

1 BEFORE THE WASHINGTON UTILITIES AND
 TRANSPORTATION COMMISSION
 2 WASHINGTON UTILITIES AND)
 TRANSPORTATION COMMISSION,) DOCKET NO. UE-032065
 3)
 Complainant,) Volume VI
 4) Pages 723 to 793
 vs.)
 5)
 PACIFICORP d/b/a PACIFIC)
 6 POWER & LIGHT COMPANY,)
)
 7 Respondent.)
 _____)
 8

9 A hearing in the above matter was held on
 10 September 17, 2004, from 9:40 a.m. to 11:45 a.m., at
 11 1300 South Evergreen Park Drive Southwest, Room 206,
 Olympia, Washington, before Administrative Law Judge
 DENNIS MOSS and Chairwoman MARILYN SHOWALTER and
 Commissioner RICHARD HEMSTAD and Commissioner PATRICK J.
 OSHIE.

12 The parties were present as follows:
 PACIFICORP, by JAMES M. VAN NOSTRAND and
 13 STEPHEN C. HALL, Attorneys at Law, Stoel Rives, LLP, 900
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15 THE COMMISSION, by SHANNON SMITH, Assistant
 Attorney General, 1400 South Evergreen Park Drive
 16 Southwest, Post Office Box 40128, Olympia, Washington,
 98504-0128, Telephone (360) 664-1192, Fax (360)
 17 586-5522, E-Mail ssmith@wutc.wa.gov.

18 THE PUBLIC, by ROBERT W. CROMWELL, JR.,
 Assistant Attorney General, 900 Fourth Avenue, Suite
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 20 robertcl@atg.wa.gov.

21 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,
 by IRION A. SANGER, Attorney at Law, Davison Van Cleve,
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24 Joan E. Kinn, CCR, RPR

25 Court Reporter

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

2 JUDGE MOSS: Good morning, before we swear
3 Mr. Dittmer and proceed with our examination, I did
4 distribute copies of the updated exhibit list. Please
5 note that I have included on there the responses to
6 Bench Requests that were received earlier, and I marked
7 those as Exhibits 13 through 20 and 28.

8 (Exhibit 13 is Responses to BR-1.

9 Exhibit 14 is Responses to BR-2.

10 Exhibit 15 is Responses to BR-3.

11 Exhibit 16 is Responses to BR-4.

12 Exhibit 17 is Responses to BR-5.

13 Exhibit 18 is Responses to BR-6.

14 Exhibit 19 is Responses to BR-7.

15 Exhibit 20 is Responses to BR-8.

16 Exhibit 28 is Responses to BR-9.)

17 JUDGE MOSS: It would be my intention to have
18 those become part of the record unless there is an
19 objection.

20 Hearing no objection, those will be admitted,
21 and I have already, anticipating that there would be no
22 objection, I went ahead and put those on the exhibit
23 list.

24 I also reserved for the public comment,
25 written public comment exhibits, Exhibit Number 30, and

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1 I have indicated a received date of the 30th, which is
2 three days after the scheduled public comment hearing in
3 Eastern Washington. And so we typically do announce at
4 those hearings that parties who wish to submit will have
5 a couple of days to do so, so that's why I have chosen
6 the 30th as the date for that.

7 I have also, of course, updated the exhibit
8 list to reflect our activity yesterday afternoon
9 basically admitting everything that hadn't previously
10 been admitted.

11 So with that, unless there's something
12 preliminary from one of the parties, we'll go ahead and
13 swear Mr. Dittmer.

14 MR. VAN NOSTRAND: We do have a preliminary
15 matter, Your Honor.

16 JUDGE MOSS: All right.

17 MR. VAN NOSTRAND: I would like to follow up
18 on a request that I made at the prehearing conference on
19 consideration of a small amount of rebuttal testimony by
20 the panel. We have had considerable live testimony from
21 ICNU and Public Counsel, and we reserved the right at
22 the prehearing conference to at least consider whether
23 or not we should have the opportunity to put on some
24 additional rebuttal testimony. And we think there's
25 probably only about five minutes of matters that we

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1 would like to address. We think a lot of the issues
2 that were raised in terms of the testimony responsive to
3 the settlement agreement we have been able to address
4 through testimony of witnesses while they're on the
5 stand, but we think there are a couple of issues that we
6 would like to put Ms. Kelly and Mr. Schooley on as
7 representatives of the panel to do probably five minutes
8 of rebuttal.

9 (Discussion on the Bench.)

10 JUDGE MOSS: All right, we'll allow for that.
11 Let's see, in terms of timing, when should we do that,
12 at the very end?

13 MR. VAN NOSTRAND: At the very end.

14 JUDGE MOSS: Okay.

15 MR. VAN NOSTRAND: Thank you, Your Honor.

16 JUDGE MOSS: Anything else preliminary?

17 MR. CROMWELL: The only preliminary matter
18 would be to confirm that the Bench does have
19 Mr. Dittmer's revisions to his testimony that were
20 previously submitted last week.

21 JUDGE MOSS: Well, if they were submitted
22 last week, they have been distributed.

23 MR. CROMWELL: Thank you.

24 JUDGE MOSS: We have had a lot of revisions,
25 and so I can't verify specifically, but I know that as

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1 they have come in, they have been distributed, so.

2 All right, Mr. Dittmer, please rise, raise
3 your right hand.

4

5 Whereupon,

6

JAMES R. DITTMER,

7 having been first duly sworn, was called as a witness

8 herein and was examined and testified as follows:

9

10 DIRECT EXAMINATION

11 BY MR. CROMWELL:

12 Q. Good morning, Mr. Dittmer, would you please
13 state your name and address for the record.

14 A. James R. Dittmer, Utilitech, Inc., 740
15 Northwest Blue Parkway, Suite 204, Lee's Summit,
16 Missouri 64086.

17 Q. And on whose behalf are you appearing today?

18 A. The Public Counsel division or office of the
19 Attorney General's Office.

20 JUDGE MOSS: Mr. Dittmer, could I ask you to
21 make sure the button on your mike is up, and these
22 microphones don't pick up very well unless you speak
23 right into them.

24 THE WITNESS: Okay.

25 JUDGE MOSS: Thank you.

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1 MR. CROMWELL: Maybe pull it a little closer.

2 THE WITNESS: (Complies.)

3 BY MR. CROMWELL:

4 Q. Did you prepare the exhibits that have been
5 admitted as Exhibits 521 through 532, Mr. Dittmer?

6 A. I did.

7 Q. And with the revisions that have been
8 previously submitted to the Commission, are these
9 exhibits true and correct to the best of your knowledge?

10 A. They are.

11 Q. And are there any other changes or
12 corrections that you need to make other than those
13 previously submitted?

14 A. No.

15 Q. And if I asked you the same questions today,
16 would your answers provided in your prefiled testimony
17 be the same?

18 A. Yes.

19 MR. CROMWELL: Thank you.

20 Your Honor, at this point I would like to
21 proceed with a short surrebuttal.

22 JUDGE MOSS: All right.

23 MR. CROMWELL: Thank you.

24 BY MR. CROMWELL:

25 Q. Mr. Dittmer, have you had the opportunity to

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1 review the proposed settlement in this matter that's
2 been admitted as Exhibit 3?

3 A. I have.

4 Q. And do you have a general opinion on that
5 proposed settlement?

6 A. Yes. First of all, there's two significant
7 issues that are not truly nailed down with the
8 settlement agreement, neither of which am I responsible
9 for, namely cost of capital and the interjurisdictional
10 cost allocation methodology to be employed.

11 But beyond that, there are at least a couple
12 of what I will refer to as accounting issues that I have
13 raised that have not been fully addressed in the
14 settlement agreement nor adequately described in the
15 joint supportive testimony. Specifically on the
16 accounting issues, in the company's original request,
17 they asked for an amortization, a five year
18 amortization, of an IRS settlement payment that covered
19 the years 1991 through 1998.

20 In my prefiled direct testimony, I -- and I
21 should point out that I opposed that company adjustment
22 as did Staff initially. In my direct testimony I listed
23 three reasons, basically three reasons why the IRS
24 settlement payment amortization should be rejected,
25 which I think individually any one of them would have

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1 been grounds to reject the company's proposal, but
2 certainly cumulatively, I believe, you know, that
3 there's no grounds for acceptance of any of the IRS
4 settlement payment amortization.

5 The settlement agreement provides for roughly
6 half of it to be built into the jurisdictional cost of
7 service determination in the revenue requirement
8 agreement. In the -- in my direct testimony, I talked
9 about how the company's methodology for allocating the
10 IRS settlement payment to the Washington jurisdiction
11 was not equitable. They basically used an income before
12 income tax ratio to allocate it to the Washington
13 jurisdiction. I think most cost of service people would
14 agree that you allocate cost to the cost causer, and
15 income is not a -- is not the way these IRS settlement
16 payments were derived. They had to do with Schedule
17 M's, which I will talk about, tax timing differences of
18 Schedule M's that I will talk about in just a second.
19 So first of all, I don't think the allocation
20 methodology that the company has proposed is equitable.

