the four-year period that
24 all of the rate classes hit the maximum cap of
25 allowable rate increase under the decoupling

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1 mechanism.

2 So I wanted to ask Mr. Braden, then, in
3 recommending that the Commission make a statement
4 along the lines that's in the settlement documents
5 with regard to a decoupling mechanism, whether he,
6 in fact, investigated the impacts of the decoupling
7 mechanism in Oregon, and whether the mechanism
8 operated as it was advocated by NRDC in Oregon,
9 whether it did, in fact, actually result in DSM
10 programs being implemented, or whether it simply
11 resulted in rate increases for all customer
12 classes.

13 JUDGE MOSS: Ms. Smith, do you have
14 anything to say?

15 MS. SMITH: Yes, briefly, Your Honor. We
16 do have a process where cross exhibits are made
17 available ahead of time. So I think that is the
18 standard application of the rules, and that's what
19 we do here.

20 And the fact that they were provided ahead
21 of time doesn't change our objection as to
22 relevancy and foundation. There is nothing in the
23 settlement that suggests that any sort of
24 decoupling mechanism that would be discussed or
25 ultimately recommended, if anything, would have

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1 anything resemblance to what was done in Oregon.
2 And these exhibits are just simply too far afield
3 to be relevant in this docket.

4 CHAIRWOMAN SHOWALTER: I have a question.
5 If that's true, the settlement agreement, what
6 about the underlying rate case? Is this an issue
7 in the underlying rate case where these documents
8 would be relevant there?

9 MS. SMITH: I think NRDC has raised this
10 issue in the rate case. They may be relevant
11 cross-examination exhibits for NRDC. I don't see
12 how they are relevant cross-examination for
13 Mr. Braden, who was not a party to the Oregon Staff
14 discussions, or how the decoupling mechanism was
15 implemented in Oregon, or the experiment in Oregon.
16 So to the extent they are relevant, they would be
17 relevant to NRDC.

18 CHAIRWOMAN SHOWALTER: That is, in the
19 underlying rate case, and the testimony in the rate
20 case. Mr. Braden does not have testimony on
21 decoupling?

22 MS. SMITH: He does not, Your Honor.

23 JUDGE MOSS: The objection on relevance is
24 sustained in that I think, Ms. Davison, you have
25 yourself acknowledged the marginal relevance, and

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1 particularly for this witness, Mr. Braden, we don't
2 find the relevance. So we will sustain the
3 objection and those exhibits previously identified
4 as 567 through 571 will not be admitted.

5 Now, my understanding is that all the
6 remaining exhibits concerning the panel testimony
7 and concerning these individual witnesses'
8 testimony, there's no objection to any of those
9 exhibits; is that correct or incorrect?

10 MR. GALLOWAY: That is incorrect, Your
11 Honor. We have an outright objection to one of the
12 exhibits, and concerns about two others that are
13 promoted in connection with Ms. Kelly's testimony.

14 JUDGE MOSS: Tell us the numbers.

15 MR. GALLOWAY: The exhibits are 76, 88,
16 and 89.

17 JUDGE MOSS: Give us a minute to get
18 those.

19 MS. DAVISON: George, 76 and what were the
20 other two?

21 MR. GALLOWAY: 88 and 89.

22 JUDGE MOSS: These appear to be fairly
23 discrete, so we will take them up one at that time.
24 76.

25 MR. GALLOWAY: There the circumstance is

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1 similar to what was just addressed in regard to the
2 proposed cross-examination exhibits for Mr. Braden.
3 76 is an issue paper prepared by parties other than
4 the Company in Oregon regarding, at the time it was
5 written, the position taken by the Oregon Staff,
6 the Citizens Utility Board and ICNU.

7 Ms. Kelly had no role in preparing that
8 document and is, in no way that we understand,
9 somebody who is in a position to sponsor somebody
10 else's white paper. That is our sole objection as
11 such.

12 Two cautions in regard to 88 and 89. 88,
13 as shown on the face of it, are materials that were
14 prepared in connection -- settlement discussions
15 that occurred during the MSP process. The ground
16 rules for that process were that they were
17 settlement discussions, and that the parties'
18 comments and concerns would remain confidential.

19 The only materials from a substantial
20 amount of materials that were included in this
21 response to data requests that it appears
22 Ms. Davison is offering are some financial economic
23 analyses of various competing allocation proposals.

24 We don't want to burden the process by
25 objecting though to those as such, but we don't

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1 wish to signal that the Company is generally
2 receptive to the settlement materials being used
3 for purposes of these proceedings.

4 So if all we're going to do is use the
5 economic analyses, that's fine. But we reserve an
6 objection to any broader use of this data response
7 or settlement materials.

8 And, finally, in regard to Exhibit 89, the
9 Company doesn't object to its introduction, but
10 we would note that it is Mr. Taylor who was the
11 respondent to that data request, and it would not
12 be an appropriate cross-examination exhibit for
13 Ms. Kelly.

14 JUDGE MOSS: To be certain that I
15 understand, you do have an objection on the basis
16 of foundation with respect to 76?

17 MR. GALLOWAY: Yes.

18 JUDGE MOSS: As to 88, you have noted for
19 the record the Company's concern regarding the
20 sanctity of the settlement privilege, but you don't
21 object to the limited amount of economic analysis
22 that's reflected in the proposed exhibit. So we
23 don't need to discuss that one?

24 MR. GALLOWAY: That's correct, Your Honor.

25 JUDGE MOSS: And 89, I'm not sure I am

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1 clear on that one. You say on the one hand the
2 Company doesn't object to its introduction, but on
3 the other hand, you are concerned that Ms. Kelly --

4 MR. GALLOWAY: Ms. Kelly is not the
5 witness for it.

6 JUDGE MOSS: And, of course, we can have a
7 foundation when and if the time comes to see if
8 Ms. Kelly has sufficient familiarity. And if not,
9 then we can proceed on that. But we do need to
10 make a decision on 76, if there's an objection to
11 the admission.

12 And so, Ms. Davison, let's give you an
13 opportunity to speak to the question of foundation,
14 how you would establish a foundation for this
15 document with this witness.

16 MS. DAVISON: First, I would like to state
17 for the record that Exhibits 88 and 89 were
18 admitted yesterday.

19 JUDGE MOSS: By stipulation.

20 MS. DAVISON: By stipulation. However, I
21 do not agree that those exhibits were the product
22 of settlement. That is not how I would
23 characterize the multi-year long MSP process. And
24 all the studies and documents that were then
25 prepared for that part of that MSP process have

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1 been admitted as exhibits, for example, in Oregon,
2 and there was no objection on the basis of
3 settlement.

4 So that's the first I have heard that that
5 long, multi-year collaborative process was as a
6 result of settlement, so I want to state on the
7 record that we do not view that process as invoking
8 the settlement rules.

9 As it relates to Exhibit 76, the purpose
10 of this exhibit is to rebut the position of
11 Pacificorp that the hybrid methodology is not
12 sufficiently developed, that there were at least
13 three parties who spent a great deal of time
14 reviewing hybrid, and it is their view that hybrid
15 is sufficiently developed, and this document speaks
16 for itself.

17 I am obviously not asking Ms. Kelly to, as
18 Mr. Galloway said, sponsor the exhibit. I
19 obviously know that she did not prepare the
20 exhibit, but I still believe that it is a proper
21 exhibit to demonstrate the point that hybrid is
22 sufficiently developed, and that it could be
23 utilized in this proceeding if the Commission so
24 chose.

25 JUDGE MOSS: All right. With respect to

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1 Exhibit No. 76, the objection is overruled, and the
2 exhibit will be admitted. And we will see to what
3 purpose it might be put when we have any questions
4 that may arise concerning it.

5 (EXHIBIT 76 ADMITTED.)

6 JUDGE MOSS: Does that take care of our
7 objections? I am trying to get to the point where
8 I can do a global admission of exhibits. I think
9 we're there.

10 All the remaining exhibits, and there's an
11 exhibit list for the benefit of our court
12 reporter -- I'm not going to separately identify
13 all of these exhibits on the record this morning,
14 because it simply takes too much time. The exhibit
15 list will reflect the appropriate numbers and
16 descriptions, and I will mark it with respect to
17 the rulings.

18 JUDGE MOSS: So with that said, do we have
19 any sort of direct testimony from the panel, or are
20 we simply going to launch directly into the cross?

21 Ms. Smith, Mr. Van Nostrand, whomever.

22 MR. VAN NOSTRAND: We thought that was the
23 purpose of prefiling the testimony in support of
24 the settlement agreement, so that stands as the
25 direct testimony of the panel.

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1 MS. SMITH: Your Honor, since we admitted
2 the direct testimony of the individual witnesses
3 as well as the panel testimony, there is a
4 correction on the testimony of Mr. Braden. And I
5 am wondering if we shouldn't put that on the record
6 now, or if you would like to wait until he stands
7 cross on his individual testimony. We're
8 indifferent as to how you want to do it.

9 JUDGE MOSS: Let's be off the record for a
10 moment.

11 (Discussion off the record.)

12 JUDGE MOSS: Let's be back on the record,
13 and take up the corrections to Mr. Braden's
14 testimony. What is the exhibit number?

15 MS. SMITH: Your Honor, it's 561.

16 JUDGE MOSS: And the page?

17 MS. SMITH: It's going to be on page 15,
18 Your Honor. And that is the revised page 15.

19 JUDGE MOSS: To be sure we're all on the
20 same page, I am looking at Exhibit 561, that was
21 premarked Exhibit RAB-1T, page 15 revised, July 14,
22 2004, it says in the lower right-hand corner. Why
23 don't we have our correction then?

24 MS. SMITH: Mr. Braden, would you like to
25 make the correction?

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1 MR. BRADEN: Yes. This morning in
2 reviewing the testimony -- and I apologize for the
3 late date of catching this -- there's a
4 typographical error on line 15 where it states that
5 the testimony that I provided here assumed an
6 equity percentage of 47.08 percent. That's
7 actually the equity percentage specified in the
8 Company's proposal. The equity percentage on which
9 the Staff's calculations were made was 44.09.

10 JUDGE MOSS: So we would replace 47.08
11 with 44.09?

12 MR. BRADEN: .09.

13 JUDGE MOSS: Do we have that? Thank you.

14 MS. SMITH: Thank you, Your Honor.

15 MR. GALLOWAY: Your Honor, there is a
16 correction to Ms. Kelly's rebuttal testimony,
17 Exhibit 73. Do you wish to consider that at this
18 time?

19 JUDGE MOSS: Sure. Exhibit 73. And what
20 page?

21 MR. GALLOWAY: Page 4.

22 JUDGE MOSS: Give us a minute.

23 MR. GALLOWAY: Sure. Good ahead.

24 Ms. Kelly, would you provide the
25 correction at this time?

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1 MS. KELLY: Beginning on line 2 of page 4
2 of my testimony, the sentence begins, "Hearings on
3 the Oregon stipulation and the revised protocol
4 will be held on August 5th." Rather than
5 correction, it's an update to let parties know the
6 date was changed to August 19, and then hearings
7 were waived by the parties.

8 In the next paragraph, the final line
9 starting on line 7 to line 8, "Settlement
10 negotiations will occur in these states beginning
11 in August." And to again update, a stipulation was
12 filed, an all-party stipulation was filed in
13 Wyoming yesterday, and settlement negotiations have
14 occurred in Idaho and are continuing through the
15 month of September and October.

16 JUDGE MOSS: Yesterday being the 9th day
17 of September?

18 MS. KELLY: That's correct.

19 MR. GALLOWAY: That is the extent of your
20 corrections?

21 MS. KELLY: I have one more.

22 CHAIRWOMAN SHOWALTER: You mean, the
23 testimony about Idaho, that was a sentence you
24 read, right?

25 MS. KELLY: The settlement negotiations

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1 have occurred in Idaho, and will continue through
2 the month of September and October.

3 JUDGE MOSS: Okay. Go ahead.

4 MS. KELLY: And the other correction is to
5 my direct testimony, Exhibit No. 71, page 19. On
6 line 13 the sentence that states, "Mr. Duvall's
7 direct testimony describes this process in greater
8 detail" should be struck. And those are my
9 changes.

10 JUDGE MOSS: Thank you. Any other
11 corrections? It appears we're ready to begin our
12 cross-examination.

13 Why don't we -- well, do you parties, ICNU
14 and Public Counsel, do you have a preference as to
15 who goes first?

16 MS. DAVISON: We're neutral.

17 JUDGE MOSS: We will let Mr. Cromwell go
18 forward.

19 MR. CROMWELL: For the record, Robert
20 Cromwell, Junior, Assistant Attorney General for
21 Public Counsel.

22 Also, for the record, I should state that
23 Public Counsel opposes the proposed settlement that
24 is now before the Commission and does look forward
25 to briefing these issues, as well as the wider

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1 issues that are before this Commission in this
2 docket.

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4

CROSS EXAMINATION

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6 MR. CROMWELL: My first question for the
7 panel would refer to page 3 of the revised
8 settlement agreement, which has been identified as
9 Exhibit 3. And looking at section 8 under
10 Jurisdictional Cost Allocation, the penultimate
11 sentence in that section reads, quote, "The
12 protocol represents the only common basis upon
13 which the parties could evaluate each other's
14 proposed adjustments."

15 My question is whether it is the position
16 of each of the settlement parties that the original
17 protocol was, in fact, the only basis upon which
18 adjustments could be analyzed, or whether it was
19 simply the most convenient?

20 MR. BRADEN: This is Roger Braden on
21 behalf of the Staff. I will respond for Staff.

22 In fact, that sentence could be more
23 accurately stated. It was the only available
24 common basis at the time of the settlement
25 discussions. Obviously other bases could have been

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1 developed had there been time and resources to do
2 so.

3 But in the situation where the settlement
4 discussions occurred, we only had reviews of the
5 numbers using the protocols that were common to
6 both Staff and the Company as a result of the Bench
7 Request No. 1 having been issued, which requested
8 that Staff attempt to convert its calculations and
9 adjustments which had been originally prepared on
10 the control area hybrid method into the same format
11 that the Company had proposed; that is, the
12 protocol methodology.

13 So as part of the response to the Bench
14 Request, there was readily available a Staff
15 attempt to translate, if you will, Staff's
16 adjustments and figures into that format. And so
17 there was Staff's view in the protocol format.
18 There was the Company's view in the protocol
19 format. Otherwise, there were no common approaches
20 to the various adjustments and numbers presented in
21 the case that was available at the time of the
22 settlement discussion.

23 MR. CROMWELL: Was there any consideration
24 by Commission Staff, Mr. Braden, about utilizing
25 the revised protocol as a basis for analyzing the

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1 adjustments?

2 MR. BRADEN: No, there was not, because
3 the revised protocol had not been subject to any
4 degree of scrutiny by Staff. It was simply not an
5 approach or a mechanism that we could have even
6 attempted, as we did attempt to do with the
7 original protocol -- that we could have even
8 attempted any kind of a credible translation of our
9 data into that format.

10 MR. CROMWELL: Was that because of the
11 date upon which you received the revised protocol
12 in this record?

13 MR. BRADEN: It was in part because of
14 that. We had seen various versions of the revised
15 protocol as reflected in the Staff's testimony
16 prior to that time, but had not done analysis or
17 any attempt to do an audit or accounting
18 adjustments on the basis of that since it was not
19 actually part of the case presented by the Company.
20 The Company's case was presented on the original
21 protocol.

22 MR. CROMWELL: Thank you. I would now
23 like to draw the panel's attention to the
24 Commission's final order. This is the six-state
25 order in dockets UE 020417, and UE 991832, which I

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1 believe has been marked for identification as
2 Exhibit 450.

3 And I would ask the panel members whether
4 they are individually familiar with this order
5 beginning with Ms. Kelly.

6 MS. KELLY: I am not.

7 MR. WIDMER: I am not.

8 MS. OMOHUNDRO: Yes, I am. I am.

9 MR. BRADEN: I have read the order, but I
10 do not have a copy, and it's been such time since I
11 read it.

12 MR. SCHOOLEY: I am generally familiar
13 with the issues, but I haven't read it recently.

14 MR. CROMWELL: And for those
15 representatives of the parties present on the panel
16 who had read the order, had they done so prior to
17 entering into in settlement?

18 MS. OMOHUNDRO: I read the order prior to
19 entering the settlement. I did not read --

20 COURT REPORTER: I'm sorry. I can't hear
21 you. Please use your microphone.

22 MS. OMOHUNDRO: This is Christy Omohundro,
23 Pacificorp. I did not reread it at that time, but
24 I was generally familiar with the order.

25 MR. BRADEN: This is Mr. Braden, and my

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1 response is the same as Ms. Omohundro's.

2 MR. CROMWELL: Do you have that exhibit
3 available to you?

4 JUDGE MOSS: Exhibit 450 with
5 Mr. Falkenberg.

6 MR. BRADEN: I do not.

7 MR. CROMWELL: Could counsel for the
8 witnesses make it available to them, if they have
9 it?

10 JUDGE MOSS: Could we get some copies?

11 MS. SMITH: Your Honor, I could give the
12 panel my copy, but I don't have my copy --

13 MS. OMOHUNDRO: I have a copy as well.

14 JUDGE MOSS: Looks like we're in good
15 shape, but let's give the Bench an opportunity to
16 get its copy.

17 COMMISSIONER OSHIE: What is the exhibit
18 number?

19 JUDGE MOSS: 450. I think we all have it
20 now.

21 MR. CROMWELL: I would ask the party
22 representatives on the panel who previously stated
23 that they had read the order to please turn to page
24 14, and refer to paragraph 30.

25 MS. SMITH: That is 14, counsel?

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1 MR. CROMWELL: 14.

2 Have the panel members had an opportunity
3 to review that?

4 MS. OMOHUNDRO: Yes.

5 MR. BRADEN: Yes.

6 MR. CROMWELL: I would ask them whether
7 they would agree that in this order, the Commission
8 identified the lack of an appropriate basis for
9 interjurisdictional allocation as a key problem?

10 MS. SMITH: Your Honor I object to that
11 question on behalf of Commission Staff. I think
12 that asks Staff to undertake a legal analysis of
13 the Commission's order, and I don't believe that's
14 proper cross-examination.

15 JUDGE MOSS: Well, in terms of the
16 question, the order speaks for itself. That's what
17 it says. So if there's another question, you can
18 follow-up on that. We can all acknowledge the
19 order says what it says.

20 MR. CROMWELL: And I would then ask the
21 settlement panel members whether they had the
22 Commission's concern in mind at the time they
23 entered into the settlement.

24 MR. BRADEN: This is Mr. Braden, and I
25 would respond that we had this concern in mind

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1 throughout the entire case. The allocation issue
2 was a paramount concern for all parties, because
3 virtually every value, every number, every
4 adjustment in this case is dependent to a greater
5 or lesser extent on the methodology used to
6 allocate figures amongst the various jurisdictions
7 where Pacificorp does business. So it has been, as
8 I said, the paramount issue or problem.

9 As the Commission's order pointed out, it
10 is important to have an effective approach to
11 allocation to properly measure costs to serve
12 customers in the state of Oregon. And it would be
13 certainly desirable for the parties to come to
14 agreement on that matter.

15 However, given the schedule of this case,
16 and given the flux with regard to allocation
17 methodology development, as was testified to by
18 Mr. Furman and others, I think that it simply was
19 not possible for the parties to come to common
20 resolution on an appropriate allocation methodology
21 for purposes of this specific case.

22 So, yes, in direct answer to your
23 question, it was given consideration, but
24 unfortunately it was not possible to reach a common
25 agreement on an allocation methodology.

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1 MR. CROMWELL: Ms. Omohundro?

2 MS. OMOHUNDRO: Yes. Pacificorp was aware
3 of and shared that concern. And what we have
4 offered in the settlement proposal is an orderly
5 way to get to an ultimate resolution of the
6 interjurisdictional allocation issue.

7 CHAIRWOMAN SHOWALTER: Ms. Omohundro, can
8 you get closer to the microphone when you are
9 speaking?

10 MS. OMOHUNDRO: Do I need to repeat
11 myself?

12 MR. CROMWELL: My next question would be,
13 then, am I correct that this settlement does not
14 purport to resolve the interjurisdictional
15 allocation issue on a going-forward basis?

16 MR. BRADEN: That is correct.

17 MS. OMOHUNDRO: Yes, that's correct.

18 MR. CROMWELL: And it's my understanding
19 that the settling parties propose to continue a
20 discussion of some form on a going-forward basis on
21 an attempt to resolve this issue?

22 MR. BRADEN: That's correct.

23 MR. CROMWELL: How long would each of the
24 settling parties estimate such a discussion might
25 take?

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1 MR. BRADEN: On behalf of Staff, we don't
2 have an estimate on hand. We do intend to dedicate
3 Staff to working with the Company and other parties
4 immediately on the resolution of this pending
5 present case.

6 MS. OMOHUNDRO: Mr. Furman testified
7 yesterday that it is likely that we would come in
8 for a general rate case in 2005, and we would hope
9 to have this resolved before that time.

10 MR. CROMWELL: So I suppose, just a
11 ballpark for this, if that were true, it would be
12 somewhere in the 6- to 18-month window, somewhere
13 like that?

14 MS. OMOHUNDRO: I can't say for sure.

15 MR. CROMWELL: Ms. Omohundro, in the event
16 that this subsequent discussion or process does not
17 result in an agreement with Commission Staff, let
18 alone other interested parties, would you
19 anticipate, as Mr. Furman indicated, that the
20 Company would file a new rate case in any event,
21 that would then contain the version of the protocol
22 which the Company preferred at the time of that
23 filing?

24 MS. OMOHUNDRO: Let me refer that to
25 Ms. Kelly.

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1 MS. KELLY: This is Andrea Kelly. I
2 think, looking at the Commission Staff's response
3 to data request No. 1.2 on the stipulation, I think
4 we agree with the settlement there that at this
5 time we plan to meet with parties to discuss the
6 issues. We hope that we will be able to reach
7 agreement with the parties.

8 It may be that a separate proceeding is
9 necessary in advance of a rate case. And I think
10 we are open to the process that this Commission
11 would like us to follow in order to get sort of a
12 more orderly resolution of the issues.

13 We are on the verge, it appears, of
14 resolving many of these issues in our states, or at
15 least hearing from the Commissions in each of the
16 states. And I think that will put us in a better
17 place to be able to move forward in Washington to
18 be able to develop a mutually acceptable solution.

19 MR. CROMWELL: Thank you. I would ask
20 Ms. Omohundro and Mr. Braden to return to the six
21 state order, and turn to page 17. And I am looking
22 at paragraph 38, in the middle of the page.

23 Was it your understanding that part of the
24 rationale of the Commission in permitting this rate
25 case was a concern regarding Pacificorp's financial

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1 condition?

2 MS. SMITH: Your Honor, I would object to
3 that question. That asks -- at least on behalf of
4 the Commission Staff, that asks the Staff witness
5 to analyze the Commission's order and offer
6 analysis of that. And that would be a legal
7 opinion, and that's not appropriate for
8 cross-examination.

9 JUDGE MOSS: I don't think it calls for a
10 legal conclusion. The objection is overruled.

11 MR. BRADEN: Can you restate the question,
12 please?

13 MR. CROMWELL: Yes.

14 CHAIRWOMAN SHOWALTER: And will you refer
15 to a particular paragraph?

16 MR. CROMWELL: I apologize. I referred to
17 page 38, in the middle of line 17. And my question
18 to Ms. Omohundro and Mr. Braden is whether it was
19 their understanding that part of the Commission's
20 justification for permitting the rate case we are
21 now in was a concern regarding the Company's
22 financial circumstances or performance, if you
23 prefer.

24 MS. OMOHUNDRO: I believe the order speaks
25 for itself. It says that given its projected

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1 returns during future periods, the Company's
2 financial performance in Washington through the
3 rate plan period bears on our consideration of
4 whether Pacificorp should remain subject to the
5 rate plan's moratorium through 2005.

6 MR. BRADEN: I would interpret it
7 personally as having that intent, that there's some
8 concern about the revenue flow for the company.

9 MR. CROMWELL: I would ask you to turn to
10 the next page, page 18, and looking at paragraph 42
11 which carries over onto page 19, as well as
12 paragraph 43, and ask the similar question.
13 Whether it is your opinion that part of the
14 Commission's concern was regarding the
15 accountability. And I believe the quote would be,
16 "The Commission's ability to achieve a thorough and
17 comprehensive understanding of Pacificorp's
18 financial circumstances," closed quote.

19 MS. OMOHUNDRO: My understanding of this
20 paragraph is that the Commission was concerned that
21 since the Company had not had a fully examined,
22 full general rate case proceeding since 1986, that
23 a general rate case was desirable in the near
24 future.

25 MR. CROMWELL: Mr. Braden.

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1 MR. BRADEN: I would agree that that was
2 the issue. And I think that is actually one of the
3 drivers behind the degree of specificity and
4 accountability in the order that we're proposing.

5 MR. CROMWELL: Ms. Omohundro, in your last
6 response you stated "a full general rate case since
7 1986," how are you defining a full general rate
8 case?

9 MS. OMOHUNDRO: It's somewhat of a
10 subjective definition, but I would say that in this
11 case we have gone through the full process of
12 discovery. Staff has analyzed and reviewed the
13 Company's costs, and the parties have subsequently
14 filed their own testimony on the case.

15 And I do think when the Commission talks
16 about a fully examined -- talking about having our
17 costs fully examined, that full examination has
18 taken place in this case.

19 MR. CROMWELL: How are you distinguishing
20 that from the rate case that the Company filed in
21 1999?

22 MS. OMOHUNDRO: I was not there for that
23 rate case, and maybe I can refer to that Ms. Kelly.

24 MS. KELLY: One of the differences is that
25 no testimony was filed on behalf of Staff, or any

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1 other intervening parties in that past case. And
2 so there was -- a settlement was reached in advance
3 of that sort of investigation into the Company.

4 MR. CROMWELL: I would ask the panel to
5 turn back to the settlement document itself,
6 Exhibit 3, and referring to page five, section
7 10-A, titled "Cost of Capital."

8 Ms. Kelly, are you aware that the
9 Commission Staff and Public Counsel had jointly
10 retained Mr. Hill to testify regarding cost of
11 capital?

12 MS. KELLY: I am aware of the testimony,
13 yes.

14 MR. CROMWELL: And am I correct in reading
15 the settlement that the only two figures regarding
16 cost of capital provided by the settlement are the
17 \$3.5 million revenue requirement adjustment, and
18 the overall rate of return of 8.39 percent?

19 MS. KELLY: I believe that's true, but I'm
20 probably not the best witness on the panel to
21 respond to that.

22 MR. CROMWELL: And who would that be, in
23 your opinion?

24 MS. KELLY: I think probably the two
25 policy witnesses, Ms. Omohundro and Mr. Braden.

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1 MR. CROMWELL: I would pose the same
2 question to Ms. Omohundro and Mr. Braden, whether,
3 to the best of your knowledge, the only two figures
4 provided by the settlement regarding cost of
5 capital are the three and a half million revenue
6 adjustment, and the overall rate of return of 8.39
7 percent?

