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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3 WASHINGTON UTILITIES AND)
4 TRANSPORTATION COMMISSION,) DOCKET NO. UE-032065
5 Complainant,) Volume VIII
6) Pages 841 to 869
7) vs.)
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10 A hearing in the above matter was held on
11 November 8, 2004, from 1:30 p.m. to 2:15 p.m., at 1300
12 South Evergreen Park Drive Southwest, Room 206, Olympia,
13 Washington, before Administrative Law Judge DENNIS MOSS.

15 The parties were present as follows:

16 PACIFICORP, by STEPHEN C. HALL and via bridge
17 line by JAMES M. VAN NOSTRAND, Attorneys at Law, Stoel
18 Rives, LLP, 900 Southwest Fifth Avenue, Suite 2600,
19 Portland, Oregon, 97204, Telephone (503) 294-9679, Fax
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19 THE COMMISSION, by SHANNON SMITH, Assistant
20 Attorney General, 1400 South Evergreen Park Drive
21 Southwest, Post Office Box 40128, Olympia, Washington,
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22 THE PUBLIC, by ROBERT W. CROMWELL, JR.,
23 Assistant Attorney General, 900 Fourth Avenue, Suite
24 2000, Seattle, Washington, 98164-1012, Telephone (206)
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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 afternoon, everybody. We
3 are convened for an order conference in Docket Number
4 UE-032065. Let's take appearances, and we'll start here
5 in the room, and then we'll find out who is on the
6 conference bridge line.

7 MR. HALL: This is Stephen Hall, I'm
8 appearing here this afternoon on behalf of PacifiCorp.

9 MR. CROMWELL: Robert Cromwell on behalf of
10 Public Counsel.

11 MS. SMITH: Shannon Smith for Commission
12 Staff.

13 JUDGE MOSS: And I understood that perhaps
14 Mr. Sanger was going to be on the line.

15 MR. SCHOENBECK: Judge Moss, this is Don
16 Schoenbeck, I'm on the line.

17 JUDGE MOSS: Okay.

18 MR. SCHOENBECK: I'm not sure if Irion is
19 going to be on or not.

20 JUDGE MOSS: Okay, well, I also understood
21 that you would be on the line, Mr. Schoenbeck, so thank
22 you for letting us know.

23 Is there anyone else on the bridge line?

24 MR. VAN NOSTRAND: Yes, Your Honor, James Van
25 Nostrand.

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1 JUDGE MOSS: Okay. And, Mr. Van Nostrand, I
2 suspect Mr. Hall will be speaking for the company today,
3 but I will just alert you that your voice is barely
4 coming through.

5 MR. VAN NOSTRAND: All right, I will do my
6 best. Yes, Mr. Hall is speaking for the company today,
7 and I will just participate as necessary.

8 JUDGE MOSS: Okay, fine.

9 Well, I thank you all for entering your
10 appearances. I think the primary participation today
11 will perhaps be in the form of some explanation. We
12 don't do these very often, let me just say that while we
13 are recording it for the sake of posterity, I would like
14 to keep things informal today and let this be an
15 exchange that is oriented toward ensuring clarity in the
16 order. Specifically I think the points we need to focus
17 on are I view it more as a case of looking at the
18 application of principle to data, and so we do want to
19 get that right.

20 And I have asked Mr. Layne Demas to sit up
21 here with me. Mr. Demas is the Commission's accounting
22 advisor in this case. I think probably that was
23 generally known. And so he has been away and has just
24 gotten back today, so imagine his surprise upon coming
25 in this morning and discovering this waiting for him on

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1 E-mail and phone message. In any event, he's here and
2 may have some questions.

3 I suppose the best way to start unless
4 anybody has something preliminary they want to raise is
5 to simply have the company start and perhaps just
6 reiterate briefly its perception of the misapplication,
7 if you will, of principle to data.