21 Second, the majority of the IRS settlement
22 payment relates to book and tax timing differences, and
23 Mr. Martin agrees with that, but there are -- most of
24 them are timing differences as opposed to permanent
25 differences, and if they were permanent differences, we

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1 would have other issues to discuss. But since they're
2 mostly timing differences, a question comes up as to
3 whether Washington rate payers have previously benefited
4 from an accelerated or quicker deduction that's embodied
5 in these book tax timing differences.

6 Mr. Martin and I conceptually agree that if
7 an item has been normalized in the past, then -- and it
8 relates to an IRS settlement payment line item, that
9 rate payers should not be charged currently through this
10 amortization process. Where we disagree is mechanically
11 what has been normalized and what has been flowed
12 through previously to the benefit of Washington rate
13 payers, in other words, where have Washington retail
14 rate payers received a reduction in their otherwise
15 calculated retail rates.

16 And as I understand it, what Mr. Martin has
17 done or his position is unless you can show me a
18 Washington order that specifically normalized any one of
19 these literally I believe it's in terms of hundreds of
20 book tax timing differences, unless you can show me a
21 Washington order that these items were normalized, I
22 will assume that they have been flowed through. The
23 problem with that is that so many of these, there are
24 literally hundreds of book tax timing differences, do
25 not appear to even belong to the Washington

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1 jurisdiction.

2 Let me be specific here. There can be a
3 Schedule M item that has to do with the Eastern control
4 area or even perhaps a nonregulated area of the
5 business. All of those are lumped together and
6 allocated to the Washington jurisdiction on an income
7 before tax basis. If you go back to the '86 rate case
8 or even if you go to the reporting to the '91 through
9 '98 time period, those Schedule M's that had to do with
10 nonreg or Eastern control wouldn't even -- wouldn't have
11 even shown up in the Washington jurisdictional cost of
12 service income tax development. It just wouldn't have
13 been over there, so you would not expect this Commission
14 to have ever had before it an issue of whether that item
15 was flowed through or normalized. Yet under the, you
16 know, all-in approach, effectively Mr. Martin is arguing
17 that rate payers have somehow benefited from a prior tax
18 deduction that had nothing to do with Washington
19 operations. So we fundamentally disagree on what rate
20 payers have been benefited from in the past related to
21 these book tax timing differences.

22 The third item that I raised in direct
23 testimony, which again I don't think has been addressed
24 in the rebuttal testimony or in the joint testimony
25 supporting the agreement, is whether or not during the

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1 relevant '91 through '98 time period Washington rates
2 were adequate to have, assuming that these are book tax
3 timing differences, would have been flowed through to
4 Washington benefits, whether there would have been
5 adequate -- earnings would have been adequate to absorb
6 an additional payment at that point in time.

7 Mr. Martin came back in rebuttal testimony
8 and said we, you know, the Washington jurisdiction has
9 never earned its authorized rate of return in the '91
10 through '98 time frame. But to draw that conclusion, he
11 has used a targeted 13.25% return on equity, which was
12 granted in the '86 litigated case, and he's also used
13 the jurisdictional allocation methodologies that the
14 company, you know, was using at that time, but which
15 have never been approved by this Commission.

16 Now I'm not a cost of capital expert, just
17 like Mr. Martin, but I will tell you my observations is
18 that, you know, I have not seen a 13.2 -- I did not see
19 13.25% returns on equity granted during the '90's
20 because interest rates had fallen precipitously during
21 that time frame. So I don't think that benchmark is
22 necessarily correct, and certainly since there was no
23 agreed upon jurisdiction allocation methodology, I don't
24 know how we can -- how anyone can conclude that, you
25 know, that earnings were not adequate to absorb some of

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1 these deductions that we're now being asked -- that were
2 assumed that we got the benefit of during the '91
3 through '98 time frame.

4 The other somewhat significant issue that was
5 raised in my direct testimony and to some extent in
6 Staff's direct testimony was the treatment of a number
7 of miscellaneous deferred debits and other regulatory
8 assets. The majority of deferred debits or reg assets
9 that are in dispute originated in the Eastern control
10 area of PacifiCorp's system, and as I understand Public
11 Counsel's position is, you know, we should not be
12 responsible for those costs now or in the future. Many
13 of the costs were incurred years ago, and certainly
14 there was no interjurisdictional power allocation, power
15 allocation methodology approved, so we don't know where
16 we're at on the allocation of cost during the historic
17 period in which some of these costs first arose.

18 The jurisdictional allocation procedure
19 adopted for the settlement was just for settlement
20 purposes on an interim basis. It's not, as I understand
21 it, binding in the future, so it certainly doesn't sound
22 like it would be binding in the past if it isn't even
23 binding in the future. The company did not seek
24 Washington authority to defer a number of these costs
25 that occurred during the past, and I submit that the

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1 time to have addressed that was when they were being
2 incurred so that the parties could establish the
3 criteria whether they're going to be accepted for future
4 recovery or not, not years later when many -- when much
5 of the information is quite stale.

6 The company appears to take the position that
7 they have the unilateral right to defer a cost, and then
8 it's on every other moving party's -- it's every other
9 moving party's position to have the burden to prove that
10 they were imprudent, and I submit that's not the way
11 this order of business should be done. In Docket
12 UE-020417, this Commission rejected a PacifiCorp request
13 to defer some power supply costs, and in so doing they
14 in part said, we have no base line to determine what's
15 in base rates right now, and therefore they ordered this
16 rate case. Well, that same logic applies to some of
17 these deferred debits and reg assets that go back a
18 number of periods. I'm not sure what -- how you can
19 establish the base line since we don't know what
20 methodology was employed in those prior years.

21 During discovery before and after rebuttal, I
22 tried to obtain studies, analysis, reports that
23 justified these expenditures that have been deferred.
24 To date at most what has been provided is a general
25 explanation of what the costs were and why a witness

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1 thinks they are beneficial, but not the actual
2 underlying supports that no doubt would have existed at
3 the time or should have existed at the time the
4 transaction first arose.

5 The final point I would simply make is that
6 these accounting authority orders are a fairly unique
7 privilege to utility companies. They are largely
8 asymmetrical in approach, and by that I mean there is
9 generally no quid pro quo. If the company gets a
10 windfall, something that occurs in between rate cases
11 that benefits their bottom line, generally those
12 benefits aren't -- can not be flowed back to rate payers
13 on a prospective basis. There's undoubtedly been some
14 exceptions to that, but generally that's the rule. And
15 I just emphasize that this is a unique privilege, that I
16 think the utility should come forward at the front end
17 and get the criteria and approval to defer these costs.
18 So those are the two major issues of the ones that I
19 raised that I don't think the settlement agreement fully
20 resolves.

21 Q. And in reviewing the settlement agreement on
22 those areas as well as the other specific adjustments
23 that were provided in your testimony, were you able to
24 determine whether the settlement in fact accommodated
25 the specific adjustments that you proposed?

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1 A. Some -- there is some indication that it may
2 have covered in part, but it's -- there are no
3 workpapers supporting the settlement agreement, and the
4 testimony is fairly general. They considered some
5 things in some ways, but it's difficult to nail it, you
6 know, down that all of the -- all of say my objections
7 have been incorporated in total. Certainly some credit
8 I think has been given.

9 Q. In looking at the settlement agreement, do
10 you have it there in front of you? Could you turn to
11 page 8, please.

12 A. I believe I am there, yes.

13 Q. And looking at the top of the page, there's a
14 Subsection (d) of Section 12 entitled other regulatory
15 assets, how did you interpret that clause of the
16 settlement agreement in forming the opinions you have
17 expressed this morning?

18 A. Well, it would appear that the company has
19 effectively carte blanche got all of the deferred debits
20 and reg assets that were in its original case approved
21 by default with this language. There were some specific
22 ones I think that were approved, Trail Mountain
23 environmental remediation, but there were others that
24 were kind of lumped into this 12(d) that are, well,
25 effectively approved now.

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1 Q. So is it your assumption that unless the
2 settlement agreement or the Attachments A and B to it
3 address a specific issue, that it's your assumption that
4 this provision provides for full recovery of all
5 other --

6 A. Yes.

7 MR. CROMWELL: Thank you.

8 Your Honor, Mr. Dittmer is now available for
9 cross-examination.

10 JUDGE MOSS: All right.

11 Does the company have cross for Mr. Dittmer?

12 MR. HALL: Yes, we do, Your Honor.

13

14 C R O S S - E X A M I N A T I O N

15 BY MR. HALL:

16 Q. Good morning, Mr. Dittmer.

17 A. Good morning.

18 Q. I would like to turn to page 7 of your direct
19 testimony, that's Exhibit 521.

20 MR. CROMWELL: I'm sorry, was that page 7?

21 MR. HALL: Page 7.

22 A. Yes, I am there.

23 BY MR. HALL:

24 Q. In your testimony you propose an adjustment
25 to rate base for customer deposits; is that correct?

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1 A. Yes, I do.

2 Q. And how much is that adjustment for?

3 A. Well, in my revised I accepted the company's
4 and apparently the Staff's -- the company's rebuttal and
5 the Staff's direct position on that, but it's in --

6 Q. Mr. Dittmer, perhaps I can just save you a
7 minute. Is it your understanding that the company has
8 made the adjustment as you proposed and as Mr. Schooley
9 proposed?