8 MR. BRADEN: Those are the only two
9 numbers contained in that provision. That is
10 correct. And that is the only provision that
11 specifically addresses the cost of capital.

12 MS. OMOHUNDRO: Yes, that's correct.

13 MR. CROMWELL: So including the, I think
14 it was panel four through panel seven, what we have
15 identified as Exhibits 4 through 7 as well, there
16 are no other references or figures that directly
17 inform this Commission or the parties as to any
18 other element of cost of capital not disclosed in
19 this narrative description?

20 MR. BRADEN: Yes, that was intentionally
21 done, because the section you are citing on cost of
22 capital points out there was not an agreement
23 between the parties on the variable components
24 associated with cost of capital. And in the
25 interest of compromise, the approach you have

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1 identified here is the one that was taken, which
2 was a minimalist approach to capturing the revenue
3 component.

4 MR. CROMWELL: So we have neither capital
5 structure, or return on equity or rate base
6 provided?

7 MR. BRADEN: That's correct. Excuse me, I
8 correct my statement. That rate base was not
9 referred to in here, but there's other information
10 concerning rate base.

11 MR. CROMWELL: To clarify the record, that
12 would be in the attachment to the settlement
13 document, Exhibit 4. Do you have that
14 identification?

15 MR. BRADEN: Yes.

16 MR. CROMWELL: Thank you. I would ask
17 Ms. Omohundro and Mr. Braden to return to Exhibit
18 450, on page 12, at paragraph 26.

19 MR. BRADEN: Excuse me. Is that the
20 order?

21 MR. CROMWELL: Yes.

22 MS. OMOHUNDRO: Which paragraph?

23 MR. CROMWELL: Paragraph 26, on page 12.

24 And for your convenience, I will be going back and
25 forth between 450 and Exhibit 1 -- or I am sorry,

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1 Exhibit 3.

2 JUDGE MOSS: I think we're ready.

3 MR. CROMWELL: Ms. Omohundro and
4 Mr. Braden, is it your understanding that included
5 in the unresolved questions identified by the
6 Commission in that paragraph were questions of
7 prudence?

8 MS. OMOHUNDRO: Yes.

9 MR. BRADEN: Yes, I would agree.

10 MR. CROMWELL: And returning to Exhibit 3,
11 the settlement, if you would now look at page 6,
12 subsection C, titled Prudence of Resource
13 Acquisitions, am I correct in understanding that
14 the settlement does not propose to resolve the
15 question of the prudence of resources acquired
16 since 1986 in Pacificorp's eastern control area?

17 MR. BRADEN: That's correct, because of
18 the allocation issue not being resolved. The need
19 or the appropriateness of making a prudence
20 determination with regard to the inclusion of any
21 or any portion of eastern control area resources in
22 Washington rates is dependent upon the allocation
23 methodology selected.

24 The allocation methodology debate required
25 us to defer that issue until the allocation

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1 methodology is presented for full bedding before
2 the Commission.

3 MS. OMOHUNDRO: I would just add the
4 resources identified for this paragraph were the
5 subject of a joint Company-Staff report, and the
6 recommendation was that these resources have been
7 determined to be prudent for the system.

8 MR. CROMWELL: Thank you.

9 JUDGE MOSS: Let me pause here, and see if
10 I can clarify something in my mind. It says -- I'm
11 looking at the same paragraph in the settlement, C.
12 It says, "Due to Staff's use of a control area
13 approach as the basis for cost allocation and its
14 revenue requirement recommendation, Staff does not
15 take a position with respect to the prudence for
16 purposes of Washington rates of those resources
17 acquired since 1986 located in the Company's
18 eastern control area." And then there's a list.

19 But my understanding -- and I assume
20 that's the testimony you are referring to,
21 Mr. Braden, when you say the settlement is not
22 resolving that. But my understanding was that the
23 agreement among the parties was to rely not on the
24 control area approach, but on the common basis of
25 the original protocol. So how do we square those

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1 two concepts?

2 MR. BRADEN: It is difficult to square
3 them, and that is inherent in the disagreement
4 between the parties as to proper allocation. When
5 it came to resource evaluation, we struck somewhat
6 of a compromise in terms of, as Ms. Omohundro
7 stated, acknowledging the propriety of those
8 resources on a system basis, which is more akin to
9 the protocol approach.

10 But because of our ongoing concern about
11 the application or use of those resources for
12 Washington customer service, we insisted upon, in
13 this instance, turning back to the hybrid model, in
14 part because we simply had not done the analysis
15 that would have been required to evaluate the use
16 of those resources for Washington customer service
17 in our hybrid analysis earlier.

18 And our attempt to convert our hybrid into
19 a protocol model had not gone back and done the
20 sort of resource analysis that would have been
21 required to do so because of time constraints.

22 So in this instance there is a disconnect,
23 if you will, Your Honor, that points out that there
24 is a system determination that Staff supports. But
25 in terms of Washington usage, only the portion that

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1 we analyzed, which is the western control area
2 portion, was considered prudent for Washington
3 customer service.

4 JUDGE MOSS: I guess I'm trying to
5 understand the interplay of allocation and
6 prudence. On the other hand, I understand that
7 Staff is not resolving the allocation issue through
8 the settlement, or the parties are not proposing
9 that that issue be finally resolved.

10 But if I understood what you just said, it
11 is that Staff agrees that it was prudent for the
12 Company to require these resources on a system
13 basis?

14 MR. BRADEN: Yes, that was the subject of
15 the joint report that was previously developed that
16 conclusion.

17 JUDGE MOSS: Well, let's assume for the
18 moment that the Commission makes that determination
19 in an order. What impact does that have for the
20 future in terms of -- let's say, the allocation
21 discussions fall apart and Staff challenges the
22 revised MSP, or the MSP revised protocol filing
23 that the Company makes in its rate case in 2005.

24 What issue do we have before us then? Is
25 it simply whether those costs were properly

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1 allocated to Washington, or is it the underlying
2 issue of whether those assets prudently acquired?

3 MR. BRADEN: It's essentially the first
4 portion of that, Your Honor, as to whether or not
5 those costs are properly allocatable to Washington.

6 JUDGE MOSS: Thank you. Sorry for the
7 interruption, Mr. Cromwell. Go ahead.

8 MR. CROMWELL: I would never brook you
9 that opportunity, Your Honor.

10 Ms. Omohundro, if you could turn next to
11 page 7 of the settlement agreement, Exhibit 3, and
12 in section 12, regulatory assets and deferred
13 debits, subsections B and C are Trail Mountain and
14 environmental remediation.

15 It's my understanding from discussions off
16 the record that it would be appropriate to ask you
17 a number of procedural questions regarding those
18 matters.

19 MS. OMOHUNDRO: Yes, that's correct.

20 MR. CROMWELL: Yes. And also in the Joint
21 Testimony Exhibit 1 that was filed with the
22 Commission, these matters are taken up at page 18
23 continuing over onto 19. Is it correct that on
24 October 13 of 2003, Pacificorp filed petitions with
25 this Commission seeking approval to account for and

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1 accumulate \$46.3 million for the Trail Mountain
2 Mine, and to accumulate an as yet undetermined
3 amount in the millions of dollars for the purposes
4 of environmental remediation?

5 MS. OMOHUNDRO: Well, on October 13 we
6 filed petitions for an accounting order that asked
7 the Commission to recognize the accounting
8 treatment of these items. There's no knew
9 accumulation that is anticipated by these
10 accounting orders, except for ongoing supplemental
11 remediation costs.

12 These costs, Trail Mountain and
13 environmental remediation costs were part of this
14 case, and were examined by the parties.

15 MR. CROMWELL: And just to make the record
16 clear, the filings we were discussing were made in
17 dockets UE 031657 and UE 031658, correct?

18 MS. OMOHUNDRO: Yes, that's correct.

19 MR. CROMWELL: And am I also correct in my
20 understanding that there have been no further
21 filings or activities in those dockets?

22 MS. OMOHUNDRO: I believe there hasn't,
23 other than informal discussions.

24 MR. CROMWELL: Perhaps Mr. Schooley could
25 respond.

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1 MR. SCHOOLEY: Staff did conduct some
2 discovery on those dockets at the time it was
3 filed.

4 MR. CROMWELL: Have any other documents,
5 analyses, Staff memoranda been filed in those
6 dockets?

7 MR. SCHOOLEY: No.

8 MR. CROMWELL: So as to these issues, the
9 parties are relying on the record in this
10 proceeding in requesting as part of the settlement
11 that these two issues be approved as part of the
12 proposed settlement; is that correct?

13 MS. OMOHUNDRO: Yes. And let me step back
14 for a minute here. The rate plan entered into by
15 the parties subsequent to the last general rate
16 case had this provision in it. And it said, on
17 page 7 of the rate plan, or the stipulation -- I
18 don't know if people have this before them -- "The
19 Company shall ensure that items currently treated
20 as regulatory assets under authorizations from
21 other states that are proposed for inclusion in
22 Washington at the end of the rate plan period are
23 supported by necessary accounting authorizations in
24 Washington."

25 So the reason that we filed these

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1 accounting petitions was to meet the provision,
2 this provision of the rate plan. The environmental
3 remediation costs, the request for accounting
4 treatment is consistent with prior Commission
5 precedent on this matter, and we had input from
6 Staff on that. So it conforms to prior Commission
7 precedent.

8 And the Trail Mountain costs are costs
9 that are currently being accounted for on the
10 Company's books, and were the subject of this
11 proceeding and the subject of Mr. Weston's
12 testimony.

13 MR. SCHOOLEY: To that -- this is Tom
14 Schooley of Commission Staff. If the Commission
15 wishes to refer to prior orders concerning
16 environmental remediation, those would for Puget
17 Sound Power & Light, UE 911476 and for Washington
18 Natural Gas, UG 920781.

19 MR. CROMWELL: Thank you. Ms. Kelly, am I
20 correct in understanding that the settling
21 parties -- I'm sorry. I should state as a matter
22 of law that the Company, which has this legal
23 right, has committed to extending the extension
24 period as reasonably necessary in the event that
25 further process is required?

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1 MS. KELLY: I believe there's a section of
2 that in the stipulation. But, again, my area of
3 focus on this panel is specifically on the
4 multi-state process issues.

5 MR. CROMWELL: All right. If we could
6 turn to page 21 of the Joint Testimony, Exhibit 1,
7 and I am looking at lines 14 through 20. Which of
8 the Company representatives who are a member of the
9 panel before us today is prepared to address this
10 issue?

11 MS. OMOHUNDRO: I can address it.

12 CHAIRWOMAN SHOWALTER: Ms. Omohundro, can
13 you please get -- either project your voice more,
14 or get the mic closer, because I can just barely
15 hear you.

16 MS. OMOHUNDRO: I am sorry.

17 MR. CROMWELL: I apologize. I'm not clear
18 on -- perhaps it would have been useful to identify
19 who wrote what section of the testimony or the
20 settlement. But Ms. Omohundro, can you tell me, am
21 I correct in understanding that the Company has
22 committed to extending the suspension period as
23 reasonably necessary in the event that any further
24 process before the Commission is required?

25 MS. OMOHUNDRO: This section provides that

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1 the Company agrees to consider extending the
2 suspension period as reasonably necessary to
3 accommodate the process contemplated by WAC
4 480.07.750(2)(a). And subject to the condition
5 that if the suspension period is extended, that
6 parties agree that an appropriate interim measure
7 would be to permit the revised rate increase to be
8 implemented, subject to refund, pending final
9 determination in the case.

10 MR. CROMWELL: So just so the record is
11 clear, are you stating on behalf of the Company
12 that the Company is willing to consider extending
13 the period, or the Company will commit to extending
14 the suspension period as reasonably necessary?

15 MS. OMOHUNDRO: I believe we committed to
16 that in the last prehearing conference on this
17 docket.

18 MR. CROMWELL: And am I also correct in
19 understanding that the settling parties are
20 requesting that the rates that they propose in this
21 settlement would go into effect, subject to refund,
22 in the event that the settlement is either
23 rejected, or conditioned in a manner that one or
24 more of the settling parties find unacceptable?

25 MR. BRADEN: This is Mr. Braden speaking

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1 on behalf of Staff. The settlement agreement
2 states that we agree that would be an appropriate
3 measure, and that would be a recommendation, on
4 behalf of the settling parties, to the Commission.

5 MS. OMOHUNDRO: Let me back up for a
6 second. It provides that in the event that the
7 Commission authorizes a different revenue
8 requirement increase or a revised rate increase,
9 that that amount would be put into place subject to
10 refund at the end of this proceeding.

11 MR. CROMWELL: Is it the settling parties'
12 belief that the record now before the Commission
13 would justify interim rate relief?

14 MS. OMOHUNDRO: The parties aren't asking
15 for interim rate relief as it's traditionally
16 defined by this Commission.

17 MR. CROMWELL: Mr. Braden?

18 MR. BRADEN: I concur.

19 MR. CROMWELL: May I ask which of the
20 settling -- excuse me. May I ask which of the
21 Company representatives on the panel participated
22 in the settlement discussions which resulted in the
23 settlement document?

24 MS. OMOHUNDRO: The three of us
25 participated, with several other members of the

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1 Company.

2 MR. CROMWELL: May I ask you,
3 Ms. Omohundro, is it correct that prior to that
4 meeting, neither ICNU, Public Counsel, the Energy
5 Project, or the Citizen's Utility Alliance were
6 invited to participate in that discussion?

7 MS. OMOHUNDRO: The Company has contacted
8 ICNU and Public Counsel, and Staff, at various
9 points in this proceeding to explore the
10 possibility of settlement.

11 This particular meeting was intended to
12 discuss certain issues in the Staff's case that we
13 had found that there needed to be adjustments made
14 or possibly errors corrected. And the meeting was
15 to discuss those issues with Staff. So, no, Public
16 Counsel were not included.

17 JUDGE MOSS: Do you have more than five
18 more minutes?

19 MR. CROMWELL: Excuse me, Your Honor?

20 JUDGE MOSS: Do you have more than five
21 minutes?

22 MR. CROMWELL: I think I probably do.

23 JUDGE MOSS: Then let's take our morning
24 recess, and we will come back at two minutes after
25 the hour.

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1 (Brief recess.)

2 JUDGE MOSS: Let's go briefly on the
3 record and take care of these. We had just
4 discussed off the record that my notes, at least,
5 did not reflect the action with respect to Exhibits
6 26 and 27, identified as cross exhibits by Public
7 Counsel for Ms. Johansen, whose testimony was
8 adopted by Mr. Furman. Was there any objection by
9 the Company?

10 MR. VAN NOSTRAND: No, Your Honor.

11 JUDGE MOSS: There being no objection, we
12 will mark them and admit them now.

13 (EXHIBIT 26 & 27 ADMITTED.)

14 JUDGE MOSS: And Mr. Cromwell had
15 indicated he would like to move the admission of
16 Exhibits 8 through 11. Is there any objection to
17 any of those?

18 MS. SMITH: No, Your Honor.

19 JUDGE MOSS: So those will be admitted as
20 marked.

21 (EXHIBIT 8 to 11 ADMITTED.)

22 MS. DAVISON: I have one remaining exhibit
23 that has not been admitted. I would like to move
24 for the admission of that, Exhibit 12.

25 JUDGE MOSS: Is that objected to? If

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1 there's no objection --

2 MS. SMITH: Your Honor, I don't have
3 Exhibit 12.

4 MS. DAVISON: It was passed out yesterday.
5 It's the transcript of the oral argument.

6 JUDGE MOSS: Let's be off the record
7 again.

8 (Discussion off the record.)

9 JUDGE MOSS: Let's be back on the record
10 and let Mr. Cromwell continue with his questions
11 for the panel.

12 MR. CROMWELL: Thank you, Your Honor.

13 Ms. Omohundro, before the break, I believe
14 you made a statement regarding the communications
15 between the Company and nonsettling parties
16 regarding settlement; is that correct?

17 MS. OMOHUNDRO: Yes.

18 MR. CROMWELL: And is it your testimony
19 that Pacificorp had discussions with Public Counsel
20 prior to the settlement meeting that resulted in
21 this settlement?

22 MS. OMOHUNDRO: Yes.

23 MR. CROMWELL: And with whom were those
24 conversations?

25 MS. OMOHUNDRO: I had a conversation with

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1 Simon ffitch, and with Mary Kimball prior to the
2 time that Public Counsel filed its case.

3 MR. CROMWELL: So that would be before the
4 date of the responsive testimony?

5 MS. OMOHUNDRO: Right.

6 MR. CROMWELL: And at the settlement
7 meetings -- well, let's be clear. For the record,
8 what was the date that the Company met with
9 Commission Staff?

10 MS. OMOHUNDRO: August 18.

11 MR. CROMWELL: And am I correct, then,
12 that the parties that we previously identified, the
13 nonsettling parties were not invited to that
14 meeting prior to its commencement?

15 MS. OMOHUNDRO: Yes, I believe I said that
16 before.

17 MR. SCHOOLEY: I would tend to not
18 characterize it as such. Ms. Davison was in the
19 building at that time, and was talking with us at
20 the noon hour. And she was attending a different
21 meeting. I told her about the meeting we were
22 having, and she knew that was in effect.

23 And I did ask her if she would like to
24 attend it at that time. She had this other meeting
25 to go to, and we were discussing accounting

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1 adjustments. She declined, and went to the other
2 meeting. I did --

3 JUDGE MOSS: Let's pause for a moment.

4 (Discussion off the record.)

5 JUDGE MOSS: All right. We have had some
6 conference here at the bench.

7 Mr. Cromwell, we don't see any point in
8 pursuing this line of questioning. It doesn't
9 matter, frankly. We understand what transpired.
10 We have been told and went through this extensively
11 at the prehearing conference the other day, and it
12 has no relevance to what is before us.

13 So let's move on to the more substantive
14 material and focus on that.

15 MR. CROMWELL: Thank you, Your Honor.
16 Well, I would direct this question to the panel.

17 Is it true that the proposed settlement
18 does not identify specific adjustments advocated by
19 ICNU, Public Counsel, the Energy Project, and the
20 Citizens Utility Alliance as being incorporated
21 into the terms of the proposed settlement?

22 MS. OMOHUNDRO: No. That is not true.

23 MR. CROMWELL: Ms. Omohundro, would you
24 please direct my attention to the specific
25 adjustments advocated by Public Counsel that are

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1 incorporated into the settlement agreement?

2 MS. OMOHUNDRO: I apologize. Did you ask
3 for ICNU and Public Counsel adjustments?

4 MR. CROMWELL: Actually, my original
5 question was stated broadly to include all of the
6 nonsettling parties, and the adjustments they had
7 advocated in this proceeding, but for illustrative
8 purposes, let's focus on the adjustments advocated
9 by Public Counsel witnesses.

10 And could you identify for me the specific
11 adjustments recommended by either Mr. Hill,
12 Mr. Lazar, or Mr. Dittmer that are specifically
13 identified and incorporated in this settlement
14 agreement?

15 MS. OMOHUNDRO: If you look at the
16 attachment A to the settlement agreement, there are
17 two adjustments that are identified as Public
18 Counsel adjustments; both working capital, and the
19 IRS settlement.

20 MR. CROMWELL: And Ms. Omohundro, are you
21 aware that both working capital and IRS settlement
22 are matters that are comprised of a great many
23 elements?

24 MS. OMOHUNDRO: Certainly.

25 MR. CROMWELL: And is it true that this

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1 settlement agreement does not identify which of
2 these specific adjustments recommended by the
3 Public Counsel witnesses are reflected, if any, in
4 this settlement agreement?

5 MR. OMOHUNDRO: Could you restate the
6 question? I'm not sure I understand it.

7 MR. CROMWELL: Sure. Which are the --
8 which of the working capital adjustments proposed
9 by Public Counsel witness Dittmer are reflected in
10 this settlement agreement?

11 MR. SCHOOLEY: The settlement agreement
12 does not identify specific working capital
13 adjustments. It was agreed upon in the
14 negotiations that some level of working capital
15 would be allowed in rate base, but not anything
16 identified by any given individual or witness of
17 either of the parties?

18 MR. CROMWELL: So am I correct in
19 understanding, Mr. Schooley, that while in the
20 column of attachment A to the settlement agreement
21 the settling parties have identified working
22 capital and IRS settlement as adjustments that
23 reflect Public Counsel adjustments, there is no
24 specific identification of which of Mr. Dittmer's
25 proposed adjustments in those areas are, in fact,

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1 specifically reflected in the settlement agreement?

2 MR. SCHOOLEY: Working capital adjustment
3 contains no identification as to how a number was
4 arrived at, neither by my testimony nor by
5 Company's witness nor by Mr. Dittmer.

6 MR. CROMWELL: So to speak very generally,
7 if we assume for purposes of this discussion that
8 Mr. Dittmer made a dozen working capital
9 adjustments, you cannot tell this Commission that
10 it was adjustments 8 through 12 that were reflected
11 in the settlement agreement?

12 MS. SMITH: Your Honor, I think that --
13 this is Shannon Smith. I'm going to object to that
14 question. It's been asked and answered by the
15 witness twice already.

16 JUDGE MOSS: Sustained.

17 MR. CROMWELL: Mr. Braden is it your
18 opinion that as to the allocation issue, this
19 settlement constitutes a placeholder?

20 MR. BRADEN: I'm sorry. I don't
21 understand what you mean by placeholder.

22 MR. CROMWELL: What is your understanding
23 of what this settlement does regarding interstate
24 cost allocation?

25 MR. BRADEN: I would say it totally defers

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1 the determination to subsequent negotiations and
2 proceedings.

3 MR. CROMWELL: How would you define a
4 placeholder?

5 MS. SMITH: Your Honor, I'm going to
6 object to that. That was a term used by counsel.
7 If counsel wants to define it, and ask the witness
8 what he thinks about it, that might be a better way
9 to go.

10 JUDGE MOSS: Sustained.

11 MR. CROMWELL: Mr. Braden, can you
12 identify for the Commission who participated in the
13 Pacificorp MSP process on behalf of the Commission
14 Staff?

15 MR. BRADEN: I'm not able to do that. My
16 tenure with the Staff is of such a recent nature
17 that I do not have the history on that.

18 MR. CROMWELL: Would you accept, subject
19 to check, that none of the Commission Staff members
20 of this panel participated in the Commission's
21 representation at the Pacificorp MSP process?

22 MR. BRADEN: I would not. It's impossible
23 for me to identify that in this context.

24 MR. CROMWELL: Are you stating it's
25 impossible for you to identify which of the

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1 employees under your direction and control have
2 been performing functions relevant to this
3 proceeding addressed in this settlement?

4 MR. BRADEN: There may be members outside
5 of the Energy Group who participated.

6 MS. SMITH: I would like to object, and I
7 should have done so a question ago. And perhaps
8 Public Counsel can explain what he means by
9 participate, whether Public Counsel means attended
10 meetings, or had some other input with respect to
11 the issues that came from meetings.

12 Participate is pretty broad, and perhaps
13 Public Counsel could be more specific as to what is
14 meant by participate.

15 JUDGE MOSS: I would like to know where
16 you are going. What difference does it make who
17 participated on behalf of the Commission? How does
18 that help inform us with respect to whether the
19 settlement is a good idea or not?

20 MR. CROMWELL: Well, Your Honor, I think
21 there are a number of issues implicated, including
22 the fact that there are party witnesses who did
23 participate in the MSP process on behalf of the
24 Commission Staff as I previously indicated, I
25 believe, with Mr. Furman. And I wish to make the

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1 record clear as to exactly -- as to my
2 understanding of who the Commission Staff's
3 representatives were at MSP proceeding.

4 And perhaps Ms. Kelly can best address
5 this. But, frankly, I believe it is my
6 understanding that the Commission Staff's
7 representatives, and indeed the team addressing MSP
8 issues on behalf of this Commission independent of
9 this proceeding, were Ms. Steal (ph), who is no
10 longer with the Energy side of the Commission --

11 JUDGE MOSS: Why does it matter? That's
12 my question to you.

13 MS. SMITH: And, Your Honor, if I might
14 also interject a follow-on objection, Commission
15 Staff doesn't see how this is relevant. And in the
16 second place, we have a panel of the witnesses who
17 are supporting this settlement. And the settlement
18 is the four corners of the settlement. And what
19 other Staff may have participated in at earlier
20 phases of MSP before this rate case was even filed
21 just makes this line of questioning even more
22 irrelevant.

23 JUDGE MOSS: Mr. Hemstad has a comment.

24 COMMISSIONER HEMSTAD: I was going to
25 pursue this same point. We have a product in front

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1 of us that we're trying to understand. And I don't
2 think your process questions really are advancing
3 that at all.

4 MR. CROMWELL: I appreciate that. If I
5 may, your Honor, it is my understanding that
6 Mr. Garcia was also a member of the Commission
7 Staff's MSP group. It's also my understanding --

8 CHAIRWOMAN SHOWALTER: Mr. Cromwell, you
9 are starting to testify now. If the issue is at
10 the moment what is in the settlement document, the
11 allocation issues are very important and we are
12 interested in them. Ask these witnesses here what
13 they know or don't know or what their views are or
14 aren't about allocation. That's entirely a
15 legitimate inquiry.

16 Who did what when is not. There are going
17 to be other witnesses coming along who also may
18 have views on the allocation issues which are
19 important. But why does it matter who went to what
20 meetings for purposes of examining what this
21 settlement does or doesn't do about allocation
22 issues?

23 MR. CROMWELL: And, Your Honor, I believe
24 the relevance is that none of the members of the
25 panel presented to you for consideration in support

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1 of this settlement were substantively involved in
2 the Commission Staff's MSP process.

3 MS. SMITH: Your Honor, again, we have put
4 on our settlement panel witnesses. They are the
5 ones here testifying in support of the settlement,
6 and I don't see how their participation, or the
7 participation of other Staff members, or even the
8 participation of the Commission Staff's policy
9 advisor is anywhere near relevant to the settlement
10 agreement and this testimony supporting the
11 settlement agreement.

12 MR. SCHOOLEY: If it furthers the
13 discussion, I've been involved in Pacificorp
14 allocation issues for over 10 years, including a
15 meeting in July of 2003.

16 MR. CROMWELL: Your Honor, I can move on.

17 CHAIRWOMAN SHOWALTER: Why don't you ask
18 Mr. Braden or Mr. Schooley about the allocation
19 issues. What they know, they know, and what they
20 don't know, they don't know. But ask about the
21 substance.

22 JUDGE MOSS: And it sounds like
23 Mr. Schooley might be the witness, because he's
24 been participating for a number of years, and
25 Mr. Braden is fairly recent.