8 Anything preliminary?

9 Apparently not. Go ahead, Mr. Hall.

10 MR. HALL: Thank you, Your Honor. First I
11 would just like to reaffirm, and it should be clear from
12 our motion but it's worth repeating, that the company
13 accepts the Commission's order and does not reject any
14 of the conditions that are in it. However, the aspect
15 of the order relating to Paragraphs 12.B and 12.C of the
16 settlement agreement appears to contain an error in the
17 calculation and thereby produces a result that's
18 inconsistent with the principles set out in the
19 Commission's order. These errors are set out in our
20 motion for clarification, and I brought Jeff Larson with
21 me, and he can explain in more detail the nature of
22 those. With respect to the motion that we filed, we
23 further refined our analysis in the attachments, and
24 Jeff can explain, but basically the effect is that the
25 numbers changed and it's a little bit smaller. We have

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1 copies, and if you think it would be appropriate at some
2 point we can hand those out as attachments.

3 JUDGE MOSS: It would probably make sense to
4 make the corrected or updated versions part of our
5 record as well.

6 MR. HALL: So, Your Honor, I guess I would
7 kind of like to follow your lead on how you would like
8 to best do this, but I think just as a thought it might
9 be helpful to review the principle intended by the
10 Commission in the order, then perhaps agree on the data,
11 and maybe Mr. Larson can get up and explain that and
12 walk through the attachments, and then third apply the
13 Commission's principle to the data especially with
14 respect to Paragraphs 63, 64, 77, and 87 of Order Number
15 6.

16 JUDGE MOSS: Yeah, I think that's a
17 reasonable way to proceed. And I will say in terms of
18 the Commission's intent in its order, I think the
19 company's filing here, its motion for clarification, I
20 think reflects accurately the Commission's intent, which
21 was to decline to accept, that's a little awkward
22 phrasing, but decline to accept Paragraphs 12.B and 12.C
23 of the settlement, and the Commission perceived that
24 there was an accounting impact from that. And so we
25 were attempting to recognize that, and there may have

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1 indeed been a misapplication of principle to data, but
2 that was the intent. And so to the extent it turns out
3 as we discuss it today that there is not an accounting
4 impact relative to the 12, oh, I'm sorry, was it 15.5,
5 then we need to know that and understand that. I
6 understand the company's proposal is that even if it
7 should be a bit on the high side of that, the company
8 would stick to the settlement amount, and so that would
9 be an important piece of information for us to have.

10 So I think your second part there was perhaps
11 suggesting that Mr. Larson might explain a bit,
12 something of a rehash perhaps of the analysis presented
13 with the motion. And that in turn may trigger some
14 questions from Mr. Demas or others in the room. I see
15 Mr. Schooley is here from the Staff, we've got other
16 accounting expertise in the room. Mr. Cromwell, you
17 don't have your expert with you. Mr. Schoenbeck is on
18 the line.

19 Again, I want to be fairly informal, just
20 want to get things straight, and perhaps everyone
21 understands these accounting principles. I confess I
22 personally found them somewhat arcane, but perhaps they
23 will become more clear to me as we discuss things today.
24 So let me turn the floor over to you, Mr. Larson, if
25 that's appropriate, Mr. Hall.

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1 MR. HALL: Yes.

2 JUDGE MOSS: Okay, and you can perhaps walk
3 us through this.

4 MR. LARSON: All right.

5 JUDGE MOSS: Do you want to hand that other
6 piece up.

7 MR. LARSON: Yes, if we could.

8 JUDGE MOSS: Okay, sure, go ahead and hand
9 that out and then we'll be able to follow along. And if
10 you would, please, if you have copies sufficient I would
11 like for our policy advisors over there to have copies
12 as well, Mr. Hall.

13 MR. SCHOENBECK: I'm sorry, Judge Moss, this
14 is Don Schoenbeck, would it be possible for somebody to
15 E-mail that to me or fax it to me? Is maybe Jamie in
16 his office, could he E-mail it to me?

17 JUDGE MOSS: Mr. Van Nostrand, can you do
18 that from where you are?

19 MR. VAN NOSTRAND: I'm sorry, Your Honor, I
20 am not in my office.

21 JUDGE MOSS: On an island in the South
22 Pacific somewhere no doubt.

23 All right, well, let's see if somebody from
24 here can take a copy and get it faxed to you,
25 Mr. Schoenbeck, and we'll put that -- it's a good bit

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1 longer than what we have in our attachment, so it may
2 take a few minutes for it to arrive for you there.