10 A. Yes.

11 Q. All right. I would now like to turn to I
12 guess it's been marked as Exhibit 522, but it's also
13 page 10 of your testimony, your direct testimony, and
14 this is cash working capital, and my understanding is
15 that you have proposed an adjustment to rate base for
16 cash working capital; is that correct?

17 A. That's correct.

18 Q. And do you know what the effect of that
19 adjustment would be on the company's revenue
20 requirement?

21 A. It depends upon whose rate of return you use.
22 It will be probably between \$700,000 and maybe \$850,000
23 depending upon the high and low ends of the rates of
24 return being recommended.

25 Q. If we used \$850,000, would you accept subject

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1 to check that the company's proposed settlement with
2 Staff would accommodate approximately 73% of your
3 adjustment?

4 A. I assume you're referring -- you're dividing
5 660 or whatever the number is on Exhibit A into the 850,
6 I agree with the math. I don't know if there were other
7 Staff adjustments that really should be cumulative to
8 mine, but I agree with the math.

9 Q. Okay. And yes, and I did that by dividing
10 622,000 by 850,000, which was your high estimate.

11 A. Okay.

12 Q. You spoke earlier about miscellaneous
13 deferred debits and other regulatory assets, that would
14 be page 22 of your direct testimony. Exhibit 522 has a
15 schedule, and in that schedule there's a Schedule B-4.

16 A. Okay.

17 Q. And on this schedule you're proposing an
18 adjustment for certain miscellaneous deferred debits and
19 other regulatory assets; is that correct?

20 A. That is correct.

21 Q. And how much is that adjustment?

22 A. Well, the --

23 MR. CROMWELL: I'm sorry, Your Honor, I'm
24 looking at 522, could Mr. Hall just --

25 JUDGE MOSS: 527 is Schedule B-4.

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1 MR. CROMWELL: Oh, 527, thank you.

2 THE WITNESS: I knew what he was talking
3 about, so I kept on going.

4 MR. HALL: I apologize if I said 522.

5 JUDGE MOSS: That's all right.

6 A. Okay, your question is what's the value of
7 the adjustment, well, the rate base value is 7.6
8 Million, and the amortization value is 1.782 Million.
9 So just for ease, if you took say 10% or 11% of the 7.6,
10 that would probably bring you up to about 850, 850,000,
11 and then add another 1.7 or 1.8 Million, you're up to
12 about 2 1/2 Million.

13 BY MR. HALL:

14 Q. And you filed revised testimony, and we're
15 not opposing that, one of the revisions that you made
16 was to add some credits on this page, and in the
17 testimony in front of me that's in bold. I'm not sure
18 if it is for everyone else.

19 A. I remember the testimony. I don't have the
20 page, but I know what you're talking about.

21 Q. Well, on the schedule --

22 A. On the schedule, yes.

23 Q. -- lines 15 through 26 show the changes that
24 you made, and were those changes in response to
25 Mr. Weston's rebuttal testimony?

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1 A. Yes.

2 Q. And just for the benefit of the
3 Commissioners, what was the basis for adding those, the
4 reasoning behind that?

5 A. He pointed out what was an apparent
6 inconsistency in my direct testimony in that there were
7 some deferred credits that had not been approved by this
8 Commission that I was using -- that I was not
9 considering. So after reflecting upon his testimony, I
10 reduced my adjustment for the deferred credits that had
11 not been approved by this Commission that are very much
12 related to the deferred debits and reg assets.

13 Q. Okay, so just to restate it, make sure I
14 understand it, Mr. Weston's point was that if you were
15 going to remove certain debits and certain regulatory
16 assets, you should also remove the credits associated
17 with those?

18 A. That's correct.

19 Q. Okay.

20 A. That had not been approved by the Commission.
21 He had one in there that had actually been approved by
22 the Commission, so I didn't take that one out. I didn't
23 use that as an offset, nor should I. I mean there's
24 Commission authority for that one.

25 Q. Okay, which one was that one?

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1 A. It was -- it was the company's response to
2 Public Counsel Data Request 156(f), there was an So2
3 deferred credit net amortization that was included in
4 his rebuttal that he said I shouldn't have considered,
5 but the fact of the matter is that one had Commission
6 approval for the accounting that the company was using,
7 so I did not use that one as an offset to his otherwise
8 calculated argument or calculated adjustment.

9 Q. All right, I don't have any questions about
10 the So2 allowance, but the principle there of taking out
11 the assets, the debits, and also taking out the
12 associated credits, I have one item I would like you to
13 look at and see if you think that might also fall into
14 that same category. And to do that, I'm going to need
15 to have two documents in front of us. This first one is
16 Exhibit Number 207, that's from Mr. Weston's testimony,
17 page 1.

18 A. I'm sorry, could you give me that reference
19 again, Mr. Weston's testimony?

20 Q. Yes, it's Exhibit Number 207, JTW-7 if that
21 helps.

22 A. And that has to do with his rebuttal or
23 direct, 7 I guess?

24 Q. 7, I believe that's rebuttal.

25 A. Okay.

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1 Q. All right, and then has everybody been able
2 to find that one?

3 Okay, and then the second one is Exhibit 203,
4 which is page 8.1 of Ted Weston's direct testimony that
5 was an exhibit filed with that.

6 A. 8?

7 Q. 8.1. At the top of the page it says
8 environmental settlement.

9 MR. CROMWELL: I'm sorry, Mr. Hall, which JTW
10 was that?

11 MR. HALL: That one, I would have to look at
12 the exhibit list, but it's Exhibit 203.

13 JUDGE MOSS: That would be JTW-3.

14 MS. SMITH: And it might be helpful, on my
15 copy those are tabbed, and this would be under tab 8,
16 would it not?

17 MR. HALL: Yes.

18 JUDGE MOSS: Tab 8.

19 THE WITNESS: And I don't have -- I never did
20 have the tabbed version, and I'm not sure that I have
21 all of those. Because of the volume, I pared some
22 things back, so I'm not sure I've got his page 8 point
23 whatever it was you were referencing.

24 JUDGE MOSS: Do you have a copy for the
25 witness?

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1 MR. HALL: I assumed that since it was in the
2 prefiled testimony he would have it.

3 CHAIRWOMAN SHOWALTER: Is there anything
4 after tab 8 since that tab has a large number of pages
5 in it?

6 MR. HALL: No, it's just page 8.1.

7 CHAIRWOMAN SHOWALTER: 8.1?

8 MR. HALL: Yes.

9 MR. CROMWELL: Mr. Hall, is this the
10 environmental deferred page?

11 MR. HALL: Yes.

12 May I approach the witness, Your Honor?

13 JUDGE MOSS: Sure, go ahead, hand it to him.

14 THE WITNESS: Okay.

15 MR. HALL: Mr. Cromwell, do you have that in
16 front of you?

17 MR. CROMWELL: I have the 8.1 page, and I
18 will just look over Mr. Schooley's shoulder for the
19 JTW-7.

20 MR. HALL: Thank you.

21 BY MR. HALL:

22 Q. This is a simple point and a simple question,
23 it seemed complicated by trying to find the documents.

24 Okay, so just to bring us back to where we
25 were before we went through all that, the point was that

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1 if you make your adjustments and take out reg assets,
2 that we would also take out any associated credits?

3 A. Correct.

4 Q. Okay. On JTW-7 at the top it says
5 miscellaneous deferred debits and regulatory assets.
6 The bottom line just above the total under the heading
7 of regulatory assets, it says environmental reg assets,
8 and there's an adjustment of \$804,000 there.

9 A. Okay.

10 Q. And if we turn to the other page, there is
11 PacifiCorp has an account that has money in it from an
12 environmental settlement.

13 A. Okay.

14 Q. And that's what's shown here. This is a
15 reduction of rate base.

16 A. All right.

17 Q. Would you agree or do you think that this is
18 a credit like the other ones that -- and just to explain
19 what I mean by like the other ones -- you proposed
20 removing the reg asset for environmental liability, and
21 then we have an account with some environmental
22 settlement funds in that.

23 A. Okay.

24 Q. Would you agree that that should be taken out
25 under the same principle that the other credits were?

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1 A. I guess I can conceptually agree. If you
2 have a -- if there is a related deferred credit that I
3 haven't considered as a reduction to the adjustment, it
4 should be done.

5 However, I am confused, I don't know how this
6 relates, how the direct exhibit of Mr. Weston page 8.1
7 relates to the response to 156(f). I don't have the
8 complete question, but I think I was asking him
9 specifically what are all the offsets, and he gave me
10 the one page response, and I don't see the page 8.1 in
11 that list. So if it should have been in there, yeah,
12 sure, I will reduce it. But if it --

13 Q. Is it possible, and Mr. Weston isn't here,
14 but is it possible the reason that it wasn't found out
15 before is that this is in account 182M, it's in a
16 different account and so maybe didn't get added to the
17 list?

18 A. Well, I guess I can answer the question this
19 way, the reason it didn't get added to my list is
20 because it wasn't provided in the data request response.

21 Q. Fair enough. But conceptually you would
22 agree that --

23 A. If I have unfairly or asymmetrically included
24 a debit portion for which there is a credit portion,
25 yes, it should be in there. I have no problem making

0750

1 that adjustment.