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1 MR. CROMWELL: What has the Washington
2 Commission's position regarding interstate cost
3 allocation been in the Pacificorp MSP process?

4 MR. SCHOOLEY: You are asking about what
5 the Commission's position has been? I'm not
6 entirely certain of that. Although I know they are
7 very interested in it, and they have had
8 representatives at MSP meetings.

9 MR. CROMWELL: But you don't know what the
10 Commission Staff -- excuse me, what the Washington
11 State Commission's position regarding MSP is, so
12 you weren't involved in the Commission Staff's MSP
13 process?

14 MR. SCHOOLEY: I was involved in -- excuse
15 me. I'm sorry.

16 MS. SMITH: Your Honor, I object to this.
17 And I would like Public Counsel to be very clear
18 that the witnesses can testify on behalf of
19 Commission Staff. But as a separate advocacy
20 party, these witnesses cannot testify on behalf of
21 the Commission.

22 So I would prefer that all questions
23 directed with respect to the MSP process be
24 directed as from the perspective of Commission
25 Staff. Because none of these witnesses can testify

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1 from the perspective of the Commission, and that
2 would be improper in their role as advocacy staff
3 in this docket, anyway.

4 JUDGE MOSS: Well, there is a valid
5 distinction that you draw, and so we have that as
6 part of our record.

7 But to focus things, perhaps, a little bit
8 more, Mr. Cromwell, what we may be concerned about
9 in terms of our inquiry in this proceeding is the
10 position that the parties are advocating through
11 their settlement. And if you wish to perhaps draw
12 some contrast between that position, to the extent
13 there is one, and positions the parties have taken
14 on an advocacy basis, we have the testimony on that
15 that is subject to cross-examination and those are
16 the legitimate areas of inquiry.

17 And beyond that, I don't think we have a
18 legitimate area of inquiry. To inquire into the
19 Commission's long participation in the MSP process
20 over the course of many years, I don't see how that
21 bears on where we are today. Where we are today is
22 the positions that have been advocated in this
23 case.

24 MR. CROMWELL: I believe the matters are
25 related in that the Commission Staff's

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1 participation in the MSP process over the last few
2 years would presumably inform their position in
3 this proceeding if the Staff involved in the two
4 were coincidence or identical in some cases.

5 My line of inquiry was directed at
6 determining whether the Commission Staff members
7 presented as a part of this panel had any knowledge
8 or participation in the Commission's prior and
9 ongoing MSP process in determining whether that
10 informed this agreement that was reached that is
11 now before the Commission.

12 JUDGE MOSS: Then you can ask that
13 question. You can ask Mr. Schooley whether his
14 position as a member of this panel supporting the
15 settlement, was informed by his prior involvement.
16 And then you have an answer, and we can move on.

17 MR. CROMWELL: Thank you.

18 Mr. Schooley, what has been the Commission
19 Staff's position in the Pacificorp MSP process?

20 MR. SCHOOLEY: Commission Staff's
21 participation in both the earlier Pacificorp
22 interjurisdictional task force on allocations and
23 the multi-state process has always been to arrive
24 at the fair determination of what resources served
25 Washington customers.

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1 MR. CROMWELL: And as that policy goal has
2 been reflected in the positions that the Washington
3 State Commission Staff has taken in the MSP
4 process, what position has the Washington
5 Commission Staff taken regarding interstate cost
6 allocations in the Pacificorp MSP process?

7 MS. SMITH: Your Honor, we're going far
8 afield again. Perhaps the questions can be
9 directed to the settlement as opposed to this long
10 process.

11 JUDGE MOSS: Yeah, I think that's right,
12 Mr. Cromwell. That's the point I was trying to
13 make a moment ago. The concerns we have here are
14 those that are before us in this case, which is the
15 settlement. And to the extent the witness has
16 taken a different position in direct testimony that
17 we're admitting, we can ask about that, I suppose.

18 But this is a process that's been going on
19 for about 18 years. We don't need to march through
20 the history of everybody's position over the course
21 of 18 years, which has shifted dramatically even in
22 the context of this original protocol or revised
23 protocol. There are discussions, at least, about
24 second revised protocols.

25 It's a dynamics process. We don't need to

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1 examine the history of that process. We're
2 concerned about what is here in this case. So
3 let's don't go there. It will take an inordinate
4 amount of time.

5 MR. CROMWELL: Thank you, Your Honor.

6 Mr. Schooley, does the settlement
7 agreement reflect the position that the Commission
8 Staff took in its responsive testimony?

9 MR. SCHOOLEY: No, it does not. And
10 there's no position taken in the settlement
11 agreement as to what allocation issue is
12 appropriate for ongoing Pacificorp operations.

13 MR. CROMWELL: Does the settlement
14 agreement reflect the position taken by the
15 Commission, the Washington State Commission Staff
16 in the long-running Pacificorp MSP process?

17 MS. SMITH: I object to that on the same
18 grounds that, again, the ongoing process is
19 ongoing. It's been years and years. People have
20 changed positions and ideas.

21 And I think Public Counsel got the answer
22 that the position taken by Staff in its prefiled
23 testimony is somewhat different than what is in the
24 settlement, and the settlement doesn't reflect an
25 ongoing allocation methodology. I think that's the

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1 relevant answer. And what happened, and what the
2 position has been over the years is not relevant.

3 JUDGE MOSS: As I understand the
4 settlement agreement, Mr. Cromwell, the matter is
5 not finally resolved. It is deferred to another
6 day. And we have had considerable testimony to
7 that effect today. And so if that's what the
8 settlement agreement does, clearly it does not
9 reflect Staff's position at any point in time,
10 including presently, as to what should be firmly
11 and forever fixed, if that's the goal, as the
12 allocation methodology.

13 So, again, I don't see the point of
14 pursuing this line of questioning.

15 MR. CROMWELL: Then I have no further
16 questions, Your Honor.

17 JUDGE MOSS: Good. Then I can shut up.

18 So let's move on to Ms. Davison's
19 questions for the panel, irrespecting the
20 settlement piece. And then we will be up against
21 the noon recess, I imagine.

22

23 CROSS EXAMINATION

24

25 MS. DAVISON: Good morning. I'm Melinda

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1 Davison for Industrial Customers of Northwest
2 Utilities. I will try to direct my questions as
3 best I can.

4 Mr. Braden, notwithstanding the settlement
5 agreement, is it correct that Staff still supports
6 a hybrid approach to the allocation methodology?

7 MR. BRADEN: We prefer -- we use the term
8 control area as opposed to hybrid, because there's
9 connotations with hybrid that are somewhat
10 different.

11 But with that correction in mind, we
12 supported the use of the control area approach for
13 purposes of Staff's direct case. But in the nature
14 of that analysis, we pointed out that we did not
15 support it for any use other than as an interim
16 measure for resolution of this particular case. We
17 do not see it as a viable model going forward.

18 MS. DAVISON: You don't see control areas
19 as a viable model going forward? Did I understand
20 that correctly?

21 MR. BRADEN: That's correct. It's spelled
22 out in a number of places, including my testimony,
23 that it is simply an interim proposal for
24 resolution of the pending case absent a better
25 methodology.

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1 MS. DAVISON: So how should we
2 interpret -- are you still standing behind the
3 direct testimony that Staff filed with regard to
4 the allocation methodology in the recommendations
5 you made to the Staff in that testimony?

6 MR. BRADEN: In terms of the
7 recommendation that the protocol not be accepted as
8 a methodology, and that the control area be used as
9 an interim tool to resolve this case, yes. That
10 was the extent of our recommendations.

11 MS. DAVISON: Could you identify in your
12 testimony where you recommend that control area be
13 utilized as an interim --

14 MR. BRADEN: If you give me a moment. In
15 my testimony, beginning on page 10, there's a
16 section identified Transitional Costs.

17 MS. SMITH: Mr. Braden, if we could get a
18 moment to make sure everybody is with you. And the
19 exhibit number, I believe, is 561.

20 JUDGE MOSS: Why don't you give us a page
21 again.

22 MR. BRADEN: I'm looking on page 10 of my
23 testimony, subpart Roman numeral III, identified as
24 Transitional Cost Methodology. In general, that
25 entire discussion relates to the proposal by Staff

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1 that they use a western area control area
2 methodology or hybrid model for the purposes of
3 this case.

4 But at the very bottom of page 11 on
5 page -- line 19, it states that "For the reasons
6 expressed in Staff's testimony, Staff strongly
7 recommended that the Commission use the control
8 area allocation methodology only as a transitional
9 tool in this case."

10 Then goes on to suggest that Staff and the
11 Company and others work on developing a more
12 effective long-term allocation methodology for the
13 future.

14 MS. DAVISON: But sitting here today,
15 Staff is not willing to accept the revised protocol
16 as that long-term methodology solution; is that
17 correct?

18 MR. BRADEN: That is correct.

19 MS. DAVISON: In the settlement agreement,
20 it states that the Company will use the revised
21 protocol as the basis for routine regulatory
22 filings with the Commission. Could you explain
23 what filings are encompassed by routine regulatory
24 filings?

25 MR. SCHOOLEY: This is Tom Schooley. I

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1 can respond to that. The types of filings would be
2 the annual report, FERC report one, the Commission
3 basis report, until such time as a new methodology
4 is agreed upon by the parties.

5 MS. DAVISON: Do you have any views as to
6 what that means for purposes of how the Commission
7 should look at allocation issues that may come up
8 in the interim before there is an agreed upon
9 allocation methodology?

10 MR. SCHOOLEY: I am sorry. I don't
11 understand the question.

12 MS. DAVISON: Well, let me put it in a
13 more specific context. Are you aware that when
14 Pacificorp filed for its deferred power costs that
15 one of the issues the Commission had in evaluating
16 whether the Company was entitled to those deferred
17 power costs was the fact that there was not an
18 agreed-upon interjurisdictional allocation
19 methodology? Do you recall that?

20 MR. SCHOOLEY: Yes.

21 MS. DAVISON: And let's assume that
22 between now and the time that the Commission or the
23 parties agree on an allocation methodology,
24 assuming that that is possible, that the Company
25 comes in and files for deferral of power costs, for

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1 example. How should the Commission treat the
2 allocation methodology for purposes of evaluating
3 whether or not they should grant such a deferral?

4 MR. SCHOOLEY: It would raise the same
5 issues that were raised in the 2002 docket, or
6 whatever that was. So I think there would be a
7 substantial disagreement as to what amount should
8 be deferred, if any, at that time. I don't know
9 what the outcome would be.

10 MS. DAVISON: Thank you. Has Staff
11 reviewed the revised protocol in any detail?

12 MR. SCHOOLEY: No.

13 MS. DAVISON: Did Staff conduct any
14 discovery on the revised protocol?

15 MR. SCHOOLEY: Not to my knowledge.

16 MS. DAVISON: Can you tell us, then, on
17 what basis Staff concluded that it's appropriate to
18 use the revised protocol for the routine regulatory
19 filings of the Company?

20 MR. SCHOOLEY: We made no adjustment as to
21 the allocation method itself. We did recognize the
22 Company's need to efficiently process their filing
23 requirements with their various states, and gave
24 them the opportunity to do so with one allocation
25 methodology.

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1 MS. DAVISON: Why didn't you utilize the
2 original protocol to at least have some consistency
3 in the state of Washington?

4 MR. SCHOOLEY: The original protocol has
5 never been used for any filings in Washington,
6 except in rate case, and it's not been used in any
7 other states that I know of.

8 MS. DAVISON: But isn't it correct that
9 the revenue requirement that you are recommending
10 the Commission adopt in this case is based on the
11 original protocol?

12 MR. SCHOOLEY: The exhibits supporting the
13 revenue requirement are using protocol as a common
14 basis to show a means to arrive at a revenue
15 requirement. Neither the Company nor the Staff
16 view protocol as a permanent solution to allocation
17 issues.

18 MS. DAVISON: But isn't it correct that
19 the revenue requirement that you are recommending
20 that the Commission adopt in this proceeding be
21 based on original protocol?

22 MS. SMITH: Objection, Your Honor. That
23 question has been asked and answered by the
24 witness.

25 MS. DAVISON: I didn't get an answer to

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1 it.

2 JUDGE MOSS: I will overrule the
3 objection.

4 MR. SCHOOLEY: I would say no. I think we
5 presented a means to arrive at a revenue
6 requirement increase of \$15.5 million. The problem
7 we arrived at in looking at how to derive, even in
8 the discussion of adjustments that we were trying
9 to see where there could be compromise on, was that
10 we had different means to arrive at an adjustment,
11 and different allocations which would cause
12 differences in the numbers. Even the per books
13 number changes as you change allocations.

14 So to further a negotiation of even
15 adjustments on an adjustment by adjustment basis,
16 Staff offered to use protocol as a common basis.
17 And from that point we were able, then, to discuss
18 individual adjustments without arguing whether that
19 was a \$1,021,000 number or \$1,022,000 number. It
20 simplified the process of discussions greatly.

21 MS. DAVISON: So to perhaps use an
22 overused term, could I assume from your answer that
23 as it relates to this issue, that the settlement
24 reflects a black box settlement on this point?

25 I would prefer Mr. Schooley answer, and

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1 then you can follow up.

2 MR. SCHOOLEY: I would say, no, it
3 doesn't. We have clearly laid out a path from a
4 per books number plus adjustments to arrive at a
5 revenue requirement. We could have, in our
6 discussions, agreed upon a revenue requirement
7 number. And the Company could have presented its
8 path on how to get to that number, and Staff could
9 have presented its path to get to that number.

10 It would be the same number, all the
11 components would be different. It would leave the
12 Commission with a very difficult decision as to
13 whether that was fair by whatever standards they
14 would like to use. So we agreed upon the use of
15 one starting point and proceeded from that point.

16 MS. DAVISON: And what allocation
17 methodology is specifically adopted for purposes of
18 this revenue requirement that you are recommending
19 in this settlement?

20 MS. SMITH: I object to the question -- I
21 object to the form of the question. The settlement
22 spells out expressly that it doesn't adopt any
23 allocation methodology, and Mr. Schooley has
24 testified that the settlement is premised on using
25 protocol as a starting point for a common point of

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1 adjustment. But there has been no adoption of an
2 allocation method in the settlement.

3 MS. DAVISON: And I would say, then, if
4 there is no allocation adopted, then it looks like
5 a black box on that issue, and I am trying to
6 follow-up on that point.

7 JUDGE MOSS: But that's beginning to get
8 argumentative. We have the testimony, and we have
9 the settlement agreement, and we know how it's
10 structured in this regard.

11 So I don't see how the point of pursuing
12 the argument -- you can make the argument in
13 post-hearing opportunities, whatever they turn out
14 to be.

15 MS. DAVISON: I would like to turn to
16 Exhibit 12. That is the oral argument transcript
17 from UM 1050. And could you turn to page 20,
18 please.

19 MS. SMITH: Ms. Davison, is this addressed
20 to the entire panel, or to the Staff witnesses?

21 MS. DAVISON: My question is addressed to
22 Staff.

23 MS. SMITH: Could we have some foundation
24 with respect to their familiarity with this
25 document, or the issues that are presented in the

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1 document?

2 MS. DAVISON: I think you should wait for
3 my question before you object on the basis of
4 foundation.

5 JUDGE MOSS: Let's have the question.

6 MS. DAVISON: Do you have that page?

7 MR. BRADEN: Yes, we have it.

8 MS. DAVISON: Could you read lines 11
9 through 20, please, to yourself.

10 MR. BRADEN: (Complies.)

11 MR. SCHOOLEY: (Complies.)

12 MS. DAVISON: And I should say as a way of
13 foundation that this is a transcript of an oral
14 argument in UM 1050, which is the Oregon MSP
15 docket. And the paragraph I just had you read is a
16 statement by Mr. Galloway on behalf of Pacificorp.

17 My question to you is whether you agree
18 with Mr. Galloway's statement to the Oregon
19 Commission that the revised protocol is the
20 mechanism for reporting and the method that will be
21 used in Washington until agreement is reached in
22 Washington on a substitute method?

23 MR. BRADEN: I would not agree with the
24 latter part of that statement.

25 MS. DAVISON: Thank you. I would like to

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1 move the admission of Exhibit 12.

2 JUDGE MOSS: No objection, it will be
3 admitted.

4 (EXHIBIT 12 ADMITTED.)

5 MS. DAVISON: And Mr. Braden, how would
6 you characterize what would be utilized in
7 Washington until an agreement is reached?

8 MR. BRADEN: Utilized for what purpose?

9 MS. DAVISON: Interjurisdictional
10 allocation.

11 MR. BRADEN: Well, there will be no
12 interjurisdictional allocation decisions per se
13 until such time as a subsequent forum addresses
14 those issues. In terms of reporting requirements,
15 I think the agreement speaks for itself that they
16 will report on the basis of the revised protocol,
17 and retain the ability to answer inquiries from
18 Staff on any other accounting basis that Staff
19 chooses to investigate.

20 MS. DAVISON: Thank you.

21 Ms. Kelly, is it correct that the original
22 protocol or revised protocol would lower the
23 revenue requirement for Washington as compared to
24 modified accord?

25 MS. KELLY: I don't know offhand, and I

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1 don't know what time period you are talking about.

2 MS. DAVISON: I would be referring to the
3 future, say 2005 forward.

4 MS. KELLY: I don't have that information
5 in front of me. I'm not the witness on the revenue
6 requirement impacts.

7 MS. DAVISON: You are not aware of the
8 series of studies that have been performed and
9 discussed over the past several months in the large
10 MSP process meetings, and the impacts on original
11 protocol or revised protocol which is currently
12 under discussion as it relates to Washington
13 revenue requirements?

14 MS. KELLY: I am aware of the studies, but
15 I do not have them in front of me. Mr. Taylor is
16 the witness on the revenue requirement impacts on
17 the different protocols, and their comparison to
18 modified accord.

19 MS. DAVISON: So you personally do not
20 know whether the revenue requirement would
21 generally be higher or lower under revised protocol
22 as opposed to modified accord?

23 MS. KELLY: As I answered, I don't know
24 specifically what time frame you are talking about.
25 There are differences in different years, and I

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1 don't have the information in front of me.

2 MS. DAVISON: Let's try more specifically.

3 For the period 2005 through 2011, do you know

4 generally whether the revenue requirement for

5 Washington would be higher or lower under revised

6 protocol as compared to modified accord?

7 MS. KELLY: If you would like to get

8 Mr. Taylor's Exhibit 8 and hand it out, it speaks

9 for itself and has been entered into the record.

10 As I have stated three times, I don't have that in

11 front of me, and I don't know generally which years

12 the impacts move in which direction.

13 MS. DAVISON: Okay. Is it correct that

14 the revised protocol would lower the Washington

15 revenue requirement as compared to the protocol?

16 MS. KELLY: During what time frame?

17 MS. DAVISON: For this particular rate

18 case, for this revenue requirement for this

19 settlement agreement.

20 MS. KELLY: As Mr. Furman testified

21 yesterday, we do not know.

22 MS. DAVISON: Well, isn't it correct that

23 there's testimony in this case that the revenue

24 requirement would be approximately \$2.5 million

25 less under revised protocol as compared to original

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1 protocol, and isn't it correct that Mr. Furman
2 testified yesterday that because there is a \$10
3 million reduction in the revenue requirement that
4 the \$2.5 million would be lower?

5 MS. KELLY: I believe he testified that he
6 didn't know what the number would be.

7 MS. DAVISON: But isn't it correct that it
8 would be lower?

9 MS. KELLY: I don't know. We haven't run
10 the study. We did run the study, and as Mr. Furman
11 discussed, we ran the study on the Company's
12 rebuttal case as part of a response to a data
13 request.

14 Again, Mr. Taylor, being the witness on
15 that. And it was approximately two and a half
16 million dollars as cited in Mr. Furman's testimony.
17 What the impacts would be as a result of the
18 stipulation has not been calculated.

19 MS. DAVISON: How could the number
20 possibly be anything but lower under revised
21 protocol as compared to original protocol, whether
22 it is in the context of the stipulation or the
23 Company's rebuttal case?

24 MS. KELLY: I don't know. One of the
25 things we have learned as part of this is that

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1 there are counterintuitive impacts when you run
2 studies through different allocation methodologies.
3 And I can't offhand testify that it will definitely
4 be lower, but that was the trend for the test
5 period on the Company's filed case. What it would
6 be under the stipulation, we don't know.

7 MS. DAVISON: But isn't it correct that
8 the only variable that is changing is the number?
9 Allocation methodology is the same, the only thing
10 that is changing is the approximately \$25 million
11 going down to approximately \$15.5 million?

12 MS. KELLY: No, because each of the
13 components of the revenue requirement that have
14 changed have different impacts under the different
15 methodologies.

16 MS. DAVISON: Did Staff investigate
17 whether adopting revised protocol for settlement
18 purposes would have produced a lower revenue
19 requirement for Washington rate payers?

20 MR. BRADEN: As was previously testified
21 to, we have not done extensive analysis on revised
22 protocol, and did not do that.

23 MS. DAVISON: I would like to turn to the
24 page of the settlement agreement, page 6, section
25 C.

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1 JUDGE MOSS: Which is Exhibit No. 3.

2 MS. DAVISON: Thank you.

3 JUDGE MOSS: And you referred us to page
4 6, I believe?

5 MS. DAVISON: Yes, Your Honor, paragraph
6 C.

7 JUDGE MOSS: Thank you.

8 MS. DAVISON: Mr. Braden, you testified
9 earlier this morning about Staff's views on the
10 treatment of the resource acquisitions. And if I
11 recall your testimony correctly, you said something
12 to the effect that the settlement agreement is
13 recommending that the resources are prudent on a
14 system basis, but that they are not necessarily
15 prudent on a Washington state basis. Did I
16 understand that correctly?

17 MR. BRADEN: I didn't use the term
18 prudence in both contexts. I used the term cost
19 allocation as to whether those costs are properly
20 allocated to Washington customers, not whether the
21 resource in and of itself was prudently developed
22 and built and operated.

23 So there's somewhat of a fine line in the
24 terminology there. But it really has to do with
25 whether or not the cost of those resources will be

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1 paid for in part by citizens of Washington.

2 MS. DAVISON: Could you explain how we
3 should interpret paragraph C with regard to the
4 prudence of those resources for purposes of putting
5 them in a Washington revenue requirement?

6 MR. BRADEN: Well, it states quite clearly
7 that the Hermiston-James River projects, which are
8 included in the grouping of projects determined to
9 be prudent on a system basis are also determined to
10 be appropriate for inclusion in Washington rates.

11 MS. DAVISON: How about West Valley and
12 Gadsby? Are you determining that West Valley and
13 Gadsby are prudent for purposes of including them
14 in the Washington revenue requirement?

15 MR. BRADEN: I believe the agreement,
16 again, speaks for itself, stating that that
17 determination is reserved for subsequent
18 proceedings in the event that eastern control area
19 resources are determined to provide benefit to the
20 state of Washington.

21 MS. DAVISON: But my question -- let me
22 try it again -- is a little more specific.

23 Leaving the allocation methodology aside,
24 has Staff determined that West Valley is a prudent
25 resource?

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1 MR. BRADEN: Within the limitations
2 specified in the settlement agreement, yes.

3 MS. DAVISON: And on what basis has Staff
4 concluded that West Valley is prudent?

5 MR. BRADEN: I would defer that to
6 Mr. Buckley who made that determination, and his
7 direct testimony. And I believe you have him up
8 for cross-examination. I'm not able to get into
9 the details of that determination.

10 MR. WIDMER: This is Mark Widmer, and I
11 think testimony filed in this case by Mr. Tallman
12 and the numerous exhibits included with his
13 testimony provide substantial evidence of the
14 prudence of the West Valley resources.

15 MS. DAVISON: Well, my question is going
16 toward Staff's evaluation of that. Isn't it
17 correct that the prudence of the resources that
18 have been acquired since 1986 is based on the Joint
19 Report, which is dated December 2003, Prudence
20 Review of Generating Resources Acquired Since 1986?
21 It's an attachment by Mr. Widmer.

22 Is that what is being referred to here in
23 paragraph C as supporting the prudence of those
24 resources?

25 MR. BRADEN: As to the resources included

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1 in that report, that's correct.

2 MS. DAVISON: And isn't it correct that
3 the report doesn't include West Valley or Gadsby?

4 MR. BRADEN: That's my understanding.

5 MS. DAVISON: If the Commission adopts the
6 settlement agreement, is it correct that the
7 Company's Washington rates will include the costs
8 associated with the resources for the eastern
9 control area that have been acquired since 1986?

10 MR. BRADEN: Yeah, I am not capable of
11 answering that question.

12 MS. DAVISON: Can you answer it,
13 Mr. Schooley?

14 MR. SCHOOLEY: As I mentioned in the
15 earlier statement, the revenue requirement arrived
16 at does not consider the specifics to that level of
17 detail. Staff can arrive at the same revenue
18 requirement by vastly different means, so I would
19 not state unequivocally that the eastern control
20 area resources are included in rates.

21 MS. DAVISON: So as it relates to this
22 issue, could one conclude that this is a black box
23 settlement on this point?

24 MR. SCHOOLEY: On which point? That
25 certain exact resources are included in rates?

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1 MS. DAVISON: On the point of the eastern
2 control area resources, and whether, in fact, the
3 revenue requirement includes those resources.

4 MR. SCHOOLEY: I guess I don't understand
5 what you mean by black box on this point.

6 As I understood that term to be used in
7 general, it means that the total determination of a
8 revenue requirement has not been identified.

9 If you lay out a number of adjustments in
10 order to arrive at the revenue requirement, I would
11 say, no, there's no black box here. You can see
12 how power costs in total, how various adjustments
13 are used to derive the revenue requirement. And
14 that should give the Commission means of
15 determining the fairness and reasonableness of the
16 rates.

17 So as to which resources those are, I
18 don't think that's a great relevance at that point.

19 MS. DAVISON: So just so we're clear,
20 based on the answer you just provided, one cannot
21 specifically conclude whether or not the costs of
22 West Valley, for example, are included in this
23 recommended revenue requirement?

24 MR. SCHOOLEY: Yes.

25 MS. DAVISON: Thank you.

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1 JUDGE MOSS: How much more do you have?

2 MS. DAVISON: Quite a bit.

3 JUDGE MOSS: That's a fair answer. And I
4 guess -- well, it's 12:00, so let's take our noon
5 recess, and we will resume at 1:30.

6 (Lunch recess taken.)

7 JUDGE MOSS: Let's be on the record.

8 MR. VAN NOSTRAND: Your Honor, during the
9 break I distributed a document in connection with
10 Exhibit 509 to deal with the authentication issue.
11 It's a letter from EEI acknowledging a mistake was
12 made, and authorizing either issuing an errata page
13 or they would authorize that change to be made.
14 And with that, I would move the admission of 509.

15 JUDGE MOSS: All right. Mr. Cromwell I
16 understand from our off-the-record levity during
17 the lunch break that you still have issues with
18 this?