3 MR. CROMWELL: Your Honor, if I may.

4 Mr. Schoenbeck, what's your fax number?

5 MR. SCHOENBECK: (360) 737-7628.

6 JUDGE MOSS: We'll get that in the works to
7 you.

8 MR. SCHOENBECK: Thank you.

9 JUDGE MOSS: Do we have some more copies, we
10 need another copy on the Bench.

11 Okay, great. That didn't take all your
12 copies, did it, Mr. Larson?

13 MS. OMOHUNDRO: Maybe I can ask if I can get
14 Don's E-mail address, I may be able to forward it to
15 him.

16 JUDGE MOSS: Mr. Schoenbeck, we're going to
17 try the Blackberry wonders of electronic mail and see if
18 we can E-mail it to you too, so tell us your E-mail,
19 please.

20 MR. SCHOENBECK: It's my initials which are
21 dws@r-c-s-inc.com.

22 JUDGE MOSS: And let's take about a five
23 minute recess to give everybody an opportunity to take
24 care of this getting this off to Mr. Schoenbeck and also
25 then be able to pay attention to what's going on in the

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1 room, so we will be in recess for five minutes.

2 (Recess taken.)

3 JUDGE MOSS: Mr. Larson, why don't you
4 proceed to explain to us what all this paper is about.

5 MR. LARSON: All right, my name is Jeff
6 Larson, Managing Director for Regulation at PacifiCorp,
7 I'm happy to be here today to explain a very interesting
8 issue and what would be perceived as possibly
9 counterintuitive when you take into consideration some
10 tax impacts of the removal of a couple of adjustments.
11 And so let me first walk through what the document is
12 before you so you know what we're looking at, and then I
13 will go into the concepts and the removal of the two
14 adjustments in order to correctly apply the Commission's
15 order as we perceive the intent of it.

16 Looking at the document before everybody
17 currently, the first page is a model run out of our
18 revenue requirement model that was used in the
19 Washington case, and on the left-hand side it starts
20 with what was included in the stipulation and the
21 original stipulated price change of \$15,501,000 in
22 column 2, line 2. We then have looked at the amounts
23 included in the case for Trail Mountain and the
24 environmental regulatory asset and pulled out all of the
25 costs and the tax impacts and rate base associated with

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1 those two adjustments in the columns identified as
2 reference order 1 and reference order 2 at Trail
3 Mountain and environmental regulatory asset respectively
4 and then the interest synchronization calculation
5 associated with removing rate base to come up then with
6 what the total would be applying the Commission's order
7 and a price change that would be \$15,775,000.

8 And then to validate and support that, looked
9 at first of all a summary on a revenue requirement basis
10 and also trying to look at how the Commission arrived at
11 its number and trying to reconcile those, and that was
12 the initial activity that we went through, looking at
13 the Commission's order and how we would apply it. And
14 so this first page which is titled Washington Commission
15 Order Number 6 Reconciliation compares what we perceive
16 to be the Commission's order and the adjustments and the
17 company's calculation supporting that on a revenue
18 requirement basis for each of the components, and then
19 the next couple of pages footnote those calculations.

20 Then on page 3 I went through and did a hand
21 calculation to prove out what the revenue requirement
22 was and each of the specific tax components in it. And
23 in that -- in the prior summary it was just -- it was
24 showing like for expense it was showing the pure expense
25 and not the calculation of any tax impact on it. And so

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1 I went through in the proof to show all of the tax
2 components on a line by line basis. And so that takes
3 us from the \$15,501,000 stipulation amount through each
4 of the adjustments, the tax components, to page 4, a
5 total of \$15,775,000 again to prove that out.

6 Then following that there is a T account
7 page, which the title T Accounts for Trail Mountain
8 Regulatory Assets, which is at a high level basis just
9 trying to show the ins and outs of the adjustments, both
10 what was included in the company's actual results as
11 well as the entries that would need to be made to
12 properly remove those adjustments from the results. And
13 it's hard to read, the numbers written there got blocked
14 out by -- they were originally color coded and that's
15 been shadowed out, so we put the footnote references
16 there to what the actual entries, the descriptions at
17 the bottom of the page. And then adjustments 9, 10, and
18 11 are the reversal impacts of it. I do have copies,
19 the colored copies, if people would like that.