2 Q. Thank you.

3 Turning to page 27 of your testimony, the IRS
4 tax settlement payments, you spoke earlier about how you
5 proposed adjusting that amount out --

6 MR. CROMWELL: I'm sorry, what page again?

7 MR. HALL: Beginning on page 27 of
8 Mr. Dittmer's direct testimony.

9 MR. CROMWELL: Thank you.

10 Are we done with the Weston?

11 MR. HALL: Yes.

12 MR. CROMWELL: Okay.

13 BY MR. HALL:

14 Q. And it's your understanding that the company
15 has agreed to reduce this amount by 50%?

16 A. Roughly 50%, yes.

17 Q. Okay.

18 Moving through your testimony, on page 36 of
19 your revised testimony, you recommend an adjustment for
20 employee benefits; is that correct?

21 A. My 36 doesn't happen to have employee
22 benefits. I know I'm familiar with the issue. Mine is
23 on page 38.

24 Q. On Page 38.

25 A. 38, okay.

0751

1 Q. Do you recommend an adjustment for employee
2 benefits?

3 A. Yes.

4 Q. Are you aware that the company has made an
5 adjustment in Mr. Weston's rebuttal testimony that
6 incorporated this amount?

7 A. Well, not my amount but the Staff's amount.
8 They were a little -- there was some difference, but
9 they captured part of this adjustment, yes, part of my
10 adjustment I should say.

11 Q. The adjustment that was made in Mr. Weston's
12 testimony, it was for an amount larger than what you
13 had --

14 A. Which adjustment, are you talking about the
15 original adjustment in his direct case or the revised
16 adjustment in his rebuttal?

17 Q. Let me take one step back to clear this up.

18 As I understood it, the basis for your
19 adjustment was that the company had used FY 2004
20 budgeted amounts, and you proposed that for employee
21 benefits that the company ought to use fiscal year 2004
22 actuals?

23 A. No, I said fiscal year 2003 actuals, the
24 Staff said fiscal year 2004.

25 Q. Oh, okay.

0752

1 A. I just reversed the company's movement to a
2 budget amount for this item.

3 Q. And it's your understanding that the company
4 went to an actual amount but just a different year
5 than --

6 A. A different year, yes.

7 Q. -- than what you proposed?

8 So would you agree that some part of your
9 adjustment has been incorporated in the company's
10 revisions?

11 A. It would appear, yes.

12 Q. Okay.

13 A. In their rebuttal, yes.

14 Q. Okay. I'm just trying to point out all the
15 areas of agreement, we seem to have quite a few of them.

16 I just have one little bit left. At this
17 point I would like to go to Schedule A of your
18 testimony, page 1, and that's Exhibit 522.

19 A. That's my Exhibit Schedule A is 522?

20 Q. Yes.

21 A. I haven't quite made the transition to
22 exhibit numbers versus schedule numbers, but yes.

23 Q. Okay, we have been kind of down to the weeds
24 a little bit on some of these adjustments, and I would
25 like to just kind of take a step back and just kind of

0753

1 look at the big picture of Public Counsel's case. On
2 the basis of all of the adjustments that are proposed by
3 Public Counsel, as I look at this schedule I understand
4 that you're proposing that the company should have a
5 revenue requirement adjustment of \$24 1/2 Million
6 downward?

7 A. Well, we have calculated a revenue excess of
8 24 Million. I can't recall if Mr. Lazar -- I think he's
9 saying just keep the rate moratorium in place, if I
10 recall, and look at it again when the rate moratorium is
11 over with is his recommendation. But if you're going to
12 change rates, yes, move it downward by 24 Million.

13 Q. As another way to just try to get to an
14 apples to apples comparison, the company through its
15 settlement is proposing a \$15.5 Million rate increase,
16 and your schedule shows a negative 24?

17 A. Correct.

18 Q. Okay. On line 13 there's an adjustment there
19 for negative 34 Million, and that's Mr. Lazar's
20 adjustment, right?

21 A. That's correct.

22 Q. And that's based on the hydro situs approach
23 that he has --

24 A. His allocation/assignment of our supply
25 costs, yes.

0754

1 Q. And I'm not asking you to defend that, and
2 I'm not going to criticize it at this point, but what I
3 would ask you to do is if you backed that out, what
4 would the company -- what would Public Counsel's number
5 be at that point?

6 A. 9.684 Million.

7 Q. Okay, and that would be a positive number?

8 A. That would be a positive number, yes.

9 Q. And what is the return on equity that Public
10 Counsel is proposing? Or let me rephrase the question.

11 Subject to check, would you agree that Public
12 Counsel is proposing a return on equity of 9.375%?

13 A. Well, it isn't -- 9.38 is what I have in my
14 Schedule D, 9.38, 9.375, whatever.

15 Q. Okay.

16 A. Return on equity.

17 Q. Would you agree subject to check that an
18 increase of 100 basis points or 1% would add about \$4
19 Million to the proposed revenue requirement?

20 A. A 1% increase in common equity?

21 Q. Return on equity.

22 A. Return on equity. I haven't done that
23 calculation. You would have to also give me a capital
24 structure, which we don't have that defined in the
25 settlement either. There's capital structure

0755

1 differences in return, and there's return on equity
2 differences, and there might even be it looks like
3 long-term debt has the same rate, but it's the
4 percentage of the capital structure in conjunction with
5 the return on equity that changes the revenue
6 requirement associated with overall return on rate base.

7 Q. Let me ask the question a little bit
8 differently. You propose 9.38%. If I moved your number
9 up to 10.38%, would you agree that that would move your
10 revenue requirement up somewhere in the neighborhood of
11 \$4 Million subject to check, all other things being
12 equal?

13 A. Probably.

14 Q. Okay.

15 A. Probably.

16 Q. And then the environmental settlement amount,
17 that account that we talked about, assuming that that's
18 correct and that checked out, that was \$1.8 Million.

19 A. In rate base, wasn't it? Was that a rate
20 base or was that an expense item? I have already closed
21 the page.

22 Q. I believe that was an expense item, but
23 that's fine, let's not go back to that.

24 My larger point, and I'm almost finished --

25 A. Rate base item so it's --

0756

1 Q. Okay.

2 A. -- be only, you know 10% or 11% of the 1.8
3 Million, 108,000.

4 Q. Okay. I guess just the point that I would
5 like to end on is that if we take your positive \$9.6
6 Million, so if we subtract out Mr. Lazar's hydro situs
7 adjustment of negative 34, your case is at 9.6 Million,
8 correct?

9 A. Correct.

10 Q. And if we added in about \$4 Million by
11 bumping up the ROE 1%, that then you would be at about
12 \$13 Million?

13 A. Correct, I would agree.

14 Q. And then we would only be about \$2 1/2
15 Million apart from the Staff settlement?

16 A. I agree with your math, yeah.

17 MR. HALL: Thank you.

18 No further questions, Your Honor.

19 JUDGE MOSS: Did Staff have any questions for
20 Mr. Dittmer?

21 MS. SMITH: No, Your Honor, we don't.

22 JUDGE MOSS: Thank you.

23 Are there any questions from the Bench for
24 this witness?

25 Okay, any redirect?

0757

1 MR. CROMWELL: Yes, briefly, Your Honor.

2

3 R E D I R E C T E X A M I N A T I O N

4 BY MR. CROMWELL:

5 Q. Mr. Dittmer, you were just discussing a
6 little while back, you were discussing also with
7 Mr. Hall the page 8.1 in comparison to JTW-3, from the
8 documents that you have in front of you, can you
9 conclusively testify to this Commission that those
10 matters are related?

11 A. No, and in fact I'm -- no, I can't.

12 Q. And when we were discussing your Exhibit 527,
13 I think you mentioned in passing that you had sent the
14 company a data request asking essentially for specific
15 justification for all the matters under consideration
16 here, and I think you stated that the response was
17 essentially summary, you got a narrative response?

18 A. Well, I relied on that response, which
19 apparently did not have this environmental deferred cost
20 on page 8.1 of whatever Mr. Weston's direct exhibit was
21 labeled.

22 Q. Thank you.

23 And then turning to page 522, your Schedule
24 A, you were discussing the \$9.6 Million figure with
25 Mr. Hall, it's correct, is it not, that that reflects

0758

1 the adjustments proposed to the company's case as
2 proposed by the company in its direct case?

3 A. It only has Public Counsel's adjustments to
4 the case as to the company's case as originally
5 proposed. It would not have any of ICNU's or Staff's
6 other adjustments in that number, which would drive it
7 down further.

8 Q. And in reaching that number, Mr. Dittmer, did
9 you exhaustively examine every item of revenue
10 requirement or other elements of the company's case
11 other than those testified to by you in your responsive
12 testimony?

13 A. I did not. I took a pretty limited approach
14 in this case.

15 Q. And again in Schedule A, the \$24 Million and
16 the \$34 Million, those were figures provided to you by
17 Mr. Lazar, correct?

18 A. Well, the \$34 Million was provided, and I
19 just subtracted it from the otherwise calculated 9.6 to
20 arrive at the 24.584311 negative amount on line 16.

21 Q. I apologize, thank you for that correction.

22 MR. CROMWELL: I have nothing further, Your
23 Honor.

24 JUDGE MOSS: All right, I believe that
25 completes your examination, Mr. Dittmer. We appreciate

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1 you being here today and giving your testimony.