19 MR. CROMWELL: Yes, Your Honor. My
20 question regarding this exhibit, if we turn to page
21 3, the first page that purports to have some
22 significant information on it, the fourth column --

23 CHAIRWOMAN SHOWALTER: What exhibit is
24 this?

25 JUDGE MOSS: Exhibit 509 with Mr. Lazar.

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1 MR. CROMWELL: The fourth column that
2 purports to represent the typical bills and average
3 rates, while the title or the heading in the upper
4 left corner indicates this is a cents-per-kilowatt
5 hour, it does not tell us what criteria EEI is
6 using in determining what it's considering to be a
7 typical bill.

8 My other concern about this comparison is
9 that, at least based on a cursory review, it does
10 not appear to include other Washington utilities,
11 namely the Public Utility District. It does not
12 appear to include the Canadian utilities, both of
13 whom might present a more relevant comparison for
14 PacifiCorp's rates here in the Northwest.

15 JUDGE MOSS: The testimony concerned
16 investor-owned utilities. So to the extent it
17 doesn't reflect the Public Utility District, or
18 whatever, what have you, I don't think that's
19 particularly significant to us.

20 You have your point of record, and you can
21 make your arguments concerning the significance of
22 this. And how significant PacifiCorp's ranking is
23 in terms of its rates relative to the utilities,
24 I'm not sure anyway.

25 So what I'm hearing from you does not

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1 strike me as something that is really an objection.
2 It's the qualifications arguments you might want to
3 make concerning the weight we might want to afford
4 any argument that is drawn from this particular
5 exhibit.

6 MR. CROMWELL: I would agree as to
7 the latter points I made regarding the relevance of
8 the exhibit or the weight the Commission should
9 give to it.

10 I think it is still a foundational -- I
11 think it is properly a foundational objection that
12 the report on its face, nor the letter that Mr. Van
13 Nostrand has provided, identifies for the
14 Commission what the criteria EEI is using in
15 determining what its inputs are for this rate
16 for -- hypothetically speaking, are they saying a
17 1,000 kilowatt hour customer on an annual basis is
18 typical, and that's who they are including?

19 Are they taking the distribution curve,
20 slicing standard deviation off, and using everybody
21 in the middle? I simply don't know, and I don't
22 think this Commission knows how EEI is slicing the
23 data that it's aggregating and representing in this
24 document.

25 So to the extent I have an evidentiary

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1 foundation, it would be on that point, that the
2 exhibit purports to present what is alleged to be a
3 typical bill, but does not provide this Commission
4 with the information that EEI is using in how it's
5 determining what it is calling a typical bill.

6 JUDGE MOSS: Well, we have that on the
7 record. And to the extent any objection remains,
8 I'm going to overrule the objection and we will
9 allow this Exhibit 509, I think it is.

10 And we have previously -- did we
11 previously admit the others, or are all Mr. Lazar's
12 issues still at issue? They are all still at
13 issue, aren't they?

14 Oh, I recall now. 509 was raised with
15 another witness. That's why we took it up earlier.
16 So fine, that resolves that. And we will take up
17 the other exhibits as appropriate.

18 (EXHIBIT 509 ADMITTED.)

19 JUDGE MOSS: Let me swear Mr. Lazar, and
20 we will get on with it.

21

22 JIM LAZAR,
23 having been first duly sworn, was examined and
24 testified as follows:

25

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1 JUDGE MOSS: Please be seated. Thank you.

2

3 DIRECT EXAMINATION

4

5 BY MR. CROMWELL:

6 Q Good afternoon, Mr. Lazar. Would you
7 state your name and address for the record?

8 A Jim Lazar, L-a-z-a-r.

9 Q Could you bring your microphone to your
10 mouth, please?

11 A My name is Jim Lazar. My address is 1063
12 Capital Way, South, Suite 202, Olympia, Washington
13 98501.

14 Q And on whose behalf are you appearing?

15 A On behalf of Public Counsel.

16 Q And did you prepare what has been marked
17 for identification as Exhibit 501-C, your
18 confidential direct testimony, and what has been
19 marked as 512, your JL2, and 513 your JL3 exhibits?

20 A Yes, I did.

21 Q And do you have any changes or corrections
22 to make to that testimony?

23 A There are two minor corrections. The
24 first is at the bottom of page 14, a couple of
25 numbers that were transposed.

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1 Q Please wait a moment for everyone to get
2 there.

3 A Page 14, line 16, the number 34 should
4 read 21. And on line 17, the number 21 should read
5 34.

6 JUDGE MOSS: Well, I am confused. My line
7 16 does say 21, and my line 17 does say 34. Are
8 those the correct numbers? Mine reads as follows
9 on line 16: "of-state electricity customers would
10 cost Washington rate payers \$21 million per year if
11 the control area approach were adopted by the
12 Commission, and \$34 million per year if the
13 rolled-in method were adopted."

14 THE WITNESS: Well, maybe everyone but me
15 and a few other people got the corrected version.

16 JUDGE MOSS: Well, we have the corrected
17 version.

18 THE WITNESS: The other correction is on
19 page 15 at line 20. There is a reference to Public
20 Counsel data request 219. I'm not sure where that
21 came from. It should be 146.

22 JUDGE MOSS: Okay.

23 THE WITNESS: Those are my only
24 corrections.

25 Q BY MR. CROMWELL: And with those

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1 corrections, Mr. Lazar, is your testimony true and
2 correct to the best of your knowledge?

3 A Yes, it is.

4 Q And if I were to ask you today the same
5 questions that are posed in your direct testimony,
6 would your answers be the same today?

7 A Yes, they would.

8 MR. CROMWELL: Your Honor, at this time I
9 would move the admission of 501-C, 512, and 513.

10 (EXHIBITS 501, 512, 513 OFFERED.)

11 JUDGE MOSS: To clear up one thing, my
12 recollection is that while this was initially filed
13 as confidential testimony, it has since been
14 revised in the sense that it is no longer
15 confidential?

16 MR. CROMWELL: Your recollection is better
17 than mine in that regard, Your Honor.

18 JUDGE MOSS: My recollection is that you
19 had originally designated the entire testimony as
20 confidential, and we had some back and forth
21 earlier in the proceeding. And the result of that
22 back and forth is none of it is confidential. And
23 Mr. Van Nostrand is confirming that point for me.

24 MR. VAN NOSTRAND: That's correct, Your
25 Honor.

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1 JUDGE MOSS: So 501, 512 and 513, and
2 there being no objection, those will be admitted.

3 (EXHIBIT 501, 512, 513 ADMITTED.)

4 MR. CROMWELL: Thank you. At this time I
5 would like to offer surrebuttal testimony regarding
6 the settlement.

7 JUDGE MOSS: Hang on for just a second.
8 We're missing some testimony. Give us a minute.

9 We're off the record momentarily.

10 (Brief recess.)

11 JUDGE MOSS: All right. We will be back
12 on the record. We have all the papers we need now.

13 MR. CROMWELL: Thank you, Your Honor.

14 Q BY MR. CROMWELL: Mr. Lazar, I would like
15 to ask you a couple of questions regarding the
16 settlement. Do you have that in front of you?

17 A Yes, I do.

18 Q And for the record, Exhibit 3, the
19 settlement agreement between Pacificorp, Commission
20 Staff, and NRDC, turning to page 3, section 8 on
21 interjurisdictional cost allocation, do you have an
22 opinion regarding the terms of the settlement
23 agreement?

24 A Yes. First of all, the use of the
25 protocol method is very different from either what

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1 the Staff's original testimony advocated, or what
2 the Staff had advocated earlier in discussions,
3 what I expected the Staff to present in this
4 proceeding, and is a method that I find
5 inappropriate and unacceptable for Pacificorp.

6 It fails, in my opinion, the principles
7 that were set forth in the original merger
8 approval.

9 Q Why is that?

10 A The original merger approvals in
11 Washington and Oregon were -- expressed concern,
12 and I have quoted those in my testimony, about the
13 effect of averaging costs between the historical
14 Western Pacific Power System, and the historical
15 Eastern Utah Power System.

16 The protocol method does a a fair amount
17 of that type of averaging, to the adverse position
18 of Washington rate payers. And the Washington
19 merger agreement, which I was a witness in that
20 case, was sort of premised on a no-harm standard,
21 as I understood it at the time. And the Oregon
22 approval was more of a net-benefit standard. And
23 the protocol method, I think, doesn't meet that
24 threshold.

25 Q Do the terms of the settlement agreement

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1 regarding interstate cost allocation change any of
2 the opinions contained in your testimony?

3 A No, they do not. I continue to recommend
4 that hydro resources located in the state of
5 Washington have both the costs and generation
6 allocated to the state of Washington, and the same
7 for hydro resources located in other states.

8 Q In the event that the Commission approves
9 the settlement agreement, do you have an opinion on
10 when rates should be allowed to increase, if some
11 increase is, in fact, ordered?

12 A My opinion, the appropriate time for rates
13 to change would be at the end of the rate plan
14 period; that is, at the end of 2005.

15 Q Is it correct that you were retained by
16 the Commission for purposes of Washington State's
17 participation in the MSP process?

18 A Yes, I was.

19 Q And what position were you directed to
20 advocate for on behalf of Washington State?

21 MS. SMITH: Your Honor, I am going to
22 object to this on the same grounds that I objected
23 earlier. What occurred at the MSP isn't relevant
24 with respect to this settlement.

25 MR. CROMWELL: With all due respect, Your

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1 Honor, Mr. Lazar in his testimony cited to his
2 experience representing the Commission as part of
3 the predicate for his testimony. I believe it's a
4 reasonable grounds for inquiry as substantive
5 surrebuttal to the settlement agreement.

6 CHAIRWOMAN SHOWALTER: Isn't it already in
7 the testimony?

8 MR. CROMWELL: No. He cited to his
9 participation on behalf of the Commission Staff in
10 the MSP process. I do not believe his testimony
11 states what that position was.

12 CHAIRWOMAN SHOWALTER: Well, isn't that
13 the difference? His experience is his --
14 presumably in his testimony to reflect on his
15 credibility and expertise as a witness. What his
16 opinion was at that time, why is that relevant to
17 what is in front of us now?

18 MR. CROMWELL: I think the question goes
19 to whether the settlement agreement that is now
20 before the Commission, and the policy decisions
21 that it reflects in terms of what the settling
22 parties are advocating the Commission do, that the
23 relevant question is whether the position Mr. Lazar
24 was advocating in the MSP process and the opinions
25 expressed in his direct testimony are affected by

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1 the settlement agreement. And that's what I am
2 trying to probe.

3 CHAIRWOMAN SHOWALTER: That's a dual --
4 why isn't the question, what is Mr. Lazar's opinion
5 of the allocation issues in the settlement? Why is
6 what his opinion or version was outside the
7 confines of the proceeding relevant?

8 MR. CROMWELL: I believe they are relevant
9 to the formulation of Mr. Lazar's opinion.

10 MS. SMITH: And I might --

11 JUDGE MOSS: We're going to sustain the
12 objection. We had this discussion earlier,
13 Mr. Cromwell. What is relevant in this proceeding
14 is the position. To the extent I'm talking about
15 Staff's position, Staff is one of the settling
16 parties. So the Settlement allocation methodology
17 is what it is. And that's what we're talking
18 about.

19 So let's keep focused on that. And what
20 someone may have advocated in the past, whether a
21 member of our Staff or someone the Commission Staff
22 hired, simply isn't relevant to what is before us
23 today.

24 MR. CROMWELL: Thank you, Your Honor. Did
25 you want to --

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1 MS. DAVISON: Your Honor, if I could just
2 ask a question in terms of your general statement
3 about relevance. There is a lot of evidence in
4 this record that the Company has put into this
5 record regarding the overall MSP process, and the
6 process that is going on, and has been going on in
7 the various states.

8 I shouldn't interpret that to mean that
9 that is an improper area of inquiry, should I?

10 JUDGE MOSS: You can inquire about the
11 direct testimony that's been put into the record,
12 to the extent we have to have some factual inquiry
13 about it to eliminate our effort.

14 But my only point is what is relevant in
15 terms of allocation in this proceeding right now is
16 to the extent that the settlement agreement
17 involves the use, in some fashion or another, of an
18 allocation methodology, then clearly that is
19 relevant. It's where we are today as of the filing
20 of this case.

21 And the history and so on and so forth
22 is -- it's interesting, but it's where we are today
23 in this case that matters, that is relevant.
24 That's what we're going to decide.

25 MS. DAVISON: Thank you.

0401

1 Q BY MR. CROMWELL: Mr. Lazar, do you have
2 any other concerns regarding the terms of this
3 settlement agreement?

4 A Yes, I do. I find it to be nonresponsive,
5 to the very explicit direction that the Commission
6 gave in the previous proceeding, the 020417
7 proceeding.

8 In the sixth supplemental order in that
9 proceeding, at paragraph 31, the Commission said
10 that the reason for having a general rate case was
11 to come up with an explicit allocation methodology.

12 "The absence of an allocation methodology,
13 however, is one reason, as we discuss later, that a
14 general rate case is desirable."

15 At paragraph 43, they reiterated their
16 concern from the '99 proceeding that the Company
17 hasn't been closely scrutinized in a general rate
18 proceeding in nearly two decades.

19 I think I may be -- no, Mr. Duvall may
20 have been at the '86 proceeding, too, so I'm not
21 alone in going back that far among the people in
22 the room. But we're a lonely few.

23 This settlement has no well-defined rate
24 base, no capital structure, no return on equity, no
25 resolution of interstate cost allocation methods.

0402

1 As Mr. Braden testified, it's deferred.

2 If the goal of the Commission was to have
3 a general rate case and resolve things like rate
4 base, and rate of return, and capital structure,
5 and operating expenses, and interstate cost
6 allocation, the settlement doesn't get there. It's
7 too vague. It's a black box.

8 MR. CROMWELL: Thank you. Nothing
9 further, Your Honor.

10 JUDGE MOSS: Thank you. So we have some
11 cross-examination from Pacificorp, I imagine?

12 MR. GALLOWAY: We do. In the first
13 instance, I would like to move the admission of
14 cross-examination exhibits 502, 503, 504, 505, 506,
15 507, 508, 510 and 511.

16 (EXHIBIT 502-508, 510, 511 OFFERED.)

17 JUDGE MOSS: Any objection?

18 MR. CROMWELL: No objection, Your Honor.

19 JUDGE MOSS: They will be admitted.

20 (EXHIBIT 502-508, 510, 511 ADMITTED.)

21

22 CROSS EXAMINATION

23

24 BY MR. GALLOWAY:

25 Q Good afternoon, Mr. Lazar.

0403

1 A Hello.

2 Q Could you describe for us, please, what
3 the term traditional approach means to you?

4 A Traditional approach to what? Maybe you
5 can draw me to a paragraph in my testimony.

6 Q Well, I am actually talking about the
7 first paragraph of your testimony where you -- I am
8 sorry. Actually it is line 15 of page 1 where you
9 refer to a traditional approach.

10 And I am asking you sort of generally what
11 the term "traditional approach" means to you.

12 MR. CROMWELL: Objection; misstates the
13 testimony. If Mr. Galloway and I are on the same
14 page and line, Mr. Lazar's testimony reads, quote,
15 "the traditional 'control-area' approach."

16 JUDGE MOSS: This is the area of the
17 testimony you are referring to, Mr. Galloway?

18 MR. GALLOWAY: It is.

19 JUDGE MOSS: Allright. With that
20 clarification, the witness can answer the question.

21 THE WITNESS: To me, it means that the
22 resources that are allocated to various states are
23 the resources that serve those states, and are part
24 of the interconnection of resources that gets
25 dispatched to serve customer needs in those states.

0404

1 Q BY MR. GALLOWAY: If Judge Moss had
2 started these proceedings by suggesting that we
3 have a period of joint calisthenics, would you
4 characterize that as a traditional approach?

5 MR. CROMWELL: Objection; relevance.

6 CHAIRWOMAN SHOWALTER: I am not
7 understanding. The mic is not close enough to you.
8 I didn't understand the question. What was the
9 question?

10 MR. CROMWELL: Could we restate the
11 question?

12 MR. GALLOWAY: My question was -- and I am
13 trying to explore what his use of the word
14 traditional means, and I was asking if Judge Moss
15 had suggested that we commence with a joint
16 calisthenics, if that would be a traditional
17 approach to these proceedings.

18 MR. CROMWELL: Objection.

19 JUDGE MOSS: Sustained.

20 Q BY MR. GALLOWAY: Mr. Lazar, is not an
21 element of traditional that something has been done
22 before?

23 A Yes, I think so.

24 Q And similarly you use, in the rest of that
25 paragraph, the suggestion that the control area

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1 approach for allocation be, quote, retained. Do
2 you see that?

3 A Yes.

4 Q And doesn't the word retained imply that
5 somehow something was adopted in the first place?

6 A Yes. And I believe that's the case here.

7 Q And you have described the control area
8 approach as traditional in the beginning of your
9 testimony. Can you cite to any time that this
10 Commission has allocated costs based on separate
11 control areas?

12 A At the time of the '86 proceeding it was
13 my understanding at that time -- and I don't recall
14 anything in the record that suggested otherwise --
15 that Pacificorp had a single control area. And
16 that's what was being allocated on the '86 order,
17 which was -- Exhibit 510 reflects the Commission
18 adopting an allocation approach for the six
19 Pacificorp states.

20 I understand now that perhaps then, or
21 perhaps subsequent to '86, the Wyoming system has
22 operated as a separate control area. But at the
23 time it was not my understanding that there was
24 were two control areas. It was my understanding
25 there was a six-state coordinated system, and that

0406

1 power from Dave Johnston, power from Wyodak flowed
2 into the system to serve the loads of the six
3 states.

4 Q Mr. Lazar, you apparently did not
5 understand my question. I had --

6 MR. CROMWELL: Objection; argumentative.

7 JUDGE MOSS: Let him get his question out,
8 Mr. Cromwell.

9 MR. GALLOWAY: I tried to give Mr. Lazar a
10 chance to answer, even though it was unresponsive.

11 Q BY MR. GALLOWAY: My question was whether
12 there was any time that this Commission had
13 allocated costs for utility based on separate
14 control areas.

15 A Yes, I -- actually, my testimony refers to
16 some examples involving waste management.

17 Q Waste management?

18 A Yes.

19 Q Where is that?

20 A I didn't cite the proceedings.

21 Q This is garbage we're talking about?

22 A Solid waste utility, yes, that has a
23 multi-state -- in fact, multi-national system.

24 Q Control area?

25 A And the resources that serve Washington

0407

1 customers are those allocated to Washington
2 customers, and those that do not do not.

3 The term control areas means one thing for
4 an electric utility; conceptually could mean
5 approximately the same thing to any other utility
6 that have resources that serve customers.

7 Q Have you ever heard the term control area
8 used in a garbage case?

9 A The terminology is a little different; the
10 concept isn't.

11 Q And where do you cite to these garbage
12 cases?

13 MR. CROMWELL: Your Honor, I am going to
14 ask that Mr. Galloway use the terminology that the
15 Commission does, which, I believe, is solid waste.
16 I believe his use of the term garbage is
17 argumentative, and decided to be pointedly
18 humorous.

19 JUDGE MOSS: I think we all understand the
20 relationship between solid waste and garbage.

21 And I do think it's appropriate that the
22 parties maintain their decorum of the proceedings
23 by refraining from giving in to their senses of
24 humor. So if you feel the need to laugh out loud,
25 please leave the room.

0408

1 THE WITNESS: Yes, it's on the second page
2 of Exhibit 502.

3 Q BY MR. GALLOWAY: And Exhibit 502 is a
4 listing of cases that you participated in?

5 A No. What I have is 502 is my response to
6 your request 1.1. If my exhibits got marked wrong,
7 then I'm --

8 Q Can you point to any case involving an
9 energy company where this Commission has
10 established rates based on separate control areas?

11 A I don't think there's one -- well, I think
12 there's one ongoing with Avista's natural gas
13 system. They have a California-Nevada system
14 that's quite disconnected from the Washington-Idaho
15 system. And I know there's a clear separation of
16 the production and transmission resources that
17 serve those two areas.

18 Q Is this something the Commission has done,
19 or is this something that has been talked about?

20 A I don't think there's been -- I'm not
21 positive, but I don't think there's been a decision
22 in an Avista gas proceeding since they picked up
23 that service territory.

24 Q Can you point to any decision by any
25 utility which is in the Western United States that

0409

1 has established allocation of cost based on a
2 separate control area approach?

3 A Sure. BC Commission with respect to West
4 Kootenay Power, which at the time was a subsidiary
5 of Utilicorp.

6 MR. GALLOWAY: Your Honor, I think my
7 question referred to the United States, and we have
8 quickly gone across the border.

9 THE WITNESS: That's correct. Sorry. I
10 am thinking for all of the jurisdictions I have
11 worked in. I am thinking -- none come to mind.

12 Q BY MR. GALLOWAY: Yet this is the approach
13 that you characterize as traditional?

14 A That's the way I understand we have done
15 it for Pacificorp in the time I've been involved
16 here, yes.

17 Q You, at page 2 of your testimony, describe
18 your two decades of experience in these matters,
19 and you cite a number of cases. But you omit the
20 1986 case that you just referred to earlier in your
21 surrebuttal testimony.

22 A I didn't mention it. I mean, I have it in
23 my full resume.

24 Q And you were a witness in that case?

25 A I was a witness on rate design issues in

0410

1 that case, yes.

2 Q And that was Pacificorp's last fully
3 litigated rate case in Washington that's occurred?

4 A Yes.

5 Q And did the Commission deal with
6 allocation issues in that '86 case, which is --
7 that dominated U8602?

8 A Yes, it did. That order is marked as
9 Exhibit 510, and there is a section in there on
10 interstate allocation.

11 Q And looking at Exhibit 510, could you look
12 at page 33 of the Commission's order?

13 A (Complies.) Yes.

14 Q And under the Roman numeral 8,
15 jurisdictional allocation, would you read the first
16 sentence into the record, please?

17 A Just so people know, there are two page
18 numbers on the exhibit, one on the top which is the
19 Commission's page number, one on the bottom that
20 appears to be the Company's page number. And it's
21 the Commission page number that I think has been
22 referred to.

23 Q That's correct, Mr. Lazar.

24 A (Reading document.) Yes, I have read
25 that.

0411

1 Q Could you read it into the record, please,
2 first sentence?

3 A It is in the record. It reads, "As the
4 Company provides electric service to customers in
5 six states, including Washington, the Company's
6 joint facilities must be allocated to each of the
7 states."

8 Q What six states are being referred to
9 there?

10 A Washington, Oregon, California, Idaho,
11 Montana, and Wyoming, I believe were the six
12 Pacific Power states. The Company has since sold
13 the Montana service territory and the Idaho service
14 territory, and acquired the Utah Power System.

15 Q Does that sentence or that order represent
16 this Commission's last pronouncement on allocation
17 issues that you are aware of for Pacificorp?

18 A Yes.

19 Q And on the next page of that order,
20 Commission page 34, there's Arabic paragraphs 2 and
21 3. Do you see that?

22 A Yes.

23 Q And it describes a demand allocation based
24 on coincident peaks. And is it correct that that
25 is intended to apply to the coincident peaks of the

0412

1 six states that you previously described?

2 A That was my understanding, yes.

3 Q And in Arabic paragraph 3, the energy
4 costs would be allocated based on temperature
5 adjusted energy consumption, among those same six
6 states?

7 A Yes.

8 Q Do those paragraphs, in effect, describe
9 what is known in the trade as a rolled-in
10 methodology?

11 A I guess it would describe a rolled-in
12 methodology for the historical states that had been
13 a part of the system during development of the
14 resources that were being allocated, yes.

15 Q Now, in this proceeding you are advocating
16 that certain facilities be allocated -- or the cost
17 of those facilities be allocated based on the state
18 in which they are located?

19 A Yes, that's correct. Directly assigned to
20 on a situs basis, similar to what we do with
21 distribution facilities.

22 Q Can you point to a single example of where
23 this Commission has adopted a state-specific
24 allocation of generation facilities in the past?

25 A No. There was something odd that happened

0413

1 with water power some years ago, but it wasn't
2 exactly that.

3 Q And if we consider for a moment, the
4 multi-state utilities that operate in Washington,
5 Avista has substantial generation facilities
6 located outside of Washington, does it not?

7 A Yes, it does.

8 Q And Northwest Natural, among other things,
9 has storage facilities in Oregon that are used to
10 provide service in Washington, and whose costs are
11 allocated to Washington, in part?

12 A Yes. Although the Washington customer
13 needs were part of the planning process that led to
14 the development of those resources.

15 Q But as far as you know, from the
16 standpoint of this Commission, the state-specific
17 situs allocation of generation resources has never
18 been done before?

19 A I have thought about that since you first
20 asked the question. The issue with Avista was that
21 there were some QF contracts, some independent
22 power producer contracts with some of the forest
23 products plants on its system that were allocated
24 to one state or the other, contracts that were
25 approved by one state -- by Washington but not

0414

1 Idaho, and vice versa.

2 I don't remember the exact details, but my
3 recollection is one or more of those contracts was
4 directly assigned, because the other state had
5 said, no, we don't approve.

6 Q The Avista hydro facilities in Idaho and
7 Montana are allocated to Washington, aren't they?

8 A Yes. As are the Avista hydro facilities
9 in Washington allocated to Idaho.

10 Q It is the case, is it not, that you have
11 no expectation that this proposed situs allocation
12 will be acceptable to other states?

13 A I expect it to be no more acceptable to
14 the other states than a rolled-in method with Utah
15 would be acceptable to Washington. Yes, that's
16 correct.

17 Q And as you responded to a data request
18 that, quote, "They won't like it"?

19 A No, they won't like it.

20 Q And you also responded, did you not, that
21 the fact of the acceptability of this situs
22 allocation was not relevant to your recommendations
23 in this proceeding?

24 MR. CROMWELL: Objection; misstates the
25 testimony.

0415

1 JUDGE MOSS: The witness can say whether
2 that's his testimony or not, Mr. Cromwell.

3 THE WITNESS: Maybe you can draw me to the
4 portion of my testimony that you are --

5 Q BY MR. GALLOWAY: I referred to a data
6 request, which was originally 114, and it's
7 denominated --

8 JUDGE MOSS: Exhibit 507.

9 MR. GALLOWAY: 507.

10 THE WITNESS: If what you are referring to
11 is the question, is the acceptability of the situs
12 hydro proposal to jurisdictions other than
13 Washington relevant to the development of
14 Mr. Lazar's proposal, my answer to that was and is
15 no. I didn't -- I developed my testimony to come
16 up with something that is fair, just, and
17 reasonable for Washington rate payers.