20 Then the following pages are at a high level
21 just a discussion of or a narrative rather than
22 pictorially in the T accounts the impact of the Trail
23 Mountain for the tax consequences. And then the
24 remaining pages are largely copies out of Mr. Ted
25 Weston's exhibit from the case, which at least the

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1 reference I have was JTW-3, and it's Tab B-6 in his
2 results of operations filing for page 1, and I have
3 noted on each page where those came out of that original
4 exhibit, and that will become important in a few minutes
5 as we walk through the adjustments. I think that's the
6 bulk of it. The rest of the package is just the
7 documentation on where the adjustments -- where our
8 calculations came from out of the information included
9 in the filing.

10 Now going back then conceptually to the
11 adjustments, and start with Trail Mountain first. As we
12 originally looked at the Commission's order, we actually
13 thought that the Commission had potentially overstated
14 the amount of revenue requirement applicable when it
15 pulls out its adjustments. Looking at the amount of
16 amortization for the two adjustments in removing rate
17 base, we initially thought that, you know, taking
18 \$675,000 and \$289,000 plus removing rate base, we should
19 have been below \$15 Million. As we looked at that, it
20 was coming in somewhere in the range of \$14 1/2 Million,
21 and we thought that there was going to need to be an
22 adjustment around that. And as we began then going
23 through the detail review of all the items included in
24 the case, it became apparent that there was actually tax
25 consequences that are counterintuitive to make the

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1 revenue requirement go above the \$15.5 Million in the
2 other direction, so I will walk through that.

3 So in adjusting for Trail Mountain, first off
4 you can't just take adjustment 5.3 from the company's
5 filing and reverse the impacts of that. It creates a
6 couple of issues. The first is that adjustment 5.3 put
7 into the case the amount of amortization that the
8 company was seeking for Trail Mountain, and it also had
9 an adjustment to remove joint owner costs from the case
10 so that customers are not paying for the joint owner
11 portion of those closure costs. So in adjusting for the
12 removal of Trail Mountain, you would actually want to
13 leave the components of adjustment 5.3 that remove the
14 joint owner costs and leave that alone. That's
15 correctly stated in the case, and you want to make sure
16 that those costs have been removed. And if the
17 Commission just reversed adjustment 5.3, it actually put
18 joint owner costs back into the case.

19 The second component is that you would
20 actually go into the company's actual results, not the
21 adjusted result, and identify what was on the company's
22 books in its actual records for the rate base balance
23 that you want to remove, and that is not being reflected
24 in adjustment 5.3. So you would go into the actual
25 filing, identify what the balance was in account 182 and

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1 186 where that was originally booked. There was no
2 reason for the company to make any additional adjustment
3 than what was on its books, and so that wasn't picked up
4 in the adjustment. So those are a couple of the
5 components.

6 The next piece then is to look at the tax
7 treatment, and at the time that Trail Mountain was
8 established on the company's books as a regulatory
9 asset, that original writeoff was reversed, and by doing
10 that you set up a rate base asset, a regulatory asset,
11 and you credit income, and so the writeoff credited
12 income, established a regulatory asset. That has a tax
13 treatment that also followed it that for tax purposes
14 they are not going to recognize that income, that
15 reversal or that credit to expense, and so you have a
16 difference between your book treatment and your tax
17 treatment, and you recognize that.

18 And so the way that you do that is you
19 establish for tax treatment a Schedule M, and a Schedule
20 M is the name of a actual -- a form in your corporate
21 1120 tax return, and it reconciles the difference
22 between your book and tax items. And so we have a
23 Schedule M deduction which is reducing your taxable
24 income. By having a credit to expense, you have an
25 increase in your income and therefore an increase to

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1 your tax expense. So we took a deduction, which was a
2 reduction to taxable income and reduced that tax
3 expense, so customers basically got a benefit because we
4 reduced tax expense.