2 THE WITNESS: Thank you.

3 MR. CROMWELL: Your Honor, may I officially
4 ask that Mr. Dittmer be excused by the Commission and
5 not subject to recall so that he may proceed to the
6 airport and attempt to obtain a flight out today?

7 JUDGE MOSS: Any objection?

8 MR. HALL: None from the company.

9 JUDGE MOSS: All right, Mr. Dittmer, you may
10 flee the jurisdiction.

11 Let's take a 15 minute break, and then we'll
12 have Mr. Buckley on the stand at about 20 before the
13 hour.

14 (Recess taken.)

15 JUDGE MOSS: I think we're ready to resume,
16 and I think the first order of business will be to get
17 you, no you haven't previously appeared, we'll get you
18 sworn then. Please rise.

19 (Witness Alan Buckley was sworn.)

20 JUDGE MOSS: Thank you, please be seated.

21 And I believe the parties indicated that they
22 did not have cross for you, Mr. Buckley, but I guess
23 we'll give Staff counsel an opportunity to introduce you
24 for the record, and then we have some questions from the
25 Bench.

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1 MS. SMITH: Thank you, Your Honor.

2

3 Whereupon,

4

ALAN BUCKLEY,

5 having been first duly sworn, was called as a witness

6 herein and was examined and testified as follows:

7

8 DIRECT EXAMINATION

9 BY MS. SMITH:

10 Q. Good morning, Mr. Buckley.

11 A. Good morning.

12 Q. Are you the same Mr. Buckley who prefiled

13 testimony in this docket?

14 A. Yes, I am.

15 Q. And has that been marked in this proceeding

16 as Exhibit 581?

17 A. Yes.

18 Q. Do you have any changes to make to that

19 exhibit?

20 A. I have one minor change on page 5, line 7,

21 that line should read appeared to have agreed rather

22 than appeared to agreed. And that's it.

23 Q. Did you also prepare what's been marked in

24 this proceeding as Exhibits 582 through 588?

25 A. Yes.

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1 Q. Do you have any changes to make to those
2 exhibits this morning?

3 A. No, I don't.

4 MS. SMITH: Your Honor, I move the admission
5 of Exhibits 581 through 588.

6 JUDGE MOSS: I believe we previously admitted
7 those yesterday, so they're in.

8 MS. SMITH: Thank you, Your Honor, the
9 witness is ready for questions from the Bench.

10 JUDGE MOSS: Thank you.

11

12 E X A M I N A T I O N

13 BY CHAIRWOMAN SHOWALTER:

14 Q. Well, I will ask you a preliminary one that's
15 usually asked, if you were asked these same questions
16 today, would your answers be the same?

17 MS. SMITH: My apology, I should have asked
18 that question. I didn't intentionally leave it out.

19 A. Yes.

20 MS. SMITH: That's a good question.

21 CHAIRWOMAN SHOWALTER: And it is an important
22 question to me, not a formality.

23 BY CHAIRWOMAN SHOWALTER:

24 Q. And so I will ask you to turn to page 105.

25 A. I'm there.

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1 Q. In general on this page and elsewhere you are
2 recommending that Washington take a stand-alone
3 approach, and I'm aware that you filed this testimony on
4 July 2nd I believe and had not had much time according
5 to your testimony to absorb the revised protocol. But
6 it is now two and a half months later, and I want to ask
7 you some questions, and this is really getting at how
8 will things play out if we adopt the settlement, and how
9 will things play out if we don't. And if we approve the
10 settlement, the settlement calls or anticipates that in
11 the near future, although not specifically defined, the
12 Commission would be presented with the allocation issue.
13 And others have testified that that might occur in a
14 general rate case, it might occur with a petition for
15 deferral accounting or perhaps simply a proceeding about
16 the allocation. My question is, if that arises, are
17 your statements here on this page a philosophical
18 approach that you have that we should be going on a
19 stand-alone, or was it in reaction to the proposals that
20 you knew of at the time?

21 A. The testimony here is in reaction primarily
22 to the company's initially filed case, which presented
23 the protocol, the original protocol, as the method that
24 they were supporting throughout their case. The
25 presence of the revised protocol and my knowledge of

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1 that and the very short review of that that I did during
2 the time frame that the proceeding was going on and
3 testimony was being prepared and other things being
4 looked at did not initially change my opinion on the
5 recommendation that's presented in the testimony.

6 Now given that, the revised protocol that I
7 had was a multiple redlined version, it was I think
8 given to me halfway through the Utah proceedings or the
9 Utah discussions, since then there's been much talk in
10 Oregon and Utah on the revised protocol, and as
11 basically indicated in the settlement that's before you,
12 the approach I'm taking now is that my mind is
13 relatively open to the possibilities. You know, I do
14 have definite opinions based on my initial review of the
15 revised protocol, and I can't say that that has at least
16 changed my initial direction that I'm thinking, but I'm
17 not firm in that approach.

18 So the intent now is, as stated in the
19 settlement, is to have the opportunity to fully review
20 the revised protocol and hopefully a final version of
21 the revised protocol along with any concessions or other
22 terms that can be used that the different jurisdictions
23 are imposing or recommending or parties are recommending
24 or have agreed to, look at that as a package, analyze it
25 on its merits, give the company an opportunity to

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1 present its case to myself and Staff that's evaluating
2 it for our recommendations, and then develop a further
3 recommendation from that point on. And that's what the
4 settlement attempted to do by essentially putting off
5 the analysis of the revised protocol into a future date.

6 Q. Now one of the issues is we don't know how
7 far in the future that date might be, you know, let's
8 talk about both ways. Isn't there the possibility if we
9 approve the settlement that the company will have no
10 particular incentive to come back in and resolve this
11 unless some particular problem arises?

12 A. I think that -- two things I can say on that
13 matter is that, one, in the settlement the company is
14 taking the risk of that and has basically accepted that
15 risk of what could happen if we don't have anything and
16 realizing that in most cases it would be the company
17 requesting something, and they recognize that we don't
18 have an agreed upon allocation. Given that, we have
19 had, you know, continued to have discussions, and, you
20 know, I think from a Staff standpoint, we can agree to
21 several things now regarding the timing of evaluating
22 the protocol. We recognize that the protocol is in its
23 hopefully final stages in some other jurisdictions,
24 other major jurisdictions, so we can commit to
25 immediately following commission orders in Utah and

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1 Oregon and perhaps maybe no later than December 1st of
2 this year initiate some formal discussions on resolving
3 the protocol. We can also commit to --

4 Q. I'm not sure what you mean by we can commit
5 to initiating, because who exactly would initiate this?

6 A. Staff and the company at least and other
7 parties would be invited to have formal meetings,
8 discussions on where we stand, what your remaining
9 issues are regarding allocations, understanding of the
10 protocol, the revised protocol, and its various terms
11 that have been put on in the other jurisdictions. So it
12 would be the starting point at which we have a set
13 instrument that we can actually evaluate, which we
14 didn't have in the proceedings that are before you now.
15 On the -- that's the beginning.

16 On the ending side, we don't know the result
17 of that, so I think that -- I think Staff, and perhaps
18 the company can speak to this later too, is what we
19 would propose is to present the Commission let's say no
20 later than April 1 a fairly extensive status report
21 which lays out where we stand, is there sufficient
22 reason to expect that we're going to come to an
23 agreement on an allocation methodology, where we stand.
24 And if we agree not to agree, each of those parties in
25 that report can submit to you perhaps their

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1 recommendation for how to proceed at that point, whether
2 it would be an immediate formal proceeding or whether it
3 might be wait until the next general rate case, but we
4 would present some alternatives to proceed.

5 This is the third case I have had with
6 PacifiCorp that I have worked on that I haven't had
7 allocation proceedings resolved, and I have just as much
8 motivation as anybody else to resolve it, so it's
9 something that I am committed to and I think Staff can
10 commit to, and I believe the company can too. It's just
11 impossible at this point to say that there is a absolute
12 date certain that everything can be resolved. We would
13 like that to be sooner than later, but at least I can
14 commit to you that we can begin at a certain point and
15 at least give you a fairly extensive status report at
16 some near date that's not too far away, April 1st, of
17 where we stand, how is it looking, where we might want
18 to go from there. And hopefully by that point we would
19 have an agreement, and it would be a recommendation on
20 how to proceed with that agreement.

21 In addition to that, we continue to talk
22 every day informally. So even on the beginning point of
23 waiting until December 1st, the intent is during last
24 week, this week and next week and the week after that,
25 we're continuing to talk about how to start focusing in

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1 on what we can do for the best interests of Washington
2 now that things seem to be settling down at least in the
3 other major jurisdictions.

4 Q. Well, let me take another tack. Supposing we
5 do not approve the settlement, then we are in this
6 general rate case here with hearings to be scheduled
7 reasonably promptly, the revised protocol is in the
8 record of this case, would you be prepared to address
9 it?

10 A. Given the time, yes, and I think we would
11 have to talk about sufficient time to evaluate the terms
12 of the revised protocol and the documents that go with
13 it in the other jurisdictions, and we certainly could.