18 Q BY MR. GALLOWAY: And if this proposal is
19 adopted in Washington and proves, as you predict,
20 to be unacceptable to the other states, it will
21 result in a material underrecovery of the Company's
22 costs?

23 A Yes. Similar to that which has occurred
24 in the past.

25 Q Something in excess of \$20 million?

0416

1 A If the other states use a control area or
2 rolled-in methodology, yes.

3 Q It would be either 20 or 31 based on -- 21
4 or 30-some-odd depending on the approach that is
5 used?

6 A Yes.

7 Q Next, I would like to have you turn your
8 attention, please, to your testimony at page 6.

9 A (Complies.)

10 Q And in particular, line 11. Are you there
11 yet?

12 A Yes, I am.

13 Q And there you discuss the Cholla, Craig,
14 and Hayden plants, and say that they are not
15 connected to the system in a manner that permits
16 any meaningful flow of power. Could you expand on
17 what your concerns are in that respect?

18 A Basically those plants cannot, under most
19 system operating conditions, be dispatched to meet
20 load in Washington. The transmission
21 interconnections and the normal system flows are in
22 the other direction, so to speak, and they can't
23 generate into Washington. Power doesn't flow from
24 Colorado to Washington, or from Arizona to
25 Washington. It flows the other direction.

0417

1 Q So is your test as to whether it's
2 appropriate to allocate the costs of resources to
3 Washington, a power flow sort of analysis that we
4 trace the flow of electrons from a given generator
5 and see whether it arrives in Yakima?

6 A No. That's one consideration in the
7 context of the proposal that the Company has
8 submitted in this case to average the costs of the
9 Utah power system with the costs of the Pacific
10 power system.

11 If those resources were to be used and
12 useful to serve Washington load, it would be
13 relevant to consider that. But I don't think they
14 are, and therefore, I don't think it is appropriate
15 to consider merging those resources in.

16 Obviously, the power system is quite
17 complex, and the electrons follow the laws of
18 physics, not the laws of accountants or regulators.

19 Q And because of those laws of physics, it's
20 entirely possible that you could have a generating
21 plant directly adjacent to a utility's service
22 territory, but if you did a load flow study, the
23 electrons might move in the other direction, right?

24 A Yes, that's possible.

25 Q Can you describe for the Commission,

0418

1 please, a principal basis for determining whether a
2 particular plant, based on its location or
3 whatever, should be considered to be providing
4 service to Washington consumers?

5 A Well, I think the first is whether the
6 plant was built for the purpose -- built or
7 acquired for the purpose of meeting those
8 customers' loads. Why was that resource added to
9 the system? If it was acquired for the purpose of
10 meeting customer loads in Washington, that's a good
11 place to start. If it wasn't, that's a good place
12 to stop.

13 The next is, can it physically serve
14 Washington loads; that is, is the nature of the
15 transmission system adequate that it could.

16 Pacificorp at one time had a utility in
17 Australia. I would think it would be safe to
18 assume that a resource in Australia would not be
19 included in Washington rates, and in fact, was not
20 ever. There was no attempt to roll things in quite
21 that far away. And I use that as a caricature of
22 the issue here.

23 And, finally, I think the question is, is
24 the resource used to serve Washington customers?
25 And I think those three together create some

0419

1 principles. Why was it bought? What can it do?
2 What does it do?

3 Q So you would propose for purposes of
4 resolving these allocation issues, that the
5 Commission pursue an inquiry as to the motives and
6 studies of utility executives 40, 50, 60 years ago
7 to determine what they thought they were doing
8 based on the circumstances at the time?

9 A No, I don't think that they need to. I
10 think they can trust their predecessors in '86.
11 The Commission determined that the Dave Johnston
12 and Jim Bridger and Wyodak plants located in the
13 state of Wyoming were relevant to serving
14 Washington. We paid for them from then until now.

15 I think that the Commission can trust that
16 result, and conclude that unless something
17 significant has changed that makes those resources
18 no longer able to serve us, or no longer serving
19 us, that they are still in our service.

20 Q Where is the Wyodak plant located?

21 A It's on -- basically on the border of
22 Wyoming and whichever Dakota.

23 Q It's almost in South Dakota?

24 A It's almost in South Dakota, and
25 electrically it is in South Dakota.

0420

1 Q And yet you don't propose to have the
2 relatively low-cost Wyodak plant excluded from
3 service for Washington?

4 A Well, it's not that cheap, and it hardly
5 matters what we do with it. It's sort of an
6 average-cost resource. But I'm not proposing a
7 change to it's inclusion in the Pacific Power side
8 of the equation as opposed to the Utah power side
9 of the equation, because that's the purpose it was
10 acquired for. That's the purpose to which it went
11 to work. And based upon the '86 statistics, we
12 have been paying for it since then.

13 Q So is it your testimony that the Wyodak
14 plant was constructed on the border with South
15 Dakota to provide service to Washington customers?

16 A It's my testimony that the Commission
17 found in the '86 proceeding that it was used and
18 useful in serving Washington customers. But absent
19 a substantial record to change that conclusion in
20 this proceeding, we should assume it stands.

21 Q But you said intent was important in this
22 determination. Did the Commission ever make a
23 determination that intended the Wyodak facility to
24 serve the Washington service territory?

25 MR. CROMWELL: Your Honor, I object

0421

1 at this point. I believe the order in U86 speaks
2 for itself. Mr. Galloway appears to be inquiring
3 of Mr. Lazar as to the intent of the Commission
4 reflected in that order.

5 MR. GALLOWAY: Let me rephrase the
6 question.

7 Q BY MR. GALLOWAY: Has there ever been a
8 determination, that you know of, that the Wyodak
9 plant was constructed with the intent of providing
10 service in the state of Washington?

11 A I have to reach the conclusion that that's
12 the case, because the Commission found in, I think
13 it was the Wyodak case 8357, or somewhere in that
14 era, that it was used and useful in serving
15 Washington. It was included in the Washington rate
16 base.

17 Looking back 20 years, there's not much
18 more I can do to second guess it. If I thought it
19 was inappropriate, 20 years ago was the time to
20 have raised that. And I haven't raised it here.
21 No one else has. I don't have any other record to
22 work with on whether it does or doesn't or can or
23 cannot or was intended to or planned to, other than
24 20 years of regulatory history that's it has been
25 in Washington rates because the Commission found it

0422

1 was used and useful in providing service for
2 Washington customers.

3 Q Can I refer you back to the Commission's
4 1986 record, and that sentence you read for me?

5 A Sure.

6 JUDGE MOSS: Is that Exhibit 510?

7 MR. GALLOWAY: Yes, which is page 33.

8 Q BY MR. GALLOWAY: Now, in enunciating
9 Washington policy on allocation issues, did the
10 Commission caveat in this sentence in any way to
11 suggest that in order for joint facilities to be
12 allocated among the six states there needed to be
13 some determination of intent or electron flow, or
14 daily usage of the plant?

15 A In this order, no. In other orders, yes.

16 Q Yes what?

17 A In other orders, yes, the Commission did
18 reach that conclusion. I was a witness in the --
19 I will call it the Company's Colstrip case. I
20 believe it was Colstrip 4 where the Company signed
21 a long-term contract to sell the power from
22 Colstrip 4 to Black Hills Power & Light for a
23 35-year term. And the Commission excluded the rate
24 base from Washington rate base, because that power
25 plant was going to serve someone else.

0423

1 Q But other than that, the Commission has
2 not enunciated a policy of the sort that you
3 describe, that we need to look at intent or power
4 flows or day-to-day operations, has it?

5 A Well, I think they do that in every case.
6 That's to me what the term used and useful means.

7 Q Do you think the Commission, in the course
8 of considering Avista's rates, has considered
9 whether electrons flow from Montana hydro
10 facilities to Washington, to the state of
11 Washington?

12 MR. CROMWELL: Objection; relevance.

13 JUDGE MOSS: Do you want to withdraw the
14 question, or move on?

15 MR. GALLOWAY: I will move on.

16 Q BY MR. GALLOWAY: Mr. Lazar, I would now
17 like to talk to you about your \$34 million
18 adjustment from the Company's proposal that is
19 first referenced on line 24 of page 1 of your
20 testimony.

21 A Yes.

22 Q And that adjustment, as I understand it,
23 is discussed in greater detail beginning on page 12
24 of your testimony?

25 A Yes.

0424

1 Q And can you turn there, please?

2 A I am there.

3 Q Now, as I understand the adjustment you
4 consider, you compare a so-called rolled-in share
5 of hydro, is that correct, to a direct assignment
6 of hydro that is located in Washington; is that
7 correct?

8 A Yes.

9 Q And adjust for that. And on the rolled-in
10 hydro that is a product of about -- an allocation
11 of hydro cost of six states?

12 A Yes.

13 Q And that is done on what the Company
14 refers to as the SG factor?

15 A Yes.

16 Q When we use the rolled-in approach, what
17 percentage of -- and this can be a rough
18 calculation. What percentage of Washington load is
19 served by hydroelectric facilities?

20 A I can't answer that question. I can
21 answer the question of what percentage of the
22 output of the hydroelectric facilities is allocated
23 to Washington, if that's what you were intending to
24 ask.

25 Q It was not what I was intending to ask.

0425

1 A As I discussed earlier, the laws of
2 physics controls how much hydro serves the state of
3 Washington.

4 Q I understand that. I miscommunicated. I
5 am saying, under a rolled-in approach, what
6 percentage of the Washington load is deemed to be
7 served from hydro?

8 A The term "deemed" helps. That becomes an
9 allocation question rather than an operational
10 question. It's about 9 percent. The SG factor as
11 shown on the top of page 1 of my Exhibit 512 was
12 8.77 percent.

13 Q But that's 8 point-some-odd percent of
14 total hydro being allocated to Washington. What is
15 the percentage of Washington load that under
16 roll-in is deemed -- if that's a word you are
17 comfortable with -- being served in Washington?

18 A Well, that would be allocating Washington
19 about 429,000 megawatt hours, which is roughly 8 or
20 9 percent of Washington load.

21 Q And under a rolled-in approach, would you
22 accept, subject to check, that Washington -- about
23 4 percent of Washington load is being deemed to be
24 served from the Mid Columbia contracts?

25 A I didn't examine that, but that's a

0426

1 plausible range.

2 Q And as I understand it, if I can use a
3 culinary analogy, you started off in your
4 adjustment with a rich broth of 8 percent hydro and
5 92 percent thermo, which is the mix that is deemed
6 for Washington under a rolled-in approach?

7 A Yes.

8 Q And --

9 A Well, no, actually, that's not quite
10 right.

11 Q Because of Mid Columbia?

12 A I didn't touch contracts in my analysis.
13 I didn't include them in the before analysis or the
14 after analysis.

15 Q I understand that. So let's confine our
16 soup to the thermal and the hydro components.

17 A I looked only at the Company owned
18 resources. And that was, as you say, a rich broth
19 of 92 percent Company thermal and 8 percent Company
20 hydro.

21 Q And the thermal being the expensive
22 ingredient, and the hydro being the less expensive?

23 A Well, generally. If you look at my
24 Exhibit 512, you will see that small hydro projects
25 are \$33 a megawatt hour. That's actually above the

0427

1 system average. The Bear project is above the
2 system average. The Klamath project is above the
3 system average. The Eastern hydro, the stuff in
4 Utah, is twice the system average. And then
5 there's Rogue, North Umpqua, and Lewis are the
6 cheap ones, and they bring down the hydro average.

7 Q So in the course of your analysis, you
8 exclude all of the relatively expensive hydro?

9 A I assign every hydro project to the state
10 in which it is located. And, actually, the small
11 North Washington, the small Washington hydros are
12 expensive, and they stay in Washington.

13 Q And the effect of your adjustment is to
14 change the soup from an 82 (sic) to 8 mix to
15 roughly a 45 percent thermal, 55 percent hydro mix,
16 isn't it?

17 A Yeah, that's about right. That's pretty
18 close to 50/50.

19 Q And the reason that there is the \$36
20 million impact from that is that you are
21 substituting a lot of relatively cheap vegetables
22 for relatively more expensive thermal and other
23 hydro?

24 A Well, substituting relatively cheap hydro
25 for relatively expensive other resources.

0428

1 Q Right. That's a good way of saying it.
2 And so the adjustment works economically for two
3 reasons. One is you are getting more -- or more
4 less-expensive stuff and paying for less relatively
5 more expensive stuff, right?

6 A Correct.

7 Q Now, if we started with a different soup,
8 say, 16 percent hydro and 84 percent other, what
9 would the effect be on your proposed adjustment?

10 A It would reduce the amount of the delta.
11 And, in fact, on page 2 of my Exhibit 512 I do
12 that; that is, that's the control area adjustment.

13 Q But I want to talk to you about your
14 adjustment to the rolled-in approach, the \$36
15 million.

16 A Okay.

17 Q Okay.

18 JUDGE MOSS: Mr. Galloway, you have
19 referred a couple of times to \$36 million. Is it
20 the \$34 million figure?

21 MR. GALLOWAY: I apologize. It is indeed
22 \$34 million. I'm not being careful with that.

23 Q BY MR. GALLOWAY: Page 8 of your testimony
24 at line 11, you say, "The Company proposal is to
25 merge all of these resources," meaning all of the

0429

1 resources into a single pool, "and allocate the
2 cost of the melded pool among the six states."

3 Do you see that?

4 A Yes.

5 Q And is that still your testimony?

6 A Well, the protocol and revised protocol
7 are a little more complicated than that, and this
8 oversimplifies it because of the creation -- and I
9 paid more attention to protocol than to revised
10 protocol -- but the creation of a couple of little
11 set asides.

12 Q I'm not going to ask you a single question
13 about revised protocol.

14 A That protocol was a little bit more
15 complicated than that, but that really captures the
16 thrust of it.

17 Q And your understanding of protocol is a
18 rolled-in approach?

19 A It's essentially a rolled-in approach with
20 a couple of set asides.

21 Q What are the set asides?

22 A A hydro endowment and a thermal endowment.
23 The thermal endowment, as I recall it, sort of
24 carefully selected to balance the hydro endowment,
25 picking the cheapest coal plant and dedicating that

0430

1 to the East.

2 Q Is the Company's proposal to use the SG
3 factor for the allocation of hydro resources?

4 A The Company's proposal, as reflected in
5 the Joint Testimony and stipulation, is to use
6 absolutely no methodology to allocate any costs
7 at all.

8 Q I'm not referring you to the stipulation.
9 You repeatedly -- when you used the word proposal
10 on line 11 of page 8, did you intend to refer to an
11 SG allocation of hydroelectric costs?

12 CHAIRWOMAN SHOWALTER: What is SG?

13 MR. GALLOWAY: Six-state system allocation
14 that he previously testified to.

15 CHAIRWOMAN SHOWALTER: What does SG stand
16 for?

17 MR. GALLOWAY: System generation.

18 Q BY MR. GALLOWAY: Is that the proposal you
19 are referring to?

20 A That's the proposal I'm referring to. And
21 I don't view the tweak that was done to the
22 protocol method to really change that in a
23 meaningful way.

24 Q Do you have Ms. Kelly's testimony before
25 you?

0431

1 A No, I don't.

2 JUDGE MOSS: Do you have an exhibit number
3 for us, Mr. Galloway?

4 MR. GALLOWAY: I do. Just give me a
5 moment. It would be Exhibit 71. And actually, for
6 convenience, I will be referring, in the next
7 couple of questions, to Exhibits 71, 72, and 291,
8 which is a portion of Mr. Taylor's testimony. And
9 I will tender to the witness pages from those
10 exhibits to refer to.

11 CHAIRWOMAN SHOWALTER: Before you
12 continue, you rattled off some exhibit numbers.
13 Can you say them again?

14 MR. GALLOWAY: Certainly. Exhibit 71 and
15 72, which is Ms. Kelly's direct testimony, and an
16 accompanying exhibit.

17 And the other one is 291, which is
18 Mr. Taylor's direct testimony.

19 Q BY MR. GALLOWAY: Starting with Exhibit
20 71, page 9, line 21, could you read the question
21 and the first sentence of the answer?

22 A (Complies.)

23 Q Into the record, please?

24 A "How are the costs of hydroelectric
25 resources to be allocated?"

0432

1 "Answer, Generally speaking, they are
2 initially assigned to the former Pacific Power &
3 Light jurisdictions. And then dynamically
4 allocated among the states."

5 Q And then turning Exhibit 72, page 4, which
6 is, I will represent to you, an excerpt from the
7 protocol that was filed in this case, could you
8 read the first two sentences following the Arabic
9 B-1?

10 A "Hydro endowment retail customers in the
11 former Pacific Power & Light jurisdictions of
12 California, Oregon, Washington, and Eastern Wyoming
13 will be deemed to be hydro endowment participants.
14 All costs associated with hydroelectric resources
15 will be assigned to and allocated among hydro
16 endowment participants based upon the DGP factor."

17 And then it follows with a similar process
18 for offsetting that with a coal endowment.

19 Q So it hydro is not being allocated to six
20 states, is it?

21 A Well, it's not, but mathematically part 2
22 of that accomplishes pretty much that result.

23 Q Did you take into account that, quote,
24 part 2 in performing your \$34 million adjustment?

25 A No, because I view the hydro endowment and

0433

1 the coal endowment as roughly offsetting one
2 another for the purposes of my testimony, which is
3 to give the Commission a methodology and then
4 encourage the Commission to direct the Company to
5 prepare a study using that methodology. It would
6 have been a misuse of resources to get down to that
7 level of detail.

8 Q But detail aside, the fact is the amount
9 of hydro that the Company is proposing to allocate
10 to Washington is twice the level that was assumed
11 in the \$34 million adjustment, is it not?

12 A Yes. Offset by an equivalent reduction in
13 Huntington cheap coal allocated to Washington which
14 offsets that almost dollar for dollar.

15 Q But dealing with that in your adjustment,
16 you consider to be a detail?

17 A I think the issue I am trying to get
18 before the Commission is the issue of situs
19 allocation of hydro, that Washington suffers the
20 environmental impacts of the hydro projects and
21 ought to enjoy the economic benefits.

22 And if the Commission concludes that
23 that's an appropriate methodology, then we have a
24 basis to go through and do a detailed study.

25 Q But your testimony doesn't provide a basis

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1 for an adjustment, doesn't it?

2 A My testimony says very specifically that
3 the calculations are not of that level of
4 precision, but it's recommending a methodology.
5 The methodology should be directed, and the studies
6 should be done prior to the time when the Company
7 can change its rates at the end of '05. There's
8 plenty of time for that.

9 Q How many MSP meetings did you attend?

10 A I attended two of the full MSP meetings.

11 Q Of a total of how many?

12 A I don't know the answer to that. Many.
13 If that's close enough.

14 Q That is precisely close enough. Another
15 detail which you apparently didn't include was the
16 purchase power contracts, is that correct, in your
17 adjustment?

18 A That's correct. I didn't touch purchase
19 power, and I made that clear that I didn't touch
20 purchase power.

21 Q Does that bias your analysis in any
22 material way?

23 A Well, I have thought about that, and my
24 gut feeling is that it tends to make my proposed --
25 my \$34 million and \$21 million adjustments lower

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1 than they would otherwise be. Because if the Mid
2 Columbia were assigned exclusively to the states
3 for which it was acquired, that would have the
4 effect of reducing costs to those states.

5 Q What do you understand is proposed as an
6 allocation of Mid Columbia contracts, and the
7 protocol in the so-called Company proposal?

8 A My recollection -- and this is a little
9 soft -- is that it was part of the hydro endowment.

10 Q So allocated to the Pacific Power states?

11 A For the four states, including Wyoming.

12 Q Consistent with what you described is the
13 original intent?

14 A Mr. Buckley did a fair amount of looking
15 at the history of the Mid C contracts, and I
16 understand there are some things that are a little
17 different about those. And I didn't do the
18 examination on those, so I don't want to jump to a
19 conclusion.

20 Q I was trying to refer you back to your
21 testimony where you said if you redid all of this,
22 and looked at purchase power contracts, and took
23 into account the Mid Columbia, it would make your
24 adjustment bigger. And that's not true, is it?

25 A I don't know the answer to that, because I

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1 didn't look at the history of Mid C. Mid C may go
2 back so far as to predate any integration of the
3 Wyoming and Washington-Oregon systems. And not
4 knowing that, I don't want to prejudge what would
5 happen with a historical perspective on Mid C.

6 I didn't touch Mid C in my analysis. I'm
7 trying, in my analysis, to illustrate the effect of
8 a situs allocation of a hydro projected owned by
9 the Company, located in Washington.

10 Q Now, a consistent theme in your testimony
11 is the Company's west side resources are less
12 expensive than east side resources?

13 A Yes.

14 Q And that theme, and your calculations
15 didn't take into account any purchase power
16 contracts?

17 A The table that the Company provided that I
18 worked from was, as I recall, only Company owned
19 resources.

20 Q So the answer is, "Yes, I don't take into
21 account any of the purchase power contracts in
22 drawing those comparisons"?

23 A I think that's correct.

24 Q And do you understand that there are a
25 considerably larger number of purchase power

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1 contracts where the point of delivery is on the
2 west side than on the east side in the Company
3 system, or isn't that something that you looked at?

4 A Well, I looked at it in the context of the
5 MSP meeting when we were talking about the control
6 area methodology. And there was a long list of
7 what resources went to which control area, and both
8 had a long list. And I don't recall whether the
9 west side, the western control area list was
10 longer.

11 It certainly would include the Mid C,
12 which would be the cheapest major purchase power
13 contract. So from a cost perspective, it would be
14 lower on the west side. But the quantities -- it
15 was a list of contracts, no quantities of power
16 attached to them.

17 Q You don't remember the conclusion that
18 under the so-called control area approach, the west
19 side of the system was considerably more dependent
20 on purchased power than the east side of the
21 system?

22 A I remember that, but that's not the same
23 thing that I was responding to. I mean, we've
24 got -- the Mid C contracts are a large source of
25 very cheap power on the west side. I don't mind

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1 being more dependent on a large source of very
2 cheap power. I don't consider that to be a bad
3 dependency.

4 Q Let's consider one of these contracts.
5 Are you familiar with the Company's peaking
6 contract with Bonneville?

7 A At one time. In the '86 case I was
8 familiar with it. I haven't paid a lot of
9 attention since then.

10 Q Will you accept, subject to check, that
11 the Company pays Bonneville \$50 million a year to
12 take 575 megawatts of capacity?

13 MR. CROMWELL: Your Honor, I have a
14 question how Mr. Galloway would propose that
15 Mr. Lazar determined in terms of the Company's
16 contract.

17 MR. GALLOWAY: We will happily provide
18 Mr. Lazar with a copy of the contract that he can
19 check. What I am representing to him --

20 MR. CROMWELL: If there's an exhibit we
21 could have before us --

22 JUDGE MOSS: He's offering the question
23 subject to check, so we can avoid spending time in
24 hearing doing that. If Mr. Lazar feels he can
25 accept it subject to check, he will say so. If he

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1 doesn't, he will say that.

2 THE WITNESS: If the Company provides me
3 with the document, I can accept that subject to
4 check. I don't have the document available
5 otherwise.

6 Q BY MR. GALLOWAY: And I assume that you
7 remember the way that contract works, is that the
8 Company takes power on the western side of the
9 system during some hours, and then returns the same
10 power within 168 hours later?

11 A Yes.

12 Q And so it doesn't gain any net energy from
13 that transaction, does it?

14 A No. It's a load factor and load shaping
15 type of arrangement.

16 Q And I have represented to you that the
17 Company pays \$50 million a year for that?

18 A Yes.

19 Q And assuming I have not led you astray, is
20 the \$50 million in any way reflected in your
21 comparison of east side and west side resource
22 costs?

23 A No. As I said, I haven't touched
24 contracts in my analysis. The purpose is to
25 illustrate one effect for the purpose of getting

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1 the Commission to give direction on how these types
2 of studies should be done.

3 Q And because it's a capacity arrangement
4 and no energy is acquired, it isn't reflected in
5 either the numerator or the denominator of your
6 dollars per megawatt calculation, is it?

7 A My calculation is simply the effect of
8 substituting Washington hydro for nonWashington
9 hydro, and system thermal resources. It makes no
10 change to the allocation of or treatment of that.

11 As I also mention in my testimony, it
12 doesn't in any way address the extremely valuable
13 load shaping characteristics that the Merwin Dam
14 complex has, a lot of hydro capacity and ancillary
15 services that those resources provide. I only
16 allocate the kilowatt hours, not the ancillary
17 services benefits.

18 But that's something, if the Commission
19 decides to go this way, we would build a model that
20 was capable of meshing that. The Company indicated
21 that it couldn't measure that with the tools it had
22 available, so I wasn't able to present something
23 that provided that kind of detail.

24 Q I would like to return to your -- I guess
25 it's surrebuttal testimony that you offered live at

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1 the beginning of your testimony.

2 You referred to a no-harm standard in
3 Washington arising from the Washington-Utah Power
4 merger order?

5 A It was -- I mean, I did refer to a no-harm
6 standard, and that was my understanding at the time
7 of the standard in Washington that we were dealing
8 with.

9 Q But notwithstanding your understanding,
10 that concept did not find it's way into any order
11 of the Commission, did it?

12 A I can't say that it didn't find its way
13 into any order of the Commission. The term is not
14 in the U871338 order, but it was very heavy, as I
15 recall, in the record of that proceeding.

16 Q And I think it's fair to assume if there
17 was language like that in the order, you would have
18 cited it instead of citing from the Oregon order
19 regarding your testimony?

20 A The Oregon order was more explicit, and
21 that's one of the reasons I cited from the Oregon
22 order.

23 MR. GALLOWAY: I have nothing further.
24 Thank you.

25 JUDGE MOSS: Ms. Smith, you had indicated

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1 a desire to cross-examine Mr. Lazar. Do you still
2 have that desire?

3 MS. SMITH: No, Your Honor. I have lost
4 it. Thank you.

5 JUDGE MOSS: Does the Bench have
6 questions?

7 CHAIRWOMAN SHOWALTER: I have a couple.

8

9 EXAMINATION

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11 BY CHAIRWOMAN SHOWALTER:

12 Q If you could turn to your testimony, page
13 1, Exhibit 501.

14 A (Complies.)

15 Q And I'm interested particularly in lines
16 21 through 23. And this principle that you are
17 propounding that allocation should be based on
18 social, or in particular, environmental costs
19 associated with a plant -- have I stated that more
20 or less correctly as a preliminary statement?

21 A Yes.

22 Q Could you consider this hypothetical.
23 Assume two states, State A and State B, both in the
24 same control area, both part of an original company
25 and now looking at allocation issues.

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1 And assume that there is one plant in
2 State A and one plant in State B. And the social
3 costs of plant A are high, and the social costs in
4 State B are low. And that is all you know.

5 Do you advocate that plant A be assigned
6 to State A, and -- that the plant in State A be
7 assigned to State A, and the plant in State B be
8 assigned or allocated to State B?