5 The flip side to that then, when you have a
6 Schedule M item, the company typically follows
7 normalization for tax treatment, and we established a
8 deferred tax expense through account 411 and established
9 the balance associated with that item. So that you have
10 a impact to your current expense, and you offset that
11 with a deferred expense, and they typically zero each
12 other out when you follow normalization on your tax
13 treatments. And typically if you reverse an adjustment,
14 you would reverse out both your deferred side and your
15 current side in removing the adjustment, you would have
16 no impact by removing it. However, in Washington,
17 Washington is typically a flow through tax state, and so
18 we had an adjustment in our filing, adjustment 7.2 in
19 Ted Weston's Exhibit JTW-3, and that adjustment 7.2
20 removed all deferred tax treatment on non-plant related
21 deferred tax items, both the expense and the balance.

22 So with that adjustment now, we have removed
23 one side of the equation and eliminated the deferred
24 side, so in our filing you still have the Schedule M or
25 the current side of your tax treatment, which was a

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1 benefit to customers, still included in the filing, and
2 7.2 eliminates all the impacts of Trail Mountain on your
3 deferred tax expense already. So in order to properly
4 reflect Trail Mountain, you would pull out \$7.9 Million
5 related to the amortization of the closure costs from
6 your expense, you would remove the unamortized deferred
7 debits from rate base, account 182 and 186, and you
8 would reverse that Schedule M item that is still sitting
9 there alone. And by pulling out a benefit to customers,
10 your tax expense actually will go up, and so that
11 Schedule M item outweighs the removal of the
12 amortization in your rate base and actually then
13 increases revenue requirement as a result. Then moving
14 on, well, and with that then we have included in the
15 package before you the detail pages that show where
16 those balances are sitting in each of those accounts so
17 that the Staff could go through and follow that and
18 validate whether they feel that's appropriate.

19 The next item, the environmental regulatory
20 asset removal, it appeared to us that the Commission
21 based on its footnote had used adjustment 8.1 as the
22 basis for making its adjustment, and that one includes
23 in its title environmental settlement which, you know,
24 may have led to some confusion. Adjustment 8.1 is a --
25 it's an adjustment to reflect a benefit to customers

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1 based on a settlement that the company arrived at with
2 an insurance carrier on a coverage for environmental
3 properties and damage, and the company in settling that
4 released the insurer of obligations and received a cash
5 payment resulting from that. So the company now has
6 cash in its possession, and until that cash is used to
7 do environmental cleanup at an expense, we have treated
8 it as a benefit to customers in the form of a rate base
9 deduction, and so adjustment 8.1 should properly stay in
10 the case and not be removed.

11 What should be removed, if the Commission's
12 intent was to remove the deferred costs of environmental
13 cleanup and environmental remediation projects, would be
14 to go into the company's actual results, not into the
15 adjustments. I don't believe we made any adjustments in
16 our filing to adjust the costs as they sit on our books
17 currently. So we went in, you would need to go into the
18 actual results and identify what is in account 182 for
19 your deferred environmental costs and pull out that
20 balance as well as the amortization associated with that
21 balance, and that would be your proper adjustment for
22 your environmental costs, and then also identifying any
23 associated tax items, and there is a Schedule M item
24 also related to that that you would need to reverse to
25 properly reflect that.

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1 So those are the two adjustments as we see it
2 largely. You would have to delve into and know the
3 pages to go to and the items to look for in the details
4 within the company's filing, identify those actual
5 costs, and pull those out to properly reflect those and
6 defer those to a later decision in the deferral
7 application dockets.

8 JUDGE MOSS: Well, as I recall the
9 Commission's order, there is a reference to, in fact a
10 quote from I believe a Supreme Court decision that talks
11 about the complexities of regulatory rate accounting,
12 and I think what you have just said certainly
13 underscores the point for me.

14 Let me ask first if the parties might have
15 questions that they would have in this connection or
16 something to say about it, if Staff has perhaps analyzed
17 the situation. And then once we have done that, I will
18 ask if Mr. Demas has any questions for Mr. Larson. So
19 here in the room, Mr. Cromwell, did you have any
20 questions about this sort of thing or Ms. Smith?