14 And I might add during that time again, even
15 if we don't settle, you don't adopt the settlement in
16 this case, the fact that things are calming down if you
17 will in the other jurisdictions I think enables the
18 company and us to continue to discuss things even in a
19 litigated position more than what we have in the past.
20 It's always been a difficult position for I think
21 particularly the company based on discussions we have
22 had with them of being open perhaps to maybe some
23 different methodologies at the same time they were
24 trying to come up to agreements in their other major
25 jurisdictions, and I can understand that, and we have

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1 agreed with that and acknowledged the difficulty. And
2 so it's always been thought to be beneficial that when
3 those start getting more in their final points that our
4 moving target starts. It didn't seem prudent to me to
5 keep evaluating a moving target when every week there
6 could be a different redlined version of a protocol that
7 terms change and things like that.

8 So I think the fact that even if you were to
9 not go with the settlement now, that we would still
10 continue to have discussions on how we might proceed.
11 And, you know, there's always the possibility at some
12 point that we could come to another agreement regarding
13 allocations. But the settlement provided an opportunity
14 to give the company the rate relief that we think is
15 justified at the same time we essentially do that
16 discussion, and that's why we agreed, partially agreed
17 to the settlement and agreed for the rate relief and
18 plan on continuing working on evaluating the revised
19 protocol as well as other alternatives.

20 Q. Have you been evaluating the revised protocol
21 since July 2nd? I don't plan to ask you detailed, but I
22 just want to know if that's been ongoing.

23 A. Well, not to any detail. You know, we had
24 initial discussions with the company when our knowledge
25 of a revised protocol first came out, and we didn't do

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1 anything at first because it was probably a faster
2 moving target at that point. By the time it slowed
3 down, it was too late to incorporate it into our
4 testimony.

5 I contacted the company, and we had some
6 initial discussions about this problem, what to do with
7 a protocol that was being supported in the testimony and
8 a revised protocol that was being looked at in the other
9 states. And if I remember right, the company indicated
10 that for now they were supporting the protocol for
11 purposes of this proceeding, so there wasn't, you know,
12 and therefore there would be no request from us to
13 incorporate more time or try to get more time, suspend
14 the schedule or do whatever if they were going to be
15 continuing supporting the revised or the original
16 protocol. So there wasn't a, given that, there wasn't a
17 motivation if you will to turn my attention to
18 evaluating the terms of the revised protocol.

19 It wasn't until the rebuttal case was filed
20 that both of us kind of acknowledged that I had been
21 advocating a transitional approach or a temporary
22 approach, and the momentum of the revised protocols in
23 the other jurisdictions essentially I think then
24 convinced the company that perhaps the protocol version
25 that's filed, was originally filed in its case in this

0770

1 case, should also be considered a transitional approach
2 but still being used to evaluate the revenue
3 requirements during this case. Which I might add so was
4 other methods, in coming up with the settlement there
5 was several methods that was being used to evaluate the
6 appropriateness of the revenue requirement that's in the
7 settlement.

8 Q. Are you sufficiently familiar with the
9 revised protocol that you could say that if used, it
10 would produce some result in this case that would be
11 between the original protocol case of the company's and
12 the methodology proposed by Staff? I have forgotten the
13 terminology momentarily.

14 A. The control area based methodology.

15 Q. Control area.

16 A. I'm aware of that from responses to data
17 requests. I don't necessarily agree with the premise of
18 this, although this is a bit awkward because I am
19 supporting the settlement, which states that we will
20 give the company the opportunity to present its case
21 regarding the revised protocol to me at a later date, my
22 opinions on it are kind of biased if you will from a
23 quick reading of it and probably a quick reading of
24 terms that I don't like, so it's --

25 Q. I'm not sure what you mean by premise. I was

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1 simply asking you, would the result of its application
2 yield a rate, a revenue requirement in between the --

3 A. Okay.

4 Q. -- company's original and your proposal?

5 A. I think I -- I think it's best for me to say
6 in that regard that I have not evaluated that data
7 request or the revised protocol sufficient enough to say
8 that I agree with, I think this number is this \$2 1/2
9 Million number that's been out there, that I have not --
10 can not say with any confidence that I would support
11 that number as being a apples to apples comparison or
12 even a something close to apples to apples.

13 Q. You can't even speak for the direction, that
14 is would the revised protocol produce a lower revenue
15 requirement in this state than the original protocol?

16 A. Not without evaluating specific details
17 behind that. But I will agree with that's what the data
18 request says, but, you know, I have not had time to
19 review the underlyings of that data request. There is
20 significant difference in how things get allocated and
21 calculated in the revised protocol than the original
22 protocol, and without confirming that those were done
23 according to the revised protocol, I hesitate to say
24 that. But at the same time I have to admit that the
25 company has put significant effort into responding to

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1 those requests, and I don't have a reason to doubt that
2 number nor the direction that it takes.

3 And I might add that that was for a test year
4 I believe of the test year we're in this case, it
5 doesn't necessarily represent the effect of the revised
6 protocol in future years, which is where my greatest
7 concern is, not in the test year we're looking at today,
8 but it's out in the future, which is my greatest
9 concern.

10 CHAIRWOMAN SHOWALTER: Thank you.

11 COMMISSIONER HEMSTAD: I think that the Chair
12 has covered the questions I would have asked, I have no
13 other questions.

14

15 E X A M I N A T I O N

16 BY COMMISSIONER OSHIE:

17 Q. Mr. Buckley, maybe you can comment, and
18 that's perhaps all that it would be, on Mr. Falkenberg's
19 testimony yesterday as to what he believed to be
20 weaknesses in the revised protocol. And if I can
21 restate them succinctly, it would be that there were the
22 revised protocol does not take into consideration the
23 hydro reserve and the load following qualities of hydro
24 within at least I'm not sure if it's the western control
25 area or state of Washington, and that I believe that

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1 there's no permanent structural solution to irregular
2 uneven load growth within the company's different
3 jurisdictions. Do you have any opinion as to either of
4 those issues or any observations?

5 A. The first one, which is the value of the
6 hydro reserves is I -- it's my understanding, and again
7 it's not based on extensive review of the model runs
8 backing up this case, is that that's true, that it
9 doesn't -- it allocates cost but doesn't necessarily
10 allocate certain benefits to where they might go to
11 follow those costs, so I think that one I think the
12 company would agree is something that probably needs
13 some refinement in the revised protocol.

14 And in regards to the second issue, and again
15 with a bit of awkwardness that I'm supporting discussing
16 this issue in the future after the company has convinced
17 me, had an opportunity to convince me, my concern in the
18 protocol and the revised protocol has always been
19 essentially the allocation of cost associated with
20 resources to serve other jurisdictions, and that
21 incorporates changes in load growth and such, and that
22 if those costs are indeed allocated to Washington that
23 there be a basis for that allocation either in its own
24 load growth or the ability of whatever resource is
25 required to meet that load growth within Washington. So

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1 those are two of the issues that are still issues as far
2 as I'm concerned, at least based on my initial review,
3 and there's others too.

4 COMMISSIONER OSHIE: All right, thank you
5 very much.

6 JUDGE MOSS: Well, since we didn't have any
7 cross I guess there's not to be any follow up, but there
8 might be some redirect based on the questions from the
9 Bench.

10 MS. SMITH: We don't have any redirect, thank
11 you, Your Honor.

12 JUDGE MOSS: All right.

13 Very well then, Mr. Buckley, we appreciate
14 your being here this morning and testifying, and you may
15 step down.

16 THE WITNESS: Thank you.

17 JUDGE MOSS: We had previously agreed that
18 the settling parties could -- was the panel just to
19 consist of Ms. Kelly and Mr. Schooley?

20 MR. VAN NOSTRAND: Yes, Your Honor.

21 JUDGE MOSS: Okay, we call those witnesses
22 for purposes of brief surrebuttal.

23 MR. VAN NOSTRAND: Do you want me to call
24 them, or do you want to call them?

25 JUDGE MOSS: Well, I just called them, come

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1 on up.

2 And, Ms. Kelly and Mr. Schooley, you have
3 both been previously sworn and you remain under oath.

4 Go ahead.

5 MR. VAN NOSTRAND: Thank you, Your Honor.

6

7 Whereupon,

8 ANDREA L. KELLY AND THOMAS E. SCHOOLEY,
9 having been previously duly sworn, were called as
10 witnesses herein and were examined and testified as
11 follows:

12

13 D I R E C T E X A M I N A T I O N

14 BY MR. VAN NOSTRAND:

15 Q. I just want to cover a few of the issues
16 raised by Mr. Falkenberg in his surrebuttal testimony
17 yesterday to the panel. One of the criticisms from
18 Mr. Falkenberg was that the process for resolving
19 interjurisdictional cost allocation issue was open
20 ended. What do the settling parties have in mind for
21 that process?

22 A. (Ms. Kelly) I think Mr. Buckley did a good
23 job of outlining what we would be willing to agree to,
24 and I can reiterate that it's the company's intention,
25 hope, we have every incentive to resolve this issue in a

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1 timely manner in Washington, and we are caught between
2 the challenges of needing rate relief, as Mr. Furman has
3 testified, and wanting to have a smooth process for
4 evaluating the revised protocol. So we too can commit
5 to continuing informal dialogue until the final orders
6 are received in Oregon and in Utah, which are pending.
7 The cases there, we have issued -- we have done our
8 final briefs, we have held hearings, and we are just
9 waiting for the Commission orders to be issued. And
10 from there initiate a process where we hope that Public
11 Counsel and ICNU and other parties in addition to Staff
12 and the company would be involved in putting together
13 and working through the issues that are remaining with
14 the revised protocol and can commit to coming back to
15 this Commission no later than April 1st with a detailed
16 status report and an agreement hopefully to how we move
17 forward to in a timely manner resolve these issues and
18 the appropriate forum for doing so.