9 A I would certainly recommend the Commission
10 to give that consideration. One would want more
11 facts than that to make a decision, but I think
12 that would be information that would lead you to
13 want to look deeper.

14 Q All right. I'm going to give you two more
15 facts. Assume that State A, which has the low
16 social cost plant in it, that that plant is also
17 low cost in general. In other words, the plant in
18 State A has both a low price to it, and low social
19 cost. That's a very appealing plant.

20 And now in State B, the social costs are
21 very high, as are the costs of the plant very high.
22 Do you still -- would you still say in that
23 instance that we should allocate based on the
24 social or environmental costs?

25 A I think it merits looking at that, because

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1 State B is the state that presumably, through its
2 land use policy, authorized the construction of a
3 high social cost, high economic cost project. And
4 State A probably had little to contribute to that
5 decision.

6 And I think there's a reason why states
7 that make decisions shouldn't be allowed to export
8 the costs of those decisions. If you meld these
9 two systems -- and we had exactly that situation in
10 Avista where we had the Idaho Commission approving
11 some very high cost cogen contracts thinking
12 Washington was going to pay two-thirds.

13 And all the jobs were going to go to the
14 forest products industries in Idaho, and the
15 Washington Commission, as I recall, said, "Huh-uh.
16 We're not going to take a high cost resource that
17 you thought you could export the costs of."

18 This high social cost resource was built
19 presumably under the land use laws of B, and I
20 think there's a reason that State B ought to bear
21 some responsibility for that.

22 Now, obviously I am saying this from the
23 perspective of looking down from above, or being in
24 State A.

25 Q And I specifically don't want you to know

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1 which state you are in.

2 A I am a firm believer that people should
3 take responsibility for their own actions. So I
4 reach that conclusion based on the very small
5 number of facts that are in this hypothetical.

6 Q All right. Switching to a different
7 topic. I'll put this as a hypothetical as well to
8 test a certain concept.

9 Assume that you have -- you are analyzing
10 three different allocation models, all of which are
11 reasonable in your eyes. If one of them is
12 acceptable to all six states, considering these
13 options, do you think that one has more overall
14 value because it is acceptable to all six states?

15 A Not necessarily. You could have a
16 situation -- and I think we had that here -- where
17 a method was acceptable to five states and
18 unacceptable to one.

19 Q That's not my hypothetical. I am really
20 trying to test whether you think there is value
21 alone per se, only on the issue of something being
22 acceptable to all six states.

23 So I am asking you to say -- the
24 hypothetical I'm trying to get at is, of three
25 reasonable possibilities in your eyes, and in every

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1 states' eyes, if all three are reasonable, but one
2 is acceptable, and only one is acceptable to all
3 states, does that have value to you?

4 A It has some value, but not necessarily
5 dispositive value.

6 Q Now, what do you want to be looking at
7 that value -- let's call it a beta value. And
8 recognizing that value, wouldn't you want to be
9 testing the other options in front of you to see if
10 the value to you exceeded that beta value? In
11 other words, if the advantages of the other options
12 outweigh that beta value?

13 A Yes. And I think, actually, my testimony
14 provides a good basis for this Commission to do
15 that, because --

16 Q I'm not getting into this. I am simply --
17 I really want to stick with the hypothetical. And
18 I do think what you have said is there is value to
19 a multi-state allocation acceptable to all states
20 that has value. Not dispositive value, but value.
21 That is what you said?

22 A That's what I said. Some value, not
23 dispositive.

24 CHAIRWOMAN SHOWALTER: Thank you -- oh,
25 wait. I have got one more.

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1 Q BY CHAIRWOMAN SHOWALTER: Well, we will
2 get down now to the case. Is it your view that the
3 revised protocol is more advantageous probably to
4 Washington over the long term than the original
5 protocol, just comparing those two?

6 A I have not examined the revised protocol
7 in any detail.

8 Q Let me then ask you about the original
9 protocol compared to the control area proposed by
10 Staff, without your islanding aspect. Is it your
11 view that over the long term the original protocol
12 would be more advantageous to Washington than the
13 control area model propounded by the Staff in its
14 direct testimony?

15 A No, absolutely not. The control area
16 method, in my opinion, would have been far better
17 for Washington over the long run than the original
18 protocol. In my opinion, the Company included some
19 assumptions in its modeling with respect to future
20 costs of coal emission compliance that were very
21 favorable to coal, and some assumptions with
22 respect to hydro relicensing costs that were
23 very -- I'll just say at the high end of
24 plausibility of hydro relicensing costs. And that
25 had the effect of making rolled-in and control area

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1 look pretty similar over the long run.

2 But when you substituted a greater than
3 zero expectation of future coal emission
4 requirements, very quickly the control area method
5 as keeping the hydro in the west became far more
6 preferable. And when you included a more
7 reasonable cost of hydro compliance, it became more
8 reasonable.

9 I think that the Company was being
10 tactical in trying to make the results come out
11 about the same, trying to get everybody to come
12 together on something. But I think we were, as a
13 team working for you, able to see through those
14 modeling assumptions.

15 And I think that the reason why the Staff
16 advocated the control area methodology pretty
17 solidly throughout the MSP process, we just didn't
18 buy the Company's model results.

19 Q So on those two points, the way that coal
20 plays out and the way that hydro plays out, you
21 don't have an opinion on what the revised protocol
22 does about those compared to the original, or do
23 you?

24 A I don't no.

25 CHAIRWOMAN SHOWALTER: Thank you.

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EXAMINATION

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3 BY MR. COMMISSIONER HEMSTAD:

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Q In your oral testimony with regard to the settlement agreement, I believe you stated that it's your conclusion that the settlement agreement is nonresponsive to our earlier order.

Does that view simply go to what kind of weight we should give to the settlement, or are you attempting to establish that the parties would be foreclosed from offering the settlement that did not resolve all of those issues?

A I don't presume to say what the parties can and can't offer. I am suggesting to you that if your goal was to reach resolution on things like rate base and operating expense and capital structure and rate of return, this doesn't get us there.

If the goal was to have some resolution of some issues on interstate cost allocation, this doesn't get us there.

And I think that the sensible thing for the Commission to do in this case is to give direction on how the multi-state allocation should be done, and direct the Company to file a case to

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1 take effect at the end of the rate plan period.

2 Q Would you be similarly pessimistic about
3 the outcome of a rate case that the Company has
4 indicated here that it expects to file probably in
5 2005, and with at least the hope that some
6 resolution of the interstate allocation issues
7 would have been achieved?

8 A I think that that is more likely to be
9 successful if the Commission provides some guidance
10 in this case as to what it expects for interstate
11 allocation.

12 COMMISSIONER HEMSTAD: Thank you. That's
13 all I have.

14 COMMISSIONER OSHIE: I don't have any
15 questions. Thanks.

16 JUDGE MOSS: I believe that brings us to
17 the redirect, if you have any, Mr. Cromwell.

18 MR. CROMWELL: I do, Your Honor. Did
19 Mr. Galloway want to do any recross based upon the
20 questions from the Bench before I --

21 MR. GALLOWAY: If that would be
22 appropriate at this juncture.

23 JUDGE MOSS: We typically do allow you to
24 ask questions if the Bench's questions had prompted
25 any.

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1 MR. GALLOWAY: I knew that. I just didn't
2 know whether it was now or at the end.

3 JUDGE MOSS: Yeah, this will save time.

4

5 RECROSS EXAMINATION

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7 BY MR. GALLOWAY:

8 Q Mr. Lazar, I want to refer you to your
9 testimony just now, and I apologize for
10 paraphrasing. But you found the control area or
11 hybrid approach substantially superior to the
12 protocol. Do you recall that testimony?

13 A Yes.

14 Q Have you reviewed Mr. Duvall's direct
15 testimony in these proceedings, Exhibit 101?

16 A I did at the time I -- prior to preparing
17 my original testimony.

18 Q Mr. Duvall testifies that the Company's
19 analysis indicates that the control area approach
20 has associated with it a greater risk from the loss
21 of generation units than the protocol approach. Do
22 you recall that testimony?

23 A I don't recall that, but I don't doubt
24 that it might have been there.

25 Q Do you have any reason to disagree with

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1 that conclusion?

2 A Well, I guess I don't. There's a larger
3 number of generating resources in the west, and
4 that alone creates a greater probability of the
5 loss of one or more of them.

6 Q And Mr. Duvall concluded that the control
7 area approach exposes customers to greater risk
8 associated with market price volatility. Do you
9 recall that testimony?

10 A Yes, I do.

11 Q And do you have any reason to disagree
12 with that conclusion?

13 A Yes, I do.

14 Q What is the reason?

15 A The market volatility risk is something
16 that one can secure through contractual and other
17 means, and you can edge market risk. There's tools
18 available for dealing with it.

19 Q Free tools?

20 A Sometimes they are free, sometimes they
21 save you money, sometimes they cost you money.

22 Q They are called derivatives, right?

23 A Derivatives are one form. There are a lot
24 of other tools available for hedging volatility.

25 Q And Mr. Duvall testifies that under the

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1 control area approach, power costs increase faster
2 in the western states than they do in the rolled-in
3 approach. Do you recall that testimony?

4 A Yes. And that's the testimony that I find
5 to be flawed, and either creative or deceptive,
6 depending on how you want to look at it. That was
7 the analysis that, working with the Staff in the
8 MSP process, we found to be unpersuasive as the
9 high hydro compliance cost, and the low coal
10 compliance cost.

11 Q What carbon tax assumption was made in the
12 Company's analyses?

13 A I don't recall exactly. It was very
14 small, and very late when we were doing the MSP
15 studies.

16 Q Will you accept, subject to check, that
17 there was an assumption of an \$8 a ton carbon tax?

18 A Yeah, my recollection is that is phased in
19 over an extended period of time, and it didn't get
20 to \$8 until quite late.

21 MR. GALLOWAY: I have nothing further.

22 Thank you.

23 CHAIRWOMAN SHOWALTER: I have one
24 follow-up.

25

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1 FURTHER EXAMINATION

2

3 BY CHAIRWOMAN SHOWALTER:

4 Q In your opinion, how soon do you think a
5 carbon tax should be assumed in the future?

6 A I would have an easier time answering that
7 question on November 3rd.

8 Q Well, give two scenarios.

9 A Either in the next four years, or the four
10 years after that, is when I expect it to occur. I
11 expect it to occur either in the next presidential
12 term, or the one after that.

13 Q The act or the actual imposititon of the
14 carbon tax?

15 A The actual imposititon of the carbon tax,
16 because someone has to pay off the deficit, and
17 that's going to be one of the most attractive tools
18 for doing so.

19 JUDGE MOSS: Do you have more than 10 or
20 15 minutes?

21 MR. CROMWELL: No, a handful of questions.

22

23 REDIRECT EXAMINATION

24 BY MR. CROMWELL:

25 Q Mr. Lazar, are there any other regulated

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1 electric utilities operating in Washington, which
2 present the same type and scale of interstate cost
3 allocation issues as we have been discussing here
4 today?

5 A Not nearly as dramatic as Pacificorp.
6 Avista has a two-state electric system and
7 four-state gas system, but the issues have been
8 sort of long resolved on the electric systems
9 between Washington and Idaho.

10 I was involved in resolution of some of
11 the last of them. And as I mentioned to
12 Mr. Galloway, there's sort of an island away from
13 the Northwest pipeline-dependent gas system in the
14 California-Nevada service territory that creates a
15 two control area allocation methodology that nobody
16 has suggested be done on a rolled-in basis.

17 Q And if you turn to page 8 of your
18 testimony, line 11, your discussion with
19 Mr. Galloway regarding this part of your testimony
20 is engaging in a paraphrase of that with you.

21 Just for the record, am I correct that
22 when you were answering this question you were
23 predicating your answer on the Company's direct
24 case as originally filed?

25 A Yes, with the simplifying assumption of

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1 the Huntington hydro allocation to the east -- the
2 Huntington coal allocation to the east and hydro
3 allocation to the west were offsetting. So the
4 system averaging numbers effectively survived that
5 refinement of rolled-in pricing.

6 Q And turning to Exhibit 72, page 4, wherein
7 Mr. Galloway had you read part of Ms. Kelly's
8 direct testimony, you use the phrase cheap coal
9 allocated to Washington in answering one of
10 Mr. Galloway's questions.

11 At that point were you referring to the
12 coal endowment proposal in the protocol as
13 reflected in Ms. Kelly's testimony?

14 A Cheap hydro to the west, and cheap coal
15 allocated to Utah to the east. And if I mixed
16 those, I made a mistake.

17 Q I am just making sure that the record is
18 correct.

19 A Right.

20 Q Finally, in discussing a hypothetical with
21 the Chairwoman wherein you were conceptually
22 looking at three allocation models, wherein we're
23 presuming all three are reasonable, one of which is
24 acceptable to all six states and ascribing a value
25 to that multi-state acceptability factor, are there

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1 other values that you would then believe are
2 important, or other factors that you would then
3 consider in determining which of those three
4 reasonable options would be best to pursue?

5 A Yes. As I've described in my testimony
6 and the discussion with Mr. Galloway, there's
7 historical issues, what caused something to happen.
8 And there's operational issues, what really
9 happened, that I think are important to consider
10 and to include in the weighting or the evaluation
11 of what is most reasonable among reasonable
12 alternatives.

13 You get to Circuit City and there's five
14 boomboxes, all of which have reasonable prices, and
15 reasonable sound, and you somehow make a choice
16 among them. And you look at sort of the next layer
17 of detail to see which one fits on the shelf, which
18 one looks like the other furniture in your living
19 room. I mean, there become other criteria that you
20 use. And I think that looking at what fits with
21 the history of the system is not an unimportant
22 criteria.

23 MR. CROMWELL: I apologize, Your Honor.
24 One final question.

25 Q BY MR. CROMWELL: You discussed the carbon

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1 tax with Mr. Galloway and with the Chairwoman.

2 In the MSP process when you were
3 discussing a carbon tax, was this strictly an
4 economic financial tax based upon emissions?

5 A Yes.

6 Q Was there any modeling of sequestration
7 costs?

8 A No. It was a dollar amount plugged into
9 the model in some of the model runs to see what
10 effect a carbon tax had on whether resources
11 remained economic, and how those costs got
12 allocated between the systems.

13 Q Were multiple inputs used in terms of
14 assigning various value to what that tax might be?

15 A My recollection is that there was one set
16 of assumptions that was used, and it was used in
17 one -- one or two sensitivity analyses.

18 We didn't test a lot of different
19 assumptions on carbon tax. That's been done in the
20 IRP process, but I don't recall that kind of
21 multiple testing in MSP.

22 MR. CROMWELL: Thank you. I have nothing
23 further, Your Honor.

24 MR. GALLOWAY: Just a couple of more
25 questions.

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REXCROSS EXAMINATION

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BY MR. GALLOWAY:

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Q Mr. Lazar, will you accept, subject to check, that in the Company's base case analysis there is assumed to be an \$8 a ton carbon tax commencing in 2008 and escalating?

8

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A That doesn't fit with my recollection, so I am hesitant to accept it, even subject to check.

10

11

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Q If that were correct, would it change your conclusions about the quality of the Company's analysis of the costs of thermal resources?

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A No. I serve on the Regional Technical Forum appointed by the Northwest Power Planning Council. We have adopted a reference value of \$15 a ton, and I consider \$8 a ton to be significantly less than the cost of offsetting carbon emissions over the long term. So I don't think that's a reasonable assumption.

20

21

Q You mentioned the IRP. I gather you have been participating in Pacificorp's IRP process?

22

23

24

A No, I haven't. I reviewed the results of the IRP process by looking at the conservation programs.

25

Q So you would not be able to confirm

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1 that the Company has been applauded in the context
2 of its IRP process for including the \$8 a ton
3 carbon tax assumption?

4 A Some parties have applauded the Company
5 for that, and others have criticized it.

6 Q And some in the environmental community
7 have considered the Company to be demonstrating
8 important leadership in doing that, haven't they?

9 A Yes. And some have criticized the Company
10 for being a little on the low side.

11 MR. GALLOWAY: Thank you.

12

13 FURTHER EXAMINATION

14

15 BY CHAIRWOMAN SHOWALTER:

16 Q One follow-up, and that is regarding the
17 Technical Advisory Committee to the Power Council
18 that you were on. You said they were assuming \$15
19 a ton as of what year?

20 A We adopted that value, I think, now three
21 years ago. And it has been used in the screening
22 activity for conservation measures that are being
23 evaluated for the 5th power plant at this time. It
24 was used by Bonneville in screening resources that
25 are eligible for the conservation credit that

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1 Bonneville grants to utilities. We published a
2 whole resource cost effectiveness matrix about two
3 years ago when we submitted the final report on
4 that C&RD credit.

5 Q So does that mean that \$15 a ton is not an
6 assumption of what regulatory congressional act is
7 in place, but simply an economic value assigned to
8 social costs?

9 A Yes, that's exactly what it is. This is
10 the cost of a carboniferous resource. We don't
11 care if it's monetized or not for purposes of doing
12 cost effectiveness analysis. It doesn't matter who
13 pays the cost. If it's a cost, it's a cost.

14 MS. SHOWALTER: Thank you.

15 JUDGE MOSS: That will complete our
16 examination of Mr. Lazar, and we thank you very
17 much for being here and presenting your testimony.
18 You may step down.

19 I think we need to have our panel
20 witnesses back, and since that's going to take some
21 rearrangement of the personnel, let's take our
22 afternoon recess. And we will come back at 3:40.

23 (Brief recess.)

24 JUDGE MOSS: Let's be back on the record.

25 And, Ms. Davison, I believe you had a few

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1 more questions for the panel.

2 MS. DAVISON: Yes, I do, Your Honor.

3 Thank you.

4

5 CROSS EXAMINATION (Continuing)

6

7 MS. DAVISON: My first question is
8 directed to Ms. Omohundro. If the Commission does
9 not approve the settlement agreement, does the
10 Company agree to adopt the rate -- if the
11 Commission does not approve or modifies the
12 settlement agreement, does the Company agree to
13 adopt the rate spread and rate design
14 recommendations set forth in the testimony of Jim
15 Lazar, Don Schoenbeck, and Joelle Steward?

16 MS. OMOHUNDRO: Because the Company's
17 agreement wasn't part of the settlement, it would
18 depend upon the Commission's decision in this case.
19 We would have to take a look at it and see if we
20 could still agree to that.

21 MS. DAVISON: But is there any aspect of
22 that settlement agreement on rate spread and rate
23 design that, sitting here today, the Company
24 imposes?

25 MS. OMOHUNDRO: I don't have anything to

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1 address at this point, no.

2 MS. DAVISON: This question is addressed
3 to Staff. Regarding the deferred account for RTO
4 related costs, if Pacificorp does not join a FERC
5 jurisdictional RTO, is it your view that Pacificorp
6 should be allowed to recover these deferred costs?

7 MR. SCHOOLEY: I don't think we have an
8 opinion at this point in time, and would address
9 that when they file for any deferred accounting.

10 MS. DAVISON: So the settlement agreement
11 doesn't presume one way or the other the Company's
12 ability to amortize and collect the RTO costs; is
13 that correct?

14 MR. SCHOOLEY: No, I believe it says we
15 will analyze that filing on its merits.

16 MS. DAVISON: Thank you. I would like to
17 address this question, I guess, to whoever is
18 appropriate on the panel. I'm not sure who that
19 would be. And that is, it's directed toward
20 Exhibit 427, which is Mr. Schoenbeck's exhibit that
21 computes an implied ROE in the settlement
22 agreement.

23 And my question to the panel is whether
24 anyone on the panel has identified any errors in
25 Mr. Schoenbeck's analysis?

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1 MR. BRADEN: Are you referring to
2 mathematical errors?

3 MS. DAVISON: Any errors.

4 MR. BRADEN: I haven't scrutinized it for
5 that purpose. The assumptions that were built into
6 it are ones that he has made, and I assume his math
7 is correct. But I have no opinion on his
8 assumptions.

9 MS. DAVISON: Does the Company have a
10 response?

11 MS. OMOHUNDRO: I haven't scrutinized that
12 closely, either.

13 MS. DAVISON: Is there adequate
14 information in the record for the Commission to
15 make a finding that the implied ROE in the
16 settlement agreement is 10.50 percent?

17 MR. SCHOOLEY: Could you clarify that
18 question, please?

19 MS. DAVISON: Do you want me to try it
20 again? Okay. Is there adequate information in the
21 record for the Commission to make a finding that
22 the implied ROE in the settlement agreement is
23 10.50 percent?

24 MR. SCHOOLEY: Maybe I am
25 misunderstanding. Within the settlement agreement,

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1 or within the testimony of all the parties
2 considered?

3 MS. DAVISON: Well, my question says in
4 the record, so broadly in the record.

5 MR. SCHOOLEY: If their advisors wish to
6 back into the number, I am sure they could figure
7 it out just like Mr. Schoenbeck did.

8 MS. DAVISON: So --

9 MS. OMOHUNDRO: May I respond? None of
10 the elements of rate of return were agreed upon by
11 the parties. And the rate of return that was
12 adopted in the settlement is part of a total
13 settlement package. So I would say, no, you could
14 not conclude that from this document.

15 MS. DAVISON: Do you conclude 11 percent
16 ROE from the document?

17 MS. OMOHUNDRO: Making certain
18 assumptions, I believe you could conclude various
19 scenarios, but that is not what we did.

20 MS. DAVISON: Does Staff agree with that
21 answer?

22 MR. SCHOOLEY: I agree with that. I think
23 the missing piece is that you have looked at the
24 rate of return, and then backed into certain
25 numbers. What is missing under any of the

0466

1 scenarios is to what do you apply that rate of
2 return. And within the settlement there are the
3 components to arrive at a revenue requirement.

4 If you wish to know how either the Company
5 or Staff arrived at what that revenue requirement,
6 through its own analysis, they may have used quite
7 different scenarios.

8 MS. DAVISON: Could you identify what
9 issues or problems you might see with not
10 establishing an ROE specific number for the Company
11 in the settlement?

12 MR. BRADEN: I don't believe there's any
13 problem in terms of reaching the revenue
14 requirement and the resulting rate impacts. That's
15 one reason why we proposed it this way. We thought
16 it did allow for that factor.

17 Let me expand on your prior concern. The
18 ROE, there are various conjectures that can be made
19 about what the implicit or implied ROE might be.
20 But I think an important point that is being missed
21 as is, at least from the Staff perspective in
22 evaluating the revenue requirement, we agreed to
23 prepare the stipulation and present it on the basis
24 of the protocol. And there's been a fair amount of
25 discussion about that.

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1 What is being missed, I believe, in the
2 context of this discussion so far, is the fact that
3 Staff, in agreeing to the settlement, was
4 constantly checking the assumptions and the various
5 adjustments and agreements against our own analysis
6 that we did internally based on our own view of the
7 numbers throughout the case.

8 For example, we had looked at the
9 adjustments and the return on equity based on our
10 expert's original testimony. And went into the
11 settlement discussions with a number in mind that
12 we believed at that time was a reasonable number
13 using the Staff's position.

14 What we did was utilize a different
15 methodology, the protocol, to reach that same
16 number, or a relatively comparable number that we
17 felt was fair, reasonable, and sufficient.

18 So what is missing is the fact that
19 implying the protocol was our foundation for
20 evaluating the settlement, it was not. We
21 evaluated the settlement on the basis of the
22 analysis we had done under the control area
23 methodology. The number came out comparable.

24 The approach in presenting it so that the
25 numbers could be consistent for the adjustments was

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1 using the protocols. So there was a common
2 foundation for the assertion of the numbers.

3 The net result was something Staff was
4 satisfied with, based on its own internal control
5 area analysis.

6 So, in essence, both methods were used in
7 terms of compiling a specification of adjustments
8 and the numbers necessary to reach what you see in
9 the settlement. We had to agree on a common
10 baseline, but the evaluation we did internally
11 really was not protocol based.

12 MS. DAVISON: But isn't it correct in your
13 direct testimony you were recommending an overall
14 revenue requirement increase of approximately 3.5
15 percent, and sitting here today you were
16 recommending to the Commission an overall revenue
17 requirement increase of about approximately 8
18 percent?

19 MR. BRADEN: That was, that's correct, a
20 number in my direct testimony. And even in the
21 direct testimony it changed once from a revenue
22 requirement in the range of \$3 million to something
23 in excess of \$7 million.

24 The point is, as of the time we initiated
25 our settlement discussions on the 18th -- which is

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1 another point that needs to be clarified.
2 Settlement actually took a week to consummate. It
3 was not consummated on the 18th. It was a series
4 of negotiations over a week.

5 We had made determinations based on the
6 Company's rebuttal testimony, our own internal
7 examination of numbers that were brought to our
8 attention, errors that were discovered.

9 And as I responded to ICNU in a data
10 request, Staff was in the range of a \$14 million
11 recommendation for revenue requirement using the
12 control area methodology on the day we walked into
13 the discussions with the Company.

14 That was based on the 9.375 ROE, and the
15 lower 44 percent common equity percentage. So we
16 walked into those discussions with those kinds of
17 internal numbers, which we did not share with the
18 Company.

19 And then in our negotiation, that was our
20 understanding of what our case very well might have
21 been when we went into hearing, based on
22 information that was obtained subsequent to the
23 filing of the testimony you are referring to. So,
24 in essence, if there had been any adjustment of the
25 ROE above the nine and three-eighths, or an

0470

1 adjustment of the equity above 44, we would have
2 ended up with a revenue requirement substantially
3 in excess of 19.5.

4 The other factor has that hasn't come out
5 here in the focus on numbers --

6 MS. DAVISON: I'm sorry. I understand
7 your desire to kind of tell your side of the story.
8 I am trying to get some specific information from
9 you, and I will give you an opportunity to get to
10 more of your perspective on this settlement.

11 But if I could focus your attention to
12 a portion of the answer that you just gave, which
13 is that Staff's case was not the \$7.1 million
14 contained in your direct testimony, but it was, in
15 fact, \$14 million, is your \$14 million figure
16 anywhere in this record, other than what you just
17 verbally stated?

18 MR. BRADEN: No. The number had been
19 developed as a result of reviewing certain errors
20 that had been pointed out in Staff and Company
21 documents, as well as additional information that
22 we had obtained as a result of rebuttal testimony
23 from the Company. And we were anticipating the
24 revision of our testimony to reflect not
25 necessarily that number. The number had not been

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1 pinned down as of the date we entered into
2 settlement discussions. But settlement discussions
3 disrupted the need to do so.

4 MS. DAVISON: Is it your testimony that
5 the direct testimony that has been submitted in
6 this case by Staff is not accurate?

7 MR. BRADEN: The direct testimony was
8 accurate as of the time it was submitted. The
9 direct testimony has been supplemented by
10 additional information that I am currently
11 testifying to.