21 MS. SMITH: If I may, Your Honor, if Staff
22 has any comment to make or any reaction or response,
23 perhaps Mr. Schooley could do that. I think he would do
24 a better job than me.

25 MR. SCHOOLEY: This is Tom Schooley,

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1 Commission Staff. We have been in discussions with the
2 company over these adjustments and concur with their
3 analysis, and certainly theoretically we haven't tied
4 down every number yet, but I think Mr. Larson has
5 provided sufficient information to say that the
6 Commission's order would, if implemented, result in a
7 revenue requirement increase rather than the decrease
8 they expected.

9 JUDGE MOSS: So what's in the order in your
10 view would represent the misapplication of principle to
11 fact or data?

12 MR. SCHOOLEY: Yes, especially with the
13 environmental remediation where there was a removal of
14 something that was a benefit to customers.

15 JUDGE MOSS: Okay, thank you.

16 Mr. Cromwell, did you have any comment on
17 this?

18 MR. CROMWELL: A couple of observations.
19 After consulting with Mr. Dittmer, I will equally
20 reflect my ignorance of flow through versus
21 normalization tax accounting. But the company's
22 response to Public Counsel Data request 144, which I do
23 not believe it is in the record, but it was essentially
24 a CD-ROM of data that they provided, indicated that
25 there had been flow through treatment of Trail Mountain

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1 Mine costs in the past, but Mr. Dittmer is not able to
2 connect the numbers that he saw in that response to the
3 Attachment A document.

4 What struck me as odd, stepping away from the
5 data for a moment, was that when Mr. Dittmer proposed to
6 remove the Trail Mountain Mine costs and the
7 environmental remediation costs in his responsive
8 testimony, it occurred to me that that would have been
9 the normal time where the company might have identified
10 and raised this issue in their rebuttal case or during
11 cross-examination or in briefing, and it strikes me as
12 odd that if this is the proper means of accounting for
13 these issues that when Mr. Dittmer raised these very
14 disallowance questions in his testimony that the
15 company's response at that time didn't contain the
16 information that's being presented today.

17 I have also been told that it appears that
18 when the company proposed to normalize its Trail
19 Mountain Mine costs it also tax affected the proforma
20 adjustments, and if the company were following the flow
21 through accounting for this item, it should not have tax
22 affected the adjustment. So this would either appear to
23 be an inconsistency or at least a reflection of some
24 unclarity in the record that's before the Commission,
25 which, you know, without belaboring arguments previously

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1 made, reinforces some of the concerns that we have
2 previously expressed to the Commission.

3 JUDGE MOSS: But you don't have any analysis
4 that would suggest that the company's math or
5 application if you will of the accounting principles is
6 in error, do you?

7 MR. CROMWELL: I don't believe that the
8 record would allow me to make that argument at this
9 point.

10 JUDGE MOSS: Yeah, I'm somewhat inclined to
11 agree with you, although I see that the data are buried,
12 and I don't mean this pejoratively, but they are buried
13 in there in one way or another, it's just not apparent
14 to the eye at the level of accounting analysis that we
15 typically do in the context of the hearing itself, and I
16 think indeed that explains perhaps what may turn out to
17 be a misperception on the Commission's part as to the
18 accounting effect is that we are looking at things
19 perhaps a bit more superficially than what we have just
20 gone through, and perhaps necessarily so given the time
21 available and so forth, but it appears that we have the
22 data here from which all this can be determined, so.

23 MR. CROMWELL: Well, and I --

24 MR. SCHOENBECK: This is Don Schoenbeck, Your
25 Honor, I do find one thing a little bit ironic about

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1 this whole calculation. On behalf of ICNU early on
2 after we saw the settlement, we asked for data requests
3 to both the company and the Staff saying, what is your
4 return on common equity implicit within the settlement
5 agreement. I don't have the responses here in front of
6 me, but I know from both sides of the aisle we basically
7 got an answer that we could not assume a return on the
8 common equity, we could only assume an overall rate of
9 return on cost of capital. But if you look at the work
10 papers here, PacifiCorp has very definitely been able to
11 make these tax adjustments and make these gross-up
12 amounts, has indeed attributed a return on common equity
13 with regard to those cost items. And you will see a
14 10.5% as shown on Attachment A, and I do find it a
15 little bit disingenuous that the company said there's no
16 return on common equity as agree to by the company and
17 Staff and then assume to make these very adjustments
18 they're proposing now.