19 A. (Mr. Schooley) I agree with those statements,
20 it sounds like Staff will be working on this diligently
21 for the next few months.

22 Q. Another point yesterday while Mr. Falkenberg
23 was on the stand, there was the suggestion that the
24 company and ICNU may be in agreement on an
25 interjurisdictional cost allocation methodology. Do you

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1 believe based on Mr. Falkenberg's testimony that the
2 company's position and ICNU's position is close on an
3 interjurisdictional cost allocation methodology?

4 A. (Ms. Kelly) No, not at this time, and
5 ironically it would be I think as if the company said,
6 well, we still support the original protocol with these
7 few amendments to it and that creates the revised
8 protocol. I think that's exactly where we stand as far
9 as the adjustments that Mr. Falkenberg has proposed in
10 respect to load following and reserves and the treatment
11 of load growth issues. So those are significant issues,
12 they have been debated for many years in the MSP, and
13 ultimately the resolution of those issues was to exclude
14 them from the revised protocol or to deal with the load
15 growth issue in the ways that the revised protocol does.
16 So we should not minimize the fact that those amendments
17 are in effect a third protocol, the ICNU protocol.

18 Q. How do you respond to Mr. Falkenberg's
19 criticism regarding the inability of the revised
20 protocol to assign value to the hydro benefits load
21 following reserves capabilities?

22 A. (Ms. Kelly) In Mr. Duvall's testimony, he
23 addresses this issue specifically, but what we have
24 found is that there is significant challenge in just
25 allocating the identifiable costs associated with the

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1 company's generation and shared system. And if we head
2 down the path of trying to value all of the different
3 characteristics of our generation fleet, it becomes
4 untenable to reach some of the agreements that we need.
5 What Mr. Falkenberg has done is isolated the benefits
6 associated with one set of resources, but other
7 generation plant in our fleet provides the same sort of
8 reserve value, the same sort of load following, many of
9 our thermal plants have automatic generation controlled
10 AGC which allows them to provide some of the same value
11 that we get from the hydro. And so in the course of the
12 MSP, parties came to the understanding that trying to
13 assign different values to different resources was going
14 to head us down a very, very difficult path.

15 Q. Can you respond to the criticism that the
16 revised protocol does not do an adequate job of dealing
17 with the issue of cost shifts due to uneven load growth?

18 A. (Ms. Kelly) I think it's a fair
19 characterization that we have not come up with a
20 structural protection mechanism, but we do believe that
21 the revised protocol deals with the load growth issue in
22 probably I would say five ways.

23 We did a series of studies that showed that
24 under a pure rolled in allocation where each state gets
25 a share of all resources based on their peak and energy

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1 demands that depending on the resource that's added, the
2 growing state can pay between 86% and 125% of the
3 incremental cost of their growth. So in some
4 circumstances, the growing state actually pays more than
5 the cost of their growth.

6 There's also mitigating factors, the fact
7 that on the west side of the system significant
8 contracts will be dropping off over the next several
9 years so that the load growth on the east side of our
10 system, the reverse of having to replace resources on
11 the west side of our system, as contracts drop off
12 that's approximately 1,900 megawatts over the next ten
13 years of resources that need to be replaced.

14 We have also introduced a seasonal allocation
15 methodology that better assigns cost causers in the
16 winter and summer months as we add seasonal resources,
17 and the embedded cost differential approach will help as
18 we add new resources, the value if they are higher than
19 the embedded cost of our other resources, the value of
20 the hydro endowment to Washington will increase and the
21 value of the QF credit will increase as well. So those
22 factors help to mitigate.

23 And finally, the revised protocol has an
24 agreement that we will continue to monitor this process,
25 this potential problem, that we will look after this IRP

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1 cycle and make sure that there is not a material and
2 sustained harm to our other states. It's important to
3 note that Washington is the second fastest growing state
4 on our system. We recognize that Utah's growth is very
5 large compared to that, but there are issues that we
6 need to monitor and make sure that, as we look at all of
7 these different factors as part of an integrated system,
8 that we're considering all of those factors. And that's
9 a commitment that the company has made to come forward
10 with a report to its commissions in the fall of 2005 on
11 this very issue with specific recommendations if
12 necessary to implement structural protection mechanisms
13 for our slower growing states.

14 MR. VAN NOSTRAND: Thank you.

15 Your Honor, that completes the questions that
16 I was going to ask for the rebuttal testimony.

17 JUDGE MOSS: Thank you.

18 Is there any cross with respect to the
19 testimony we have just had?

20 MR. CROMWELL: Yes, Your Honor.

21

22 C R O S S - E X A M I N A T I O N

23 BY MR. CROMWELL:

24 Q. Ms. Kelly, when do you anticipate receiving
25 orders from the Utah, Oregon, and Wyoming commissions

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1 addressing the revised protocol proposals in those
2 states?

3 A. (Ms. Kelly) I would say by the end of the
4 year. There is no target date set in those states, so
5 we are just waiting to hear from the Commissions. And
6 hearings will be held in Wyoming in mid October.

7 Q. But you anticipate that the hearings, the
8 briefing, all of that will be done and that the Wyoming
9 commission will make a decision sometime around the end
10 of the year?

11 A. (Ms. Kelly) That's our hope.

12 Q. Thank you.

13 You also mentioned 1,900 megawatts of
14 contracts, contracts covering roughly 1,900 megawatts
15 would be expiring in the company's western control area
16 over the next ten years?

17 A. (Ms. Kelly) That's correct.

18 Q. And are --

19 A. (Ms. Kelly) I believe that's a systemwide
20 number, but the majority of them are in the western
21 control area.

22 Q. And who are those contracts with?

23 A. (Ms. Kelly) Some of them are Mid-Columbia
24 contracts. There is a BPA peaking contract. There are
25 several different long-term contracts that drop off,

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1 again primarily located in the Washington, I mean in the
2 western control area. One of my cross-examination
3 exhibits has a chart, a waterfall chart, that goes
4 through and shows our current forecast of load growth
5 and these derates and contract reductions.

6 Q. Does it identify all the contracts by who the
7 counterparty is?

8 A. (Ms. Kelly) It does not.

9 Q. Okay. Are most of the contracts or most of
10 the megawatts covered by those contracts either Mid-C or
11 BPA?

12 A. (Ms. Kelly) I don't know off hand. That
13 would be something that would be looked at in the IRP
14 process. But the BPA peaking contract certainly is a
15 significant amount of lost capacity.

16 Q. Thank you.

17 And you mentioned that Washington is your
18 second fastest growing territory after Utah; is that
19 correct?

20 A. (Ms. Kelly) That's correct.

21 Q. How many customers, I'm sorry, how many
22 residential and business customers does PacifiCorp serve
23 in Washington and Utah respectively?

24 A. (Ms. Kelly) I don't know.

25 MR. CROMWELL: Okay, thank you.

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1 Nothing further, Your Honor.

2 JUDGE MOSS: Mr. Sanger, did you have
3 something?

4 MR. SANGER: Yes, I have a couple questions.

5

6 C R O S S - E X A M I N A T I O N

7 BY MR. SANGER:

8 Q. Regarding this subsequent proceeding or
9 discussions that Staff and the company have agreed to
10 engage in, could Staff and the company have those same
11 discussions if the Commission approved the revised
12 protocol instead of the protocol for purposes of this
13 proceeding?

14 A. (Ms. Kelly) I'm not sure -- so it's the -- is
15 your question if the Commission rejects the settlement
16 and we go into litigation?

17 Q. If the Commission approves the settlement but
18 approves the settlement using the revised protocol
19 instead of the original protocol, and that is the basis
20 for the Commission order, and that is not opposed by any
21 party, and that becomes the rate case order in this
22 proceeding, could the Staff and the company then engage
23 in long-term discussions regarding interstate allocation
24 issues?

25 A. (Ms. Kelly) The parties could, but, and I

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1 won't speak for Staff, but I believe there would be the
2 option for Staff to withdraw its support for the
3 stipulation at that time based on its concerns about
4 review of the revised protocol, which would then lead us
5 into more of a hearing phase, and we think that having
6 these --

7 Q. But my question is based on the assumption
8 that no one challenged the order, that there was no
9 subsequent proceeding.

10 A. (Ms. Kelly) Again, I think that that could
11 happen, but I don't know that that would be, the
12 hypothetical that you posed, would be the case.

13 Q. And then on the issue of load growth, you had
14 mentioned that the growing state pays between 86% and
15 125% of the cost of the load growth under the -- and you
16 said that was the case in your testimony. In which, the
17 125%, that is the state that accepts 125% of their load
18 growth, is that a eastern control area or a western
19 control area state?