12 MS. DAVISON: Well, I guess those of us
13 who were not privy to the conversations that led to
14 the \$14 million number would not actually know how
15 to treat your testimony that has been prefiled in
16 this case.

17 And if it is your testimony today that
18 your direct testimony is no longer accurate, then
19 my question is, how do we know what we can rely
20 upon as being accurate in terms of what has been
21 submitted in this record?

22 MS. SMITH: Your Honor, I am going to
23 object to that question. What we have is a
24 settlement. And as Mr. Braden testified, Staff
25 originally filed testimony, gave a number, entered

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1 into settlement, and now we have got a settlement.
2 And that is what Staff is recommending that the
3 Commission adopt.

4 And the decision of whether or when or if
5 the Commission Staff would have filed supplemental
6 testimony to update its original testimony, but for
7 the settlement is something that -- I mean it's not
8 really proper inquiry here.

9 What's proper here is, here's the
10 settlement. And Mr. Braden testified that -- you
11 know, how we got there, and that's as far as we
12 need to go.

13 MS. DAVISON: Your Honor, I strongly
14 disagree with that. I believe that this record has
15 testimony admitted on Staff's underlying case. And
16 as Mr. Schoenbeck testified, ICNU can't run an
17 entire case.

18 So we have to rely on analyses that are
19 performed by other witnesses in rate cases. And
20 for the first time today, just now, we are hearing
21 that the testimony that has been admitted in this
22 record by Staff is not accurate testimony.

23 And I think that if the Staff wants to
24 just simply support the settlement, that's fine.
25 They can put in their settlement testimony. But

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1 they have decided strategically to also admit their
2 direct testimony in this case.

3 And I believe that the record, if it's
4 going to have this direct testimony, should reflect
5 what is accurate so that we know what we can rely
6 upon in this record as being correct.

7 MS. SMITH: Your Honor, we don't know what
8 Staff's supplemental testimony would be. As
9 Mr. Braden testified, that process was interrupted
10 with the settlement negotiations. And instead of
11 pursuing supplemental testimony, Staff made the
12 decision to enter into the settlement agreement
13 with the Company.

14 And on a second point, Staff does not have
15 the obligation to make the revenue requirement or
16 any other argument on behalf of any other party.
17 Staff filed its testimony, and if other parties
18 want to rely upon that, quite frankly, they have to
19 do that taking the risk that Staff could supplement
20 that testimony, or that Staff could settle and the
21 testimony that they might be relying upon isn't
22 there. And that's just a risk that every party
23 takes.

24 And speaking as Staff counsel, I've seen
25 that happen in telephone generic cost dockets where

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1 Staff expects that the competitive company will do
2 most of the work. And we take the risk that
3 perhaps they either won't do a good job, or they
4 will settle with the Company, and we're left with
5 the few issues that we chose. We just don't have
6 the obligation to make the case for other parties.

7 MS. DAVISON: Your Honor, I'm not
8 suggesting that Staff does have that obligation.
9 But I do believe that Staff has the obligation that
10 if they are going to admit any exhibit into the
11 record in the case, that that exhibit should be
12 accurate and that we should be able to rely upon
13 the accuracy of the exhibit.

14 COMMISSIONER HEMSTAD: What is the issue
15 in front of us?

16 MS. DAVISON: The issue --

17 COMMISSIONER HEMSTAD: What are we being
18 asked to decide here?

19 MS. SMITH: Your Honor, I guess I have
20 objected to the discussion about what Staff might
21 possibly have testified to had we supplemented our
22 testimony. And the objection is relevancy. We
23 have Staff's original testimony, and we have a
24 settlement.

25 MS. DAVISON: That's wasn't my question,

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1 Your Honor.

2 JUDGE MOSS: Let me cut through this. We
3 have had extensive enough argument about it.

4 Staff has offered Mr. Braden's testimony
5 and exhibits, prefiled testimony and exhibits. And
6 at an appropriate moment in time, which is not now,
7 you will have an opportunity to cross-examine him
8 with respect to that testimony and those exhibits.

9 Right now we have the settlement panel
10 before us, and that's what we're supposed to be
11 focusing on. So let's confine ourselves to that
12 subject matter for the present time.

13 And if you have questions about elements
14 of Mr. Braden's testimony or another Staff
15 witness's testimony, then raise those questions
16 when we're focused on that direct testimony, which
17 is not now.

18 MS. DAVISON: Your Honor, with all due
19 respect, Mr. Braden implicated and relied upon
20 Staff's direct case in answering the last question,
21 and I was following up on that to understand how
22 that related to the settlement.

23 JUDGE MOSS: You can file that away. But
24 I think we have it perfectly clear from
25 Mr. Braden's testimony in response to your

0476

1 questions that Staff's thinking evolved in terms of
2 settlement, and that's what we need to know in
3 terms of the settlement.

4 MS. DAVISON: The question I asked you,
5 Mr. Braden, that set off a very long explanation on
6 your part was -- and I'll try it again -- what
7 issues or problems do you see on a going-forward
8 basis with not identifying an ROE number for the
9 Company in this settlement?

10 MR. BRADEN: None.

11 MS. DAVISON: What is the proper earnings
12 baseline that the Commission should utilize to
13 evaluate whether the Company is underearning or
14 overearning without an ROE?

15 MR. BRADEN: The total return of 8.39,
16 which covers all forms of capital.

17 MS. DAVISON: Did the failure to establish
18 an authorized ROE in the 1999 case make it more
19 difficult for the Commission, the Company, and
20 interveners to evaluate the Company's financial
21 condition when Pacificorp requested a power cost
22 deferral in 2002?

23 MR. BRADEN: I don't believe I can answer
24 that question.

25 MR. SCHOOLEY: I wasn't involved in that

0477

1 docket, and I don't know if that was an issue that
2 was brought forth at the time.

3 MS. OMOHUNDRO: I don't know if that was a
4 problem.

5 MS. DAVISON: If Pacificorp claims that it
6 is in need of interim rate relief in the future,
7 what should the Company -- what should the
8 Commission assume to be the Company's authorized
9 ROE that would be used to evaluate such an
10 application?

11 MR. SCHOOLEY: It shouldn't assume any
12 return on equity. It should be looking at the
13 total weighted average cost of capital at 8.39
14 percent.

15 MS. DAVISON: Is it correct that one of
16 the reasons the Commission amended the rate plan
17 was because it was concerned that Pacificorp might
18 not be able to earn a reasonable rate of return
19 during the remaining term of the rate plan?

20 MR. BRADEN: I believe the order would
21 speak for itself in that regard.

22 MS. DAVISON: Do you have any independent
23 recollection or knowledge of that point?

24 MR. BRADEN: I was not involved in that
25 case.

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1 MS. DAVISON: In this case, did Staff
2 consider whether Pacificorp was able to have -- was
3 able to have an opportunity to earn a reasonable
4 rate of return under its current rates until the
5 end of the rate period?

6 MR. BRADEN: One of the factors,
7 obviously, Staff is responsible for evaluating is
8 the sufficiency of the revenue flow to the Company.
9 So to the extent we were looking at the overall
10 picture, their financial picture, we did take into
11 consideration sufficiency, which is in part the
12 amount they are able to earn.

13 MS. DAVISON: Did you reach a conclusion
14 that under the rate plan rates would not be
15 sufficient?

16 MR. BRADEN: We did not consider the rate
17 plan explicitly. We considered that effectively
18 our task was to evaluate the filed case.

19 MS. DAVISON: The settlement agreement has
20 \$600,000 of what has been labeled unspecified
21 Public Counsel-ICNU adjustments; is that correct?

22 MR. BRADEN: That is itemized, yes.

23 MS. DAVISON: And isn't it correct that in
24 data responses in which we asked for specific
25 identification of which issues were to be

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1 considered in that \$600,000, that we got the same
2 response, it's unspecified?

3 MR. BRADEN: It's unspecified. It was
4 part of the overall settlement compromise.

5 MS. DAVISON: And I believe we established
6 that neither ICNU nor Public Counsel participated
7 in the settlement talks, is that correct, that led
8 to the \$600,000 unspecified adjustment?

9 MR. SCHOOLEY: That's correct, but within
10 our discussions we had told the Company that they
11 needed to talk to you, and they should go over the
12 adjustments we proposed to see if there was room
13 for you to bring in \$600,000, or perhaps even more.

14 MS. DAVISON: So isn't it more accurate to
15 say that there's \$600,000 of unspecified
16 adjustments, rather than to identify it to
17 unspecified adjustments of ICNU and Public Counsel?

18 MR. SCHOOLEY: You may look at it that way
19 if you wish.

20 MR. BRADEN: I would supplement that, if I
21 may, by stating that as it says in the settlement
22 agreement and the testimony, there was the sense on
23 part of the Staff that some of the issues ICNU had
24 raised might have merit. We were not to the point
25 of being able to dissect that, and determine which

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1 ones had how much merit. But we felt that some
2 recognition of points we felt were potentially
3 valid should be given in the settlement.

4 MS. DAVISON: Does Staff oppose any of the
5 adjustments that Mr. Schoenbeck or Mr. Falkenberg
6 have proposed in this docket?

7 MR. BRADEN: We support the settlement
8 stipulation. To the extent those would result in a
9 different result, we do not support them.

10 MS. DAVISON: But on an individual
11 adjustment by adjustment basis, are there any
12 adjustments that Staff believes are inappropriate
13 that have been suggested by Mr. Schoenbeck or
14 Mr. Falkenberg?

15 MR. BRADEN: I believe my prior answer
16 responds to that.

17 MS. DAVISON: Well, no, my question is,
18 put the settlement agreement aside.

19 MR. BRADEN: I don't believe we can do
20 that. We have an effective settlement agreement
21 that requires each party to support the settlement.
22 The settlement comes up as a total, and that's what
23 we support.

24 MS. DAVISON: I understand that. But
25 let's assume for purposes of my question that the

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1 settlement agreement is rejected. Are there any
2 adjustments that Mr. Falkenberg and Mr. Schoenbeck
3 have advanced that Staff believes to be
4 inappropriate?

5 MS. SMITH: I would object to that. I
6 think the question has been asked and answered,
7 that we really can't do that, because we're
8 committed to supporting a settlement.

9 MS. DAVISON: But my question assumes that
10 the settlement has been rejected.

11 JUDGE MOSS: To that extent it's a
12 hypothetical question, so I don't know how far that
13 advances our record.

14 CHAIRWOMAN SHOWALTER: Isn't that the
15 question that would come to Mr. Braden if we do
16 reject the settlement, and we have further process?

17 MS. DAVISON: I guess maybe I'm confused
18 about what we're doing at the hearing. I thought
19 we had agreed at the prehearing conference that
20 we would be pursuing the issues that are being
21 admitted in this case, and that it wasn't just
22 limited exclusively to the settlement agreement?

23 JUDGE MOSS: Well, you will have an
24 opportunity to inquire of Mr. Braden concerning his
25 direct testimony and exhibits that have been or

0482

1 will be admitted in support of the settlement. At
2 this juncture, that's not the inquiry we're having
3 right now.

4 Insofar as this issue that you have been
5 pursuing is concerned, I think the witnesses have
6 answered rather thoroughly that there are \$600,000
7 worth of unspecified adjustments that are labeled
8 as an acknowledgement of adjustments proposed ICNU
9 and Public Counsel, and I don't know what more
10 there is to inquire about that.

11 They are not identified to the specific
12 line item adjustments proposed by ICNU and Public
13 Counsel witnesses. We have all of that in the
14 record. So I don't know how much further we can
15 pursue that. In terms of the settlement, they
16 aren't specified. Staff didn't specify them, the
17 Company didn't specify them.

18 MS. DAVISON: I'm not asking about the
19 \$600,000 anymore. I was asking independently,
20 whether Staff opposed any of the positions that
21 were advocated by Mr. Falkenberg or --

22 JUDGE MOSS: That would be a merit for
23 brief, unless one of these witnesses testified on
24 direct or in their response cases concerning those
25 adjustments, which would have been an impossibility

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1 since you filed your response testimony on the same
2 day they did.

3 So I don't see that that's a proper line
4 of inquiry. It would have been addressed on brief,
5 I assume.

6 MS. DAVISON: Well, I don't want to
7 belabor that point, but I certainly have asked that
8 question in dozens of rate cases, whether a witness
9 agrees with a particular adjustment or not. But if
10 you are sustaining the objection, I will move on.

11 JUDGE MOSS: It may be something we need
12 to pursue if we have further process concerning the
13 parties' advocacy in the case. But what we're
14 focused on right now right here is that adjustment,
15 to the extent it exists in the settlement
16 agreement.

17 MS. DAVISON: So is it sustained?

18 JUDGE MOSS: Let's call it sustained, if
19 that will help.

20 MS. DAVISON: Thank you.

21 Ms. Kelly, do you have Taylor Exhibit 309
22 before you?

23 MS. KELLY: No, I don't.

24 MS. DAVISON: Could you retrieve that,
25 please?

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1 MS. SMITH: Your Honor, may I hand a copy
2 up to the Staff witnesses who are at the table in
3 case they need to address this as well?

4 JUDGE MOSS: Well, the question has been
5 specified to one of the panelists, so let's go with
6 that and see if we can save the time.

7 MS. KELLY: Could you give me the exhibit
8 number reference without the numbers?

9 MS. DAVISON: I have Exhibit 309, and it
10 is a chart that is page 1 of 1.

11 MS. KELLY: DLT --

12 JUDGE MOSS: 19.

13 MS. KELLY: Thank you.

14 MS. DAVISON: Yes. I believe I asked you
15 earlier today, Ms. Kelly, whether the revised
16 protocol would generally result in an increase or
17 decrease in revenue requirement for the state of
18 Washington, and you testified that you did not
19 recall. Does this chart address this issue?

20 MR. VAN NOSTRAND: Your Honor, I'm going
21 to object to this line of questioning. I think the
22 fact that Ms. Davison has identified this as
23 Mr. Taylor's exhibit illustrates the problem that
24 this is not Ms. Kelly's exhibit.

25 JUDGE MOSS: Well, we frequently have

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1 reference to other witnesses' exhibits. I will
2 overrule that.

3 MS. KELLY: Repeat the question, please.

4 MS. DAVISON: Does this chart refresh your
5 recollection of whether the revised protocol
6 resulted in an overall increase or decrease to the
7 Washington revenue requirement?

8 MS. KELLY: It does for purposes of the
9 forecasting period, but not for purposes of the
10 test period we're in and the period in which the
11 stipulation covers.

12 MS. DAVISON: For purposes of the
13 forecasted period, does the revised protocol result
14 in lower or higher rates for Washington rate
15 payers?

16 MS. KELLY: It results in both, depending
17 on the time period you are talking about over the
18 14-year period the NPV, net present value decrease
19 is .82 percent.

20 MS. DAVISON: So overall, the purposes of
21 this chart and this forecast, Washington rates are
22 lower under revised protocol as compared to
23 modified accord. Is that what this chart shows?

24 MS. KELLY: I believe that's what I said.
25 Yes.

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1 MS. DAVISON: Thank you. And you
2 testified earlier today that there was a
3 stipulation in Wyoming on MSP issues; is that
4 correct?

5 MS. KELLY: That's correct.

6 MS. DAVISON: And did that stipulation
7 contain anything unique to Wyoming, or did Wyoming
8 simply adopt revised protocol?

9 MS. KELLY: Wyoming has not adopted
10 anything. It's a stipulation of the parties in
11 Wyoming to support ratification by the Commission
12 of the revised protocol without any changes to the
13 revised protocol.

14 MS. DAVISON: Were there any concessions
15 that the Wyoming parties received in the
16 stipulation that will be presented to the Wyoming
17 Commission?

18 MS. KELLY: Could you describe
19 concessions?

20 MS. DAVISON: How would you describe
21 concessions?

22 MS. KELLY: That's wasn't my question.

23 MS. DAVISON: Do you have a common
24 understanding of what concessions means? You can
25 use your own words, however you would like to

0487

1 describe it.

2 MS. KELLY: The stipulation contains
3 conditions of both the Company and the parties that
4 were agreed to to secure their support of the
5 revised protocol. It does not change the
6 underlying underpinnings of the revised protocol,
7 though.

8 MS. DAVISON: I understand that, and
9 I will accept that the Wyoming Staff and parties to
10 the stipulation are not seeking to change revised
11 protocol.

12 My question is that in the stipulation and
13 agreement that the parties entered into, did the
14 Wyoming parties get any financial concessions from
15 the Company in order to entice them to sign a
16 stipulation, or for whatever reason?

17 MS. KELLY: No.

18 MS. DAVISON: Does the stipulation state
19 in paragraph 7 that "The parties further agree and
20 acknowledge that this new rate rider is set at a
21 level that reflects anticipated benefits to
22 Pacificorp's Wyoming customers from the revised
23 protocol developed in the multi-state process"?

24 MS. KELLY: No. You are referring to a
25 different stipulation. That's a stipulation in a

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1 separate case. The MSP stipulation is in a
2 different docket.

3 MS. DAVISON: Isn't there a stipulation
4 and agreement in docket 2000 -- well, I guess that
5 would be 20000 EP04211 that contains the statement
6 I just read to you?

7 MS. KELLY: There is, but that's not the
8 MSP proceeding.

9 MS. DAVISON: We understand that that's a
10 different docket. But isn't it correct that that
11 stipulation contains the provision that I just read
12 to you?

13 MS. KELLY: It does. But that was not a
14 condition of them supporting the MSP stipulation.
15 If you read the MSP stipulation, which has not been
16 entered into this proceeding, there are no
17 financial conceptions associated with their support
18 of the multi-state process.

19 MS. DAVISON: The paragraph that I just
20 read to you in the Wyoming stipulation is related
21 to a power cost case in which the parties agree to
22 reduce the amount of the new rate rider that would
23 go into effect in Wyoming if the Commission were to
24 approve it, identifies that that amount is reduced
25 by the amount that Wyoming would expect to receive

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1 in the first year under the revised protocol; isn't
2 that correct?

3 MS. KELLY: No.

4 MS. DAVISON: How would you describe the
5 stipulation in Wyoming?

6 MS. KELLY: I think it speaks for itself.
7 I do not have it in front of me, and I was not a
8 participant in negotiating the terms of the
9 reduction to the rider. That was done by the
10 participant in the pass-on docket.

11 I followed that docket, but I was not a
12 participant in how they arrived at the specific
13 dollar amount of the reduction. I believe it took
14 into account many factors, not just the reduction
15 associated with the benefits of the revised
16 protocol.

17 MS. DAVISON: So is it your testimony that
18 the sentence I read to you that says, "The parties
19 agree and acknowledge that this new rider is set at
20 a level that reflects anticipated benefits to
21 Pacificorp's Wyoming customers from the revised
22 protocol and the MSP process," is not correct?

23 MS. KELLY: It's a correct reading of it,
24 but your characterization is incorrect.

25 MS. DAVISON: All right. Did the Wyoming

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1 parties also get, as part of this stipulation in
2 the power cost case, an agreement from the Company
3 to stay out for a stay out period; in other words,
4 an agreement not to file a rate case for a period
5 of time?

6 MS. KELLY: I believe so. But as I said,
7 I was not part of the negotiation of the specific
8 terms of that.

9 MS. DAVISON: Is Ms. Omohundro more
10 familiar with the stipulation I'm talking about?

11 MS. OMOHUNDRO: Similar to Andrea, I
12 believe that's true, but I was not a party to those
13 negotiations.

14 MS. DAVISON: Do you accept, subject to
15 check, that the stipulation states at paragraph 9
16 that Pacificorp agrees it will not seek to increase
17 any rates in Wyoming at any time prior to September
18 30, 2005?

19 MS. OMOHUNDRO: I would accept that,
20 subject to check.

21 MS. DAVISON: Thank you.

22 I don't have any further questions.

23 JUDGE MOSS: Thank you. I think we may
24 have some questions from the bench.

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EXAMINATION

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CHAIRWOMAN SHOWALTER: Well, it's about

this time of day that I start losing a grip on what

I thought were good questions earlier. I think

I will begin with a very basic one, and that is

about the MSP and allocation process. I think

I will direct this to Ms. Kelly.

First of all, if you take simply

administrative costs of the company, is that

affected by the MSP process and allocation, or is

that taken care of in a more direct or simple way?

MS. KELLY: To the extent that

administrative costs can be directly assigned, they

are. But the common costs that cannot be directly

assigned are allocated based on an overhead

allocation factor.

CHAIRWOMAN SHOWALTER: And is that

overhead allocation factor at issue in the various

incarnations of the allocation models?

MS. KELLY: Not explicitly. I am familiar

in Mr. Schooley's testimony he initially had

questions about that. But as far as in the

multi-state process, that has generally, between

the different iterations of the protocols, been a

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1 static treatment that has been in place for many,
2 many years.

3 CHAIRWOMAN SHOWALTER: So here's an
4 example. In the settlement proposal you allow for
5 the possibility of RTO costs to come before the
6 Commission in a request for a deferred accounting;
7 is that correct?

8 MS. KELLY: That's correct.

9 CHAIRWOMAN SHOWALTER: And I assume at
10 that point, then, in order to set up the account,
11 there would have to be an assumed allocation to the
12 state of Washington for its portion of the RTO
13 costs; is that correct?

14 MS. KELLY: That's correct.

15 CHAIRWOMAN SHOWALTER: Since that's a real
16 example in the settlement, if that was to come
17 before us, is it known, without having to know the
18 allocation process or the allocation decision that
19 we might make, would we know how to go about that
20 particular petition for deferred account?

21 MS. KELLY: I think so. I think that the
22 stipulation sets out, sets forth a set of algebraic
23 derivations of allocation factors, including the
24 system overhead, or SO factor. And so that
25 allocation factor could be applied in the deferral

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1 of the RTO costs.

2 CHAIRWOMAN SHOWALTER: And this is
3 separate, is it, from the agreement to use the
4 revised protocol for regular routine reporting?

5 MS. KELLY: It is part of the agreement to
6 use it for the regular reporting. But the
7 difference between the original protocol and the
8 revised protocol, the SO factor did not change.

9 CHAIRWOMAN SHOWALTER: And I will ask
10 Mr. Schooley, do you agree with Ms. Kelly's
11 testimony?

12 MR. SCHOOLEY: Perhaps. I think that
13 would be part of the analysis. I think it's a
14 little slipperier, though, in that as the
15 allocation factors are dynamic, they change as
16 loads change and other factors change.

17 And so if you approved the deferral of RTO
18 expenses, it would be more or less on a system-wide
19 basis of which some of it would be allocated to
20 Washington. And that piece that gets allocated
21 wouldn't necessarily just be one set number
22 forever, and then it works itself off over a period
23 of time.

24 It could, depending on how it's structured
25 in the accounting petition, change as the

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1 allocations change, even by their own design
2 mechanism.

3 CHAIRWOMAN SHOWALTER: I guess one
4 question I am getting at is if we do not approve,
5 in this proceeding, an allocation methodology, do
6 we have the ability, in a general way, to entertain
7 different petitions that might come before us,
8 including the RTO costs, but there might be others,
9 or are we going to get stuck in the same situation
10 we were in when we were unable to deal with the
11 deferred accounting petitions, because we didn't
12 have the most basic elements that we needed in
13 order to set it up and start accounting for it?

14 MR. SCHOOLEY: I understand what you are
15 getting at.

16 CHAIRWOMAN SHOWALTER: Are some deferred
17 accounting petitions easier than others?

18 MR. SCHOOLEY: That's what my answer was
19 going to be. Some are a lot easier. The power
20 costs are one with a number -- a huge number to
21 start with. And no matter how you allocate it,
22 it's still a number, big number.

23 In things like the RTO expenses, the
24 differences in allocation schemes would probably be
25 diminimus in the end, anyway.

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1 MS. KELLY: I would agree with that
2 characterization. I think the area where you would
3 have controversy is in the context of generation
4 related costs, power costs, rather than in the
5 other areas of sort of overall A&G, and those types
6 of filings.

7 CHAIRWOMAN SHOWALTER: Ms. Omohundro,
8 regarding the allocation decision or nondecision, I
9 want to pick up with you where I left off with
10 Mr. Furman yesterday. And I believe he confirmed
11 that in Idaho and Wyoming all parties have agreed
12 to the revised protocol with perhaps some
13 variations, but not five years out; is that
14 correct? Or would you like to add to that?

15 MS. OMOHUNDRO: I will defer that to
16 Ms. Kelly, please.

17 CHAIRWOMAN SHOWALTER: Sorry.

18 MS. KELLY: For purposes of clarification,
19 in Oregon there's a three-party stipulation that
20 excludes ICNU, that's before the Oregon Commission.
21 There's an all-party stipulation in Utah that is
22 unopposed, and that's before the Utah Commission.

23 And in Wyoming, we have just filed the
24 all-party stipulation that's before the Wyoming
25 Commission. We're currently in settlement

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1 discussions with the Idaho parties.

2 But in each of the -- each of the four
3 states, the revised protocol, the elements of it
4 are identical among the states. Each of the
5 stipulations looks at some of the concerns that are
6 addressed, but are unique to each of the states,
7 but does not change the underlying allocation of
8 the costs.

9 So your question about five years out,
10 will everybody be on the same allocation, our hope
11 is that on day one everybody will be on the same
12 allocation methodology, subject to, in Utah, the
13 capping and the impact on the shareholders for the
14 transition period until we get to full recovery.
15 And, in fact, the opportunity to overrecover our
16 costs in a few years.

17 CHAIRWOMAN SHOWALTER: And in Oregon is
18 ICNU opposing the revised protocol, or simply
19 taking no position?

20 MS. KELLY: Opposing.

21 CHAIRWOMAN SHOWALTER: And in all of the
22 states that you know of, are the parties opposing
23 the revised protocol, ICNU and Public Counsel in
24 the state of Washington, and kind of an unknown as
25 far as Washington Staff is concerned? Does that

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1 summarize the status of things?

2 MS. KELLY: I think that's a fair
3 assessment, yes.

4 CHAIRWOMAN SHOWALTER: Then do I assume --
5 or should I assume that the Company does, or I
6 guess I should say will support the revised
7 protocol in this state, should it come -- should
8 there be a proceeding?

9 MS. KELLY: We will and we do. But I
10 think I agree with Mr. Lazar, that this is an
11 opportunity for the Commission to provide some
12 direction of which way this state would like to go.

13 From the beginning of the multi-state
14 process, the four states that we have talked about,
15 the four, Idaho, Wyoming, Utah, and Oregon, have
16 had much more of an integrated system focus, desire
17 to keep the system together. And Washington has
18 sought to be more of an island.

19 That's part of the message that we're
20 receiving from the parties. And I think one of the
21 benefits of the stipulation is it gives us the
22 opportunity to have the dialogue to make sure
23 that's the direction that this state and the
24 policies of this state that that's the direction
25 that the parties want to head, or would they

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1 prefer, and can they be -- can they persuade
2 themselves and be convinced upon careful review of
3 the revised protocol that it achieves the benefits
4 for Washington customers that they think are
5 appropriate.