19 MR. LARSON: If I may, Your Honor, respond to
20 that.

21 JUDGE MOSS: Sure.

22 MR. LARSON: In trying to reconcile to the
23 Commission's adjustment, one has to assume some level of
24 overall rate of return in order to know what the revenue
25 requirement is that you're making an adjustment for when

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1 you're removing rate base items. And so for purposes of
2 our analysis, we have included that capital structure
3 showing an overall rate of return to demonstrate or to
4 show how one would back into the revenue requirement
5 calculation to make that adjustment. You can't remove
6 rate base and its revenue requirement impact without
7 making some assumption.

8 MR. SCHOENBECK: Yes, and all I'm suggesting
9 is that there are a multitude of assumptions that could
10 be made on this. That's why I frankly looked at the
11 \$15.5 Million figure as really a black box settlement.

12 JUDGE MOSS: Mr. Schoenbeck, you're fading.
13 Slow down a little bit and try to speak up a little bit
14 so the court reporter can catch what you're saying.

15 MR. SCHOENBECK: Okay, well, I'm just
16 denoting that it was our view that the \$15.5 Million
17 figure was basically a black box settlement, and
18 adjustments were backed into it. And now I look at this
19 calculation and say, they're going beyond this kind of
20 black box settlement and even now asserting a specific
21 value when they claim there had been no such value
22 agreed to by the settling parties. I guess in my view,
23 I look at the \$15.5 Million value as a black box
24 settlement, and I even look at the Commission Order,
25 \$15.0 Million value as a black box settlement, and I

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1 think we're going far beyond what was testified to
2 before this Commission with regard to what were the
3 elements of the settlement. It absolutely did not
4 include a 10.5% return on common equity in this specific
5 capital structure.

6 MR. CROMWELL: If I may, Your Honor.

7 JUDGE MOSS: Go ahead. Let's don't stray too
8 far beyond the purpose here though. Our purpose is not
9 to reargue points that are made on petitions for
10 reconsideration, and indeed we're not getting into that.
11 These argument are made, and we have those in mind as a
12 separate matter, but here we're only concerned with the
13 application of principle to data, and we have here an
14 illustration of that that Mr. Larson has presented based
15 as I understand it on an assumed capital structure for
16 purposes of illustration, and we're not trying to reopen
17 the case on that. So I want to be clear about what
18 we're doing here, and appreciate your comments, but
19 let's don't stray too far from our purpose, so.

20 MR. CROMWELL: I just wanted to add, Your
21 Honor, that I think the calculations Mr. Larson provides
22 really illustrates the conundrum that the Commission
23 faces when we don't have clear regulatory treatment for
24 the Schedule M adjustments. You may recall my somewhat
25 obtuse discussion with Mr. Martin during

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1 cross-examination on some of these questions, and it is
2 complex. But, you know, that's one of the problems that
3 we illustrated is that without very clear determinations
4 from the Commission on these things, you end up having
5 exactly this type of problem.

6 JUDGE MOSS: Thank you.

7 All right, anything further on the accounting
8 matters before I ask Mr. Demas if he has any questions
9 for the company, anything that needs answered before he
10 explains all this to me?