20 A. (Ms. Kelly) It would cover all states. The
21 factor that determines whether it's more than 100% or
22 less than 100% is the incremental cost, the comparison
23 of the incremental cost of the new resource to the
24 embedded portfolio. And to the extent that there is a
25 good IRP process and a good match between the resources

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1 that are being added and the resources that -- and the
2 load shape, that's when you will see over 100% of the
3 incremental cost being covered by the growth state.

4 Q. And in the studies that you provided to the
5 parties in discovery in this proceeding, did the studies
6 show that the eastern control area states picked up 86%
7 or around 86% of their load growth, or was it the
8 western control area states that picked up that
9 percentage of the load growth?

10 A. (Ms. Kelly) In the discovery in this process
11 and again in the UN-1050 process that ICNU has been a
12 party to, the studies were conducted some on Oregon load
13 growth and some on Utah load growth, and again the
14 determinate is not where the resource is located, the
15 determinate is how well the resource matches the load
16 shape of the resource that's being added. So if there's
17 a good match between the increase in load and the
18 resource that's added, then you will see more than 100%
19 of the costs of the new resource being allocated to the
20 state. So it's not -- and I know ICNU has had this
21 misconception and it was part of what was put forward in
22 Oregon and rebutted in the brief.

23 Q. Is it correct that in those studies that the
24 86% number that you referred to and that was referred to
25 in your testimony referred to Utah picking up 86% of its

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1 load growth?

2 A. (Ms. Kelly) No, there are studies that show
3 that when you add the same resource in Oregon that they
4 pick up approximately the same amount and vice versa on
5 the 125% number.

6 MR. SANGER: No further questions.

7 JUDGE MOSS: Okay, if that completes our
8 cross, then we can see if we have any questions for this
9 panel from the Bench.

10 Apparently not, so -- Ms. Smith, you looked
11 like you were reaching for your microphone, did you have
12 some redirect?

13 MS. SMITH: Just one, thank you, Your Honor.

14

15 R E D I R E C T E X A M I N A T I O N

16 BY MS. SMITH:

17 Q. Following the hypothetical question that
18 counsel for ICNU asked with respect to if the Commission
19 were to approve the settlement but do it on the basis of
20 revised protocol, is it the position of the settling
21 parties that the Commission should adopt revised
22 protocol on its face value?

23 A. (Mr. Schooley) No, it is not, I think many of
24 the items Ms. Kelly has brought up only show that
25 Washington Staff has to evaluate this revised protocol

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1 carefully and understand its implications today as well
2 as into the future, so that's why we need some time to
3 go over that, and we will spend the time necessary to do
4 so.

5 A. (Ms. Kelly) And I think it's the company's
6 position in this case that we are mindful of the
7 procedural challenges and therefore believe that in our
8 direct case we have advocated the use of the original
9 protocol and would again respect the wishes of Staff and
10 the other parties in this case.

11 MS. SMITH: I have nothing further.

12 JUDGE MOSS: Thank you.

13 I suppose I should ask if you have any
14 redirect?

15 MR. VAN NOSTRAND: No, Your Honor, thank you.

16 JUDGE MOSS: Thank you.

17 Well, that would appear to complete the
18 examination of the panelists, and we appreciate you
19 coming back and testifying this morning.

20 I believe that concludes the presentation of
21 witnesses, and with the exception of Exhibit Number 30,
22 which will be the public comment exhibit to be provided
23 by September 30th, that will complete our record, which
24 brings us to the question of post hearing process.

25 This subject came up yesterday, and I didn't

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1 have any particular news for the parties. This morning
2 I can say that we have considered the question, and the
3 Commission's preference is to, of course we previously
4 canceled the procedural schedule, so to set a schedule
5 for post hearing process that would include one round of
6 briefs to be filed on September 30th by noon. I
7 understand that the transcripts have been provided on an
8 expedited basis, I know I have been receiving them on
9 that basis, so you should have those by, Ms. Kinn,
10 Wednesday?

11 THE REPORTER: Monday.

12 JUDGE MOSS: Monday, yes, so Monday the
13 transcripts will be complete. And then with the one
14 round of briefs, the Commission will take the matter
15 under advisement. So if the parties have a comment on
16 that, we will certainly hear that, but that is the
17 Commissioners' preference.

18 MS. SMITH: Your Honor, this is Shannon Smith
19 for Commission Staff, certainly we could do that. I
20 would like to take this opportunity to beg and plead for
21 an additional day due by Friday at noon simply because I
22 have another matter the week before that is really going
23 to grab a lot of my time, and if I could just get that
24 extra 24 hours. But if there is a scheduling need on
25 the part of the Bench, of course I can accommodate that.

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1 MR. CROMWELL: Your Honor, for what it's
2 worth, I am in a similar position to Ms. Smith. I have
3 two commitments next week, one of which actually
4 involves this Commission, speaking at a panel for a
5 NARUC conference, and then the following week the public
6 comment hearing in Yakima with transit time is probably
7 going to consume a day itself. And I would ask for some
8 clarification as to the scope of the briefing that the
9 Commission is requesting. I guess in the absent --
10 absent any other indication, my initial impulse was to
11 try to brief this case completely, both addressing the
12 settlement that's been presented, obviously the matters
13 that we have pointed out where we have concerns
14 regarding the settlement, but also then go on and
15 address the testimony that our witnesses have provided
16 and those issues that are implicated. I frankly express
17 concern about my ability to do so fully by the 30th. I
18 will provide you with whatever I can in the time that is
19 available.

20 JUDGE MOSS: Well, let me address your
21 question in this way. What we have before us at this
22 time in the case is the proposal put forth by the
23 company, the Staff, and the NRDC that we resolve the
24 issues pending on the basis of their stipulation. And
25 we have also had some considerable discussion concerning

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1 the point that should it result that the settlement is
2 rejected or that the Commission conditions it in such a
3 way that it is unacceptable to one of the settling
4 parties and they withdraw, then we will have the need
5 for further process. I don't think it would be
6 appropriate, certainly unnecessary, at this juncture to
7 brief the litigation position except to the extent it
8 bears on the question of whether the settlement is an
9 acceptable, reasonable, or appropriate, or whatever word
10 you may choose resolution. So subject to any comments,
11 other comments, that's how I view the case at this
12 juncture, and that might simplify your task.

13 MR. CROMWELL: Thank you.

14 JUDGE MOSS: Mr. Sanger, do you have a
15 question or a comment?

16 MR. SANGER: Yes, I would comment that
17 originally we had planned on filing the initial briefs
18 in this case on October 8th, and while we will file a
19 brief whenever the Commission wishes, we had scheduled
20 our schedule to accommodate that initial time. And I
21 see the issues in this case in the brief, even though
22 you have just and I appreciate your narrowing the issues
23 for us on brief, I still see them as quite extensive and
24 would appreciate any additional time that the Bench
25 would like to provide.

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1 JUDGE MOSS: Okay, we will confer among
2 ourselves.

3 (Discussion on the Bench.)

4 JUDGE MOSS: All right, taking the comments
5 into account, we're going to actually need to go check
6 on some other information to see what accommodations we
7 might be able to make in terms of our initial
8 preference. So we will be in recess for 15 minutes, and
9 we will come back at about a quarter to the hour and see
10 if we can get this resolved.

11 Did anybody else have a comment on the
12 briefing? I should ask that, I have heard from some
13 parties but not all.

14 MR. VAN NOSTRAND: The sooner the better as
15 far as the company is concerned, Your Honor.

16 JUDGE MOSS: Got yours all ready to go.

17 MR. VAN NOSTRAND: I wouldn't say that.

18 JUDGE MOSS: Let's be off the record then,
19 we'll be back in 15 minutes.

20 (Recess taken.)

21 JUDGE MOSS: We have studied the calendars
22 and so forth and can accommodate the remarks we have
23 heard and will make the briefs due on October 8th at
24 noon, and that allows us to distribute them internally
25 and so on and so forth, so do have them here by noon,

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1 and I suppose that's all we need to say about that.

2 Is there any other business we need to
3 conduct?

4 MR. SANGER: Yes, this is Irion Sanger,
5 earlier in the proceeding you had passed out a common
6 brief outline for all the parties to address, I'm
7 assuming that that is no longer applicable.

8 JUDGE MOSS: That would only apply in the
9 case of a fully litigated case, because that outlined
10 all the issues that were set out in the preliminary
11 testimonies and so forth. So no, that outline is just
12 something that's a useful paperweight.

13 MR. SANGER: Thank you.

14 JUDGE MOSS: Anything else?

15 MR. VAN NOSTRAND: No, Your Honor.

16 JUDGE MOSS: All right, well, for my part at
17 least I would like to thank you all for your usual
18 highly professional conduct in getting us through our
19 hearing smoothly and even finishing a little early, and
20 perhaps we have a parting comment from one or more
21 commissioners.

22 COMMISSIONER HEMSTAD: Thank you, everybody,
23 for doing a good job.

24 CHAIRWOMAN SHOWALTER: I will echo those
25 comments and just say we proved Judge Moss as a

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1 pessimist in terms of getting through, but he's happy.

2 COMMISSIONER OSHIE: Yes, he's very happy.

3 MR. CROMWELL: For what it's worth, I was a
4 much more severe pessimist than Judge Moss.

5 JUDGE MOSS: All right, well, thank you all
6 very much, we will be off the record.

7 (Hearing adjourned at 11:45 a.m.)

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