6 CHAIRWOMAN SHOWALTER: When you say
7 Washington, I take it you mean parties in
8 Washington, but you are not referring -- or are you
9 to the individual commissioners in Washington?

10 MS. KELLY: I think it's to the parties,
11 but I think it would be helpful outside of a
12 litigated process to be able to engage in a public
13 dialogue with all of the parties that are impacted
14 by this type of decision.

15 CHAIRWOMAN SHOWALTER: Ms. Kelly, you had
16 answered a question about Exhibit 309 that was
17 Mr. Taylor's exhibit. And after I got on my second
18 pair of glasses, I could see that this appears to
19 be evidence that the revised protocol over the
20 years 2005 through 2018 is more beneficial to
21 Washington and Oregon and Wyoming compared to the
22 original revised protocol. Is that what this says?

23 MS. KELLY: This is compared to the
24 modified accord, which is arguably the allocation
25 methodology that is in place in each of the states,

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1 or at least was used for comparison purposes
2 throughout the multi-state process.

3 So you will note that both Idaho and Utah
4 are compared to a rolled-in methodology, which is
5 their preferred or existing methodology for
6 rate-making purposes.

7 CHAIRWOMAN SHOWALTER: So is there
8 anything comparable to this in the record that
9 compares the revised protocol to the original
10 protocol? Or if not, do you have an opinion as to
11 whether, over the same period, the revised protocol
12 is more favorable to Washington, given these
13 assumptions, than the original protocol?

14 MS. KELLY: I am aware that the pieces are
15 in the record. I believe in Mr. Taylor's original
16 direct testimony there is a -- yes, there's an
17 exhibit that has the exact same comparison for the
18 original protocol.

19 So you would need to take what you have
20 before you and the original protocol. I'm not sure
21 that's been entered anywhere in the record that
22 does that comparison.

23 But my understanding is that the revised
24 protocol on balance is more favorable from a net
25 present value and revenue requirement impact over

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1 that time frame than the original protocol.

2 CHAIRWOMAN SHOWALTER: Right. And then I
3 would like to dwell a minute on comparing the
4 original protocol to the control area model used by
5 the Staff in its testimony, and/or a comparison of
6 the original of the control area model compared to
7 the revised protocol model.

8 Do you have any judgment, given certain
9 assumptions -- or holding certain assumptions
10 constant, that allows you to compare those two?

11 MS. KELLY: So this is to compare the
12 revised protocol to the control area methodology
13 advocated by Commission Staff in this proceeding?

14 CHAIRWOMAN SHOWALTER: Yes.

15 MS. KELLY: We do not have the same type
16 of 14-year forecast of the methodology that was
17 employed by the Staff in their direct case, because
18 they had made independent changes to the
19 methodology that's different than what was
20 developed in the multi-state process back through
21 2002.

22 Again, I'm trying to think if there -- I
23 don't believe in the record that there is a 14-year
24 forecast of what the control area methodology would
25 result for Washington. But based on general

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1 trends, the control area methodology seems -- I
2 believe started out more beneficial to Washington.
3 And I believe crossed over in some of the years
4 where the Mid Columbia contracts expired, and new
5 resources were coming in on the west side which
6 were directly assigned to the west. And then I
7 believe crossed back over later in the 14-year
8 study. Did that make sense?

9 CHAIRWOMAN SHOWALTER: Yes. And I
10 understand that there's not a lot of detail on
11 this. I am really looking for overall judgments
12 about the relative values that we can make
13 judgments about in this proceeding.

14 Mr. Braden, I think my concern is whether
15 this is or should be an opportunity to seize the
16 moment and see if we can get to an agreement on an
17 allocation, particularly in light of the fact that
18 there seems to be agreement in other states which
19 has some value -- some value.

20 And I wonder whether approval of the
21 settlement will slow that process in Washington.
22 What is the incentive of the Company to come back
23 here -- after it has its rate increase based on the
24 original protocol, to come back to us and propose
25 what would almost have to be the revised protocol,

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1 because that's what they support, and that's, I
2 would say, probably what will be adopted in other
3 states. I don't want to presume those other
4 Commissions. And particularly in Oregon I would
5 not make that guess.

6 But we have a time in the six states when
7 things are fairly active, maybe jelling, we're a
8 part of those six states. The revised protocol
9 seems to be in a direction that is positive for
10 Washington compared to some other models, maybe not
11 others. And what are we giving up by not getting a
12 grip on all of that?

13 JUDGE MOSS: Ponder your answer for a
14 moment, please. Off the record.

15 (Discussion off the record.)

16 JUDGE MOSS: We will take a brief recess.

17 (Brief recess.)

18 JUDGE MOSS: All right. Let come back to
19 order.

20 Mr. Braden has had ample opportunity to
21 contemplate his answer.

22 MR. BRADEN: Ample opportunity to
23 completely forget the question.

24 CHAIRWOMAN SHOWALTER: That's because it
25 was too long.

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1 MR. BRADEN: I will try to address the
2 concern you raised concerning the propriety of
3 actually addressing the allocation issue in the
4 present proceeding versus the settlement, which, in
5 fact, does leave the question unanswered, and the
6 risks that are associated with doing so.

7 It would have pleased me tremendously to
8 be able to present a proposal to you, whether we
9 were in agreement with the Company or not, that
10 would have represented a comprehensive solution to
11 the allocation issue. I believe that was the
12 intent of the parties as this case was initiated,
13 and the hope of the parties.

14 Frankly circumstances have conspired
15 against us in being able to do so, because of the
16 fact that the protocol, as has been testified to
17 and by a variety of people, has been a moving
18 target. And what we spent a great deal of time and
19 effort analyzing is not actually the proposal that
20 would provide the uniformity that you spoke of,
21 which we believe does have value as well.

22 So it's really not something that we can
23 give you a clear opinion on at this point. What we
24 have tried to do in the settlement, however, is
25 open the door for being able to give you the

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1 opportunity to make that determination by creating
2 an environment where the Company, and Staff, and
3 other interested parties will be able to take a
4 look at allocation issues, kind of once the ball
5 has stopped rolling.

6 As you heard testimony, it appears very
7 promising that there will be an agreement on a
8 uniform methodology in the other states, meaning we
9 will actually have a fixed target that we can
10 analyze.

11 What we have -- what has been part of the
12 mutual consideration of this settlement has been a
13 willingness on the part of, certainly Staff and the
14 Company, and hopefully other parties who have an
15 interest in this, to take a fresh look at the
16 protocol in its final form with an open mind.

17 Certainly Staff is committed to do so.
18 The Company, likewise, has committed to discuss
19 with Staff whether there are alternatives that
20 would allow a Washington variation that would be
21 compatible that would allow them to achieve, if not
22 all of their goals, at least a significant portion
23 of their goals in terms of uniformity and avoidance
24 of regulatory gaps.

25 So we think that the stage has been set.

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1 While we would have preferred to come to you with
2 specific proposals, preferably by agreement, but
3 even if not, otherwise if we could have come with
4 opposing ones that you could have decided between,
5 that would have been desirable in order to avoid
6 the kinds of potential problems you have pointed
7 out going down the road with other requests or
8 petitions that might be pending.

9 You raised the question about, you know,
10 if we go ahead with the settlement on this interim,
11 or this kind of one-time only basis that we
12 proposed in the stipulation, how do we know we're
13 going to get a chance to actually resolve this in
14 the fairly near future?

15 I will defer to the Company to some extent
16 on that, but I believe the testimony has been, and
17 our understanding is, that the Company is prepared
18 to work on this immediately, and that there is a
19 virtual certainty that some filing would be
20 forthcoming within the very near future.

21 In fact, because the stipulation itself
22 does not resolve the question, and it does need to
23 be resolved for all parties' interests, I think
24 that it is essentially inconceivable that this
25 could just percolate out indefinitely.

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1 It may come back as a controversy, or it
2 may come back as some sort of uniform proposal by
3 multiple parties, but it will come back, I believe
4 within, I would guess a year to 18 months.

5 CHAIRWOMAN SHOWALTER: So the ways that it
6 could come back might be -- well, a, the Company
7 could simply file a petition on the allocation
8 itself, or b, it could file another rate case and
9 that would set the issue up again, or c, one of
10 these deferrals that was not the easy kind, but the
11 harder kind, would again require us to grapple with
12 that.

13 Would any of those be appropriate vehicles
14 for deciding whether we can determine an allocation
15 methodology?

16 MR. BRADEN: I believe so. And we have
17 intentionally left that open, because we wanted the
18 flexibility to use the vehicle that appeared to be
19 the most suitable and met the timing that the
20 parties -- if they either reached agreement or
21 disagreement on specific proposals, and could come
22 to you through any of the those alternatives.

23 CHAIRWOMAN SHOWALTER: All right. Thank
24 you.

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EXAMINATION

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COMMISSIONER HEMSTAD: I believe this question would at least start with asking for a response from the Staff.

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I am looking at page 8 of the settlement agreement. Under the general discussion, Regulatory Assets and Deferred Debits, and sub D at the top of the page with regard to Other Regulatory Assets, quite tersely says, "Accept as specifically set forth in the adjustments, all remaining regulatory assets and liabilities are recognized in rates for purposes of this settlement."

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What are those regulatory assets and liabilities? In further pursuing that, the Staff has given me an exhibit from Mr. Weston's testimony that describes miscellaneous deferred debits and regulatory assets. It says JTW -- or Exhibit 207. Is that the list of other regulatory assets?

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MR. SCHOOLEY: Probably. If it's the page I have in mind, it would be part of JTW-3.

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COMMISSIONER HEMSTAD: It's JTW-7.

MR. SCHOOLEY: I don't have that in front of me, but maybe my counsel can provide me with that.

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1 MS. SMITH: Can we get the exhibit number
2 again, please?

3 COMMISSIONER HEMSTAD: I believe it's
4 Exhibit 207.

5 MR. SCHOOLEY: Thank you, Ms. Davison.

6 MS. DAVISON: I provided it to him.

7 COMMISSIONER HEMSTAD: I am trying to
8 first get an idea of the size of the condition that
9 we're talking about, but beyond that I want to ask
10 a couple of policy questions.

11 MR. SCHOOLEY: I don't know if this
12 statement refers to Exhibit 207. I was thinking of
13 something that is the list of regulatory assets
14 contained in Mr. Weston's revenue requirements
15 JTW-3, but I'm not sure which exhibit it is.

16 COMMISSIONER HEMSTAD: Maybe it's a
17 different one.

18 MR. SCHOOLEY: And it's tiny type. But
19 most of the them are items that have long been in
20 the Company's books. Not because they are
21 considered regulatory assets in the sense that they
22 require a Commission's approval, but they are the
23 normal things like the deferred taxes and such.

24 COMMISSIONER HEMSTAD: I see. Well, the
25 policy question I wanted to get to is that first

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1 point of whether these are the kind of regulatory
2 assets that at least historically the Commission
3 has required be brought to the Commission for
4 approval before they can be booked as such?

5 MR. SCHOOLEY: I think the Company has
6 come forth with some of those over the years. I
7 haven't reviewed them carefully enough to determine
8 that. I don't know if Mr. Weston would actually
9 have a better answer, too.

10 COMMISSIONER HEMSTAD: Maybe the Company
11 has.

12 MS. OMOHUNDRO: Let me respond to that.
13 If we need more detail, we will get Mr. Weston.

14 The Company has certain costs on its
15 books, regulatory assets and liabilities. And some
16 are supported by accounting orders from the
17 Commissions.

18 And to the extent that we needed those
19 accounting orders from Washington, we have
20 requested those accounting orders and they were the
21 subject of the settlement agreement.

22 Some costs, however, are carried on our
23 books, and they are -- legitimately book them as
24 regulatory assets or liabilities based on generally
25 accepted accounting principles.

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1 And so that is the reason that we haven't
2 brought you a petition for an accounting order for
3 every regulatory asset, because they are supported
4 by generally accepted accounting principles.

5 COMMISSIONER HEMSTAD: Well, are the
6 parties prepared to say these don't raise issues of
7 what could be described as unusual or extraordinary
8 regulatory assets or liabilities that we would
9 normally expect be brought to the Commission to
10 review?

11 MR. SCHOOLEY: I will say yes to that.

12 COMMISSIONER HEMSTAD: That is your view,
13 also?

14 MS. OMOHUNDRO: That's my view. And if
15 you want to follow-up further, we can certainly
16 have Mr. Weston come back for the specifics.

17 COMMISSIONER HEMSTAD: My primary concern
18 is I don't wish to be setting a precedent with this
19 approval that would have implications for the issue
20 of how the Commission deals normally with the issue
21 of, we will call it unusual regulatory assets
22 without any essential review.

23 MR. SCHOOLEY: Yes. I expect the Company
24 would come forth with any accounting petitions
25 necessary to handle those circumstances.

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1 COMMISSIONER HEMSTAD: And then one other
2 area, and this has to do with the hydro
3 normalization which is described in the attachment
4 B to the settlement.

5 It's Staff adjustment to exclude
6 extraordinary years, and there's a dollar amount
7 there. Are either of you from -- representing
8 Staff prepared to give me some understanding of the
9 content of that?

10 MR. BRADEN: This is an item that was
11 identified by Mr. Buckley in his testimony. It was
12 a proposal that would take hydro years, and take a
13 standard deviation variance that would take out low
14 and high, one standard deviation on each end, which
15 was a proposal that was made in the course of his
16 testimony.

17 And for the purposes of the settlement,
18 the Company agreed to accept it, and this is the
19 monetary impact from that shift.

20 COMMISSIONER HEMSTAD: I remember that
21 from his testimony. Is the methodology that is
22 being used here a modification or change of the
23 position that the Commission has historically used?

24 MR. BRADEN: My understanding is it is a
25 methodology that has not been previously utilized.

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1 That was agreed to solely for the purposes of the
2 settlement.

3 COMMISSIONER HEMSTAD: For the purposes of
4 the settlement, but is it -- can you read that
5 with -- is an assumption that you could expect the
6 Staff would then be taking that position going
7 forward, the correct one?

8 MR. BRADEN: It's a possibility that that
9 position will be advocated in the future. We have
10 that and some other hydro approaches that we have
11 been looking at to determine what provides the best
12 hydro normalization approach in terms of both the
13 number of years, and in this instance, the standard
14 deviation approach. It was not the intent that
15 this be precedential in any way for purposes of the
16 settlement.

17 COMMISSIONER HEMSTAD: That's all I have.
18 Thank you.

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20 EXAMINATION

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22 COMMISSIONER OSHIE: I have some questions
23 of Staff, and it's either -- Mr. Braden, you or
24 Mr. Schooley. And I guess you can decide between
25 the two of you who would be most appropriate to

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1 answer.

2 But the areas I want to inquire, I think
3 they are related, and that's the Trail Mountain
4 Mine, the closure costs and environmental
5 remediation costs that have been included in the
6 settlement. And I want to reconcile the Staff's
7 position with regard to Trail Mountain and the
8 environmental remediation costs with the section
9 within the settlement, which I believe is on page
10 6-C, with regard to prudence of the resource
11 acquisitions.

12 And there Staff is taking a position that
13 there's certain facilities that have been acquired
14 by Pacificorp since 1986 that will not be included,
15 or that Staff will not take a position with respect
16 to prudence because they are within the eastern
17 control area and, as I understand it, because
18 there's still the open questions as to what the
19 appropriate methodology should be to allocate
20 costs.

21 So given that is Staff's position with
22 regard to those facilities, it's my understanding
23 that Staff's position with regard to Trail Mountain
24 and with regard to the environmental remediation
25 costs that are included in the Company's case, is

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1 that Staff did not believe that those costs were
2 properly included as well in the Company's case,
3 because they also were within the eastern control
4 area.

5 And I am just -- you can see why I am
6 looking to Staff's position. You have agreed to
7 align those costs in the settlement, even though
8 you took the position that they were within the
9 eastern control area and should be excluded, and at
10 the same time you are excluding -- I guess there
11 are six facilities, because they are within the
12 eastern control area.

13 And perhaps one of you can answer that,
14 why there appears to be inconsistencies, at least
15 in principle, in how you are approaching these
16 items.

17 MR. SCHOOLEY: Speaking to the accounting
18 petition items, Trail Mountain and environmental
19 remediation, Trail Mountain in particular is, in
20 its docket, there's information that presents the
21 cost benefit of the closing of that mine versus a
22 different contract for coal.

23 And the final number of the mine closures
24 is what is presented here, is the \$46.3 million.
25 From a Company-wide point of view, we're accepting

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1 that as a valid regulatory asset, with the recovery
2 to be over a period of time.

3 If, through the allocation discussions to
4 be coming, we decide that is not something relevant
5 to the western control area, then the recovery of
6 that would be incumbent upon the eastern control
7 area. How they accept it is another question. But
8 if we do agree upon some methodology that
9 incorporates all of the eastern resources,
10 including the Huntington (ph) plant, then it would
11 be included in rates here as well.

12 COMMISSIONER OSHIE: Well, is the Trail
13 Mountain, the agreement as to Trail Mountain,
14 Mr. Schooley, is that a change of position on the
15 part of Staff because of new information?

16 I am just trying to think it through. In
17 the exhibits you have received information
18 as a result of the November filing, which was
19 November 2003. And that, I think, addressed the
20 prudence of those costs.

21 But your testimony was filed subsequent to
22 that, and the position was, of course, different.
23 It was within the eastern control area. I guess
24 that leads me to conclude that it's sort of within
25 the box of the settlement that Staff has agreed to

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1 include those costs. It's not a principle
2 decision, in other words?

3 MR. SCHOOLEY: Well, it's principle in the
4 sense that we will agree, for purposes of the
5 settlement, to accept protocol as a beginning
6 point. And by doing so, we bring in the necessity
7 of addressing, for purposes of setting rates, all
8 the resources of the Company, one of which would be
9 the supply of coal to its various plants.

10 And the Trail Mountain accounting
11 petition, which had been filed prior to the filing
12 of this rate case, presented sufficient information
13 to state that on a system-wide basis, that would be
14 a positive action for the Company to take and that
15 the cost -- the benefits outweighed the costs of
16 closing the mine.

17 So, in essence, we were, by accepting
18 protocol as a beginning point for setting rates in
19 the settlement, accepting the Trail Mountain
20 closure costs as well.

21 COMMISSIONER OSHIE: If I followed that
22 reasoning through to the six facilities, wouldn't
23 you have included those as well? I mean, because
24 that seems to me you are saying because the
25 protocol would look at it as system-wide, we are

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1 including Trail Mountain, but you haven't included
2 the six other facilities.

3 It seems the same reasoning would apply.
4 I am looking for the thread between either
5 excluding or denying, and it seems to be broken as
6 between those resources and the environmental
7 remediation, the Trail Mountain costs.

8 MR. SCHOOLEY: Frankly, I would prefer to
9 have Mr. Buckley address the issue of the inclusion
10 of the other resources mentioned on page 6.

11 COMMISSIONER OSHIE: Well, just staying on
12 Trail Mountain, it has generally been Staff's
13 position that deferred accounting treatment and
14 recovery of costs would result, at least, let's say
15 from -- I think it's been Staff's position in prior
16 matters that the Company would be allowed to
17 recover deferred costs from the time the Commission
18 ordered that the deferred accounting treatment was
19 appropriate, and costs should be recovered.

20 And there's been some debate over whether
21 those costs should be recovered from the point that
22 the deferred accounting petition was filed, or the
23 point in which the Commission issues its order.

24 And in the settlement, Staff reaches back,
25 or agrees to reach back to 2001, which is

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1 approximately -- I don't know whether this is
2 exactly accurate, but two years prior to the filing
3 of the deferred accounting petition. I realize
4 that it goes forward.

5 So what is Staff's -- how does Staff
6 explain why they have agreed in this situation to
7 reach back two years prior to the filing of a
8 deferred accounting petition for purposes -- for
9 the purposes of the settlement?

10 MR. SCHOOLEY: I believe the Company has
11 received the accounting petitions allowing the
12 recovery of the Trail Mountain closure costs in
13 other states beginning in April of 2001, as it
14 states here, and a five-year amortization of those
15 costs.

16 Basically we were just jumping on board
17 that moving train, and accepting it from this point
18 forward. In essence, it would be stating that at
19 this point in time, almost half of those costs
20 would have been gone in the past already, and we're
21 only looking at the next two and a half years.

22 COMMISSIONER OSHIE: Let me ask the
23 Company, if these deferred accounting petitions
24 were accepted in other jurisdictions going back to
25 April 2001, and the rate plan would have allowed

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1 you to bring those forward in this jurisdiction,
2 why did it wait for, let's see, two years plus
3 before -- almost two and a half years before
4 bringing it to Washington?

5 MS. OMOHUNDRO: Well, I can't answer prior
6 to the time I was at the Company. But the rate
7 plan contemplated that prior to the filing of the
8 next general rate case that these requests for
9 accounting petitions would be brought before the
10 Commission, and we were attempting to comply with
11 that provision.

12 COMMISSIONER OSHIE: Well, does the
13 Company mean prior, in the immediate time before
14 the filing? I mean, I guess I look at it a little
15 broader, that prior means sometime before the rate
16 case would be filed in general. But the Company's
17 reading is it had to be filed immediately, or some
18 narrow time period before the rate case could be
19 filed?

20 MS. OMOHUNDRO: I think it would have been
21 preferable if we had filed them earlier. But I
22 think our reading was that that had to be filed in
23 all circumstances prior to the time that we came in
24 for the next general rate case.

25 Let me just say one more thing about these

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1 costs. These costs are not continuing to accrue.
2 The amount is known, and so the result is, is that
3 the \$46 million has been amortizing on the
4 Company's books since April 2001. So there's
5 probably less than half of those costs remaining to
6 be amortized.

7 COMMISSIONER OSHIE: That's what I
8 understood.

9 MS. OMOHUNDRO: Okay.

10 COMMISSIONER OSHIE: I guess I have one
11 other area to inquire, and it's -- again, this is
12 directed to Staff, Mr. Braden and Mr. Schooley.

13 With regard to the hedges of the -- the
14 three hedges that have -- essentially the
15 temperature hedges and the hydro hedges that have
16 been adjusted out of the Company's case, is it --
17 maybe Staff could explain its reasoning in making
18 those adjustments. Is it Staff's position that
19 hedges should not be included as an expense of the
20 Company, or is there some other reason?

21 MR. SCHOOLEY: Perhaps we could have
22 Mr. Buckley answer that when he's on the stand.

23 COMMISSIONER OSHIE: I will have to keep a
24 little note pad up here. Offered by Mr. Cromwell.
25 Well, thank you very much.

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1 JUDGE MOSS: All right. Unless the
2 questions from the Bench caused there to be some
3 brief follow-up, considering the hour of the day --
4 Mr. Cromwell.

5 MR. CROMWELL: Very brief, Your Honor.

6

7 RE CROSS EXAMINATION

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9 MR. CROMWELL: So that the record is
10 clear, Ms. Kelly, you had a discussion with the
11 Chairwoman regarding MSP in the Company's various
12 states. Could you tell us what the status of MSP
13 is in California?

14 MS. KELLY: In California the Staff has
15 monitored the process, and has been briefed on what
16 is going on as it's unfolding. And our intent,
17 although we initially filed a petition to initiate
18 the MSP, they requested that we withdraw it and
19 weren't quite sure how to treat the pleading.

20 So we have now -- we now intend to, once
21 we have the orders in hand from our largest states,
22 go down and begin the discussion with the Staff to
23 fill them in on where things have landed. And
24 ultimately will look to implement the revised
25 protocol in our next rate filing there.

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1 MR. CROMWELL: And, Ms. Omohundro,
2 regarding Trail Mountain and environmental
3 remediation, your response to Commissioner Oshie
4 was that the amounts are known and fixed. Is that
5 true for environmental remediation as well?

6 MS. OMOHUNDRO: It's true for Trail
7 Mountain. The costs for environmental remediation
8 that have been spent to date are known, but there
9 will be future costs incurred as well.

10 MR. CROMWELL: Does the Company have an
11 estimate of those?

12 MS. OMOHUNDRO: I do not have an estimate
13 of those.

14 MR. CROMWELL: Could I make a records
15 requisitions request for any estimate of those
16 costs that the Company might have.

17 JUDGE MOSS: You can make that request, if
18 the Company has an estimate available.

19 MR. CROMWELL: I would like to make that
20 record requisition.

21 JUDGE MOSS: That would be record
22 requisition No. 1 in this proceeding.

23 (ATTORNEY REQUESTS.)

24 MR. CROMWELL: My third point is -- I can
25 phrase it as a question but for brevity, perhaps I

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1 could simply state that Exhibit 241 did tease out
2 some of the issues implied by JTW-7. And if
3 Commissioner Hemstad needs more facts, I believe
4 there's a little more detail in that exhibit.
5 Thank you, Your Honor.

6 JUDGE MOSS: Go ahead, Ms. Davison.

7 MS. DAVISON: Thank you, Your Honor.

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9 RE CROSS EXAMINATION

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11 MS. DAVISON: Ms. Kelly, in response to
12 Chairwoman Showalter about ICNU's position in
13 Oregon on revised protocol, you stated that ICNU is
14 opposed to revised protocol. Isn't it more
15 accurate to state ICNU is opposed to revised
16 protocol unless the Oregon Commission adopts
17 certain conditions on revised protocol?

18 MS. KELLY: That's not my understanding of
19 the position.

20 MS. DAVISON: Were you in attendance of
21 the oral argument that is the subject of Exhibit
22 12?

23 MS. KELLY: I was. And I understand that
24 ICNU has proposed some positions to the revised
25 protocol, but it is my understanding that ICNU

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1 would prefer that the revised protocol not be
2 adopted at all in Oregon.

3 MS. DAVISON: Well, I guess I will let
4 Exhibit 12 speak for itself.

5 JUDGE MOSS: Thank you. Speaking exhibits
6 always evokes imagery in my mind. So I think that
7 completes the questions for our panelists.

8 Now, our best laid plans sometimes don't
9 work out, so we have not gotten to the questions on
10 individual direct testimony and exhibits. And I
11 suppose we will have to do that at the first
12 opportunity.

13 I think what I will prefer to do is
14 discuss -- keep the parties here for a few minutes
15 after we go off the record and discuss witness
16 orders, and plans, and how this works. We don't
17 want to disrupt people's plans too much.

18 So let me just ask if there's any other
19 business we need to tend to, other than that
20 procedural question today, and then we will stay
21 for a few minutes.

22 (No response.)

23 JUDGE MOSS: All right. It appears we
24 have no other business to conduct, so let us be off
25 the record, in recess until 9:30 in the morning on

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1 next Thursday, whatever date that is. I have
2 forgotten.

3 So we're in recess.

4 ENDING TIME: 5:25 P.M.

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