11 Do you have any questions?

12 MR. DEMAS: Comments maybe. It seemed like
13 there was a few of these little reference --

14 JUDGE MOSS: You need to turn on your mike.

15 MR. DEMAS: A few that referenced -- is this
16 kind of pretty much superseded now, the first?

17 MR. LARSON: Yeah.

18 MR. DEMAS: Okay, because you had an Order 1
19 and an Order 2.

20 MR. LARSON: Right.

21 MR. DEMAS: Are those still good?

22 MR. LARSON: Yes, those are still the lead
23 sheets for the adjustment.

24 MR. DEMAS: Okay, I don't know on the --
25 basically when they -- yeah, I was -- the misapplication

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1 I applied to when taking out the adjustments initially,
2 I didn't take out the environmental remediation one
3 because it was a revenue requirement increase, but we
4 had further discussion and it was made clear to me to do
5 that. Okay, then when I came in this morning and saw
6 this, I realized that, okay, taking out the rate base
7 would be the easy way to solve this, which I did. I
8 just took your numbers and ran it down to like roughly
9 the \$14.5 Million and said, okay, then all the rest of
10 it seemed to feel relatively reasonable. Then I started
11 looking through Mr. Weston's exhibit to see how you
12 figure any way out that that tax issue -- I never would
13 have come up even close just by even -- maybe -- I mean
14 it was -- I'm sure somebody sit down and point through
15 what this all was, but we would have had to have had a
16 clarification on the tax Schedule M reconciliation here,
17 because definitely was not intuitive going through the
18 exhibit what that would be. And obviously that one
19 issue is the, you know, that's the overriding adjustment
20 there is the Schedule M reversal. And so as much sense
21 as it makes, I guess I couldn't make any sense of that
22 out of the record. So I don't really, you know, if it
23 turns out, I haven't -- I don't have any basis of even
24 right now, you know, questioning, you know, if there was
25 some mistake or application error on there. So other

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1 than going through this, which I have only seen it for a
2 couple minutes, I don't have any other clarifying
3 questions for the company.

4 JUDGE MOSS: Okay, very good.

5 All right, does anybody feel that we need
6 anything further to supplement us on helping us
7 understand all of the accounting matters?

8 MR. CROMWELL: If it is a help to Mr. Demas,
9 I think the exhibits identified for Mr. Martin, part of
10 what I was trying to do was that Schedule M
11 reconciliation between Mr. Weston's exhibits and what
12 Mr. Martin had in terms of the Schedule M, so to the
13 degree that those tie together, that might provide a
14 road map.

15 JUDGE MOSS: I think we will be in a position
16 to effect appropriate clarification. I have a process
17 issue that I did want to raise. One of the things in
18 the Commission's notice last week was to defer the date
19 for the company's compliance filing, the reason for that
20 being we didn't see any point in having a compliance
21 filing that had to be then withdrawn and replaced and so
22 on and so forth. Let us assume for the moment that the
23 Commission can enter an order with respect to the motion
24 for clarification on Wednesday, what would that mean in
25 terms of timing for a compliance filing, could that be

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1 effected by Friday?

2 MR. HALL: Yes, Your Honor.

3 JUDGE MOSS: The concern I have is I want
4 Staff, of course Staff, the customary practice is for
5 Staff to review a compliance filing before a secretary
6 letter when we have authorized one as in this case is
7 issued, and so I want to be sure that Staff has an
8 opportunity. So if a compliance filing was made on
9 Friday, would that give Staff adequate time to review
10 the compliance filing and make the necessary notation to
11 me that everything was in good order or not?

12 MR. SCHOOLEY: Yes, especially if it's early
13 Friday. As I understand it, the suspension date would
14 be Tuesday the 16th, so we would have Monday if there's
15 any problems as well.

16 JUDGE MOSS: To work it out.

17 MR. SCHOOLEY: But if we could finish it on
18 Friday ourselves, that would be helpful.

19 JUDGE MOSS: That's what I was hoping that we
20 could do that Friday so that we would have that extra
21 day of cushion in there. Occasionally there is some
22 little mathematical matter that has to be addressed, so
23 hopefully that won't happen, but. Okay, well, that's I
24 will then commit to targeting that schedule, and we'll
25 see what we can do on Wednesday. We have some other

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1 business that day, open meeting and so forth, but I
2 think we will be able to take care of it.

3 Is there anything further we need to have
4 before us today?

5 No, okay, fine, well, I thank you all very
6 much for participating today, and I think as I said
7 before we have sufficient information to move forward,
8 so let's do that, and we will be in recess.

9 (Hearing adjourned at 2:15 p.m.)

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